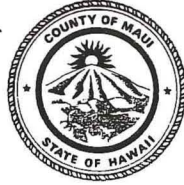


JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

July 29, 1999

Mr. Glenn Mason, AIA  
Mason Architects, Inc.  
119 Merchant Street, Suite 501  
Honolulu, Hawaii 96813

Dear Mr. Mason:

RE: Approval of the Final Compliance Report for a Special Management Area Use Permit for the Old Lahaina Courthouse Project, TMK: 4-6-1:009, Lahaina, Island of Maui, Hawaii (SM1 970002)

The Maui Planning Department (Department) has reviewed the above-referenced Final Compliance Report dated December 10, 1998, and finds it to be acceptable. We are in receipt of the letter from the Department of Land and Natural Resources, State Historic Preservation Division (DLNR, SHPD), dated July 15, 1999, which states that although the inventory survey report needs minor modifications, they have no objection to the approval of the Final Compliance Report as well as the issuance of a Certificate of Occupancy.

Once the inventory report is approved by DLNR, SHPD, the Planning Department will place the item on the Maui County Cultural Resources Commission (Commission) agenda for informational purposes. Please be prepared to present the findings of the report to the Commission at that time. You will be notified prior to the scheduled meeting.

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office at 270-7735.

Very truly yours,

  
JOHN E. MIN  
Planning Director

Mr. Glenn Mason, AIA  
July 29, 1999  
Page 2

JEM:ATC:cmb

c: Clayton Yoshida, AICP, Deputy Planning Director  
Aaron Shinmoto, Planning Program Administrator (2) (w/Enclosures)  
Maui County Cultural Resources Commission  
Brian Miskae, Executive Assistant to the Mayor  
LUCA (2) (w/Enclosures)  
CZM File (w/Enclosures)  
Ann T. Cua, Staff Planner  
Project File (w/Enclosures)  
General File  
(s:\all\ann\lacrtfin.com)

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ARCHITECTURE  
RESTORATION  
RENOVATION  
RESEARCH

Mason Architects

'99 JUL 23 12:30

DEPT OF PLANNING  
COUNTY OF MAUI

22 July 1999

Mr. John Min  
Planning Department  
County of Maui  
250 S. High Street  
Wailuku, Maui, Hawaii 96793

Subject: Final Compliance Report for the  
SMA Use Permit for the Old Lahaina Courthouse Project  
TMK 4-6-1:009, Lahaina, Maui, Hawaii (SM1 970002)

Dear Mr. Min:

A building permit was received for this project on 3 February 1998. This final compliance report is being submitted in compliance with the requirements of the Maui Planning Commission.

There were 15 conditions put upon this project by the approval of the Maui Planning Commission at their June 24, 1997 meeting. This report will summarize the compliance for each of those items. The numbers below correspond to the number of the condition contained in their June 30 letter to you.

1. *Construction of the project will commence by June 30, 1999.*

Response: We have complied with this condition. On-site construction began in late February, 1998.

2. *Construction of the project will be completed within 5 years of the date of its initiation.*

Response: This project is substantially complete. There are a couple of punchlist items remaining for the contractor to take care of, but these are normal for construction projects and do not inhibit the full use and enjoyment of the building.

3. *Final construction shall be in accordance with the preliminary architectural plans dated December 1996.*

Response: This has been accomplished.

4. *Mitigation of short-term impacts of the project relative to soil erosion from wind and water, noise, and traffic.*

Response: During most of the duration of the project, the contractor installed a 12-foot high geo-textile barrier around the site to control dust. There does not appear to have been any soil erosion resulting from this project.

Construction noise was relatively minor except for a one or two days during the demolition process. The Contractor received complaints about noise when the sidewalks were being demolished. These complaints came from the school and from Pioneer Inn. Work was completed on this demolition work within 24 hours and no further complaints were received.

Traffic effects were confined to a slight increase in traffic due to the contractor's vehicles. For the most part, they parked within the site. Traffic flow was typically unaffected.

5. *Compliance with all applicable government requirements shall be rendered.*

Response: To the best of our knowledge applicable government requirements were complied with except in two specifics:

- a. The Preliminary Compliance Report was not submitted until December 1998, when construction was well underway.
- b. The State of Hawaii Historic Preservation Division (SHPD) required that an inventory survey be done by a qualified archeologist prior to the start of any sub-surface construction work and that this work be reviewed and approved by the SHPD prior to the start of excavation work. This was not done. The effect of this is described as part of #9 below.

6. *The applicant shall submit plans regarding the location of construction-related structures:*

Response: There were no construction-related structures other than the barricade. The location of the barricade followed the outline of the area of work shown on the Title sheet of the drawings as submitted for permit.

7. *Compliance Reports.*

Response: As discussed above, the Preliminary Compliance Report was not submitted until December 1998, when construction was well underway. This Final Compliance Report is being submitted at the appropriate time.

8. *The waste from the site:*

Response: It became impossible to comply with this condition. The Construction and Demolition Landfill on North Kihei Road near Honoapiilani Highway was closed prior to the start of demolition on this contract (apparently due to underground fires). Demolition materials were dumped at the County Landfill.

9. *Archeological monitoring of the site.*

Response: As mentioned above, the SHPD required that an inventory survey be done by a qualified archeologist prior to the start of any sub-surface construction work and that this work be reviewed and approved by the SHPD prior to the start of excavation work. This was not done.

The archeologist retained for this project (Cultural Surveys Hawaii) was on site for the first three days of excavations. At that time, the architect was told verbally by that office that there was no need for further monitoring because it appeared that the entire site had been filled. Since this was based on excavations for the sewer line, the deepest excavation to be made on the site, we informed the County and the Contractor of this fact, with a warning to the Contractor that if they encountered anything that wasn't dirt, to contact us for follow-up. They did this on two occasions, which are discussed in Cultural Surveys Hawaii letter of November 27, 1998, received by our office on December 2, which is

attached. This was clearly inadequate and did not meet the intent of SHPD requirements, the Cultural Resource Commission (CRC) expectations, and the architect's representations to the CRC.

As a result of the above, a fairly extensive program of additional hand excavations and trenching was undertaken. This work was monitored by Cultural Surveys Hawaii and reviewed by a oversight group composed of Dee Fredrickson (representing the CRC), Dana Naone Hall (who originally raised the non-compliance issues), and Ross Cordy (SHPD). Ms. Hall coordinated with Leslie Kuloloio, vice-chair of the Maui/Lana'i Island Burial Council, who was also present during much of the inventory excavation work.

A draft report of the findings of this additional testing program was submitted to the State Historic Preservation Division for review, as well as the members of the Cultural Resources Commission and Ms. Hall. Comments were received. Revisions to the final archeological report reflecting those comments, are being made and will be submitted as part of the final record for this project in early August, 1999.

The comments from the SHPD were the most extensive, but the correspondence from the Division also said that we could finalize the Compliance Report and issue a final Certificate of Occupancy.

10. *Discovery of significant historic sites.*

Response: No major historic sites have been discovered. Specific findings of the excavations are described in the archeological report.

11. *Appropriate measures shall be taken to minimize noise impacts on King Kamehameha III School.*

Response: This was done. There were complaints made by the School at one point during the construction, during the demolition of sidewalks. These complaints were addressed by the Contractor within 24 hours.

12. *Pruning of the Banyan Tree:*

Response: The pruning of the Banyan tree was done in accordance with the instructions from the Arborists Committee. There was no stubbing and the pruning was supervised. The pruning was done by Jeff Gray, a certified arborist, of Ehukai Tree Trimming. Mr. Gray is also on the Arborist Committee and corresponded with Mr. Ernie Rezentes, Chair of the Committee, about the work prior to its execution.

13. *Certified arborist required.*

Response: See above.

14. *Cutting of intrusive roots of the Banyan Tree.*

Response: Success with this item is mixed. The larger roots were usually cut. Smaller roots were often severed by the back hoe.

15. *Compliance with the Conditions of the Maui County Cultural Resources Commission, contained in their May 8, 1997 letter.*

Response: The response to the Cultural Resources Commission conditions are listed below:

1. *Compliance with applicable government requirements:* Answer is the same as #5 above.
2. *Work shall be done in accordance with May 1, 1997 plans approved by the Commission:*  
This has been done.
3. *Final architectural plans to be submitted to the Planning Department for review and approval:*  
This was done.
4. *Architectural changes made to the building during the project shall be submitted to the Maui Planning Department:*  
No significant changes were made to the plans.
5. *Qualified archeologist shall conduct an inventory survey with subsurface testing of the project with results of the survey to go to DLNR.:*  
See the discussion in #9 above.

6. *If significant historic sites are found, contact DLNR, SHPD:*  
No significant historic sites were found.
7. *The use issue will be resolved with DLNR:*  
Once a building management team has been selected this issue can be finalized. The preferences outlined in the report of the Old Lahaina Courthouse Task Force will be followed.
8. *Restroom facilities within the Lahaina Courthouse Building shall have controlled access:*  
The intent of the project, and basis of the design, was that the restrooms will be used only by those using the building and that access will be controlled. This is a management issue that should be attached as a condition of the management contract for the building.
9. *The Maui Cultural Resources Commission shall be advised of the County's decision regarding use of the Courthouse Building:*  
The County has been discussing this issue with the CRC. The CRC has been kept advised of progress on the use issues.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Glenn Mason", followed by a horizontal line extending to the right.

Glenn Mason, AIA

cc. Brian Miske, Managing Director's Office  
Jeff Chang, Project Director



5320

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



TIMOTHY E. JOHNS, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES  
JANET E. KAWELO

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kekuhihewa Building, Room 555  
801 Kamehaha Boulevard  
Honolulu, Hawaii 96707

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

July 15, 1999

Mr. Glenn Mason  
Mason Architects, Inc.  
119 Merchant Street, Suite 501  
Honolulu, Hawaii 96813

LOG NO: 23785 ✓  
DOC NO: 9907RC31

Dear Mr. Mason:

**SUBJECT: Review of Preliminary Draft Report – Lahaina Court House  
Lahaina, Lahaina District, Maui TMK: 4-6-01: 9**

This letter reviews this report which was submitted on May 4, 1999 (Borthwick & Hammatt 1999. Archaeological Investigations at Lahaina Court House, Lahaina District, ... Cultural Surveys Hawaii ms.). The report will need revision before it will be acceptable.

The background section is generally acceptable. We recommend only some minor additions or clarifications (see attachment). The old photographs are a nice compliment to the report.

The methods section of the report (the rationale for the excavations and how they were carried out) is also generally acceptable, with some clarifications (see attachment).

The presentation of the excavation findings, however, needs extensive revision (re-organization) in our view in order for the sequence of layers, their meaning, and their age to be clear. The field presentation which Dr. Hammatt made for all concerned parties was an excellent and very clear presentation. We would like to see this part of the report be similar to that presentation. (The attachment provides details.) Generally, we wish to see each trench described separately, and for each trench's discussion there should be text for each layer which includes the artifacts and debris found, associated pits and likely chronology. The striking pattern that our staff observed in the field was that layers had very distinctive artifact and debris contents which enabled each layer to be reasonably dated, and pit features could be quite clearly placed to their layer of origin (e.g., the pit in Unit 1) and thus also be dated. Then there should be a concluding section on patterns across the site.

JUL 19 1999

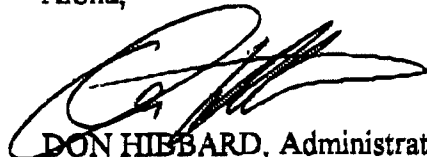
Glen Mason

Page 2

We have no objections to the County issuing a final certificate of occupancy, with the understanding that this report will be revised to be acceptable.

As always, if you or Dr. Hammatt disagree with any of our comments, please contact our review staff immediately. Ross Cordy is the contact on this project (692-8025).

Aloha,



DON HIBBARD, Administrator  
State Historic Preservation Division

RC:lm

c: Hallatt Hammatt, Cultural Surveys Hawaii  
Ann Cua, Planning Department, County of Maui  
Erik Fredericksen, Maui Cultural Resources Commission  
Dana Hall  
Maui Island Burial Council

**ATTACHMENT**  
**NEEDED REVISIONS**  
**LAHAINA COURT HOUSE INVESTIGATIONS**  
**CULTURAL SURVEYS HAWAII**

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**Scope**

Pages 5-6 summarize the scope, and page 1 somewhat indicates the reason for the work. We see one problem related to the scope. When this report was originally envisioned, the monitoring results were to be incorporated in these findings. If Cultural Surveys agrees that the monitoring work likely failed to differentiate layers (which seems likely to be the case) and that the correct stratigraphy in the construction trenches can no longer be established because the trenches were filled in, then clearly there is no reason to review the monitoring work. This should be clearly stated. This would provide the justification not to include those results, and it would forewarn the public that the draft monitoring report findings on stratigraphy are not accurate in case someone happens to see that report..

**Background Section**

1. p. 11, para 3. Please include a copy of the Freycinet 1819 map and indicate approximately where the project area is, so the reader can see that houselots and taro lo'i are indeed indicated. This map should be evaluated for accuracy, as early maps are often more schematic.
2. It would also be useful to include Mahele era (1850) or later maps to establish whether the project area was solely houselots and governmental buildings, or also included lo'i and canals. Our impression is that these maps will be very specific and accurate. It should be clear if lo'i were present or canals.
3. The issue of the fort's location was discussed on site, and our recollection was that Glenn Mason indicated that it was just outside of the project area. Yet the report seems to suggest that it might have been partially in the project area. Can the location be refined more? Some discussion occurred of dismantling and stockpiling of fort stone near the project area in the mid-1850s based on a painting (as we recall). Is there more information? Is there a painting that could be included as a figure? Page 12, paragraphs 1 and 2 are not clear as to when the fort was dismantled?
4. P. 19, para 1. We suggest that the report add note the "dismantling of the 'old Fort' in the 1850s" and then the construction of the Court House (which was completed in 1859 according to your presentation).

5. The Governor's Mansion is suddenly noted on page 19, para 2. It should be discussed earlier with mentioning of its age. It should also be noted that it was just outside the project area (as we understood it).

6. P. 19, para 2, Sentence 2. What is meant when the report says the canal to the south was excavated and filled during the historic era? Does this mean somewhere in the 1800s-1900s a canal was dug to the south and then later filled in? Was this under Canal Street? This is the first mention of such a canal that we could find. Please be specific as to time period. Include references. What was this area prior to the canal? We note that some of the source information is given on page 44. It should go here.

7. A map showing the Brick Palace, the fort, the Governor's mansion, the courthouse, etc. should be included. The project area's boundary should also be on this map.

### **Methods**

1. The Methods for the archaeological work noted on pages 6-7 should go after the historical background and before the archaeological findings.

2. Probably the monitoring trench locations should be noted here and the reason why they are not reported.

3. It should be noted that members of SHPD (Ross Cordy, Branch Chief for Archaeology, and Brian Ramos, Maui Archaeologist), the Maui Cultural Preservation Commission (Dee Fredericksen), the Maui Island Burial Council (Les Kuloloio), and Dana Hall (concerned citizen) met on site with Cultural Surveys and Glenn Mason to agree upon excavation locations and tasks.

4. p. 6, para 4. You probably should say something like, "The testing consisted of four backhoe trenches (A-D) whose location was generally determined by State Historic Preservation Division staff with the other concerned parties agreeing. Two hand-dug ..."

5. p. 7, last para. The backhoe trenching was not conducted under the "supervision" of Mr. Kuloloio. He was present and observed the excavation. The supervision of the trenching had to be done by archaeologists (Cultural Surveys staff), with progress being checked by State Historic Preservation Division Staff (Brian Ramos) and the other concerned parties.

3. You might add a paragraph at the base of page 7, noting that all concerned parties –our office (Cordy & Ramos), the Maui Island Burial Council's representatives (Kuloloio), Dana Hall, Dee Fredericksen of the Maui Cultural Preservation Commission, and the County were given a presentation of findings by Dr. Hammatt on site. And that later all parties were satisfied that the fieldwork was satisfactorily concluded.

### **Presentation of Archaeological Findings**

1. Minor Points

a. Most of the profiles which are illustrated are not as long as the text claims each trench to have been. For example, Trench A (p. 20) is described as 9 meters long, but Figure 11 shows only a 3 meter section. Trench C text (p. 24) says it was 9.7 m long, while Figure 13 shows only 7.5 meters. Please check each trench and see that an explanation is provided, or corrections are made.

b. Page 22, description of Trench B. This is missing from our copy.

c. P. 23. The figure does not show Trench B3. Some explanation must be given in the text.

d. Be sure that the layers for each trench are assigned site-wide layer labels. For example, if Layer IV is the basal sand layer, each trench should so label that layer IV. We note that on page 35, para 4, it seems to be stated that the same compact layer with illiil is labeled IIB in one unit and IIIa in another. The labeling should be consistent for all the trenches.

e. P. 42. As you will see below, we recommend the dates be blended into each trench's discussion and then summarized across the site, so this section would disappear from the report. But, as an aside Table 2 does not indicate the layer with which the features are associated for the C-6, C-15 and C-22 dates.

f. The accuracy of Figure 4 which shows the profiles. Figure 4 suggests Trench D was shorter than Trench C, yet the text and profiles show the opposite. Is Figure 4 wrong? It appears so. It should be corrected. Also, Figure 4 should show the locations of the trenches which were monitored.

2. As noted in the cover letter, we recommend that each trench be described separately by layer to include soil type and color and also artifacts and debris, associated pits, and chronological information (absolute dates from historic artifacts, radiocarbon dates). This was the way the presentation was done in the field, and it vividly made the stratigraphy in each trench clear – showing the age of each layer based on associated artifacts and debris. It also clarified the issue of the age of a number of features (e.g., the pit with the pig in Unit 1). This way separate sections of the report on midden and artifact analysis or dating analyses are not needed in the report.

3. Once each trench is described, then we recommend that the overall site's chronological sequence of layer deposition be described -- e.g., pre-human sand, pre-contact habitation layer (and its age based on the radiocarbon dates), 1850s era deposits (red clay and coral stone fill on the Hotel Street side, sandy loam on the Canal Street side, and the living surface associated with Court House), 1920s deposits (new fill and living surface), modern fill and current living surface.

4. p. 44, Summary, para 1. The construction excavations were to be monitored for more than inadvertently disturbed burials. Since the monitoring seems not to have adequately recorded the layers at the site, we suggest that this paragraph simply focus on the 4 trenches and 2 hand-units which provide the data for this report. Their aim was to determine what (if any) historic sites were present at this project. Clearly, we have a pre-contact layer, and 1850s fill/layer, and later deposits. These should probably be called subsurface archaeological deposits, rather than cultural deposits – for clarity for the general public.

5. P. 44, para 3. Before describing the pre-contact deposit, describe what the pre-human topography was like. Was the project area all flat sand? Apparently not, given the fill on the Hotel Street side. Describe what was learned about the soils and topography at this time. Then devote a paragraph or so to each successive layer's summary.

6. Do not describe all the pit features in this summary, as they should be described in each trench's discussion. But do describe the pit in Unit 1 with the pig, as this was a concern of some parties. Clearly note the layer that this pit is associated with, and the pit's age.

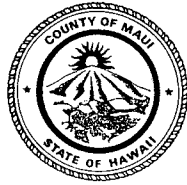
7. P. 46, para 3. Please summarize the findings for this Unit 2 work a bit clearer. Why did it not find the possible feature – because it was under the newly cemented strip? Based on Dr. Hammatt's field presentation, this unit was interesting because in IIB (?) this unit had the fist-sized to slightly large pieces of coral which may have been remnants from the fort's stones brought to build the Court House. Iliili was not much of a concern in that presentation. Did ideas change after that presentation? Anyway, clearly summarize if there are 1800s Lahaina deposits in this unit, as that essentially was the concern.

---

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

January 25, 1999

Mr. Glenn Mason, AIA  
Mason Architects, Inc.  
119 Merchant Street, Suite 501  
Honolulu, Hawaii 96813

Dear Mr. Mason:

RE: Cultural Resources Commission Review of Special Management Area (SMA) Permit Violations for the Old Lahaina Courthouse, TMK 4-6-1:009, Lahaina, Maui, Hawaii (SM1 970002)

At its regular meeting of January 7, 1999, the Maui County Cultural Resources Commission (Commission) reviewed documents and heard testimony relative to Special Management Area Use Permit violations for the Old Lahaina Courthouse. After lengthy discussion, the Commission requested that the archaeological inventory survey originally required for the site be completed to the satisfaction of the Department of Land and Natural Resources, State Historic Preservation Division (DLNR, SHPD), and the Maui/Lanai Burial Council.

In complying with the recommendations of DLNR, SHPD relative to additional testing, the Commission requested that any future trenching shall be monitored.

The Commission also requested that this item be placed on their February 4, 1999 agenda for further discussion. The meeting will be held at 9:00 a.m., in the Planning Department Hearing Room at the Kalana Pakui Building, 250 South High Street, Wailuku, Maui. You or your authorized representative are requested to attend the scheduled meeting to make a presentation to the Commission.

Mr. Glen Mason, AIA  
January 25, 1999  
Page 2

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office at 243-7735.

Very truly yours,



JOHN E. MIN  
Director of Planning

JEM:ATC:cmb

c: Grant Y. M. Chun, Managing Director  
Jeff Chang, Department of Parks and Recreation  
Clayton Yoshida, Deputy Director of Planning  
Aaron Shinmoto, Planning Program Administrator (2) (w/Enclosure)  
Maui County Cultural Resources Commission  
LUCA (2)  
Dana Naone Hall, Hui Alanui o Makena  
Charles Maxwell, Maui/Lanai Burial Council  
Ross Cordy, DLNR, SHPD  
Keoki Freeland, Lahaina Restoration Foundation  
Ann T. Cua, Staff Planner  
Project File  
General File  
(s:\all\ann.lahcrt2.crc)





Turn to our Island Calendar for previews of upcoming Maui events.

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E Komo Mai (Real Estate).....	12
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**Champs, local boxers are ready to rumble**



A boxing card at The Westin on Saturday has something for everyone.

SEE PAGE 15

**Staggered schedule may be unfeasible because of busing**

LAHAINA — A cover story in the March 18 Lahaina News stated Princess Nahienaena Elementary School, Lahaina Intermediate School and Lahainaluna High School are trying a staggered schedule for the fourth quarter.

While the schools are amenable to trying the new slate, said Princess Nahienaena Principal Edwina Wilson-Snyder, Maui education officials aren't sure if a new busing schedule can be completed in such short time.

Officials will meet after spring break to see if the staggered slate is possible, she said.

**Theo Morrison may leave LahainaTown Action Committee, based on problems caused by 'system'**

LAHAINA — LahainaTown Action Committee Executive Director Theo Morrison, who has spearheaded "A Taste of Lahaina" and other events that help promote and define the town, may be leaving her job.

County delays in renovating the Old Lahaina Courthouse and deciding who may occupy it have thrown off LAC's schedule and budget.

Morrison has been working without pay since January.

"I can only go for so long, and I don't see an end to it," said Morrison on Monday.

"It's a huge disappointment. We have worked so hard, only to have the rug pulled out from under us."

From 1995-98, LAC, a non-profit merchants' organization, based its offices and the Lahaina Visitor Center in the courthouse by Lahaina Harbor.

Staffed by volunteers, the center was the only self-funded, community-run visitor center in the state. Some 200-250 people visited the center daily to ask questions and pick-up unbiased information about Lahaina and Maui.

While staff didn't actively sell event T-shirts and other products, Morrison said, sales of LAC items generated \$6,000 to \$7,000 a month for the organization.

At the turn of 1998, the county evacuated the historic building for a renovation project. The group has since been based in an out-of-the-way place — above the Baldwin Home Museum.

The former county administration under Mayor Linda Lingle indicated the group could return to the courthouse in January, so LAC planned a budget accordingly, Morrison said.

After delays, the current administration under Mayor James Apana told LAC it could return to the courthouse under a temporary lease on March 1. That fell through.

Morrison said the group was counting on being in the courthouse during its WhaleFest event from March 5-11, and the exposure would have helped promote the week significantly.

Now, the latest word from the county is LAC may reoccupy the building in May "at the earliest," after the master lease (which may be under the management of the Lahaina Restoration Foundation) and details from the renovation are addressed, she said.



PLEASE GIVE THIS ARTICLE TO ANN CVA

**Art to be**

KAPALUA — Experience traditional arts and enjoy work at work.

Set for April, Carlton, Kapalua Festival celebrates Hawaii and the people of Hawaii.

This year's the No'eu O Na'i Artistry of Our A

Weekend activities include traditional luau and crafts, lectures and a concert by music star Henry

**Counc**

LAHAINA — The County Council Committee will meet tonight to review requests for the budget.

The meeting begins at 6 p.m. on Thursday, March 25, in the Lahaina Civic Center social hall.

Mayor James Apana's pro

**LAC, FROM 1**

The county attorney handling the Old Lahaina Courthouse was unavailable for comment at press time.

LAC proposed building a new visitor center on the Lahaina Public Library lawn. Those plans were scrapped, but even if they were approved, Morrison said, LAC banked on returning to the courthouse in January while awaiting construction of the new center.

Morrison said LAC would continue without her, but knowing first-hand the massive effort that goes into planning community-wide festivals, it's likely events would have to be downsized or canceled.

"Overall, the (bureaucratic) system failed the town," she commented.

"What we do is good for Maui. Not opening a visitor center in a visitor destination during the visitor season is just the height of absurdity."

Lyons Naone, president of the LAC Board of Directors, said, "I realize it's a hard decision that is going to drastically affect Lahaina, but we are caught in a corner and need to make a decision based on reality. Because we are a self-sufficient nonprofit, our basic source of revenue is the visitor center. The success of our events is due in part to the pre-promotion the visitor center affords."

"To lose Theo Morrison will mean we will have to start again from scratch, which basically means that all our successful activities... are in jeopardy of being discontinued."

Joan McKelvey, a Front Street businesswoman for 28 years and one of the founders of LAC, said that if Morrison is laid off, "it would effect every event. There's no way they could operate without the extraordinary input of Theo."

Jerry Kunitomo of BJ's Chicago Pizzeria believes LAC will be ineffective without

Morrison, and the town will lose the organization's "wonderful" services and events.

He hopes there will be public response to support Morrison and keep LAC going, the county will stop "dragging its feet" and reopen the courthouse, and Maui Visitors Bureau and entities responsible for bringing visitors to Maui will recognize the organization's importance and help continue it.

"Are there any events on Maui better than the LAC's?" he asked.

LahainaTown Action Committee's community events include Chinese New Year, "WhaleFest," "In Celebration of Canoes," "Art Night," "Maui Chefs Present," "A Taste of Lahaina," Halloween and "Festival of Art and Flowers." These events give national and international exposure for Lahaina, give visibility to area merchants and bring crowds into town (estimated attendance at LAC events in '98 was nearly 100,000). Morrison said visitors plan trips around the festivals.

This is accomplished with three staff — Morrison, a full-time assistant and a part-time assistant — and volunteers.

Kunitomo, who volunteers for LAC events and often sponsors them, explained there's a false perception LAC gets rich from events such as Halloween, which attracts crowds in the thousands.

LAC "hires" other non-profits to help staff fetes, and in 1998 close to \$50,000 was paid to sports teams, canoe clubs and other community groups that helped at the events.

Kunitomo also noted LAC, under Morrison, works hard to better the Lahaina community.

She was instrumental in establishing "Boat Day" greetings for cruise ship passengers to Lahaina Harbor, focusing police attention on crime and substance abuse in Lahaina's parks, and cleaning up outdated regulations for Lahaina's historic district, for example.

**HEARING, FROM 1**

The administration's spending plan also includes \$100,000 for renovation of Lower Honoapiilani Road from Hoohui Road to Napilihau Street; \$500,000 to build multi-purpose ballfields, restrooms, parking area, fencing, backstops, dugouts and an irrigation system at Napili Park; \$200,000 to refloor the uneven Lahaina

**FESTIVAL, FROM 1**

Hula will be performed throughout the weekend in the Ritz lobby. Both kahiko (ancient) and auwana (contemporary) dances will be featured, as well as oli demonstrations.

Teachers and students of the Hawaiian language immersion school Kula Kaiapuni will coordinate the children's schedule of activities for The Ritz Kids Program.

Keiki will share their knowledge of Hawaiian art and games, including hakoko (standing wrestling), o'o ihe (spear throwing), ulumaika (lawn bowling), olelo Hawai'i (Hawaiian language) and petroglyph rubbings.

The lecture series, encompassing this year's theme, begins Thursday evening.

Producer Gail Evanari will present her two films, "In The Wake of Our Ancestors" and "Wayfinders, A Pacific Odyssey," on voyaging canoes.

Lecture topics include "Ho'oponopono" (to correct), "The Decline of the Hawaiian — Causes, Effects, Solutions," "Hawaiian Lomilomi" (massage), "Kumu Hula in the Millennium," "Na Koa" (warriors) and "Na Leo O Na Kupuna Kahiko" (the voices of the ancients). The documentary "Ho'oku'ikahi" (to Unify as One) will also be shown.

Kapalua Resort is sponsoring the culinary event of the weekend: the Seventh Annual Hawaiian Food Celebration and Show. Ritz Executive Chef Patrick Callarec will prepare an authentic

Civic Center base \$400,000 for new Recreation Center.

Members of the review the budget conditions and then return administration for re

For information call at 243-7838.

Hawaiian feast.

Renowned Hawaiian Eselu and friends will journey via mele n music) of the island most beloved kumu turns in impromptu h of their kupuna (elder

During the show Kapalua will award individuals of the premiere

"Namahanaikale Excellence," to recognize carrying the values of integrity and humility be presented in m Lydia Namahanaika a treasured friend o porter of "Celebratio

Saturday night's features Kaponu. S artists will perform.

"Celebration of the Easter Sunday activi tional Easter service, zoo and Easter egg hu

Executive Chef Pat pare a lavish buffet b 9 a.m., 11 a.m. and 1

The seventh annu Arts" is supported b Kapalua, The Villag Resort and Aloha Air Call 669-6200.

Council Chair  
Patrick S. Kawano

Council Vice-Chair  
James "Kimo" Apana

Council Members  
Alan M. Arakawa  
J. Kaleni English  
Sol P. Kaho'ohalahala  
Alice C. Lee  
Dennis Y. Nakamura  
Wayne K. Nishiki  
Charmaine Tavares



Ken R. Fukuoka  
Director of Council Services

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
December 31, 1998

Honorable Council Chair Patrick S. Kawano  
and Members of the Council  
County of Maui  
Wailuku, Hawaii 96793

Dear Council Chair Kawano and Members:

**SUBJECT: USAGE OF OLD LAHAINA COURTHOUSE  
(PAF 98-276)**

I am concerned about the proposed usage of the Old Lahaina Courthouse and the adjacent "Banyan Tree Park." Therefore, may I request that this matter be referred to the appropriate committee for review.

The Lahaina Arts Society (LAS) has been a tenant at the Old Lahaina Courthouse for three decades. Through its many programs in support of local artists and art education for children, LAS has enriched the cultural lives of thousands of Maui residents and visitors. LAS is a vital part of the character of Lahaina Town. I am concerned because, as I understand it, Administration officials have determined that LAS will no longer be leased space on the first floor of the Courthouse, but instead will be relegated to a portion of the basement. I further understand that the basement is inaccessible to persons with disabilities and also houses other agencies, including a firefighting division of the Department of Land and Natural Resources. In addition, I understand that Administration officials have decided to grant management authority of the Banyan Tree Park (which LAS has long used to display the work of its affiliated artists) to another organization without engaging in a bidding process.

Pursuant to Section 3.36.090 of the Maui County Code, the Council must approve grants of real property (such as leasing County property to a nonprofit organization for a nominal lease fee). Therefore, the various proposed leases relating to the Old Lahaina Courthouse should be before the Council at some point. I would like the Council to consider the County's overall policy with respect to the usage of the Old Lahaina Courthouse, which is why I am requesting that this matter be referred to a committee. In my view, this will help the Council to

IS JUMPING THE GUN BY SAYING WHERE THEY ARE GOING IN THE COURTHOUSE <sup>(MAUI NEWS)</sup> I HAVE NO PROBLEM WITH LAC HAVING A TRUE VISITOR CENTER IN THERE. I DO HAVE A PROBLEM WITH WHAT THEY DID IN THE LAST "VISITOR CENTER" THEY HAD IN THE BUILDING. NUMEROUS T-SHIRTS, COFFEE MUGS, WINE GLASSES ETC. AND ALL THEIR INFO WAS NOT UNBIASED AS THEY CLAIM. I ALSO THINK IT WAS INAPPROPRIATE TO COMMISSION THE ARCHITECT @ \$40K BEFORE THEY HAD PERMISSION TO BUILD ON THAT OPEN SPACE. I AM ALSO CURIOUS AS TO HOW SHE CONCLUDED THAT THE "COMMUNITY" FAVORED THEM GOING BACK INTO THE COURTHOUSE. THE MEETINGS I WENT TO, PEOPLE WANTED L.A.C. DOWN AT 505 FRONT ST. ANYWAY, I DIDN'T KNOW IF YOU HAD THIS INFO SO HERE IT IS.

KENNY HOLTQUIST  
P.O. BOX 1121 96767  
661.8410

# Put visitor center-restroom complex in old courthouse, committee says

By VALERIE MORSON  
Staff Writer

LAHAINA — The LahainaTown Action Committee is proposing that a visitor center and restroom complex be a part of the renovated Old Lahaina Courthouse, if permits can be secured.

An earlier plan to build the complex on open space in front of the Lahaina Public Library on Front Street was abandoned after community opposition.

Theo Morrison, executive director of the LahainaTown Action Committee, will withdraw the original

special management area application for the library site at Tuesday's meeting of the Maui Planning Commission. Morrison hopes to put the new concept before the Maui County Cultural Resources Commission at its next meeting Feb. 4. The committee, a merchants group that promotes Lahaina, used to operate a visitor center in the courthouse before renovations began.

"What the community seemed to object to was a (new) building (being built)," Morrison said Saturday. "So we'll go back to the courthouse... It's nice, it works. I think it's a great plan. I'm just happy to be

moving forward."

The LahainaTown Action Committee had earlier obtained a grant of \$500,000 from Maui County to build the new complex.

The revised plans and goals were explained last week at the committee's annual meeting. Along with the new location of the visitor center, it was revealed that the group would like to landscape the open space in front of the library as well as a 4,000-square-foot dirt area at the parking lot at the corner of Prison and Front streets. Also planned are "story boards" that would be placed throughout the

town telling the history of important sites.

The space in the front of the library would be a Native Hawaiian minicultural park with island plants and a lo'i (a terrace used for taro cultivation) along with a small lawn-covered performance stage. Similar plantings would be done on the corner of Prison and Front streets without a stage area.

The story boards would be located on wider areas of the sidewalk or near the existing rock planters and

**See PUT VISITOR CENTER**  
on the next page

## Put visitor center in old courthouse, committee says

Continued from Page A1

combine historical facts with current information.

The visitor center/restroom project became controversial last year when the community objected to a new building being constructed on one of the last pieces of open space on Front Street. Two residents, Buck Buchanan and Dave Chenoweth, intervened on the SMA permit application.

The Cultural Resources Commission told the merchants group to look

for alternative sites. After seeking input from residents, Morrison said most favored returning the visitor center to the courthouse at Banyan Park, which is being renovated by Maui County.

Public restrooms on the second floor will be accessible to the disabled by elevator. There are also restrooms on the first floor, but those are not accessible, said Morrison, and no decision has been made whether they will be available to the public.

Buchanan said he preferred not to comment until he had more information about the new plans.

The visitor center will be located in a 500-square-foot room on the south side of the first floor. A museum and art gallery will be part of the restored courthouse.

Morrison said the committee would like to assume all maintenance for the area. She said the Royal Order of Kamehameha will provide ex-

pertise and manpower for the ground and rock work. Native Hawaiian groups and schoolchildren will care for the lo'i and gardens once they have been completed.

While the grant money will not be needed to construct a new building, Morrison said there will be expenses for courthouse signs, exterior lighting, new designs and permits and for completing the miniparks. She said there has also been talk of putting in another minipark at the front of

Kamehameha Iki Park farther down Front Street.

The committee spent \$40,000 on architectural plans for the complex in front of the library, she said.

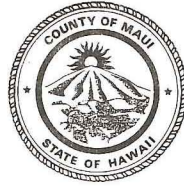
She also said the LahainaTown Action Committee and three other West Maui groups — the Friends Moku'ala, Hui O Wa'a Kauhā and the Lahaina Restoration Foundation — would soon get together to work on an interpretation plan for all of Lahaina.

NOTE: THIS PAGE PART OF REPORT TO DAIN  
KANE & COMM. OF THE WHOLE

CHRONOLOGICAL HISTORY of meetings and correspondence  
between the Lahaina Arts Society, Maui County, the State of Hawaii, and  
other organizations relative to our occupation of the Lahaina Courthouse.

- \_\_\_\_\_ 04-01-97 Report to County Council prior to on-site inspection of Old Courthouse.  
Also sent to Mayor Lingia.
- \_\_\_\_\_ 05-07-97 On-site inspection of Courthouse by Committee of the Whole.
- \_\_\_\_\_ 09-08-97 Letter to Director of Housing and Human Concerns, Stefanie Aveiro  
concerning vacancy of Courthouse for renovation and asking for  
confirmation of LAS return after renovation.
- \_\_\_\_\_ 09-12-97 Mark Purcell's reply.
- \_\_\_\_\_ 10-97 Telephone communication from Managing Director Richard Haake,  
requesting proposal for a resolution.
- \_\_\_\_\_ 11-01-97 Proposal for resolution submitted to Mayor Lingie.
- \_\_\_\_\_ 11-13-97 Letter from Managing Director Richard Haake stating that this must go  
before the Grants Review Committee.
- \_\_\_\_\_ 12-12-97 DLNR meeting at which they ammended executive order No. 16/2 to  
allow non-profit organizations to occupy Courthouse.
- \_\_\_\_\_ 01-15-98 LAS vacates Courthouse for restoration.  
Projected completion day: September 15, 1998
- \_\_\_\_\_ 03-05-98 Cultural Resources Commission grants LAS permission to collect money  
in Banyan Tree Park.
- \_\_\_\_\_ 07-20-98 Meeting with Managing Director Richard Haake informing us  
Courthouse/Banyan Tree Square will be available for Maui non-profit  
Organizations to bid on. Advised us to "check Maui News for bid notice".
- \_\_\_\_\_ 08-04-98 Met with Keoki Freeland, Executive Director of Lahaina Restoration  
Foundation, to discuss his view of future LAS occupancy of Courthouse  
and use of Banyan Tree Park.
- \_\_\_\_\_ 08-06-98 Attended CRC meeting to extend permission to collect money in Banyan  
Tree Park.
- \_\_\_\_\_ 10-98 Heard rumors that County was drafting contract with LRF. Called County  
and confirmed that the Department of Finance was indeed working with  
corporation Council on contract for Courthouse.
- \_\_\_\_\_ 11-12-98 9:30am met with Department of Finances, Travis Thompson, Brenda Lee  
and Corp. Council Peter Lee to ask if LAS could have input. LAS "return  
assured" but would not be written into contract. Promise to write letter to  
CRC for December 3<sup>rd</sup> meeting stating LAS to return to Courthouse and  
will recommend extention of waver to collect money in Banyan Tree Park  
until reoccupation of Courthouse.
- \_\_\_\_\_ 11-12-98 LAS leaves meeting concerned about future use of Courthouse and  
Banyan Tree Park.
- \_\_\_\_\_ 12-03-98 CRC meeting. Letter from Travis Thompson does not mention LAS at all!  
Waver extended as Dorothy Pyle and Commission have grown to like us  
and what we do for the Community. They have listened to numerous  
hours of testimony from LAS artists-members. Extention granted to open  
period up to reoccupation of Courthouse by LAS. Thank you CRC.

JAMES "KIMO" APANA  
MAYOR



200 South High Street  
Wailuku, Maui, Hawaii USA  
96793-2155  
Telephone (808) 243-7855  
Fax (808) 243-7870

'99 MAR 29 AM 11:03

**OFFICE OF THE MAYOR**

Ke'ena O Ka Meia

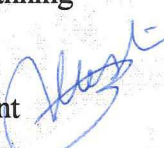
COUNTY OF MAUI  
Kalana O Maui

DEPT OF PLANNING  
COUNTY OF MAUI

**TRANSMITTAL**

March 29, 1999

To: John E. Min, Director  
Department of Planning

From: Brian Miskae  
Executive Assistant 

Subject: Occupancy of Old Lahaina Courthouse

Further to our discussion of March 25, 1999 I am enclosing herewith copies of written confirmation from Dana Hall, Dee Fredericksen and Don Hibbard indicating each has no objections to occupancy of the building pending completion of the inventory survey report. I have also spoken to Floyd Miyazono regarding a temporary use permit. He has agreed to issue one.

I would ask that you confirm that you have no objections to occupancy of the Old Lahaina Courthouse by LahainaTown Action Committee pending completion, submission and approval of the inventory survey report being done by Cultural Surveys.

In anticipation and based on our previous conversation, I have already advised LTAC that it may proceed with the permit process through the Parks Department.

FROM:

**DANA NAONE HALL**

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

DATE: March 26, 1999

TIME: 11:11 am

TO: Brian Miskae, Office of the Mayor 243-7870

REMARKS

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IF YOU DO NOT RECEIVE 2 PAGES (INCLUDING COVER SHEET),  
PLEASE TELEPHONE OR FAX US IMMEDIATELY. THANK YOU.



**DANA NAONE HALL**

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-5775

March 26, 1999

Via Facsimile and U.S. Mail  
243-7870

Mr. Brian Miskae  
Office of the Mayor  
200 S. High Street  
Wailuku HI 96793

Re: Lahaina Courthouse Restoration; TMK 4-6-01:09, Lahaina, Maui

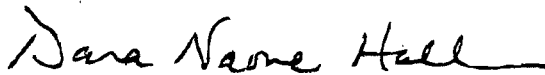
Dear Brian Miskae:

Archaeological testing of the Lahaina Courthouse project area has been completed. The testing identified a number of subsurface layers including evidence of coral and 'ili'ili pavements, and the presence of a significant subsurface precontact cultural layer. The testing also identified two articulated pig burials. These important subsurface historic and cultural resources will not be affected by the occupancy of the renovated Old Lahaina Courthouse.

We therefore have no objection to occupancy of the Courthouse building, however, we look forward to the timely submittal of an acceptable report detailing the results of the archaeological testing to the Department of Land and Natural Resources State Historic Preservation Division. We would appreciate receiving a copy of the draft report when it is submitted to the State Historic Preservation Division for review and approval.

Thank you for soliciting our views on this matter. If you have any further questions, please do not hesitate to contact me.

Sincerely yours,



Dana Naone Hall  
Hui Alanui o Makena

DNH/jp

cc: Leslie Kuloloio, Hui Alanui o Makena

DEMARIS L. FREDERICKSEN  
 P.O. BOX 880131  
 PUKALANI, HAWAII 96788

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**FACSIMILE TRANSMITTAL SHEET**

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TO:	FROM:
Mr. Brian Miskae	Dee Fredericksen
COMPANY:	DATE:
Mayor's Office	03/26/99
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
243-7870	1
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
	572-8900
RE:	YOUR REFERENCE NUMBER:
Lahaina Courthouse	Copy to Dorothy Pyle, CRC Chairperson

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

---

NOTES/COMMENTS:

Thank you for contacting me as the archaeologist serving on the Cultural Resources Commission regarding the archaeological inventory survey conducted at the Lahaina Courthouse in January of this year. The CRC was very interested in this project, since the archaeological consultant, Cultural Surveys Hawaii, Inc., claimed it was not aware of the fact that the County of Maui Planning Department and the State Historic Preservation Division had stipulated that an inventory survey was required as part of the SMA permit process. We also found out that much of the subsurface work had been done without an archaeological monitor being present, which was also stipulated by the Planning Department and SHPD.

As a result, an "after-the-fact" inventory survey was conducted by CSH. I visited the site on 6 separate occasions while excavation was in process. Not only were historic layers found, a fairly extensive precontact cultural layer was also identified. It is from this layer that radiocarbon charcoal samples were collected. It is my understanding that these are being analyzed to determine the date of the occupation represented by the precontact cultural layer.

Generally, the maximum length of time for samples to be analyzed is 30 days. It would be my opinion that the you should expect the completed archaeological inventory report very soon. It is also my opinion that there should be nothing in the report that would preclude occupying the Courthouse, prior to the completion of the report. The CRC urges you to follow up, and make sure that the inventory survey report is delivered in a timely manner, in order to bring closure to this project.

---



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621  
HONOLULU, HAWAII 96809

TIMOTHY E. JOHNS, Chairperson\* &

JANET KAWLO, Deputy to the Chairperson\*  
EDWIN SAKOBA, Acting Deputy Director\*

\* Board of Land and Natural Resources  
& Commission on Water Resource Management

- Aquatic Resources
- Boating and Ocean Recreation
- Chairperson
  - Administrative Services
  - Community Services Coordinator
  - Kahooolawe Island Reserve Commission
  - License/Permits/State/Mail Center
  - Personnel
  - Public Information
- Conservation and Resources Enforcement
  - Hunter Education
- Conveyances
- Forestry and Wildlife
- Historic Preservation
- Land
- State Parks
- Water Resource Management

- Urgent
- Confidential
- Personal

**Fax Transmittal**

To: Brian Miskae Fax: 243-7870

From: <u>Don Hubbard</u> <u>SPPD</u>	Tel (808) 692-8015 Fax (808) 692-8020
---	--

Date: 3/25/99  
Re: Lahaina Ct. house

(Number of pages faxed, including transmittal: 2)

The information contained is intended for the personal and confidential use of the designated recipient(s) named above. If the reader of this message is not the intended recipient(s) or an agent responsible for delivering it to the intended recipient(s), you are hereby notified that you have received this transmittal in error, and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you very much.

Comments:

*Signature will follow when letter is mailed.*

*Mahalo*

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhikawa Building, Room 656  
601 Kamohala Boulevard  
Kapoho, Hawaii 96707

TIMOTHY E. JOHNS, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES  
JANET E. KAWALO

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

March 24, 1999

Mr. Brian Miskae  
Office of the Mayor  
200 South High Street  
Wailuku, Hawaii 96753

LOG NO: 23141  
DOC NO: 9903tm08  
Architecture

Dear Mr. Miskae:

**SUBJECT: Lahaina Courthouse Restoration**  
**TMK: 4-6-01:09, Lahaina, Maui**

Per our telephone conversation of today, we understand that the archaeological field work is complete and there will be no further ground disturbance activities associated with the above project. Therefore, our office believes that the immediate occupancy of the Lahaina Courthouse may proceed. Thank you for the opportunity to comment. Should you have further questions, please feel free to call me at 692-8015.

Aloha,

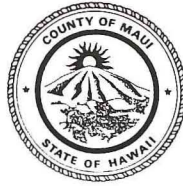
DON HIBBARD, Administrator  
State Historic Preservation Division

TM:amk

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

April 8, 1999

MEMORANDUM

TO: Grant Y. M. Chun, Managing Director

FROM: John E. Min, Planning Director *JEM*

SUBJECT: **OLD LAHAINA COURTHOUSE**

The Maui Planning Department (Department) is very interested in occupying space on the second floor of the building, and the Department would be happy to share space with other County agencies. The Department's needs would be limited to the hours of 7 a.m. until 4 p.m. The Department has planning inspectors and land use planners who could utilize the office space to assist the public while in Lahaina.

If you have any questions, please feel free to contact this office.

JEM:ATC:osy

Attachment-Memorandum dated March 31, 1999, from the Managing Director

c: Clayton I. Yoshida, AICP, Deputy Planning Director  
Aaron Shinmoto, PE, Planning Program Administrator (2) (w/Attachment)  
Ann T. Cua, Staff Planner

Project File

General File

(s:\all\ann\chunlah.crt )

JAMES "KIMO" APANA  
MAYOR



GRANT Y. M. CHUN  
MANAGING DIRECTOR  
TELEPHONE: 243-7855

OFFICE OF THE MANAGING DIRECTOR

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

APR -6 09:34  
DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

**MEMORANDUM:**

March 31, 1999

To: Franklyn L. Silva, Director  
Department of Liquor Control  
Alice L. Lee, Director  
Department of Housing and Human Concerns  
John E. Min, Director  
Department of Planning

From: Grant Y.M. Chun, Managing Director *YMC*

Subject: Old Lahaina Courthouse

Each of your departments has requested office space in the newly renovated Old Lahaina Courthouse. There are two areas designated for office use located on the second floor of the structure.

An extensive review was conducted and a considerable amount of time was spent by the Old Lahaina Courthouse Task Force, a citizen based committee, to resolve, among other things, eventual use of the building. The Task Force's final recommendation which was adopted as part of the Board of Land and Natural Resources (BLNR) board was as follows in order of preference:

1. Museum
2. Art Gallery
3. Visitor Center of Lahaina Town
4. Community Center (meeting room/classroom)
5. Office/Administration space.

The recommendation went further and stipulated that the office space be given preference to the tenants of the building. The tenants for use #2 and #3 are Lahaina Town Action Committee and the Lahaina Arts Society respectively.

Page 2

According to the proposed Master Agreement between the County and Lahaina Restoration Foundation (LRF), LRF is obligated to comply with the recommendations of the Task Force. Although the County through its Finance Director has final approval authority the assumption is that usage should still be consistent with the Task Force Recommendation. Once the final assignments are made, absolute final approval is needed from BLNR.

In fulfilling this obligation, LRF has committed one of the second floor office spaces to LahainaTown Action Committee. It is our understanding that the Lahaina Arts Society will set up its administrative office in the basement area of the building. This leaves only one office space on the second floor.

If each of your departments needs to locate on the second floor, can you share the space with occupancy by day or time assignments? Please discuss this among yourselves at your earliest convenience and transmit your comments to Brian Miskae of this office. He can be reached at 7855 if you require any further information.

cc: Pat Nitta, Director of Finance  
Brian Miskae, Executive Assistant to the Mayor

# ACTION UPDATE

The Newsletter of the Lahaina Town Action Committee • March 1999

## Lahaina Town Action Committee, Inc. Founded 1988

Celebrating 11 years of community service

*The mission of the Lahaina Town Action Committee is to foster, promote, maintain and encourage the historical, social, commercial and cultural vitality of Lahaina. LAC plans for the future while preserving the past.*

### 1999 Board of Directors

Lyons Naone - President  
Kimithi Hoang - Vice President  
Jerry Clair - Treasurer/Secretary  
Allan Litman  
Linda Shoppe  
Edwin Tokuoka  
Doug Rainey  
Steve Moyer  
Charlene Ka'uhane  
Jim Walsh  
Barbara Allen  
Bonnie McKinnon  
Masa Nagahama  
Tara Boskoff  
Liz Miller

Theo Morrison.....Executive Director  
Ruth Griffith.....Assistant to Director  
Jeni Moore.....Visitor Center Manager

**Lahaina Town Action Committee**  
120 Dickenson Street, Lahaina, HI 96761  
Phone: 808-667-9175 • Fax: 808-661-4779  
email: [action@maui.net](mailto:action@maui.net)  
<http://www.maui.net/~action>

## A Visitor Center in a Visitor Destination during a Visitor Season in a Visitor Economy should be a Priority

When our Visitor Center/Restroom Project fell through in September, we put our full efforts into ensuring the timely opening of the Old Lahaina Courthouse which was originally scheduled to be finished in October. We were told by everyone involved with the project that an opening date of January was reasonable.

January came and went, and our next target date was March 1st to coincide with the beginning of the 5th annual WhaleFest event. The building passed fire and health inspections early March, and with a promised temporary certificate of occupancy we expected to be open for the WhaleFest event.

WhaleFest has passed. Construction is complete. The building, however, still has not opened and we cannot be insured of an opening date. We are now forced to make some difficult decisions as our financial position has become critical. Our Executive Director, Theo Morrison, has not been paid since the middle of January, and we are behind on paying the bills for operating expenses.

As a self-funded, entrepreneurial non-profit, LAC depends on membership, event revenue and the proceeds from the sale of items in the Visitor Center gift store to run its operations and promote and finance its events.

over



(continued from the front)

Without a settlement of this situation, we will be laying off our Executive Director indefinitely and in effect cancelling all of the events remaining for 1999. If we had known about this delay, we would have made alternative plans. Unfortunately, we were assured all along that the opening of the building was imminent.

The Visitor Center provides what visitors want most - someone to talk to, someone to listen to them, someone to help them find the information they seek, someone to answer the questions they have, someone to give them local information on history, culture and events that they would never be able to get anywhere else.

All this is provided by the Lahaina Visitor Center at NO cost to the County of Maui.

We urge all members to write the Mayor expressing their concern about the impact this will have on their business, the visitor industry, the town of Lahaina, and the Island of Maui.

**Mayor Kimo Apana**  
**Fax: 243-7870**  
**Address: 200 S. High Street**  
**Wailuku, HI 96793**

---

**LahainaTown Action Committee**

**120 Dickenson Street**  
**Lahaina, HI 96761**

UNITED STATES POSTAGE  
113  
0410 \$ 00.330 PB8682585  
3303 MAILED FROM LAHAINA HI 96761  
MAR 25 99

'99 MAR 29 P3:38

**JOHN MIN-DEPARTMENT OF PLANNING**  
**200 S. HIGH STREET**  
**WAILUKU, HI 96793**

A Visitor Center in a Visitor Destination during a Visitor Season in a Visitor Economy should be a Priority



DEPUTIES

GILBERT COLOMA-AGARAM

AQUACULTURE DEVELOPMENT  
PROGRAM

AQUATIC RESOURCES  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
DIVISION  
LAND DIVISION  
STATE PARKS  
WATER AND LAND DEVELOPMENT

'98 JAN 20 P1:49  
DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
33 SOUTH KING STREET, 6TH FLOOR  
HONOLULU, HAWAII 96813

January 5, 1998

Mr. Bert Ratte  
Department of Public Works  
Land Use and Codes Administration  
250 South High Street  
Wailuku, Hawaii 96793

LOG NO: 20645 ✓  
DOC NO: 9712BD04

Dear Mr. Ratte:

**SUBJECT: Chapter 6E-42 Historic Preservation Review of Proposed Old Lahaina  
Courthouse Renovations  
Kuia Ahupua`a, Lahaina District, Island of Maui TMK 4-6-1: 09**

This is a Historic Preservation review of proposed renovations to the Old Lahaina Courthouse in Lahaina, Maui. Our review is based on reports, maps, and aerial photographs maintained at the State Historic Preservation Division; no field check was conducted of the subject properties.

The subject property falls within the Lahaina Historic District (State Site 50-50-03-3001) which applies to much of the 19th century architecture in town including the Old Lahaina Courthouse. Subsurface historic sites have also been located during archaeological monitoring of public utilities in many locations of old Lahaina town. For this reason, we feel that archaeological monitoring should be conducted of all excavations associated with the removal of sewer laterals, sidewalk repairs, and the relocation of the water meter for this project -- to identify and document any historic sites that might be present.

Prior to beginning construction, a monitoring scope of work should be submitted to our Division for review and approval. The monitoring scope should specify types of sites expected to be found during monitoring (i.e. types of subsurface deposits) and how these remains will be adequately recorded and treated. Also included should be measures to ensure that construction will be halted in the event that such remains are encountered, so that an archaeologist may evaluate the find and determine what mitigation procedures should be implemented. We also request that SHPD monitoring recommendations be added to the State Historic Preservation Requirements listed on Sheet 1 of the construction plans, to avoid any misunderstandings with utility and construction contractors.

Mr. Bert Ratte  
Page 2

We have reviewed renovations to Lahaina Courthouse Renovation with Glenn Mason, and believe the project meets the Secretary of the Interiors Standards for Rehabilitation. We concur that the project will have "no effect" on the historic character of the structure.

If you have any questions please contact Boyd Dixon at 243-5169.

Aloha



DON HIBBARD, Administrator  
State Historic Preservation Division

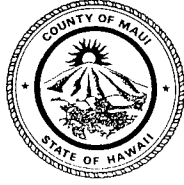
BD:jen

cc. Maui County Planning Department (fax: 243-7634)

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director




COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

March 22, 1999

MEMORANDUM

To: Brian Miskae, Executive Assistant  
Office of the Mayor

From: John E. Min, Director   
Planning Department

Subject: **FINAL COMPLIANCE REPORT FOR THE LAHAINA COURTHOUSE,  
TMK: 4-6-1:9, LAHAINA, MAUI**

The Maui Planning Department is unable to approve the above final compliance report until an Archaeological Inventory Survey is completed to the satisfaction of the Department of Land and Natural Resources, State Historic Preservation Division. The final compliance report is being returned for your use.

At the February 4, 1999 meeting of the Maui County Cultural Resources Commission (MCCRC), Mr. Glenn Mason notified the Commission that an agreement was reached on the plan of action of the excavations and trenching at the Courthouse. He further advised that the archaeological inventory survey report would probably be completed by the end of March. We understand that the completed report will be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR, SHPD); the Planning Department for transmittal to the MCCRC; the Maui/Lanai Burial Council and Dana Hall. Once the report is approved by DLNR, SHPD, the final compliance report should be revised to reflect the approval by DLNR, SHPD and be resubmitted to the Planning Department.

This item has been tentatively scheduled for the April 1, 1999 MCCRC meeting which will be held in the Planning Department Hearing Room at 9:00 a.m. You or your authorized representative are hereby requested to attend the scheduled meeting.

Memo to Brian Miskae, Executive Assistant  
March 22, 1999  
Page 2

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office at 243-7735.

JEM:ATC:dsa

Attachment

c: Clayton Yoshida, AICP, Deputy Planning Director  
Glenn Mason, Spencer Mason Architects  
Ann T. Cua, Staff Planner  
Project File  
General File  
(s:\all\ann\miskaect.hse)



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 821  
HONOLULU, HAWAII 96809

AGENDA  
MAUI/LANA'I ISLANDS  
BURIAL COUNCIL MEETING

- Board of Land and Natural Resources
- Commission on Water Resource Management
- Aquatic Resources
- Boating and Ocean Recreation
- Chairperson
  - Administrative Services
  - Community Services Coordinator
  - Kahoolawe Island Reserve Commission
  - Licenses/Permits/Store/Visitor Center
  - Personnel
  - Public Information
- Conservation and Resources Enforcement
  - Hunter Education
- Conveyances
- Forestry and Wildlife
- Historic Preservation
- Land
- State Parks
- Water Resource Management

LIEUTENANT GOVERNOR  
OF HAWAII

99 FEB -2 MO 16

**DATE/TIME:** Monday, February 8, 1999 @ 9:00 a.m.  
**PLACE:** Maui County Planning Department  
Kalana Pakui Building, First Floor Conference Room  
250 South High Street  
Wailuku, Hawai'i 96793

- I. OPENING REMARKS
- II. APPROVAL OF DECEMBER 10, 1998, MEETING MINUTES
- III. BUSINESS
  - A. HAWAIIAN CEMENT SAND MINING PERMIT  
Determination on Revised Burial Treatment Plan.
  - B. LAHAINA COURTHOUSE RESTORATION PROJECT  
Information/Recommendation: Information update, discussion, and recommendations on project.
  - C. KEAWALA'I CHURCH  
Information/Recommendation: Discussion of burial treatment plan and Hale Kukakuka Project.
  - D. MAUI LANI PROJECT  
Information/Recommendation: Discussion and recommendations on preservation plans for Find Spots 10/10A.
  - E. NISEI VETERANS' MEMORIAL CENTER PROJECT; TMK: (2) 3-8-07;123 & POR. OF 38  
Information/Recommendation: Discussion of revised plans for project.
  - F. KEOKEA BURIAL SITES  
Information/Recommendation: Discussion and recommendations on buffers for burial sites on DHHL land.
  - G. WAIKAPU SAND BORROWING OPERATION; TMK: 3-5-02:POR. 1  
Information/Recommendation: Discussion on inventory survey and monitoring plan.
  - H. OLOWALU 'ELUA ASSOCIATES PROJECT AREA; SITE 50-50-08-4693; OLOWALU; MAUI  
Information: Information update on burial-related matters.
  - I. MAKENA PLACE PROJECT  
Information/Recommendation: Status update.
  - J. WAIALE DRIVE/MAHALANI STREET EXTENSION PROJECT  
Information/Recommendation: Information update.
  - K. U.S. NAVY CABLE PROJECT  
Information/Recommendation: Discussion of proposed cable project at NOA Whale Sanctuary by U.S. Navy.
  - L. CASE UPDATES AND INADVERTENT DISCOVERIES  
Information: Discussion of new/ongoing cases, including, but not limited to, Lower Main Street burial finds.
- IV. ANNOUNCEMENTS
- V. ADJOURNMENT

Special needs (i.e., sign language interpreter, amplification, accessible parking, etc.) can be accommodated if requested in advance by calling Michelle K. Bradley, Historic Sites Preservation Specialist, at 984-2400, Ext. 2-8033, no later than two days from the date this Agenda was posted.

PURSUANT TO CHAPTER 92, PART I, HAWAII REVISIED STATUTES AS AMENDED,  
NOTICE IS HEREBY GIVEN OF A REGULAR MEETING OF THE MAUI COUNTY  
CULTURAL RESOURCES COMMISSION

AGENDA

DATE: February 4, 1999  
TIME: 9:00 a.m.  
PLACE: Planning Conference Room, 1st Floor, Kalana Pakui Building, 250 South  
High Street, Wailuku, Maui, Hawaii 96793

- A. CALL TO ORDER
- B. APPROVAL OF THE MEETING MINUTES OF JANUARY 7, 1999
- C. PERMIT REVIEW

1. HISTORIC DISTRICT APPLICATIONS

- a. MR. CRAIG G. NAKAMURA, attorney for PLANET HOLLYWOOD (MAUI), L.P. requesting Historic District Approval for the construction of an access ramp and new entrance to the building at 744 Front Street, TMK: 4-6-9: 07 and 62, Lahaina, Island of Maui. (A. Cua)
- b. MR. FRANK CANTAZARO, Director of LOVESTAR CORPORATION requesting Historic District Approval for the closing of Front Street on March 16, 1999 for approximately two hours for a dance parade featuring the Yosakoi Dancers from Kochi, Japan. (C. Suyama)
- c. THE SIGN STUDIO - ESM, INC. on behalf of WOODY'S OCEANFRONT GRILL requesting Historic District Approval for signage for Woody's at 839 Front Street, TMK: 4-5-01: 006, Lahaina, Island of Maui. (S. Bosco)
- d. THE SIGN STUDIO - ESM, INC. on behalf of GARY'S ISLAND requesting Historic District Approval for signage for Gary's Island at 839-A Front Street, TMK: 4-5-01: 06, Lahaina, Island of Maui. (S. Bosco)
- e. MS. THEO MORRISON of the LAHAINATOWN ACTION COMMITTEE requesting Historic District Approval for the Ocean Art Festival to be conducted on March 13 and 14, 1999 at Banyan Tree Park as part of the fifth annual Whalefest event, Lahaina, Island of Maui. (A. Cua)

2. OTHER APPLICATIONS/ADVISORY REVIEW

*denied.  
write cover letter  
& include CCR report.  
Also have framming get  
me a copy of approved  
minutes.*

*approved  
w/ amend ment  
to #8*

*schedule at April mtg*

*Since Jan 7 mtg.  
Agreement on Plan of Action  
excavations/Jan 18  
trenching  
Archaeological survey site plan  
Feb 1 - Backhoe trench  
Hand Excavations  
Jan 26 mtg. - decided  
that project work could continue  
under certain circumstances.  
Mid or end March - kept to be completed  
on all activities on the site.*

a. MR. GLENN MASON, AIA on behalf of the Office of Management, County of Maui reporting on the recent archaeological work at the Old Lahaina Courthouse and related improvements at TMK: 4-6-01: 009, Lahaina, Island of Maui since the January 7, 1999 CRC meeting. (A. Cua)

b. MS. THEO MORRISON of the LAHAINATOWN ACTION COMMITTEE requesting review and comment on the Alternative Plan for the Lahaina Visitor Center for the area mauka of the Lahaina Library at TMK: 4-6-1: 7 and 10, Lahaina, Island of Maui. (A. Cua)

D. OLD BUSINESS

1. MS. THEO MORRISON of the LAHAINATOWN ACTION COMMITTEE requesting Historic District approval to construct and operate the Lahaina Visitor Center and Restrooms project and related improvements at TMK: 4-6-1: 7 & 10, Lahaina, Maui (HDC 980005) (A. Cua)

*do letter to  
put Theo  
w/ all comments*

a. January 12, 1999 letter from Theo Morrison of the LahainaTown Action Committee Action Committee withdrawing the application.

*put on  
May agenda  
Send @ Brian  
Mushka  
agenda*

2. MR. KEOKI FREELAND, LAHAINA RESTORATION FOUNDATION requesting input on guidelines for the future use of the Banyan Tree Park and the old Lahaina Courthouse

3. Demolition permits - none

4. Other permits - none

E. NEW BUSINESS - None

F. PRESERVATION PLANNING

1. Review of Cultural Resources Recommendations to the proposed Wailuku-Kahului Community Plan
2. East Maui heritage area
3. Plaques program/requests
4. National Trust and Historic Hawaii Foundation grant fund



G. NOMINATIONS TO THE REGISTERS OF HISTORIC PLACES

1. Commission Consideration of Hana Road Bridges to the State and National Registers of Historic Places

H. DIRECTOR'S REPORT

1. Written Correspondence from the State Historic Preservation Division Office on Oahu
2. Jinsha Mission - Favrot Fund Grant
3. Certified Local Government Grant
4. Administrative Permits
  - a. Demolition - None
  - b. Historic District Approvals Report

I. NEXT MEETING DATE: March 4, 1999

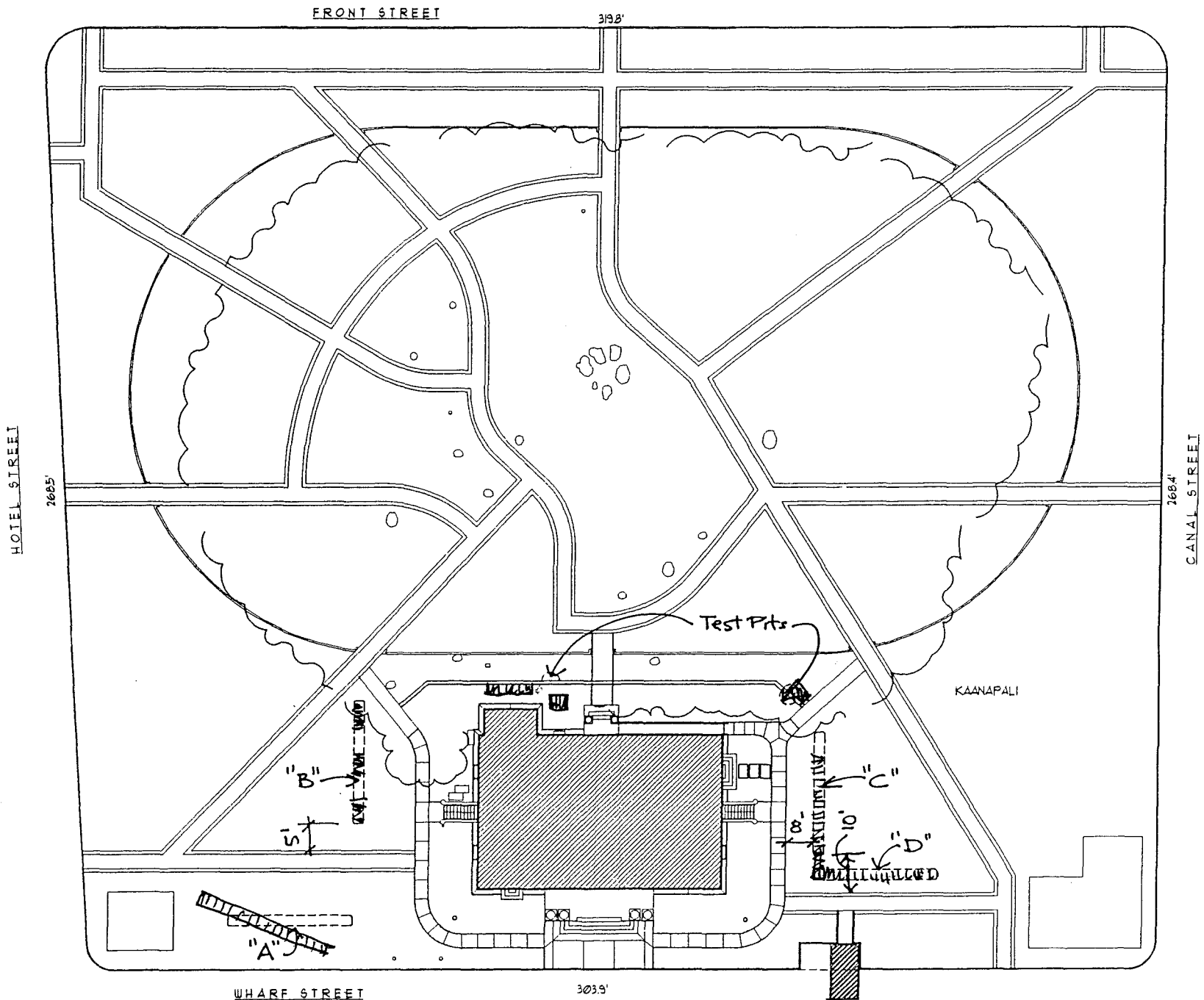
J. ADJOURNMENT

**EACH APPLICANT IS REQUESTED TO PROVIDE RESPONSIBLE REPRESENTATION AT THE MEETING.**

**ANY PETITION TO INTERVENE AS A FORMAL PARTY IN THE PROCEEDINGS BEFORE THE MAUI COUNTY CULTURAL RESOURCES COMMISSION MUST BE FILED WITH THE COMMISSION AND SERVED UPON THE APPLICANT NO LESS THAN TEN DAYS BEFORE THE FIRST PUBLIC HEARING DATE. (Note: The compilation of time for deadlines 10-days or less excludes weekends and State recognized holidays.) THE ADDRESS OF THE COMMISSION IS C/O THE MAUI PLANNING DEPARTMENT, 250 S. HIGH STREET, WAILUKU, MAUI, HAWAI'I 96793.**

**THOSE PERSONS REQUESTING SPECIAL ACCOMMODATIONS DUE TO DISABILITIES, PLEASE CALL THE MAUI PLANNING DEPARTMENT AT 243-7735 (Maui) OR 1-800-272-0117 (Molokai) OR 1-800-272-0125 (Lanai) OR NOTIFY THE MAUI PLANNING DEPARTMENT IN WRITING AT 250 S. HIGH STREET, WAILUKU, MAUI, HAWAI'I 96793 OR FAX NUMBER 243-7634; AT LEAST SIX (6) DAYS BEFORE THE SCHEDULED MEETING.**

**PLEASE NOTE: If any member of the Commission is unable to attend the scheduled meeting, please contact the Planning Department at least one day prior to the meeting date. Thank you for your cooperation.**

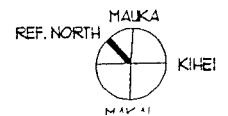


ARCHEOLOGICAL SURVEY SITE PLAN

1" = 40'-0"

RESTORATION OF THE OLD LAHAINA COURTHOUSE

649 WHARF STREET, LAHAINA, MAUI, HAWAII 96761



PURSUANT TO CHAPTER 92, PART I, HAWAII REVISED STATUTES AS AMENDED, NOTICE IS HEREBY GIVEN OF A REGULAR MEETING OF THE MAUI COUNTY CULTURAL RESOURCES COMMISSION

AGENDA

DATE: January 7, 1999  
TIME: 9:00 a.m.  
PLACE: Lahaina Civic Center Social Hall  
Lahaina, Maui

A. CALL TO ORDER

*App* B. APPROVAL OF THE MEETING MINUTES OF DECEMBER 3, 1998

C. PERMIT REVIEW

1. HISTORIC DISTRICT APPLICATIONS

*app* a. MS. MARIA LABANCA on behalf of the MARIA LANAKILA CHURCH requesting historic district approval for the installation of irrigation lines within the Maria Lanakila Church Cemetery at TMK: 4-6-010: 001, Lahaina, Maui, Hawaii. (HDC 980012) (C. Suyama)

*app to close street  
Do letter w/ standard* b. MS. THEO MORRISON, Director of the Lahaina Town Action Committee requesting historic district approval to close Front Street between Lahainaluna Road and Papalaua Street from 6:00 pm to 8:30 pm for the Chinese New Year Celebration on February 19, 1999. (A. Cua)

*Mr. Covey Passed out guidelines* c. MR. JERRY COVEY President of the LAHAINA ARTS SOCIETY presenting guidelines for the addition of music, song, and dance to the Fine Arts and Hawaiian Crafts Events pursuant to condition no. 10 of their December 3 time extension on the historic district approval for cash sales and set up of a table, chairs, and a 1 ft. X 1 ft. sign on the table at the Arts and Crafts Events on weekends and holidays at the Banyan Tree Park for a temporary period while the Lahaina Courthouse is under construction at TMK: 4-6-01:09, Lahaina, Maui, Hawaii. (HDC 980002) (A. Cua)

2. OTHER APPLICATIONS/ADVISORY REVIEW - None

D. OLD BUSINESS

1. MR. KEOKI FREELAND, LAHAINA RESTORATION FOUNDATION

J. NEXT MEETING DATE: February 4, 1999

K. ADJOURNMENT

EACH APPLICANT IS REQUESTED TO PROVIDE RESPONSIBLE REPRESENTATION AT THE MEETING.

ANY PETITION TO INTERVENE AS A FORMAL PARTY IN THE PROCEEDINGS BEFORE THE MAUI COUNTY CULTURAL RESOURCES COMMISSION MUST BE FILED WITH THE COMMISSION AND SERVED UPON THE APPLICANT NO LESS THAN TEN DAYS BEFORE THE FIRST PUBLIC HEARING DATE. (Note: The compilation of time for deadlines 10-days or less excludes weekends and State recognized holidays.) THE ADDRESS OF THE COMMISSION IS C/O THE MAUI PLANNING DEPARTMENT, 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793.

THOSE PERSONS REQUESTING SPECIAL ACCOMMODATIONS DUE TO DISABILITIES, PLEASE CALL THE MAUI PLANNING DEPARTMENT AT 243-7735 (Maui) OR 1-800-272-0117 (Molokai) OR 1-800-272-0125 (Lanai) OR NOTIFY THE MAUI PLANNING DEPARTMENT IN WRITING AT 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793 OR FAX NUMBER 243-7634; AT LEAST SIX (6) DAYS BEFORE THE SCHEDULED MEETING.

PLEASE NOTE: If any member of the Commission is unable to attend the scheduled meeting, please contact the Planning Department at least one day prior to the meeting date. Thank you for your cooperation.

(S:\all\crc.jan)

*Hand Copy*

262-4950

**DRAFT**

Log:  
Doc: 9901RC07

Post-It® Fax Note	7871	Date: 1/6/99	# of Pages: 2
To: <i>DAVID SHIDLER</i>		From: <i>POSS (LARRY)</i>	
Co./Dept: <i>CEH</i>		Co: <i>SHD</i>	
Phone #		Private # <i>622-8025</i>	
Fax # <i>262-4950</i>		Fax # <i>2</i>	

Hallett H. Hammatt  
Cultural Surveys Hawaii  
733 N. Kalahoe Avenue  
Kaliua, Hawaii 96734

Dear Dr. Hammatt:

**SUBJECT: Proposal for Additional Archaeological Work – Lahaina Courthouse  
Lahaina, Lahaina District, Maui  
TMK: 4-6-01: 9**

This responds to your written proposal sent to us on January 5, 1999 (Hammatt & Shideler 1999. Draft Proposal for an Archaeological Mitigation Plan at the Lahaina Court House, Lahaina, Lahaina District, Maui Island, Hawai'i. Cultural Surveys Hawaii ms.).

First, we should clarify that we do not consider this needed work to be mitigation work. It is work being done to fulfill the inventory survey condition and evaluates the monitoring findings to date. Assuming the County will accept the recommendations made in our second letter of December 15, 1998 to the Maui County Planning Director (Log: 22665/Doc 9812RC32), we believe the next archaeological work should keep its trenches open so our staff and the Commission's archaeologist can evaluate the deposits. Then, on-site, we can have a discussion of any needed mitigation work for the final land alteration for this project, with recommendations then formally made to the County in writing by our office and the Commission separately.

Second, we believe that the area of the Lahaina Courthouse project or the area of potential impact should be reasonable. The project has been confined to areas near the Courthouse. Thus, we suggest that the area of impact be considered to be bounded by Hotel and Canal Streets and from Wharf Street to 50 feet behind the Courthouse. Thus, the bulk of the park would not be in the study area. While the entire park is of interest and may have archaeological sites under the remaining portion, historic preservation project areas should fairly be constrained to project impact areas.

Third, the aims of this work should be to determine if all cultural layers in the project area are post-1860 fill. The nature of the terrain during human occupation times prior to the filling of the area for Courthouse construction should also be evaluated through excavation (the layers' nature) and through archival work (the background work noted in our letter). If remains of the old fort are found, that is fine. But the focus should be on the entire impact area. Given this, we suggest the following:

DRAFT

1. Four 10 meter long backhoe trenches of 1.5 meter depth. (The depth is similar to your recommendation; the length is longer to give a greater perspective of deposits.)
  - a. Two near Wharf Street, parallel to the street -- on each side of the Courthouse steps. These should be nearer the street corners than the steps, to give a wide view of the layers in the project area.
  - b. One extending parallel to Hotel Street, halfway or more toward the Courthouse.
  - c. One extending parallel to Canal Street, halfway toward the Courthouse.
2. One small 2 x 1 meter unit next to the Courthouse, to see how deep the building sits in the surrounding soils. (This conforms with your recommendation.)

The above must be dug with an archaeologist on-site. These tests should reveal quite clearly what the cultural layer and pre-cultural layer patterns are in the project area.

Obviously, any artifacts of likely 1800s age should be recovered and reported and any features visible in the trenches must be documented.

Again, the trenches should be kept open, so archaeologists from our office and from the Commission can view the trenches in consultation with Cultural Surveys Hawaii archaeologists.

Last, findings should be combined with those of the initial monitoring and background review, as recommended in our second December 15, 1998, letter.

We do not recommend that remaining subsurface construction work (for landscaping) be allowed to proceed yet. The above testing should take place first and be evaluated by our office and the Commission's archaeologist and recommendations be made to the County, to avoid further public concern about this project.

Aloha,

Don Hibbard

c: Glen Mason  
Lisa Nuyen, Planning Department, County of Maui

1142

RUSH

JAMES "KIMO" APANA  
MAYOR



OFFICE OF THE MANAGING DIRECTOR  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

'99 FEB 17

February 12, 1999

MAUI  
PLANNING  
DEPARTMENT

JOHN  
CLAYTON  
PLANNING  
ZACH  
JILL

FYI	COMMENTS	SEE ME	ASSIGN	FILE	DRAFT RESPONSE
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Due Date: \_\_\_\_\_  
By: Jim Date: 2/17

**MEMORANDUM**

TO: FLOYD MIYAZONO, DIRECTOR, DEPARTMENT OF PARKS AND RECREATION

FROM: GRANT Y. M. CHUN, MANAGING DIRECTOR *gyms*

SUBJECT: OLD LAHAINA COURTHOUSE RENOVATION/RESTORATION

This memorandum is to advise you that, effective immediately, I would like to have Jeff Chang continue to oversee the construction/restoration phase of the Lahaina Courthouse until the project is completed by the contractor and accepted by the County of Maui.

Jeff has done a good job in monitoring the renovations and confronting issues of concern, has good rapport with the contracted parties and has well represented our administration at public meetings. In addition, he is the person most familiar with the project and has the necessary expertise to oversee it.

My office will be contacting him directly on any issues relating to this project and will be transmitting invoices, documents, etc., for his timely review, processing, handling and/or appropriate action.

Please let me know if you have any concerns on my request. Thank you.

Attachment: Invoice from Mason Architects, Inc.

cc: Jeff Chang, Executive Assistant to the Managing Director  
Pat Nitta, Director of Finance  
John Min, Director of Planning  
Calvin Nemoto, Senior Executive Assistant to the Mayor

January 4, 1999

MEMORANDUM

TO: JOHN MIN, PLANNING DIRECTOR  
FROM: ANN CUA, STAFF PLANNER  
SUBJECT: LAHAINA COURTHOUSE, TMK 4-6-1:9, Lahaina, Maui  
(SM1 970002) (HDC 970002) - Chronology of Events

December 19, 1996 CRC approval letter regarding the Historic Structures Report for the Lahaina Courthouse. Approval includes 14 recommendations. **(Tab No. 1)** Number 14 states that, "Archaeological testing, as well as monitoring should be considered for subsurface work for utilities, and the root barrier for the banyan tree.

May 8, 1997 CRC Historic District approval letter for Restoration of the Old Lahaina Courthouse subject to 9 conditions. **(Tab No. 2)**

Condition No. 5 states, "That prior to any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR SHPD), for review and approval.



June 30, 1997

Maui Planning Commission (MPC) SMA Permit approval letter for the Courthouse subject to 15 conditions (**Tab. No. 3**)

Condition No. 7 states: "That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of the building permit. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a certificate of occupancy.

A preliminary compliance report was not submitted prior to issuance of the building permit.

Condition No. 9 states, "Prior to beginning any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR SHPD), for review and approval. Objects and artifacts recovered shall be conserved at an appropriate facility on Maui if at all possible.

An inventory survey was not conducted prior to beginning any ground-altering activities. Per Glen Mason, project consultant, an inventory survey has since been completed by Cultural Surveys Hawaii.

Condition No. 10 states that, "If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by the DLNR, SHPD.

According to the applicant, no significant historic sites were found.

December 10, 1997      The Planning Department signed off on the building permit for the Courthouse (BPC 971986).**(Tab No. 4)**

December 3, 1998      Dana Hall, on behalf of Hui Alanui o Makena, submitted a letter regarding the potential violation of SMA Permit Conditions for the Lahaina Courthouse. **(Tab No. 5)** In her letter she refers to the following:

Recommended condition No. 14 of the December 19, 1996 approval by the CRC on the Historic Structures Report relative to archaeological testing as well as monitoring.

Letter from DLNR SHPD dated April 2, 1997 commenting on the SMA Permit application. Letter recommended 2 conditions to be attached to SMA permit. **(Tab No. 6)**

These 2 recommended conditions were adopted by the Planning Commission in their SMA Permit approval.

Condition Nos. 7, 9, and 10 of the SMA Permit dated June 30, 1997 (referenced above).

December 15, 1998      Letter from DLNR SHPD **(Tab No. 7)** outlining what the applicant should have done and recommending that the Planning Department decide if fines or censure be applied to this violation. Also recommended that no additional subsurface land alteration be approved for this project until the written findings of monitoring to date are submitted to DLNR SHPD and the CRC can be evaluated.

December 15, 1998      Second letter from DLNR SHPD **(Tab No. 8)** acknowledging a meeting between Ross Cordy, representatives of the Burials Program and David Shideler of Cultural Surveys of Hawaii.

Recommends archaeological test excavations around the courthouse under the direction of a professional archaeologist. Trenches must be left open for inspection by DLNR staff archaeologists and CRC archaeologist. Based on evaluation of open trenches, needed mitigation measures shall be presented to the County in the form of recommendations. The findings from the initial monitoring, test excavations and any final mitigation shall be written up as archaeological report to be accepted by the SHPD.

December 18, 1998

Response from Cultural Surveys Hawaii to DLNR SHPD (**Tab No. 9**)

December 28, 1998

After-the Fact Approval Letter (**Tab No. 10**) by the Planning Department of a Preliminary Compliance Report dated December 10, 1998. Compliance Report is attached as **Tab No. 11**)

**Tab No. 12**

Copy of Applicant's statement from SMA Permit Application that an archaeologist will be required to be present for all sub-surface excavations.

s:\all\ann\lahcourt.mem

c: Clayton Yoshida, Deputy Planning Director

DANA NAONE HALL

2087 WELLS STREET

WAILUKU, MAUI, HAWAII 96793

(808) 244-9017

FAX (808) 244-6775

December 3, 1998

Richard Haake, Managing Director  
County of Maui  
200 S. High St.  
Wailuku HI 96793

Robert Carroll, Chairperson and  
Members of the  
Maui Planning Commission  
250 S. High St.  
Wailuku HI 96793

Lisa Nuyen, Planning Director  
County of Maui  
250 S. High St.  
Wailuku HI 96793

Don Hibbard, Administrator  
State Historic Preservation Division  
Dept. of Land & Natural Resources  
555 Kakuhihewa Bldg.  
601 Kamokila Blvd.  
Kapolei HI 96707

Dorothy Pyle, Chairperson and  
Members of the  
Maui County Cultural Resources  
Commission  
250 S. High St.  
Wailuku HI 96793

Re: Violation of SMA Permit Conditions for the Old Lahaina Courthouse  
Project and Related Improvements at TMK 4-6-1:009, Lahaina, Maui,  
Hawaii (SM1 970002)

Dear Richard Haake, Robert Carroll, Lisa Nuyen, Don Hibbard and Dorothy  
Pyle:

This letter is submitted on behalf of Hui Alanui o Makena. The concerns  
discussed below should be addressed as soon as possible.

I. Introduction

Numerous violations of the Special Management Area ("SMA") permit  
conditions for the Old Lahaina Courthouse project appear to have occurred.  
The applicant and permittee is the County of Maui through Richard Haake, the  
Managing Director. Hui Alanui o Makena seeks the invocation of enforcement  
procedures, the determination that violations have occurred and the  
imposition of fines or penalties. When the County of Maui is the applicant and  
permittee, it is especially important that government set the proper example for  
all others.

## II. Factual Background

On Tuesday, November 24, 1998, I received a telephone call from Charles Maxwell, the Chairperson of the Maui/Lana'i Islands Burial Council, informing me of a call he had received a few minutes earlier from William Waiohu, a member of the Maui/Lana'i Islands Burial Council who lives in the Lahaina District. William Waiohu reported that skeletal remains had been encountered during subsurface excavations on the grounds of the Old Lahaina Courthouse. Apparently, an archaeological monitor was not present at the time that the remains were discovered.

Mr. Maxwell anticipated that a follow-up call would be forthcoming from the contractor of the project and/or the project archaeologist, however, he did not receive any further information on the skeletal remains. As a result, I visited the Old Lahaina Courthouse project area, in the company of Erik Fredrickson on Wednesday afternoon, November 25, 1998. At the site we spoke with both Greg Ibara, a subcontractor for the project, and one of his workers. It was confirmed that no archaeologist had been present when the skeletal remains were disturbed. Although an archaeologist had been on site when the project began, there was no continuous on site archaeological monitoring during subsequent stages of subsurface excavations.

According to Mr. Ibara and his worker, fill material was present over a portion of the Courthouse property. Some of the fill may have been sand. This concerned me since it is not unusual to find fragmented human skeletal remains in sand fill. I was particularly concerned because full time archaeological monitoring, during all ground-altering activities, had not taken place. Sometimes human skeletal remains are fragmented such that only an archaeologist or other trained personnel would notice their presence. Other non-burial subsurface archaeological features are also potentially at risk when an archaeological monitor is not present.

Upon further questioning we were told that the project archaeologist claimed that the skeletal remains encountered the day before were those of a pig. I asked if the archaeologist from Cultural Surveys Hawaii, who had flown in from O'ahu, had determined whether or not the remains were articulated. The response was that only a portion of the remains had been disturbed (apparently a mandible was identified) and that the rest of the skeleton was likely still present in an unexcavated area adjacent to the trench where the remains were found.

From what we were told, the purported remains of the pig were in original matrix. This is an additional cause for concern since it may not have been determined whether the skeletal materials were of relatively recent age -- or whether they may have been associated with traditional cultural practices or a subsurface cultural layer. A question exists as to whether the context of these skeletal remains was properly interpreted by the Cultural Surveys Hawaii archaeologist. It would be important to know the basis upon which this determination was made, and to know who viewed the remains to ascertain

whether this individual is in fact a qualified archaeologist with the requisite experience to make an appropriate determination.

When I visited the site on November 25, 1998, the subsurface excavations had been completed and the trenches had, for the most part, been refilled and covered so that there was no way to determine at the time whether any historic sites and resources had been affected by the trenching. However, I spoke to Demaris Frederickson, who is an archaeologist and a member of the Maui County Cultural Resources Commission, on November 26, 1998 and she told me that she had visited the site, a few days earlier, on Sunday, November 22, 1998. The trenches were still open at that time. In the west face profile of the root barrier trench, approximately one half meter below surface, she saw a rounded basalt feature that contained lime mortar typical of early 19th century construction in Lahaina. Copies of photographs taken by Demaris Frederickson are attached as Exhibit A. Based on this information it appears that at least one historic site was affected by trenching for the Courthouse project. The Department of Land and Natural Resources State Historic Preservation Division was not notified in a timely manner of this probable historic feature by anyone associated with the project.

### III. Review of Pertinent Records

On November 26 and December 1, 1998, I reviewed the files for the Old Lahaina Courthouse restoration project at the Planning Department. I obtained copies of several pertinent letters and relevant portions of the Historic Structures Report and the Application for Special Management Area Permit for the project, which are described below.

#### A. Historic Structures Report

In the December 1996 Historic Structures Report, the Old Lahaina Courthouse, which is located in the National Historic Landmark town of Lahaina, is described as "one of the most important buildings in Lahaina." Originally constructed in 1859, the last major improvements were made to the building in 1925. The current project is designed to restore the building to its c. 1925 appearance. The Maui County Cultural Resources Commission ("MCCRC") conducted a site visit followed by a planning review of the proposed Courthouse restoration project at its December 5, 1996 meeting.

#### B. Letter Dated December 19, 1996

A letter dated December 19, 1996 from then-Planning Director David Blane to Managing Director Richard Haake (Exhibit "B") contains the recommendations of the MCCRC, including the following:

14. Archaeological testing, as well as monitoring should be considered for subsurface work for utilities, and the root barrier for the banyan tree. (Emphasis added.)

Lahaina was an important place in prehistoric times as well as the capital of the Kingdom of Hawaii from 1820 to 1845. The letter notes that the Old Lahaina Courthouse is "the most significant building" in the County of Maui.

C. Letter Dated April 2, 1997

The Department of Natural Resources State Historic Preservation Division commented on the Special Management Area permit application for the proposed restoration of the Old Lahaina Courthouse by letter dated April 2, 1997 from SHPD Administrator Don Hibbard to David Blane. See Exhibit "C". This letter states that:

... the Old Lahaina Courthouse is a significant historic property within the Lahaina Historic District (SIHP No. 50-50-03-3001), which is on the Hawai'i and National Registers of Historic Places. As noted in the SMA application, no archaeological work has been conducted on the grounds of the Courthouse. Judging from our files, a number of archaeological projects, including inventory surveys and data recovery work, have recovered evidence of post-Contact and pre-Contact sites such as human burials, building foundations, 'auwai, fishpond walls, and refuse pits from locales in the vicinity of the Old Lahaina Courthouse. Consequently, we believe that such deposits are likely to be present on the subject property. (Emphasis added.)

The letter then recommended that specific conditions be attached to the SMA permit so that there would be "no adverse effect" on significant historic sites. These recommended conditions were adopted by the Maui Planning Commission and will be discussed in detail below.

D. SMA Permit Application

Archaeological resources are discussed in Section 2.1.5, on page 3 of the December 1996 application for Special Management Area Permit prepared for the County of Maui by Spencer Mason Architects.

Archeological research has not been done for this project. The parcel that the Courthouse occupies was the site of the Old Fort and was used for agriculture in the pre-contact time period. It is a certainty that sub-surface archeological remains exist at the park site. (Emphasis added.)

Further discussion of archaeological resources is contained in Section 3.1.4. on page 8:

... It will be required that an archeologist be present during all sub-surface excavations. In the event that any archeological resources are uncovered, work in that area shall be stopped and appropriate mitigation shall be determined by the State Historic

Preservation Division and County of Maui and accomplished by the contractor before the work can commence. (Emphasis added.)

As has already been discussed, an archaeologist was not present during all subsurface excavations.

E. SMA Approval Letter Dated June 30, 1997

A Special Management Area permit approval letter was issued by David Blane to Richard Haake on June 30, 1997 (Exhibit "D") for the Old Lahaina Courthouse project. Approval of the SMA permit was subject to 15 conditions, four of which are discussed below.

Condition No. 7 required the submittal of compliance reports to the Planning Department:

That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of the building permit. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a certificate of occupancy. (Emphasis added.)

A building permit for the Old Lahaina Courthouse restoration was issued by the Department of Public Works and Waste Management Land Use and Codes Administration on February 23, 1998 (Permit No. 98-306). See Exhibit E. There was no preliminary report in the files for the project that I reviewed at the Planning Department. I also spoke with Planning Department staff members, who confirmed that a preliminary report had not been approved by the Department even though the building permit was issued earlier this year, in violation of Condition No. 7.

The State Historic Preservation Division recommended two conditions which were incorporated in the SMA permit approval as follows:

9. Prior to beginning any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR SHPD), for review and approval. Objects and artifacts recovered shall be conserved at an appropriate facility on Maui if at all possible. (Emphasis added.)

10. If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by the DLNR, SHPD.



I contacted the State Historic Preservation Division and have been told that SHPD has not received an Archaeological Inventory Survey Report for the Old Lahaina Courthouse project in violation of Condition No. 9. It is entirely possible that no inventory survey testing was ever done of the project area.

In addition to the foregoing conditions, Condition No. 15 states:

That full compliance with the conditions of the Maui County Cultural Resources Commission contained in their letter dated May 8, 1997 shall be rendered.

The May 8, 1997 letter from David Blane to contractor Glenn Mason of Spencer Mason Architects, Inc. is attached to the SMA approval letter. See Exhibit "D". This letter recites that the Maui County Cultural Resources Commission voted to grant Historic District Approval of the Old Lahaina Courthouse restoration project subject to nine conditions. The conditions pertinent to this discussion are:

5. That prior to any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources (DLNR), State Historic Preservation Division (SHPD), for review and approval. (Emphasis added.)

6. If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by DLNR, SHPD.

It appears that Condition No. 5 of the Historic District Approval has been violated.

#### IV. Conclusion / Relief

The County appears to have needlessly jeopardized historic resources, and has seriously compromised the historic review process which provides protection to historic sites. Because of the substantial nature of the violations, fines or penalties should be assessed against the County.

In addition, the County should be required to conduct an after-the-fact archaeological inventory survey with subsurface testing of the project area. The results of this survey should be documented in a report that is submitted to the State Historic Preservation Division for review and approval. An acceptable mitigation plan should also be prepared for review and approval by the State Historic Preservation Division if significant historic sites are found.

The building permit should not have been issued without the submission of the preliminary compliance report. This report must be submitted immediately for review and approval by the Planning Department.

Despite being repeatedly alerted to one of the most significant sites in Maui County, there was a serious breakdown in the post-permit compliance process. Neither the applicant and permittee nor the permit granting and other administrative entities assured that compliance was achieved with the conditions, which were necessary to protect historic resources. This breakdown is made all the worse because the project lies within one of the most visible and well known historic sites on the island of Maui.

I believe that prompt collective action must be taken immediately. I request that this matter be placed upon the agendas of the Maui Planning Commission and the Maui County Cultural Resources Commission for review as soon as possible. I also request a response to this letter on or by the close of business on Friday, December 11, 1998.

Thank you for your prompt attention to this matter. Please contact me if you have any questions about any of the above. I look forward to hearing from you soon.

Sincerely yours,

*Dana Naone Hall*

Dana Naone Hall  
Hui Alanui o Makena

DNH/jp  
Encl.

cc: Leslie Kuloloio, Hui Alanui o Makena  
Charles Maxell, Maui/Lana'i Islands Burial Council



Subsurface excavation on north side of building.

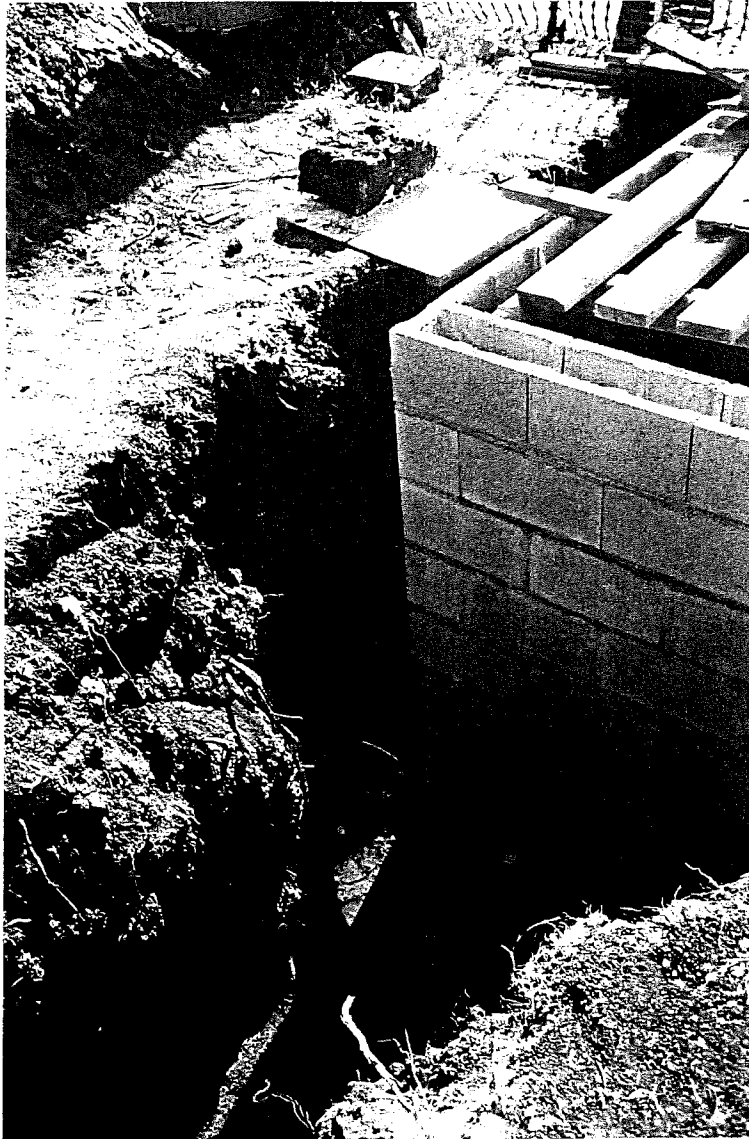
**EXHIBIT A**



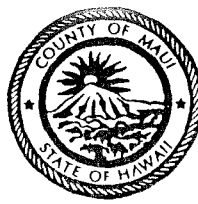
Trench for root barrier on east side of building—looking south.



Rounded basalt feature in west face profile of root barrier trench. This feature also contains lime mortar typical of early 19<sup>th</sup> century construction in Lahaina. It runs perpendicular to the building in an easterly direction.



Subsurface excavation on *makai* side of building, extending into sand deposit.



**COUNTY OF MAUI  
PLANNING DEPARTMENT  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793**

December 19, 1996

Mr. Richard Haake, Managing Director  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

Dear Mr. Haake:

**SUBJECT: PRESERVATION PLANNING REVIEW OF THE HISTORIC  
STRUCTURES REPORT ON THE OLD LAHAINA  
COURTHOUSE**

We are pleased to inform you that the Maui County Cultural Resources Commission (MCCRC) completed a site visit and planning review of the proposed restoration of the Old Lahaina Courthouse at its meeting on December 5, 1996.

The MCCRC commented that the Historic Structures Report was clearly presented and easy to understand. They agreed on the following recommendations to your office:

1. The banyan tree should be trimmed and kept away from the building in accordance with the plans presented, including the removal of the roots near the northeast corner of the building and the construction of a root barrier.
2. Air conditioning is likely to cause problems with the building and should not be included in the restoration.
3. Parking should be removed from the steps to the courthouse. This is an important part of the restoration and maintenance of the building.
4. ADA parking, south of the building on Wharf Street is recommended, although the MCCRC understands that, in this case, it is not a legal requirement.
5. The problem of water infiltration in the basement requires further investigation.

**EXHIBIT B**

Mr. Richard Haake, Managing Director

December 19, 1996

Page 2

6. Native plants should be used in landscaping and should be labeled and used as part of the interpretation of the building.
7. Public use of the building should be prioritized.
8. A portion of the basement might be an appropriate storage place for bones disinterred during the course of development on the West side. Maui has no suitable temporary repository for *iwi*. The old courthouse is a Hawaiian site, constructed by Kamehameha II and Kamehameha IV, and would be a respectful location for this sensitive cultural use.
9. The visitor center on the main floor is an appropriate public use.
10. The MCCRC strongly recommends the installation of the elevator on the northeast side of the building as described in the report. The building should see a high public use, and accessibility for all persons to the second floor is necessary.
11. On the second floor, the courtroom should be maintained as a public meeting space for private non-profit groups, as well as for government agencies. The calendar for use may be administered by the Parks Department or Planning Department. County administration should advise the DLNR that the old courtroom is also available for use as a courtroom.
12. The second floor may be the best location for a planning office to maintain records and provide information and applications, as well as administration of historic district regulations.
13. The courthouse, second floor north side, may also be a better location for the proposed satellite police station for Front Street patrols than is the currently proposed plan of moving the koban from the Wo-Hing temple site to the Baldwin House yard.
14. Archaeological testing, as well as monitoring should be considered for subsurface work for utilities, and the root barrier for the banyan tree.

Historic materials will be conserved and the configuration of rooms will be restored. The plans for restoration appear to be designed in accord with the Secretary of the Interior's Standards for Rehabilitation. This is extremely important, since the Old Lahaina Courthouse is one of eight buildings listed as significant in the National Historic Landmark designation of

Mr. Richard Haake, Managing Director  
December 19, 1996  
Page 3

Lahaina Town. As the site of Hawaiian monarchy period courts, there is not a more significant building in the County of Maui, and the MCCRC commends the County administration on the funds and expertise used in stewardship of this important public property.

In the recommendations related to use, the MCCRC concurs with the Lahaina Courthouse Task Force.

The MCCRC understands that it will have the opportunity to review further plans for the courthouse restoration at the time of the application for Historic District and Special Management Area permits.

Very truly yours,



DAVID W. BLANE  
Planning Director

DWB:EBA:ghk

cc: Jeff Chang, CIP Coordinator  
Howard Tagomori, Chief of Police  
Don Hibbard, Department of Land and Natural Resources/Historic Preservation Division  
MCCRC Members  
Clayton Yoshida, Planning Program Manager  
Ann Cua, Planner  
Elizabeth Anderson, Planner  
MCCRC File  
Central File  
G:\PLANNING\ALL\EBA\MCCRC\LAH.CRT





DEPUTIES

GILBERT COLOMA-AGARAN

AQUACULTURE DEVELOPMENT  
PROGRAM

AQUATIC RESOURCES  
CONSERVATION AND

RESOURCES ENFORCEMENT  
CONVEYANCE

FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION

DIVISION  
LAND DIVISION

STATE PARKS  
WATER AND LAND DEVELOPMENT

'97 APR 14 7:20

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
33 SOUTH KING STREET, 6TH FLOOR  
HONOLULU, HAWAII 96813

April 2, 1997

Mr. David W. Blane, Director  
Planning Department, County of Maui  
250 S. High Street  
Wailuku, Maui, Hawaii 96793

LOG NO: 19246 ✓  
DOC NO: 9703SC25

Dear Mr. Blane:

**SUBJECT: Chapter 6E-8 Historic Preservation Review of A Special Management Area Permit Application for the Proposed Restoration of the Old Lahaina Courthouse Lahaina, Lahaina District, Maui  
TMK: 4-6-001; 009**

Thank you for the opportunity to comment on the Special Management Area (SMA) permit application made for the proposed renovation of the Old Lahaina Courthouse in Lahaina, Maui. Our review is based on historic reports, maps, and aerial photographs maintained at the State Historic Preservation Division; no field inspection was made of the subject parcel. Our comments are late and we apologize for any inconvenience this may cause you.

According to our records, the Old Lahaina Courthouse is a significant historic property within the Lahaina Historic District (SIHP No. 50-50-03-3001), which is on the Hawai'i and National Registers of Historic Places. As noted in the SMA application, no archaeological work has been conducted on the grounds of the Courthouse. Judging from our files, a number of archaeological projects, including inventory surveys and data recovery work, have recovered evidence of post-Contact and pre-Contact sites such as human burials, building foundations, 'auwai, fishpond walls, and refuse pits from locales in the vicinity of the Old Lahaina Courthouse. Consequently, we believe that such deposits are likely to be present on the subject property.

Regarding the architectural plans for the Courthouse, our office has been in contact with Glenn Mason of Spencer Mason Architects, and he has addressed our concern over the elevator shaft blocking the use of windows by relocating the elevator. Consequently, we believe that the plans for restoration of the building will enhance the historic character of the Courthouse and support variances to maintain the historic hand railings. We also concur with the Lahaina Task Force recommendation to move the parking lot away from the front of the Courthouse.

In order for the undertaking to have "no adverse effect" on significant historic sites, we recommend that the following conditions be attached to the SMA permit, if approved:

- (1) Prior to beginning any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the State Historic Preservation Division for review and approval.

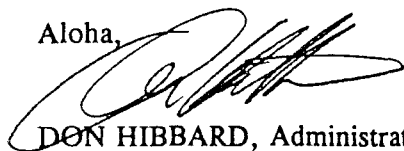
EXHIBIT c

Mr. David W. Blane  
Page 2

- (2) If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by the State Historic Preservation Division.

If these conditions are attached to the SMA Permit, and if the architectural concerns raised above are addressed as indicated, then the SMA permit, if approved, will have "no adverse effect" on significant historic sites. Should you have any questions, please feel free to call Sara Collins at 587-0013. Should you have any questions regarding the architectural plans, please call Tonia Moy at 587-0005.

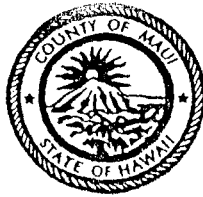
Aloha,



DON HIBBARD, Administrator  
State Historic Preservation Division

SC:jen

cc: Ms. Elizabeth Anderson, Cultural Resources Commission, Maui Planning Department,  
250 S. High Street, Wailuku, HI 96793  
Mr. Glenn Mason, Spencer Mason Architects, 1050 Smith Street, Honolulu, HI 96813



COUNTY OF MAUI  
PLANNING DEPARTMENT  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

572-3111

June 30, 1997

Mr. Richard Haake  
Managing Director  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

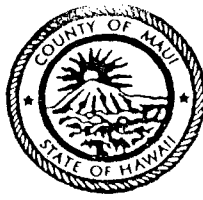
Dear Mr. Haake:

RE: Special Management Area Use Permit for the Old Lahaina Courthouse Project and Related Improvements at TMK 4-6-1: 009, Lahaina, Maui, Hawaii (SM1 970002)

At its regular meeting of June 24, 1997, the Maui Planning Commission reviewed the above request, and after due deliberation, voted to grant approval of the transfer subject to the following conditions:

1. That construction of the proposed project shall be initiated by June 30, 1999. Further, initiation of construction shall be determined as construction of offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Failure to comply within this two (2) year period will automatically terminate this Special Management Area Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said two (2) year period.
2. That the construction of the project shall be completed within five (5) years after the date of its initiation. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use Permit.
3. That final construction shall be in accordance with preliminary architectural plans dated December, 1996.
4. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels, and traffic disruptions.
5. That full compliance with all applicable governmental requirements shall be rendered.

**EXHIBIT D**



**COUNTY OF MAUI  
PLANNING DEPARTMENT**  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

May 8, 1997

Mr. Glenn Mason  
Spencer Mason Architects, Inc.  
1050 Smith Street  
Honolulu, Hawaii 96817

Dear Mr. Mason:

RE: Maui Cultural Resources Commission Approval of the Restoration of the Old Lahaina Courthouse, TMK: 4-6-1: 9, Lahaina, Island of Maui, Hawaii (HDC 970002)

At its regular meeting of May 1, 1997, the Maui Cultural Resources Commission reviewed the above request and after due deliberation, voted to grant Historic District Approval of the above project, subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the repairs and restoration be constructed in accordance with the plans approved by the Maui Cultural Resources Commission on May 1, 1997.
3. That the final architectural plans shall be submitted to the Maui Planning Department for review and approval.
4. That if architectural changes are made to the building during development of the project, said plans shall be submitted to the Maui Planning Department to determine if the components of the revisions still meet the intent of the permit. If the Maui Planning Department finds the deviation in plans to be major, the project shall then be forwarded to the Maui Cultural Resources Commission for review and approval.

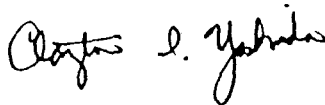
Mr. Glenn Mason  
May 8, 1997  
Page Two

5. That prior to any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources (DLNR), State Historic Preservation Division (SHPD), for review and approval.
6. If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by DLNR, SHPD.
7. That the use issue shall be resolved with DLNR.
8. That the restroom facilities within the Lahaina Courthouse Building shall have controlled access.
9. That the Maui Cultural Resources Commission be advised of the County's decision regarding use of the Lahaina Courthouse Building for review and comment.

A copy of the Maui Planning Department's Report and Recommendation dated May 1, 1997, is enclosed for your use.

Thank you for your cooperation in this matter. If additional clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office.

Very truly yours,



for DAVID W. BLANE  
Director of Planning

LAI USE & CODES ADMINISTRATION  
DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT  
250 SOUTH HIGH STREET  
WAILUKU, HAWAII 96793

PERMIT NUMBER

98-306

DATE ISSUED

2/23/98

Application for Building Permit

INITIAL  I claim an exemption under Sec. 444-2(7) of the HRS and hereby certify that this structure is for my personal use and not for use or occupancy by the general public. I further certify that such building or structure will not be offered for sale or lease within one year after completion.

Falsely claiming an exemption is a violation of Sec. 444-2(7) and carries a fine of forty percent (40%) of the total contract price, or other amounts as stipulated in Sec. 444-23(c).

I claim exemption from the provisions of Chapter 484 HRS, requiring certification and stamping of plans by a registered architect or structural engineer as permitted under Sec. 46413 (b). I further certify that I will record this exemption with the Bureau of Conveyances as required by Sec. 464-13 (c).

Approval is granted subject to compliance with the use regulations set forth in Chapter 205, HRS and the Land Use Commission's Rules & Regulations. The owner will provide notice of these use regulations to future owners, heirs and assigns. I acknowledge that I have received from the County of Maui a copy of Sec. 205-4.5HRS.

FOR LAND USE & CODES ADMINISTRATION USE ONLY			
AGENCY	SIGNATURE	DATE	
<input checked="" type="checkbox"/> DEPT. OF WATER	<i>[Signature]</i>	12/18/97	
<input checked="" type="checkbox"/> DEPT. OF HEALTH	<i>[Signature]</i>	12/15/97	
<input checked="" type="checkbox"/> FIRE MARSHALL	<i>[Signature]</i>	12-3-97	
<input checked="" type="checkbox"/> ENGIN., LUCA	<i>[Signature]</i>	2/20/98	
<input checked="" type="checkbox"/> BUILDING, LUCA	<i>[Signature]</i>	2.20.98	
<input checked="" type="checkbox"/> PLANNING DEPT.	<i>[Signature]</i>	12/10/97	

ISSUED BY: *[Signature]* ACCEPT. VAL \$ 983,000.00  
PERMIT FEE \$ EXEMPT

Applicant certifies that he/she has determined if there are any restrictive covenants applicable to the proposed construction on subject property and if so, that the structure herein applied for conforms with said covenants. Applicant acknowledges that County has no responsibility to determine conformance with covenants and hereby agrees to defend and hold County harmless from any and all claims arising out of any alleged breach thereof.

SIGNATURE OF OWNER \_\_\_\_\_ DATE \_\_\_\_\_

I hereby certify that I am a bona fide contractor licensed in the State of Hawaii *MAUI MASTER BUILDERS, INC*

X *[Signature]* 2/23/98  
SIGNATURE OF CONTRACTOR DATE

REMARKS: *doc 2/23/98*

PROJECT NAME: *Old Lahaina Courthouse - Restoration*

CONSTRUCTION TYPE: *Type III-X*

OCCUPANCY GROUP: *B-2*

OWNERSHIP: *Historic District* FLOOD ZONE: \_\_\_\_\_

APPLICATION NO. <i>97/1986</i>	T M K (S)	ZONE <i>4</i>	SEC <i>6</i>	PLAT <i>1</i>	PAR <i>9</i>	LOT
DATE RECEIVED <i>10/31/97</i>						

OWNERSHIP	ZONE <i>Historic District</i>	FLOOD ZONE
-----------	----------------------------------	------------

APPLICANT: PLEASE FILL IN AREA BELOW (TYPED)

PROJECT ADDRESS (HOUSE NO. AND STREET) <i>648 <del>Waike</del> Street</i>	NATURE OF WORK (CHECK ALL THAT APPLY)		
PROJECT ADDRESS (TOWN AND DISTRICT) <i>Lahaina</i>	<input type="checkbox"/> NEW BUILDING	<input type="checkbox"/> FENCE	<input type="checkbox"/> FOUNDATION ONLY
LEGAL OWNER (FULL NAME) <i>County of Maui</i>	<input type="checkbox"/> RETAINING WALL	<input type="checkbox"/> SHELL ONLY	<input type="checkbox"/> RELOCATION
MAILING ADDRESS (INCLUDE ZIP CODE) <i>200 S. High Street, Wailuku</i>	<input type="checkbox"/> ADDITION	<input checked="" type="checkbox"/> ALTERATION	<input type="checkbox"/> RECONSTRUCTION
LESSEE/TENANT (1)	<input type="checkbox"/> MISC. STRUCTURE	<input checked="" type="checkbox"/> REPAIR	<input type="checkbox"/> DEMOLITION
MAILING ADDRESS (INCLUDE ZIP CODE)	<input type="checkbox"/> SITE WORK	<input type="checkbox"/> SEA WALL	<input type="checkbox"/> SWIMMING POOL
LESSEE/TENANT (2)	NOW OCCUPIED AS <i>Retail / Office</i>	TO BE OCCUPIED AS <i>Office / Storage</i>	
MAILING ADDRESS (INCLUDE ZIP CODE)	DIMENSIONS	WALLS	
LESSEE/TENANT (3)	PARTITIONS <i>2x4 studs / metal studs</i>	FOUNDATION <i>Existing</i>	
MAILING ADDRESS (INCLUDE ZIP CODE)	FLOORS <i>Existing</i>	ROOF <i>Mission tile</i>	
	CEILING	BASEMENT FLOOR	
	<input checked="" type="checkbox"/> SEWER	ROOF OVERHANG	ESTIMATED VALUE OF WORK <i>\$1,000,000</i>
	<input type="checkbox"/> INDIVIDUAL WASTEWATER SYSTEM		
	NO. OF UNITS <i>2</i>	NO. OF STORIES	FLOOR AREA
			LOT AREA
PLAN MAKER <i>Glen E. Mason</i>	LICENSE NO. <i>A073</i>	DISTANCE TO NEAREST INTERIOR LOT BOUNDRY (FEET)	
MAILING ADDRESS (INCLUDE ZIP CODE) <i>1050 Smith Street Honolulu 90817</i>	TELEPHONE NO.	NEAREST BLDG.	
BUILDER <i>Later 72 TING'S DRIVE</i>	LICENSE NO. <i>BC16784</i>	RIGHT:	LEFT:
MAILING ADDRESS (INCLUDE ZIP CODE) <i>MAUI MASTER BUILDERS, INC</i>	TELEPHONE NO. <i>242-8180</i>	REAR:	FRONT:
APPLICANT NAME <i>Glen Mason</i>	TELEPHONE NO. <i>530-3036</i>	REMARKS: <i>Interior and Exterior repairs, improvements.</i>	
SIGNATURE OF APPLICANT <i>[Signature]</i>	DATE		

*(BP Issued) 2/3/98*

9903

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamokila Boulevard  
Kapolei, Hawaii 96707

MICHAEL D. WILSON, CHAIRPERSON  
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GILBERT COLOMA-AGARAN  
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98 DEC 18 P 1:18

DEPT OF LAND AND NATURAL RESOURCES  
COUNTY OF MAUI  
RECEIVED

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

December 15, 1998

Lisa Nuyen, Planning Director  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

LOG NO: 22628  
DOC NO: 9812RC12

Dear Ms. Nuyen:

**SUBJECT: Old Lahaina Courthouse Project -- SMA Violation Concerns  
Lahaina, Lahaina District, Maui  
TMK: 4-6-01: 009**

Our staff was contacted in late November of subsurface construction work at this project and the possible find of skeletal remains. According to our records, no subsurface work was to occur without the completion of a prior archaeological survey and any needed mitigation (our letter of April 2, 1997 on the SMA, Hibbard to Blane Log 19246/Doc 9703SC25); Also, according to our records archaeological monitoring was to be done of the sewer laterals, sidewalk repairs and the relocation of the water meter, with our office to approve a monitoring scope prior to the land alteration (our letter of January 5, 1998, Hibbard to Ratte Log 20645/Doc 9712BD04). Neither a survey nor approved monitoring plan have yet to occur to our knowledge. We contacted Ann Cua of your staff to try to find more about the situation. She too had heard about the concerns and proceeded to check. We more recently received a copy of Dana Hall's letter of December 3, 1998, to you, myself and others. Our staff have further checked with Dee Fredericksen (of Xamanek Researches and a member of the Maui County Cultural Resources Commission) who had visited the site on November 22, with Cultural Surveys Hawaii who had been hired as an archaeological monitor, with Glenn Mason (the architect overseeing the project), and with Dana Hall.

Based on our review of the situation, we established the following:

1. Multiple construction trenches were opened up in the project area (a trench for a sewer line in October, and in November 2 additional trenches). These have all evidently been backfilled..
2. An archaeological inventory survey (with subsurface testing) should have occurred prior to any land alteration. If significant deposits had been found, there may have been the need for mitigation work prior to land alteration. Such a survey did not occur.
3. An archaeological monitor had been hired to monitor the construction trenches, by Glenn Mason. This monitor was Cultural Surveys Hawaii. Our office was not sent a monitoring scope for the project, and did not approve any such scope.

4. The archaeological monitor was not present continuously on-site. When the first trench was opened (beginning October 5, 1998), a monitor was present for two days. At that time, Cultural Surveys Hawaii concluded that there were no intact deposits of old Lahaina present; rather there was a layer of modern fill. Cultural Surveys concluded there was no need to further monitor continuously, and Glenn Mason accepted their recommendation. The monitor was called to the project site two other times when bones were encountered in new trenches (November 17 and 25) (G. Mason, 12/9/98 personal communication; Letter Hammatt to Mason, November 27, 1998). Bones proved not to be human, and Cultural Surveys still saw only modern fill and no earlier intact archaeological deposits. Our office was not contacted by either Glenn Mason, nor Cultural Surveys asking if continuous on-site monitoring could be discontinued. (In fact, we were unaware that any monitoring was occurring.)

5. The three monitoring visits resulted in the conclusion by Cultural Surveys that a modern fill (50-100+ cm deep) was present on top of beach sand and that construction was solely within the fill. No intact cultural layers were seen. We cannot verify the accuracy of Cultural Surveys' claim without seeing a report or without a field inspection of open trenches. However, on November 22, 1998, Dee Fredericksen visited the site and observed in one of the trenches an apparently intact archaeological feature of possible early 1800s age. No monitor was present to evaluate or record this feature. The trench with the feature has since been filled back in.

6. No human burials or skeletal remains were found. When bones were found, the construction subcontractor immediately contacted Cultural Surveys, which led to their field checks of November 17 and 25. No archaeologists on our staff were contacted about the possible presence of human skeletal remains. On November 25, 1998, bones found were viewed by a Cultural Surveys monitor (John Winieski). Cultural Surveys identified the remains as an articulated pig within the modern fill layer. This information was passed to the local Maui Island Burial Council member. [Ms. Hall's letter notes that a question exists as to whether the pig was in fill. We cannot evaluate this concern, because our office did not see the open trenches and because we have yet to see an archaeological monitoring report which would provide evidence that the deposits at the project were indeed modern fill.]

7. On November 27, 1998, Cultural Surveys Hawaii recommended that "constant archaeological monitoring of excavations within the fill layer is not necessary" (Letter Hammatt to Mason, Nov. 27, 1998). Cultural Surveys Hawaii asked to monitor only on call, in the event that intact cultural deposits or inadvertent finds (e.g., burials) were found. Our office was not asked to evaluate such a marked change in a monitoring scope.

8. We understand from Mr. Mason that some minor land alteration related to landscaping is still planned (included digging holes for coconut trees and other vegetation) in the near future.

Based on the above, we can make the following findings:

1. No archaeological inventory survey was done. This was needed to determine if significant historic deposits were present in various parts of the parcel (e.g., archaeological deposits of old Lahaina). It should



have been done well before any land alteration. If extensive intact deposits were present, then data recovery might have been necessary prior to land alteration. The presence/absence of intact deposits in parts of the parcel not monitored still probably need evaluation.

2. Archaeological monitoring of the construction trenches was done, but our office was not notified of the intent to start monitoring, and no monitoring scope was sent to our office for review and approval. (The archaeological firm should know that such scope approval is commonly needed; our letter of January 5, 1998, spelled it out and minimally Mr. Mason was aware of that requirement.) Monitoring was done for two days at the beginning of infrastructure trenching, and the monitor concluded that only modern fill was present, and monitoring was discontinued. The presence of modern fill was a surprise, as most (if not all) parties expected intact deposits of old Lahaina to be present. It may be that primarily modern fill was present. However, Cultural Surveys and Mr. Mason's unilateral decision to terminate monitoring was not appropriate. Cultural Surveys is well aware that major scope deviations need approval by our office. Termination of continuous monitoring should have been requested of our office, and possibly a field check would have been needed to verify the presence of modern fill. It turns out that at least one intact feature of possible early 1800s age was present in one of the trenches (as seen by D. Fredericksen), and a few others could have been present. No monitor was on-site to record those features.

3. No human burials or human skeletal remains were found. The contractor properly contacted their monitor when bones were found, and the monitor found them not to be human, and the local member of the Maui/Lana'i Islands Burial Council was so notified. However, our archaeological staff and the Chair of the Burial Council were not notified. Notification would have avoided unnecessary confusion.

4. If modern fills were primarily the only archaeological deposits present at the project site, then the above problems (although not excusable) may have resulted in minimal damage to the historic record. Clearly one (and maybe a few) intact features of possible early 1800s age were present and not recorded -- they are now reburied. However, again, evidence that the fills were modern is not yet available. The trenches are now filled in, so the evidence must come from the archaeological monitoring report.

In sum, no human burials or skeletal remains were found at the project area. However, the historic preservation obligations of this project clearly were not and have not been fulfilled.

We recommend:

1. That your agency decide if fines or censure be applied to this violation. Clearly, a SMA condition and proper historic preservation compliance work did not occur (no survey, no approved monitoring plan, termination of continuous monitoring without approval). Damage to significant historic properties could have occurred if intact deposits had been present. Fortunately, it appears likely that the deposits were probably primarily modern fill (although this must still be verified). It may be that a few intact features were present and were not recorded.

2. No additional subsurface land alteration be approved for this project until the written findings of the monitoring to date (including drawn profiles of layers and photographs of the layers if available) are submitted to our office and the Maui County Cultural Resources Commission and can be evaluated. After that evaluation, then it should be determined by our office and the Commission what appropriate measures are needed prior to any further land alteration. [Minimally, we would probably recommend that more

Lisa Nuyen, Planning Director

Page 4

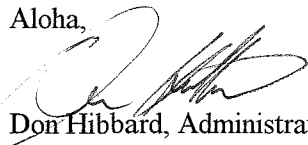
testing be done across the parcel -- with that testing and the prior monitoring of the trenches to serve as the test units for the required inventory survey and its report. The additional testing would provide enough information to establish the nature of deposits across the parcel, to aid in the planning for the remaining land alterations for this project and for any future projects. If modern fill is indeed present with almost no intact remains of early 1800s archaeological deposits, then perhaps no further archaeological work would be needed. However, this issue cannot be evaluated at all until we and the Commission are able to review the written findings from the monitoring. Cultural Surveys Hawaii staff is scheduled to come in to our office on December 14 and brief us on their findings.] Once our office and the Commission decide what next steps are needed, then recommendations on how to proceed would be given to your agency by our office.

3. Whatever your agency decides on fines/censure or still needed historic preservation actions, we recommend that it must be made clear to Mr. Mason and their archaeological consultant Cultural Surveys Hawaii that when archaeological data recovery or monitoring is to occur, usually approval of a scope of work by our office is needed and that no major deviation from that scope can occur without prior written approval by our office and your agency. This is a safety check to prevent inappropriate mitigation and monitoring.

4. Also we recommend that Cultural Surveys Hawaii be advised that in the future when finds of possible human skeletal remains are made and members of the public aware of the finds, that when the finds turn out to be non-human, as a courtesy it would be beneficial that they call our archaeological staff and the Burial Council chair to let them know the situation. This way should any public concern arise, the proper information can be passed to your staff or directly to the public. This would prevent unnecessary confusion.

Please let us know how you would like to proceed on this matter. We will continue to advise you as we get more information. If you or your staff have any questions, please feel free to call Ross Cordy, our Branch Chief for Archaeology (692-8025).

Aloha,



Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

c: Glenn Mason, Mason Architects  
Hallett Hammatt, Cultural Surveys Hawaii  
Dana Naone Hall  
Dee Fredericksen, Xamaneck

9904

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



MICHAEL D. WILSON, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

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'98 DEC 18 P1:10

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamokila Boulevard  
Kapolei, Hawaii 96707

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

December 15, 1998

Lisa Nuyen, Planning Director  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

LOG NO: 22665  
DOC NO: 9812RC32

Dear Ms. Nuyen:

**SUBJECT: Old Lahaina Courthouse -- SMA Violation Concerns**  
**Lahaina, Lahaina District, Maui TMK: 4-6-01: 9**

This follows up on our letter of earlier this week. On Monday (December 14, 1998), several of my staff (Ross Cordy, Branch Chief for Archaeology & Kana'i Kapeliela and Ka'iana Markell of our Burials Program) met with David Shideler of Cultural Surveys Hawaii to review the situation and their documents on the archaeological findings for this project.

Again, as a brief introduction, Glenn Mason did not have an archaeological inventory survey done. Cultural Surveys was unaware of this condition. Cultural Surveys was contracted to monitor construction. Mr. Mason did not notify them of the requirement to have a monitoring plan submitted to our office for approval. Cultural Surveys, however, should have known that a plan was usually needed and they should have so advised Mr. Mason. No monitoring plan was submitted to our office, nor was any plan approved by our office. As noted in our prior letter, we leave it up to your agency to decide if fines or censure be applied to the violations.

Cultural Surveys monitored the digging of the initial long trench from Canal Street to behind the Courthouse on October 5 & 6, 1998. They apparently were not notified when two short wing trenches were excavated, but they did evaluate these trenches when they were called to the site when a plate was found (November 17, 1998) and when possible human bones were found on November 24th (these bones being pig). They monitored both the trenches and the back dirt piles at these times. In our meeting they provided us with monitors' notes for each of the 4 days they were on site, with stratigraphic profiles and photographs of the trenches showing the layers, and with a photo and evaluation of the plate that was found. This is not an acceptable final monitoring report, but it is sufficient information to evaluate the claim that no intact cultural layers were present -- that modern fill of ca. 50-100+ cm were found on top of beach sand (the latter not cultural). Based on this evidence:

1. We agree that it does appear that the trenches that were dug exposed only fill on top of non-cultural beach sand. Cultural Surveys believes that this fill was initially deposited ca. 1859 to create a flat area for the Courthouse's construction and that later intrusions into the fill occurred (e.g., utility lines, later artifacts). Evidence for fill included scattered historic artifacts and faunal remains (e.g., saw cut cow bone, the plate), scattered cobbles and boulders, and an abrupt boundary with the lower beach sand layer. We would feel more comfortable with this conclusion if our staff could observe the stratigraphy in open trenches, but the records and evaluations do seem reasonable. This suggests that no significant deposits were present in the trenches.

Lisa Nuyen, Planning Director

Page 2

a. It is possible -- based on Dee Fredericksen's observation of the trenches that at least one feature of old 1800s Lahaina vintage was present. Mr. Shideler said that the feature was not visible when his staff inspected the trenches. It was not recorded, but it is still present --buried in the trench. This is a problem, but it is relatively minor.

b. The suggestions that the pig might have been a "sacred" interment (which we have heard of through second-hand information) also seems unfounded, as it would have been dug into fill after 1859 and after the Courthouse's construction.

2. We are concerned that the remainder of the Courthouse area has not had its subsurface deposits evaluated, which would have occurred had an archaeological inventory survey been done. Further land alteration (landscaping and tree planting) is planned. The entire project area needs to have its subsurface deposits evaluated prior to such land alteration -- to determine if important deposits are present and, if so, how to mitigate any adverse impacts..

Thus, to address the remaining archaeological concerns, we recommend:


1. Prior to any further land alteration (including planting and tree planting), archaeological test excavations (which can be back-hoe trenches) be representatively placed around the Courthouse -- notably in the Canal/Wharf street quadrant, but also with new trenches opened in back and on the Wharf/Hotel street quadrant. This work must be done under the direction of a professional archaeologist. The trenches must be left open for inspection by our staff archaeologists and by the archaeologist attached to the Maui County Cultural Resources Commission, so we can evaluate first-hand the interpretation of fill and any new layers that might be uncovered.

2. Based on the evaluation of the open trenches, our staff and the Commission's archaeologist shall discuss any needed mitigation work for the final land alteration for this project (e.g., the planting/landscaping) and make recommendations to the County. Minimally, monitoring may be needed.

3. The archaeological findings from the initial monitoring, the test excavations and any final mitigation shall be written up as an archaeological report (to include background archival/archaeological review common to an archaeological inventory survey). That report must be acceptable to the State Historic Preservation Division.

If you have any questions, please feel free to call Ross Cordy of my staff (692-8025).

Aloha,

  
Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

c: H. Hammatt, Cultural Surveys Hawaii  
C. Maxwell, Chair, Maui/Lana'i Island Burial Council  
Maui County Cultural Resources Commission  
Dana Hall

9939

CULTURAL SURVEYS HAWAII  
Archaeological Studies

Hallett H. Hammatt, Ph.D  
733 N. Kalaheo Ave., Kailua, Hawaii  
Bus: (808) 262-9972/Fax: 262-9972  
e-mail: csh@dps.net

18 December 1998

TO: Dr. Don Hibbard, Administrator, State Historical Commission  
FROM: Hallett H. Hammatt, Cultural Surveys Hawaii  
REGARDING: Response to SHPD letters pertaining to Burial Commission actions matter

RUSH

MAUI PLANNING DEPARTMENT

	FYI	COMMENTS	SEE ME	ASSIGN	FILE	DRAFT RESP.
LISA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DON	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLAYTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AARON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JILL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>ATR, TRB w/ [initials]</i>						

Due Date: \_\_\_\_\_  
By: CDY Date: 12/21/98

Dear Dr. Hibbard:

We would like to thank the State Historic Preservation Division for its efforts to ascertain the facts in the Lahaina Courthouse/ Burial Commission actions matter. We look forward to working with the State Historic Preservation Division to bring this matter to resolution.

Given the present situation, we at Cultural Surveys Hawai'i feel the need to clarify points and address issues raised in two recent SHPD letters (Log No: 22628, Doc No. 9812RC12 dated December 15, 1998 and Log No. 22665, Doc No: 9812RC32, dated December 15, 1998) to Lisa Nuyen, Planning Director, Planning Department, County of Maui . We hope to clear up any possible remaining misunderstandings and to make Cultural Surveys Hawai'i's position clear.

**Letter from Don Hibbard to Lisa Nuyen dated December 15, 1998 (Log No: 22628, Doc No. 9812RC12)**

page 2, paragraph # 4

We wish to clarify the content and time frame of the conclusions and recommendations of Cultural Surveys. The pertinent document here is the letter from Cultural Surveys to Glen Mason dated November 27, 1998 (copy supplied to SHPD). The letter specifically proposes that "constant archaeological monitoring of excavations within the fill layer is not necessary". This conclusion was based on monitoring of the project on the following days: 10/5/1998, 10/6/1998, 11/17/1998 and 11/25/1998.

This is not quite the same as the statement in the SHPD letter that: "Cultural Surveys Hawaii concluded that there were no intact deposits of old Lahaina present". This wording could be construed to suggest something other than what Cultural Surveys intended - i.e. that our recommendation applied only to monitoring of the fill layer. Furthermore the SHPD letter suggests this determination was made in the time frame of 5 October 1998, which could be construed as hasty.

page 2, paragraph # 5

Just for clarification, monitoring occurred on four days: 10/5/1998, 10/6/1998, 11/17/1998 and 11/25/1998.

The SHPD letter here notes that on 22 November 1998 Dee Fredericksen observed "an apparently intact archaeological feature of possible 1800s age." No such feature was observed by us in open trenches on 17 November 1998 and 25 November 1998. We are still unclear as to what this reported feature may be. Cultural Surveys is trying to learn more facts of the matter. Cultural Surveys hopes to resolve this issue - whether a single significant archaeological feature was adversely impacted or unrecorded.

page 3, paragraph # 2

The SHPD letter notes parenthetically that: "The archaeological firm should know that such scope approval is commonly needed: our letter of January 5, 1998, spelled it out and minimally Mr. Mason was aware of that requirement." While we are indeed aware that such scope approval is "commonly" needed, we were not aware that it was needed in this case. In fact we had good reason to believe otherwise. We had no knowledge of the January 5th letter.

The SHPD letter further notes: "Cultural Surveys is well aware that major scope deviations need approval by our office. Termination of continuous monitoring should have been requested of our office..." If a scope of work had been approved by your office we surely would have contacted you in advance of any changes. This has been our procedure in the past. As there was no scope of work approved by your office (addressed above), there was no basis to assume we should/would contact your office about changes.

The issue of the feature noted by D. Fredericksen has been addressed in the context of our response to page 2, paragraph # 5.

page 3, paragraph # 3

The SHPD letter notes, in the context of our response to a report of (pig) bones, that: "...our [SHPD] archaeological staff and the Chair of the Burial Council were not notified. Notification would have avoided unnecessary confusion." All in-place protocols were followed by Cultural Surveys Hawai'i in this regard. Cultural Surveys Hawai'i notified SHPD on 24 November 1998 that we were responding to the report of possible human bones. SHPD had already been notified of the possible burial by the contractor. Subsequently Cultural Surveys notified SHPD on 25 November of our findings that there were no human remains. Thus Cultural Surveys did in fact notify the appropriate agency (i.e. SHPD burials staff) on a timely basis.

The find was discussed with an individual present on site, who identified himself as associated with the Maui/Lāna'i Burial Council. The find was demonstrated to his satisfaction as pig bones.

Cultural Surveys Hawai'i is most willing to accept any change of notification protocols but we look to the SHPD to tell us of these protocols.

page 3, paragraph # 4

The SHPD letter states that: "Clearly one (and maybe a few) intact features of possible early 1800s age were present and not recorded." This matter is not clear at all. As the SHPD letter previously asserted (page 2, paragraph # 5), this feature is only "apparently" intact and, while "possibly" of early 1800s age, may in fact be something else entirely. We are not at all convinced that any significant features were impacted in any way during Cultural Surveys monitoring.

**Letter from Dr. Don Hibbard to Lisa Nuyen dated December 15, 1998 (Log No. 22665, Doc No: 9812RC32).**

page 1, paragraph 2

While acknowledging that Cultural Surveys was unaware of archaeological conditions of the SMA permit, this letter asserts that "Cultural Surveys, however, should have known that a plan was usually needed and they should have so advised Mr. Mason." We are indeed aware that a plan is "usually" needed. We usually prepare such plans in advance of monitoring. We were of the understanding that no such plan was needed in this case.

page 1, paragraph 3

The SHPD letter correctly notes: "They [Cultural Surveys Hawai'i] apparently were not notified when two short wing trenches were excavated." This is indeed the case. We only wish to point out here that our contract dated 16 March 1998 (supplied to SHPD) requests: "Please provide us with...a schedule of ground disturbing activities". Additionally the field notes of archaeological monitor Melody Heidel for 6 October 1998 (supplied to SHPD) include a reference to the discontinuation of trenching, an awareness that reconfiguration was necessary, and the explicit understanding of Cultural Surveys Hawai'i "that we were to be notified within a few days as to the plans and procedure of work." These notifications were not given. We wish to make it clear, and document, that any absence on our part during excavations prior to 27 November 1998 was not for the want of repeated efforts by Cultural Surveys to ascertain when trenching was going to occur.

This SHPD letter summarizes certain documents supplied to SHPD at a meeting on 14 December 1998 and notes that: "This is not an acceptable final monitoring report." Cultural Surveys is in complete accord. It was not our intention that these documents be construed as a final monitoring report. They were rather supplied in order to help SHPD review the situation.

It appears to us that a communication problem among the SHPD burial program staff, the Maui/Lāna`i Islands Burial Council and the SHPD archaeological staff has a direct bearing on the Lahaina Courthouse affair and has caused Cultural Surveys Hawai`i undeserved harm in this case.

Our additional concern is that no reasonable notification was given to Cultural Surveys by the Burial Council that it was considering the Lahaina Courthouse matter - let alone censure. Not only was there no chance for Cultural Surveys to present facts, there was no chance for SHPD archaeological staff to present clarifying information which we believe would have exonerated Cultural Surveys of allegations before the Burial Council.

We feel an injustice has been done to Cultural Surveys Hawai`i by the Maui/Lāna`i Burial Council. We believe that the facts make this clear. We hope, upon a thorough and dispassionate analysis of the background of the case and of the Burial Council's actions, that your office would recommend a revocation of the censure on the following grounds: 1) that the Burial Council acted in haste without any real effort to ascertain the facts of the matter, 2) that Cultural Surveys Hawai`i had no reasonable notification or chance of self-defense in advance of the Council's actions, 3) that your office has in fact thoroughly examined the case and determined that the burden of responsibility for the violations of the SMA permit lies elsewhere, and 4) that your office has in fact determined that the Burial Council's actions were based on a misunderstanding of what had actually transpired.

We would like to point out that to date (12/18/1998) we have had no direct communication from the Maui/Lāna`i Islands Burial Council whatsoever in this regard. We regret that virtually all we know about what was actually said and done at that meeting is from articles in the *Maui News*. We feel that the absence of official notification is clearly inappropriate, and of-a-piece with the inappropriateness of this entire Maui/Lāna`i Islands Burial Council action. We have requested a copy of the minutes of the meeting from SHPD, but it is our understanding that it may take your office several more weeks to provide a copy of the minutes. We understand from Ms. Lynn Otaguro at the State Office of Information Practices that we may request an audio tape of the 10 December 1998 Maui/Lāna`i Islands Burial Council meeting and we now request a copy of that tape from SHPD.

Again, we would like to thank the State Historic Preservation Division for their efforts to ascertain the facts in the Lahaina Courthouse/ Burial Commission actions matter. We at Cultural Surveys Hawai`i find the contents of the two SHPD letters to be generally accurate, insightful and appropriate. It has been our purpose to address any and all allegations of wrong-doing, to present the facts of the matter, and to present our position. We look forward to working with the State Historic Preservation Division to bring this matter to resolution.



*Mahalo* for your consideration



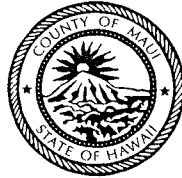
Hallett H. Hammatt, Ph.D.

- cc. Ms. Lisa Nuyen
- Dr. Ross Cordy
- Mr. Kaiana Markell
- Mr. Marshall Chinen, Attorney at Law
- Ms. Lynn Otaguro, State Office of Information Practices

LINDA LINGLE  
Mayor

LISA M. NUYEN  
Director

DONALD A. SCHNEIDER, II  
Deputy Director



CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

December 28, 1998

Mr. Glenn Mason, AIA  
Mason Architects, Inc.  
119 Merchant Street, Suite 501  
Honolulu, Hawaii 96813

Dear Mr. Mason:

RE: After-the-Fact Approval of a Preliminary Compliance Report for a Special Management Area Use Permit for the Old Lahaina Courthouse Project, TMK: 4-6-1: 009, Lahaina, Lahaina District, Island of Maui, Hawaii (SM1 970002)

The Maui Planning Department (Department) has reviewed the above-referenced after-the-fact Preliminary Compliance Report dated December 10, 1998, and finds it to be acceptable.

You are reminded that five (5) copies of the Final Compliance Report shall be submitted to the Department for review and approval prior to the issuance of a Certificate of Occupancy.

Enclosed please find two (2) letters from the Department of Land and Natural Resources, State Historic Preservation Division (DLNR, SHPD) dated December 15, 1998 outlining the project's noncompliance with conditions of the Special Management Area and Historic District Permit approvals. You are hereby requested to address issues identified by DLNR, SHPD, in the project's final compliance report.

Mr. Glenn Mason, AIA  
December 28, 1998  
Page 2

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office at 243-7735.

Sincerely,



LISA M. NUYEN  
Director of Planning

LMN:ATC:osy  
Enclosures

- c: Clayton Yoshida, AICP, Planning Program Administrator
- Aaron Shinmoto, PE, Planning Program Administrator (2)
- Office of Planning (w/Enclosures)
- Maui Planning Commission (w/Enclosures)
- Maui County Cultural Resources Commission File (w/Enclosures)
- LUCA (2) (w/Enclosures)
- 98/CZM File (w/Enclosures)
- Ann T. Cua, Staff Planner
- Project File (w/Enclosures)
- General File
- (s:\all\ann\lacrtpre.com)



ARCHITECTURE  
RESTORATION  
RENOVATION  
RESEARCH

Mason Architects

'98 DEC 14 A9:26

DEPT OF PLANNING  
COUNTY OF MAUI

10 December 1998

Lisa M. Nuyen  
Planning Department  
County of Maui  
250 S. High Street  
Wailuku, Maui, Hawaii 96793

Subject: Preliminary Compliance Report for the  
SMA Use Permit for the Old Lahaina Courthouse Project  
TMK 4-6-1:009, Lahaina, Maui, Hawaii (SM1 970002)

Dear Ms. Nuyen:

A building permit was received for this project on 3 February 1998. This preliminary compliance report was not submitted prior to the award of the permit, but is being submitted at this time to comply with the requirements of the Maui Planning Commission.

There were 15 conditions put upon this project by the approval of the Maui Planning Commission at their June 24, 1997 meeting. This report will summarize the compliance for each of those items. The numbers below correspond to the number of the condition contained in their June 30 letter to you.

1. *Construction of the project will commence by June 30, 1999.*

Response: We have complied with this condition. On-site construction began in late February.

2. Construction of the project will be completed within 5 years of the date of its initiation.

Response: We will comply with this condition. The total elapsed time of construction will be less than one year.

3. Final construction shall be in accordance with the preliminary architectural plans dated December 1996.

Response: We will comply with this condition. This has been, and will continue to be, done.

4. Mitigation of short-term impacts of the project relative to soil erosion from wind and water, noise, and traffic.

Response: The contractor installed a 12-foot high geo-textile barrier around the site to control dust. Construction noise was relatively minor except for a one or two days during the demolition process. The contractor has done, and will continue to do, as much of this work as possible during times that will minimize the effects of this noise on surrounding users.

5. Compliance with all applicable government requirements shall be rendered.

Response: To the best of our knowledge we have made every attempt to comply with applicable government requirements. However, the submission of this compliance report is late.

6. The applicant shall submit plans regarding the location of construction-related structures:

Response: There were no construction-related structures other than the barricade. The location of the barricade followed the outline of the area of work shown on the Title sheet of the drawings as submitted for permit.

7. Compliance Reports.

Response: This has not been filed in a timely manner. This Preliminary Compliance Report is being submitted as a partial fulfillment of this requirement. A final Compliance Report will be submitted at the completion of construction.

8. The waste from the site:

Response: It became impossible to comply with this condition. The Construction and Demolition Landfill on North Kihei Road near Honoapiilani Highway was closed prior to the start of demolition on this contract (apparently due to underground fires). Demolition materials were dumped at the County Landfill.

9. Archeological monitoring of the site.

Response: See the attached letter by Cultural Surveys Hawaii. In short, they were on site for the first three days of excavations. At that time, we were told verbally by that office that there was no need for further monitoring because it appeared that the entire site had been filled. Since this was based on excavations for the sewer line, the deepest excavation to be made on the site, we informed the County and the Contractor of this fact, with a warning to the Contractor that if they encountered anything that wasn't dirt, to contact us for follow-up. They did this on two occasions, which are discussed in Cultural Surveys Hawaii letter of November 27, 1998, received by our office on December 2. The recommendations of the archeologist hired for this project were followed.

Additional test pits will be done on the site by Cultural surveys Hawaii, in accordance with a request made by the State Historic Preservation Division. After research is completed on the test pits, a monitoring report by the archeologist will be submitted at the end of the project.

10. Discovery of significant historic sites.

Response: No significant historic sites have yet been found.

11. Appropriate measures shall be taken to minimize noise impacts on King Kamehameha III School.

Response: This was done. There were complaints made by the School at one point during the construction, during the demolition of sidewalks. These complaints were addressed by the Contractor within 24 hours.

12. Pruning of the Banyan Tree:

Response: The pruning of the Banyan tree was done in accordance with the instructions from the Arborists Committee. There was no stubbing and the pruning was supervised. The pruning was done by Jeff Gray, a certified arborist, of Ehukai Tree Trimming. Mr. Gray is also on the Arborist Committee and corresponded with Mr. Ernie Rezentes, Chair of the Committee, about the work prior to its execution.

13. Certified arborist required.

Response: See above.

14. Cutting of intrusive roots of the Banyan Tree.

Response: Success with this item is mixed. The larger roots were usually cut. Smaller roots were often severed by the back hoe.

15. Compliance with the Conditions of the Maui County Cultural Resources Commission, contained in their May 8, 1997 letter.

Response: The response to the Cultural Resources Commission conditions are listed below:

1. Compliance with applicable government requirements: Answer is the same as #5 above.
2. Work shall be done in accordance with May 1, 1997 plans approved by the Commission:  
This has been, and will continue to be, done.
3. Final architectural plans to be submitted to the Planning Department for review and approval:  
This has been done.
4. Architectural changes made to the building during the project shall be submitted to the Maui Planning Department:  
No significant changes were made to the plans.
5. Qualified archeologist shall conduct an inventory survey with subsurface testing of the project with results of the survey to go to DLNR.:  
This requirement has not been complied with, due to an oversight. The archeologist was present on site at the beginning of the excavations and was instructed to stop the work if anything was found and to contact the State. Additional test pits will be done to verify the extent of the fill conditions, per the wishes of the State of Hawaii Historic Preservation Division, DLNR.
6. If significant historic sites are found, contact DLNR, SHPD:  
No significant historic sites were found.
7. The use issue will be resolved with DLNR:

Discussion on this topic are on-going, but to our knowledge, uses have not been completely finalized, and will not be finalized until a building management team has been selected.

8. Restroom facilities within the Lahaina Courthouse Building shall have controlled access:  
The intent of the project, and basis of the design, was that the restrooms will be used only by those using the building and that access will be controlled. This is a management issue that should be attached as a condition of the management contract for the building.
9. The Maui Cultural Resources Commission shall be advised of the County's decision regarding use of the Courthouse Building:  
This has not yet been done, as this issue has still not been completely resolved.

Respectfully submitted,



Glenn Mason, AIA

cc. Richard Haake, Managing Director



CULTURAL SURVEYS HAWAII, INC.  
Archaeological Studies

Hallett H. Hammatt, Ph.D.  
733 N. Kalaheo Ave., Kailua, Hawaii 96734  
Bus: (808) 262-9972/Fax: 262-4950  
e-mail: csh@dps.net

Glen Mason  
Mason Architects, Inc.  
119 Merchant St. #501  
Honolulu, HI 96813  
Fax 526-0577  
536-0556

Dear Mr. Mason,

November 27, 1998

This letter is in regard to archaeological monitoring of the Lahaina Courthouse renovation project. Observations made during three inspections of the project area indicate that constant archaeological monitoring of excavations within the fill layer is not necessary.

During the initial monitoring in the *mauka* portion of the project area (October 5-6, 1998), the encountered stratigraphy consisted of a thick, imported fill layer (over 1.0 m. deep, a dark brown loam containing historic/modern debris) on top of beach sand (extending to the base of the trench). No cultural layers or deposits were observed.

A second visit to the project (November 17, 1998) was in order to inspect materials (a ceramic plate and scattered cow bones) encountered during backhoe excavations. During this inspection it was observed that the materials were located within the fill layer. Both the plate and the cow bones appeared to be disassociated from their original context; in other words, they were deposited as part of the fill. In the *makai* portion of the project area, where the plate was located, the fill layer was often mottled with light brown soil and sand lenses and ranged in depth from 50 cm. to over 1.0 m. Again, no cultural layers or deposits were observed.

A third visit to the site (November 25, 1998) to inspect additional bones (an articulated pig skeleton within the fill layer) encountered during excavation resulted in the same observations: no cultural layers or deposits were observed other than the modern pig remains.

Due to these observations, we recommend that any excavation within the fill layer proceed without archaeological monitoring as our inspections have indicated that this layer appears to be devoid of intact cultural deposits. However, we will remain on-call in the event that such deposits or inadvertent finds (*ie* potential human remains) are encountered. If this occurs, please continue to contact our office immediately, as you have done in the past.

Mahalo,



Melody Heidel  
for Hallett H. Hammatt, PhD.

RECEIVED  
DEC X 2 1998

MASON ARCHITECTS, INC.

# Application for Special Management Area Permit

---

## Old Lahaina Courthouse

Prepared for the  
County of Maui



December 1996

### 3.1.4 Archeological Resources

Excavations in the park area will be required for the installation of new electrical, water and sewer service. The new conduits and pipes will be installed primarily in the same corridors that the existing lines are in. As a result, many of the excavations will be in already disturbed soil.

There will be some excavations for back-flow preventers, landscape sprinklers and secondary electrical lines that will fall outside of these existing corridors. It will be required that an archeologist be present during all sub-surface excavations. In the event that any archeological resources are uncovered, work in that area shall be stopped and appropriate mitigation shall be determined by the State Historic Preservation Division and County of Maui and accomplished by the contractor before the work can commence.

### 3.1.5 Noise and Air Quality

The effects of the project on noise and air quality will be limited to the construction period. Noise will be generated by the tools and equipment required for the construction. Since no heavy equipment or pile driving is required these effects should be minimal. It is not anticipated that noise will be troubling to the school or surrounding commercial activities due to the distance separating the Courthouse from those other buildings.

Dust will be generated by the movement of equipment around the building and by the removal of plaster and other building materials. Regular watering will help to reduce these emissions. In addition, the perimeter construction barrier will act to confine most of the dust to the immediate work area.

### 3.1.6 Scenic and Open Space Resources

It is proposed to prune those limbs of the Banyan tree which are encroaching so close to the building that they threaten to damage the walls and foundations. This work will be performed by a reputable tree-surgery firm experienced in this type of work.

The park grounds immediately around the Courthouse will be improved with new landscaping, landscape sprinklering, and sidewalks. Parking will be removed from the makai side of the building and that area will be landscaped. The landscaping will consist primarily of various indigenous ground covers and grass, all suitable for xeriscape landscaping.

The proposed rehabilitation work on the Old Lahaina Courthouse will conserve all historic materials in the building. This is a positive effect. The only significant change to the interior of the building will be the addition of an elevator to make the second floor handicapped accessible. This will be done with

LINDA LINGLE  
Mayor

LISA M. NUYEN  
Director

DONALD A. SCHNEIDER, II  
Deputy Director



CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

December 28, 1998

Mr. Glenn Mason, AIA  
Mason Architects, Inc.  
119 Merchant Street, Suite 501  
Honolulu, Hawaii 96813

Dear Mr. Mason:

RE: After-the-Fact Approval of a Preliminary Compliance Report for a Special Management Area Use Permit for the Old Lahaina Courthouse Project, TMK: 4-6-1: 009, Lahaina, Lahaina District, Island of Maui, Hawaii (SM1 970002)

The Maui Planning Department (Department) has reviewed the above-referenced after-the-fact Preliminary Compliance Report dated December 10, 1998, and finds it to be acceptable.

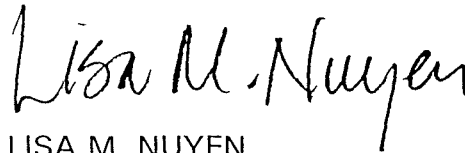
You are reminded that five (5) copies of the Final Compliance Report shall be submitted to the Department for review and approval prior to the issuance of a Certificate of Occupancy.

Enclosed please find two (2) letters from the Department of Land and Natural Resources, State Historic Preservation Division (DLNR, SHPD) dated December 15, 1998 outlining the project's noncompliance with conditions of the Special Management Area and Historic District Permit approvals. You are hereby requested to address issues identified by DLNR, SHPD, in the project's final compliance report.

Mr. Glenn Mason, AIA  
December 28, 1998  
Page 2

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office at 243-7735.

Sincerely,



LISA M. NUYEN  
Director of Planning

LMN:ATC:osy

Enclosures

c: Clayton Yoshida, AICP, Planning Program Administrator  
Aaron Shinmoto, PE, Planning Program Administrator (2)  
Office of Planning (w/Enclosures)  
Maui Planning Commission (w/Enclosures)  
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98/CZM File (w/Enclosures)  
Ann T. Cua, Staff Planner  
Project File (w/Enclosures)  
General File  
(s:\all\ann\lacrtpre.com)



ARCHITECTURE  
RESTORATION  
RENOVATION  
RESEARCH

Mason Architects

'98 FEB 14 19:36

10 December 1998

Lisa M. Nuyen  
Planning Department  
County of Maui  
250 S. High Street  
Wailuku, Maui, Hawaii 96793

Subject: Preliminary Compliance Report for the  
SMA Use Permit for the Old Lahaina Courthouse Project  
TMK 4-6-1:009, Lahaina, Maui, Hawaii (SM1 970002)

Dear Ms. Nuyen:

A building permit was received for this project on 3 February 1998. This preliminary compliance report was not submitted prior to the award of the permit, but is being submitted at this time to comply with the requirements of the Maui Planning Commission.

There were 15 conditions put upon this project by the approval of the Maui Planning Commission at their June 24, 1997 meeting. This report will summarize the compliance for each of those items. The numbers below correspond to the number of the condition contained in their June 30 letter to you.

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9. The Maui Cultural Resources Commission shall be advised of the County's decision regarding use of the Courthouse Building:  
This has not yet been done, as this issue has still not been completely resolved.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Glenn Mason", with a long horizontal flourish extending to the right.

Glenn Mason, AIA

cc. Richard Haake, Managing Director

1120

CULTURAL SURVEYS HAWAII, INC.  
Archaeological Studies

Hallett H. Hammatt, Ph.D.  
733 N. Kalaheo Ave., Kailua, Hawaii 96734  
Bus: (808) 262-9972/Fax: 262-4950  
e-mail:csh@dps.net

Glen Mason  
Mason Architects, Inc.  
119 Merchant St. #501  
Honolulu, HI 96813  
Fax 526-0577  
536-0556

Dear Mr. Mason,

November 27, 1998

This letter is in regard to archaeological monitoring of the Lahaina Courthouse renovation project. Observations made during three inspections of the project area indicate that constant archaeological monitoring of excavations within the fill layer is not necessary.

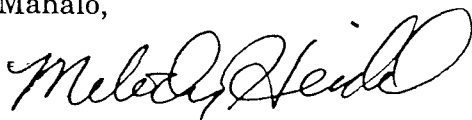
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Mahalo,



Melody Heidel  
for Hallett H. Hammatt, Ph.D.

RECEIVED  
DEC 2 1998

MASON ARCHITECTS, INC.



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamokila Boulevard  
Kapolei, Hawaii 96707

MICHAEL D. WILSON, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES  
GILBERT COLOMA-AGARAN  
TIMOTHY E. JOHNS  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

December 15, 1998

Lisa Nuyen, Planning Director  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

LOG NO: 22628  
DOC NO: 9812RC12

Dear Ms. Nuyen:

**SUBJECT: Old Lahaina Courthouse Project -- SMA Violation Concerns  
Lahaina, Lahaina District, Maui  
TMK: 4-6-01: 009**

Our staff was contacted in late November of subsurface construction work at this project and the possible find of skeletal remains. According to our records, no subsurface work was to occur without the completion of a prior archaeological survey and any needed mitigation (our letter of April 2, 1997 on the SMA, Hibbard to Blane Log 19246/Doc 9703SC25). Also, according to our records archaeological monitoring was to be done of the sewer laterals, sidewalk repairs and the relocation of the water meter, with our office to approve a monitoring scope prior to the land alteration (our letter of January 5, 1998, Hibbard to Ratte Log 20645/Doc 9712BD04). Neither a survey nor approved monitoring plan have yet to occur to our knowledge. We contacted Ann Cua of your staff to try to find more about the situation. She too had heard about the concerns and proceeded to check. We more recently received a copy of Dana Hall's letter of December 3, 1998, to you, myself and others. Our staff have further checked with Dee Fredericksen (of Xamanek Researches and a member of the Maui County Cultural Resources Commission) who had visited the site on November 22, with Cultural Surveys Hawaii who had been hired as an archaeological monitor, with Glenn Mason (the architect overseeing the project), and with Dana Hall.

Based on our review of the situation, we established the following:

1. Multiple construction trenches were opened up in the project area (a trench for a sewer line in October, and in November 2 additional trenches). These have all evidently been backfilled..
2. An archaeological inventory survey (with subsurface testing) should have occurred prior to any land alteration. If significant deposits had been found, there may have been the need for mitigation work prior to land alteration. Such a survey did not occur.
3. An archaeological monitor had been hired to monitor the construction trenches, by Glenn Mason. This monitor was Cultural Surveys Hawaii. Our office was not sent a monitoring scope for the project, and did not approve any such scope.

4. The archaeological monitor was not present continuously on-site. When the first trench was opened (beginning October 5, 1998), a monitor was present for two days. At that time, Cultural Surveys Hawaii concluded that there were no intact deposits of old Lahaina present; rather there was a layer of modern fill. Cultural Surveys concluded there was no need to further monitor continuously, and Glenn Mason accepted their recommendation. The monitor was called to the project site two other times when bones were encountered in new trenches (November 17 and 25) (G. Mason, 12/9/98 personal communication; Letter Hammatt to Mason, November 27, 1998). Bones proved not to be human, and Cultural Surveys still saw only modern fill and no earlier intact archaeological deposits. Our office was not contacted by either Glenn Mason, nor Cultural Surveys asking if continuous on-site monitoring could be discontinued. (In fact, we were unaware that any monitoring was occurring.)
5. The three monitoring visits resulted in the conclusion by Cultural Surveys that a modern fill (50-100+ cm deep) was present on top of beach sand and that construction was solely within the fill. No intact cultural layers were seen. We cannot verify the accuracy of Cultural Surveys' claim without seeing a report or without a field inspection of open trenches. However, on November 22, 1998, Dee Fredericksen visited the site and observed in one of the trenches an apparently intact archaeological feature of possible early 1800s age. No monitor was present to evaluate or record this feature. The trench with the feature has since been filled back in.
6. No human burials or skeletal remains were found. When bones were found, the construction subcontractor immediately contacted Cultural Surveys, which led to their field checks of November 17 and 25. No archaeologists on our staff were contacted about the possible presence of human skeletal remains. On November 25, 1998, bones found were viewed by a Cultural Surveys monitor (John Winieski). Cultural Surveys identified the remains as an articulated pig within the modern fill layer. This information was passed to the local Maui Island Burial Council member. [Ms. Hall's letter notes that a question exists as to whether the pig was in fill. We cannot evaluate this concern, because our office did not see the open trenches and because we have yet to see an archaeological monitoring report which would provide evidence that the deposits at the project were indeed modern fill.]
7. On November 27, 1998, Cultural Surveys Hawaii recommended that "constant archaeological monitoring of excavations within the fill layer is not necessary" (Letter Hammatt to Mason, Nov. 27, 1998). Cultural Surveys Hawaii asked to monitor only on call, in the event that intact cultural deposits or inadvertent finds (e.g., burials) were found. Our office was not asked to evaluate such a marked change in a monitoring scope.
8. We understand from Mr. Mason that some minor land alteration related to landscaping is still planned (included digging holes for coconut trees and other vegetation) in the near future.

Based on the above, we can make the following findings:

1. No archaeological inventory survey was done. This was needed to determine if significant historic deposits were present in various parts of the parcel (e.g., archaeological deposits of old Lahaina). It should

have been done well before any land alteration. If extensive intact deposits were present, then data recovery might have been necessary prior to land alteration. The presence/absence of intact deposits in parts of the parcel not monitored still probably need evaluation.

2. Archaeological monitoring of the construction trenches was done, but our office was not notified of the intent to start monitoring, and no monitoring scope was sent to our office for review and approval. (The archaeological firm should know that such scope approval is commonly needed; our letter of January 5, 1998, spelled it out and minimally Mr. Mason was aware of that requirement.) Monitoring was done for two days at the beginning of infrastructure trenching, and the monitor concluded that only modern fill was present, and monitoring was discontinued. The presence of modern fill was a surprise, as most (if not all) parties expected intact deposits of old Lahaina to be present. It may be that primarily modern fill was present. However, Cultural Surveys and Mr. Mason's unilateral decision to terminate monitoring was not appropriate. Cultural Surveys is well aware that major scope deviations need approval by our office. Termination of continuous monitoring should have been requested of our office, and possibly a field check would have been needed to verify the presence of modern fill. It turns out that at least one intact feature of possible early 1800s age was present in one of the trenches (as seen by D. Fredericksen), and a few others could have been present. No monitor was on-site to record those features.
3. No human burials or human skeletal remains were found. The contractor properly contacted their monitor when bones were found, and the monitor found them not to be human, and the local member of the Maui/Lana'i Islands Burial Council was so notified. However, our archaeological staff and the Chair of the Burial Council were not notified. Notification would have avoided unnecessary confusion.
4. If modern fills were primarily the only archaeological deposits present at the project site, then the above problems (although not excusable) may have resulted in minimal damage to the historic record. Clearly one (and maybe a few) intact features of possible early 1800s age were present and not recorded -- they are now reburied. However, again, evidence that the fills were modern is not yet available. The trenches are now filled in, so the evidence must come from the archaeological monitoring report.

In sum, no human burials or skeletal remains were found at the project area. However, the historic preservation obligations of this project clearly were not and have not been fulfilled.

We recommend:

1. That your agency decide if fines or censure be applied to this violation. Clearly, a SMA condition and proper historic preservation compliance work did not occur (no survey, no approved monitoring plan, termination of continuous monitoring without approval). Damage to significant historic properties could have occurred if intact deposits had been present. Fortunately, it appears likely that the deposits were probably primarily modern fill (although this must still be verified). It may be that a few intact features were present and were not recorded.
2. No additional subsurface land alteration be approved for this project until the written findings of the monitoring to date (including drawn profiles of layers and photographs of the layers if available) are submitted to our office and the Maui County Cultural Resources Commission and can be evaluated. After that evaluation, then it should be determined by our office and the Commission what appropriate measures are needed prior to any further land alteration. [Minimally, we would probably recommend that more

testing be done across the parcel -- with that testing and the prior monitoring of the trenches to serve as the test units for the required inventory survey and its report. The additional testing would provide enough information to establish the nature of deposits across the parcel, to aid in the planning for the remaining land alterations for this project and for any future projects. If modern fill is indeed present with almost no intact remains of early 1800s archaeological deposits, then perhaps no further archaeological work would be needed. However, this issue cannot be evaluated at all until we and the Commission are able to review the written findings from the monitoring. Cultural Surveys Hawaii staff is scheduled to come in to our office on December 14 and brief us on their findings.] Once our office and the Commission decide what next steps are needed, then recommendations on how to proceed would be given to your agency by our office.

3. Whatever your agency decides on fines/censure or still needed historic preservation actions, we recommend that it must be made clear to Mr. Mason and their archaeological consultant Cultural Surveys Hawaii that when archaeological data recovery or monitoring is to occur, usually approval of a scope of work by our office is needed and that no major deviation from that scope can occur without prior written approval by our office and your agency. This is a safety check to prevent inappropriate mitigation and monitoring.

4. Also we recommend that Cultural Surveys Hawaii be advised that in the future when finds of possible human skeletal remains are made and members of the public aware of the finds, that when the finds turn out to be non-human, as a courtesy it would be beneficial that they call our archaeological staff and the Burial Council chair to let them know the situation. This way should any public concern arise, the proper information can be passed to your staff or directly to the public. This would prevent unnecessary confusion.

Please let us know how you would like to proceed on this matter. We will continue to advise you as we get more information. If you or your staff have any questions, please feel free to call Ross Cordy, our Branch Chief for Archaeology (692-8025).

Aloha,



Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

c: Glenn Mason, Mason Architects  
Hallett Hammatt, Cultural Surveys Hawaii  
Dana Naone Hall  
Dee Fredericksen, Xamaneck



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamokila Boulevard  
Kapolei, Hawaii 96707

December 15, 1998

Lisa Nuyen, Planning Director  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

LOG NO: 22665  
DOC NO: 9812RC32

Dear Ms. Nuyen:

**SUBJECT: Old Lahaina Courthouse -- SMA Violation Concerns**  
**Lahaina, Lahaina District, Maui TMK: 4-6-01: 9**

This follows up on our letter of earlier this week. On Monday (December 14, 1998), several of my staff (Ross Cordy, Branch Chief for Archaeology & Kana'i Kapeliela and Ka'iana Markell of our Burials Program) met with David Shideler of Cultural Surveys Hawaii to review the situation and their documents on the archaeological findings for this project.

Again, as a brief introduction, Glenn Mason did not have an archaeological inventory survey done. Cultural Surveys was unaware of this condition. Cultural Surveys was contracted to monitor construction. Mr. Mason did not notify them of the requirement to have a monitoring plan submitted to our office for approval. Cultural Surveys, however, should have known that a plan was usually needed and they should have so advised Mr. Mason. No monitoring plan was submitted to our office, nor was any plan approved by our office. As noted in our prior letter, we leave it up to your agency to decide if fines or censure be applied to the violations.

Cultural Surveys monitored the digging of the initial long trench from Canal Street to behind the Courthouse on October 5 & 6, 1998. They apparently were not notified when two short wing trenches were excavated, but they did evaluate these trenches when they were called to the site when a plate was found (November 17, 1998) and when possible human bones were found on November 24th (these bones being pig). They monitored both the trenches and the back dirt piles at these times. In our meeting they provided us with monitors' notes for each of the 4 days they were on site, with stratigraphic profiles and photographs of the trenches showing the layers, and with a photo and evaluation of the plate that was found. This is not an acceptable final monitoring report, but it is sufficient information to evaluate the claim that no intact cultural layers were present -- that modern fill of ca. 50-100+ cm were found on top of beach sand (the latter not cultural). Based on this evidence:

1. We agree that it does appear that the trenches that were dug exposed only fill on top of non-cultural beach sand. Cultural Surveys believes that this fill was initially deposited ca. 1859 to create a flat area for the Courthouse's construction and that later intrusions into the fill occurred (e.g., utility lines, later artifacts). Evidence for fill included scattered historic artifacts and faunal remains (e.g., saw cut cow bone, the plate), scattered cobbles and boulders, and an abrupt boundary with the lower beach sand layer. We would feel more comfortable with this conclusion if our staff could observe the stratigraphy in open trenches, but the records and evaluations do seem reasonable. This suggests that no significant deposits were present in the trenches.



- a. It is possible -- based on Dee Fredericksen's observation of the trenches that at least one feature of old 1800s Lahaina vintage was present. Mr. Shideler said that the feature was not visible when his staff inspected the trenches. It was not recorded, but it is still present --buried in the trench. This is a problem, but it is relatively minor.
- b. The suggestions that the pig might have been a "sacred" interment (which we have heard of through second-hand information) also seems unfounded, as it would have been dug into fill after 1859 and after the Courthouse's construction.

2. We are concerned that the remainder of the Courthouse area has not had its subsurface deposits evaluated, which would have occurred had an archaeological inventory survey been done. Further land alteration (landscaping and tree planting) is planned. The entire project area needs to have its subsurface deposits evaluated prior to such land alteration -- to determine if important deposits are present and, if so, how to mitigate any adverse impacts..

Thus, to address the remaining archaeological concerns, we recommend:

1. Prior to any further land alteration (including planting and tree planting), archaeological test excavations (which can be back-hoe trenches) be representatively placed around the Courthouse -- notably in the Canal/Wharf street quadrant, but also with new trenches opened in back and on the Wharf/Hotel street quadrant. This work must be done under the direction of a professional archaeologist. The trenches must be left open for inspection by our staff archaeologists and by the archaeologist attached to the Maui County Cultural Resources Commission, so we can evaluate first-hand the interpretation of fill and any new layers that might be uncovered.
2. Based on the evaluation of the open trenches, our staff and the Commission's archaeologist shall discuss any needed mitigation work for the final land alteration for this project (e.g., the planting/landscaping) and make recommendations to the County. Minimally, monitoring may be needed.
3. The archaeological findings from the initial monitoring, the test excavations and any final mitigation shall be written up as an archaeological report (to include background archival/archaeological review common to an archaeological inventory survey). That report must be acceptable to the State Historic Preservation Division.

If you have any questions, please feel free to call Ross Cordy of my staff (692-8025).

Aloha,



Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

- c: H. Hammatt, Cultural Surveys Hawaii  
C. Maxwell, Chair, Maui/Lana'i Island Burial Council  
Maui County Cultural Resources Commission  
Dana Hall

PURSUANT TO CHAPTER 92, HAWAII REVISED STATUTES AS AMENDED, NOTICE IS HEREBY GIVEN OF A REGULAR MEETING OF THE MAUI PLANNING COMMISSION

AGENDA

DATE: JANUARY 12, 1999

TIME: 9:00 A.M.

PLACE: Planning Department Hearing Room, 1st Floor, Kalana Pakui Building, 250 S. High Street, Wailuku, Maui, Hawaii 96793

A. RESOLUTION IN APPRECIATION OF LISA M. NUYEN

B. MINUTES OF THE MEETINGS OF OCTOBER 27, 1998, OCTOBER 28, 1998 and NOVEMBER 10, 1998 HELD ON NOVEMBER 23, 1998.

C. COMMUNICATIONS

1. MS. CAROLYN J. MOORE, Principal of the DORIS TODD MEMORIAL CHRISTIAN SCHOOL requesting an amendment to Condition No. 11 of a Land Use Commission Special Use Permit for the operation of preschool in the State Rural District at Haiku Bible Church, TMK:2-7-021: 008, Haiku, Island of Maui. (SUP 890001) (C. Suyama)
2. MR. LAWRENCE N.C. ING, attorney for MARCO DEFANNIS and DEBBIE DEFANNIS requesting an amendment to the Special Management Area Use Permit (Building Plans) and offsite parking approval for Marco's Southside Grill at TMK: 3-9-051: 001, Kihei, Island of Maui. (SM1 970020) (OSP 980012) (C. Suyama)
3. MR. RAFAEL ACOBA, President of the MAUI EVANGELICAL PRESCHOOL requesting a five (5) year time extension of the County Special Use Permit to continue to operate a preschool at TMK: 3-8-48: 32, Kahului, Island of Maui. (CUP 830002) (L. Zakabi)
4. MR. TERRY L. NELSON, Pastor of the KIHEI BAPTIST CHAPEL requesting a time extension on the County Special Use Permit in order to continue to operate the Kihei Baptist Preschool at TMK: 3-9-27: 6, Kihei, Island of Maui. (CUP 880001) (L. Zakabi)
5. MR. RORY FRAMPTON, Project Manager from CHRIS HART AND PARTNERS, requesting a transfer of permit holder from PrimeCo to Sprint Com. Inc. on the State Land Use Commission Special Use Permit to continue to operate the PrimeCo Makawao Antenna Site at TMK: 2-4-009: portion of 2, Makawao, Island of Maui. (SUP2 970006) (S. Bosco)

6. MR. RORY FRAMPTON, Project Manager, requesting a transfer of permit holder from Primeco Personal Communications, L.P. to Sprint Communications on the Land Use Commission Special Use Permit for the PrimeCo Kapalua Antenna Site at TMK: 4-2-001: portion of 1, Kapalua, Lahaina, Island of Maui. (SUP2 970007) (S. Bosco)
7. MR. JOHN SAER, JR. on behalf of KSL GRAND WAILEA RESORT, INC. requesting a transfer of permit holder for a Special Accessory Use Permit for the Camp Grande Child Care Facility and the Special Management Area Permit for the Grand Wailea Resort Hotel and Spa from Grand Wailea Company to KSL Grand Wailea Resort, Inc. at TMK: 2-1-008: 59, 91, and 109, Wailea, Kihei, Island of Maui. (ACC 970001) (SM1 870035) ( C. Suyama)
8. Pertaining to the following matters:

MR. CHRISTOPHER L. HART of CHRIS HART AND PARTNERS on behalf of MAUI LAND AND PINEAPPLE COMPANY, INC. requesting a Special Management Area Use Permit for the Kapua Village Subdivision, a 45 lot single family employee housing subdivision and related improvements on approximately 10.970 acres of land located at TMK: 4-3-009: 052, Mahinahina, Lahaina, Island of Maui. (SM1 980001) (J. Higa)

MR. GUY A. HAYWOOD, attorney for KAPULANI ESTATES submitting a Petition to Intervene on the Special Management Area Use Permit application of MR. CHRISTOPHER L. HART of CHRIS HART AND PARTNERS on behalf of MAUI LAND AND PINEAPPLE COMPANY, INC. REQUESTING a requesting a Special Management Area Use Permit for the Kapua Village Subdivision, a 45 lot single family employee housing subdivision and related improvements on approximately 10.970 acres of land located at TMK: 4-3-009: 052, Mahinahina, Lahaina, Island of Maui. (SM1 980001) (J. Higa)

  - a. MR. WILLIAM CROCKETT, attorney for MAUI LAND AND PINEAPPLE COMPANY, INC. filing a Motion to Recuse Commissioners Long and Bertram. Memorandum in Support of the Motion.
  - b. Selection of Hearings Officer

9. Letter dated December 3, 1998 from MS. DANA NAONE HALL on behalf of HUI ALANUI O MAKENA regarding Violation of SMA Permit Conditions for the Old Lahaina Courthouse Project and Related Improvements at TMK: 4-6-1: 009, Lahaina, Island of Maui. (SM1 970002)
10. MR. MAYNARD TORCHIANA of DESTINATION RESORTS HAWAII, Inc. requesting a Special Accessory Use Approval in order to provide guest activity service/ sales to Diamond Resort guests and to relocate DRH, Inc. offices from the existing Wailea Shopping Village to the Diamond Resort during the Shopping Village's renovation period at TMK: 2-1-008: 105, Wailea, Kihei, Island of Maui. (ACC 980004) (S. Bosco)

D. UNFINISHED BUSINESS

1. PAT DUARTE, Controller of THE WESTIN MAUI requesting a Special Accessory Use Permit Time Extension to continue to operate a beach concession outlet in the H-2 Hotel District at TMK: 4-4-08: 19, Kaanapali, Lahaina, Island of Maui. (ACC 880003) (D. Suzuki)
2. MR. MICHAEL SPALDING and MR. CLIFFORD BEPPU of the MAALAEA TRIANGLE PARTNERSHIP requesting an amendment to condition no. 8 of the 1994 amendment of the Special Management Area Use Permit for the Maalaea Triangle project to allow for grading of the finished pad lots to include the months of November to March at what was formerly TMK: 3-6-01: 1 and 19, Maalaea, Island of Maui. (89/SM1-023) (C. Yoshida)
  - a. Letter from Terry Pridemore, President of the Maalaea Community Association dated December 11, 1998.
  - b. Letter from Maalaea Triangle Partnership to Maalaea Community Association dated December 24, 1998.
3. MR. WAYNE TANIGAWA of NAPILIHAW VILLAGES JOINT VENTURES requesting reapproval of the Special Management Area Use Permit for Drainage System A improvements of the 76-unit Napili Hau Villages (Phase I) multi-family project and related improvements at TMK: 4-3-03: 108, Napili, Lahaina, Island of Maui. (SM1 920026) (C. Yoshida)

(Kahana Sunset Owners Association previously intervened on the Special Management Area Use Permit for the 304-unit Napilihau Villages project in November 1993. The Maui Planning Commission acted on that request in February 1995 after a contested case hearing was conducted.)

MR. RICHARD MCCARTY, attorney for the ALAELOA AOA filing a Petition to Intervene on the subject SMA application

Selection of MARK HONDA as the Hearings Officer

- a. December 22, 1998 letter from Tamotsu Tanaka, attorney For the Napilihau Villages Joint Venture and James Richard McCarty, attorney for the Intervenor Alaeloa AOA advising that a settlement has been reached.
- b. Action

E. DIRECTOR'S REPORT

1. Selection of the Hana Advisory Committee to conduct the public hearing on the following applications:

MR. THOMAS COSSEY, JR. of HANA CONCRETE RENTALS AND SALES requesting a State Land Use Commission Special Use Permit in the State Agricultural District, a change in zoning from Interim District to County Agricultural District, and a Conditional Use Permit in the County Agricultural District in order to continue the use of property for concrete batching and sales and the sale of cement and cement aggregate products at TMK: 1-3-09: 70, Hana, Island of Maui. (SUP2 980017) (CIZ 980025) (CP 980017) (J. Alueta)

2. Workshop on the new County grading ordinance - January 26, 1999

F. NEXT REGULAR MEETING DATE: JANUARY 26, 1999

G. ADJOURNMENT

EACH APPLICANT IS REQUESTED TO PROVIDE RESPONSIBLE REPRESENTATION AT THE MEETING.

ANY PETITION TO INTERVENE AS A FORMAL PARTY IN THE PROCEEDINGS BEFORE THE MAUI PLANNING COMMISSION MUST BE FILED WITH THE COMMISSION AND SERVED UPON THE APPLICANT NO LESS

Maui Planning Commission Agenda  
January 12, 1999  
Page 5

THAN TEN DAYS BEFORE THE FIRST PUBLIC HEARING DATE. (Note: The calculation of time for deadlines ten days or less excludes weekends and State recognized holidays.) THE ADDRESS OF THE COMMISSION IS C/O THE MAUI PLANNING DEPARTMENT, 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793.

THOSE PERSONS REQUESTING SPECIAL ACCOMMODATIONS, DUE TO DISABILITIES, PLEASE CALL THE MAUI PLANNING DEPARTMENT AT 243-7735 (Maui) OR 1-800-272-0117 (From Molokai) OR 1-800-272-0125 (From Lanai) OR NOTIFY THE MAUI PLANNING DEPARTMENT IN WRITING AT 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793 OR FAX NUMBER 243-7634; AT LEAST SIX (6) DAYS BEFORE THE SCHEDULED MEETING.

ANY FAXES SHOULD BE RECEIVED BY THE DEPARTMENT OF PLANNING BY 5:00 P.M. ON THE SECOND WORKING DAY BEFORE THE MEETING TO INSURE THAT IT IS CIRCULATED TO THE BOARD.

\* **An Executive Session may be called in order for the Commission to consult with their attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.**

PLEASE NOTE: If any member of the commission is unable to attend the scheduled meeting, please contact the Planning Department at least one day prior to the meeting date. Thank you for your cooperation.  
(S:\all\carolyn\011299.age)



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CULTURAL SURVEYS HAWAII, INC.  
Archaeological Studies

Hallett H. Hammatt, Ph.D.  
733 N. Kalaheo Ave., Kailua, Hawaii 96734  
Bus: (808) 262-9972/Fax: 262-4950  
e-mail:csh@dps.net

'98 DEC 21 P12:48

18 December 1998

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

TO: Dr. Don Hibbard, Administrator, State Historic Preservation Division  
FROM: Hallett H. Hammatt, Cultural Surveys Hawai'i  
REGARDING: Response to SHPD letters pertaining to the Lahaina Courthouse/ Burial Commission actions matter

Dear Dr. Hibbard:

We would like to thank the State Historic Preservation Division for its efforts to ascertain the facts in the Lahaina Courthouse/ Burial Commission actions matter. We look forward to working with the State Historic Preservation Division to bring this matter to resolution.

Given the present situation, we at Cultural Surveys Hawai'i feel the need to clarify points and address issues raised in two recent SHPD letters (Log No: 22628, Doc No. 9812RC12 dated December 15, 1998 and Log No. 22665, Doc No: 9812RC32, dated December 15, 1998) to Lisa Nuyen, Planning Director, Planning Department, County of Maui . We hope to clear up any possible remaining misunderstandings and to make Cultural Surveys Hawai'i's position clear.

**Letter from Don Hibbard to Lisa Nuyen dated December 15, 1998 (Log No: 22628, Doc No. 9812RC12)**

page 2, paragraph # 4

We wish to clarify the content and time frame of the conclusions and recommendations of Cultural Surveys. The pertinent document here is the letter from Cultural Surveys to Glen Mason dated November 27, 1998 (copy supplied to SHPD). The letter specifically proposes that "constant archaeological monitoring of excavations within the fill layer is not necessary". This conclusion was based on monitoring of the project on the following days: 10/5/1998, 10/6/1998, 11/17/1998 and 11/25/1998.

This is not quite the same as the statement in the SHPD letter that: "Cultural Surveys Hawaii concluded that there were no intact deposits of old Lahaina present". This wording could be construed to suggest something other than what Cultural Surveys intended - i.e. that our recommendation applied only to monitoring of the fill layer. Furthermore the SHPD letter suggests this determination was made in the time frame of 5 October 1998, which could be construed as hasty.



page 2, paragraph # 5

Just for clarification, monitoring occurred on four days: 10/5/1998, 10/6/1998, 11/17/1998 and 11/25/1998.

The SHPD letter here notes that on 22 November 1998 Dee Fredericksen observed "an apparently intact archaeological feature of possible 1800s age." No such feature was observed by us in open trenches on 17 November 1998 and 25 November 1998. We are still unclear as to what this reported feature may be. Cultural Surveys is trying to learn more facts of the matter. Cultural Surveys hopes to resolve this issue - whether a single significant archaeological feature was adversely impacted or unrecorded.

page 3, paragraph # 2

The SHPD letter notes parenthetically that: "The archaeological firm should know that such scope approval is commonly needed: our letter of January 5, 1998, spelled it out and minimally Mr. Mason was aware of that requirement." While we are indeed aware that such scope approval is "commonly" needed, we were not aware that it was needed in this case. In fact we had good reason to believe otherwise. We had no knowledge of the January 5th letter.

The SHPD letter further notes: "Cultural Surveys is well aware that major scope deviations need approval by our office. Termination of continuous monitoring should have been requested of our office..." If a scope of work had been approved by your office we surely would have contacted you in advance of any changes. This has been our procedure in the past. As there was no scope of work approved by your office (addressed above), there was no basis to assume we should/would contact your office about changes.

The issue of the feature noted by D. Fredericksen has been addressed in the context of our response to page 2, paragraph # 5.

page 3, paragraph # 3

The SHPD letter notes, in the context of our response to a report of (pig) bones, that: "...our [SHPD] archaeological staff and the Chair of the Burial Council were not notified. Notification would have avoided unnecessary confusion." All in-place protocols were followed by Cultural Surveys Hawai'i in this regard. Cultural Surveys Hawai'i notified SHPD on 24 November 1998 that we were responding to the report of possible human bones. SHPD had already been notified of the possible burial by the contractor. Subsequently Cultural Surveys notified SHPD on 25 November of our findings that there were no human remains. Thus Cultural Surveys did in fact notify the appropriate agency (i.e. SHPD burials staff) on a timely basis.

The find was discussed with an individual present on site, who identified himself as associated with the Maui/Lāna`i Burial Council. The find was demonstrated to his satisfaction as pig bones.

Cultural Surveys Hawai'i is most willing to accept any change of notification protocols but we look to the SHPD to tell us of these protocols.

page 3, paragraph # 4

The SHPD letter states that: "Clearly one (and maybe a few) intact features of possible early 1800s age were present and not recorded." This matter is not clear at all. As the SHPD letter previously asserted (page 2, paragraph # 5), this feature is only "apparently" intact and, while "possibly" of early 1800s age, may in fact be something else entirely. We are not at all convinced that any significant features were impacted in any way during Cultural Surveys monitoring.

**Letter from Dr. Don Hibbard to Lisa Nuyen dated December 15, 1998 (Log No. 22665, Doc No: 9812RC32).**

page 1, paragraph 2

While acknowledging that Cultural Surveys was unaware of archaeological conditions of the SMA permit, this letter asserts that "Cultural Surveys, however, should have known that a plan was usually needed and they should have so advised Mr. Mason." We are indeed aware that a plan is "usually" needed. We usually prepare such plans in advance of monitoring. We were of the understanding that no such plan was needed in this case.

page 1, paragraph 3

The SHPD letter correctly notes: "They [Cultural Surveys Hawai'i] apparently were not notified when two short wing trenches were excavated." This is indeed the case. We only wish to point out here that our contract dated 16 March 1998 (supplied to SHPD) requests: "Please provide us with...a schedule of ground disturbing activities". Additionally the field notes of archaeological monitor Melody Heidel for 6 October 1998 (supplied to SHPD) include a reference to the discontinuation of trenching, an awareness that reconfiguration was necessary, and the explicit understanding of Cultural Surveys Hawai'i "that we were to be notified within a few days as to the plans and procedure of work." These notifications were not given. We wish to make it clear, and document, that any absence on our part during excavations prior to 27 November 1998 was not for the want of repeated efforts by Cultural Surveys to ascertain when trenching was going to occur.

This SHPD letter summarizes certain documents supplied to SHPD at a meeting on 14 December 1998 and notes that: "This is not an acceptable final monitoring report." Cultural Surveys is in complete accord. It was not our intention that these documents be construed as a final monitoring report. They were rather supplied in order to help SHPD review the situation.

It appears to us that a communication problem among the SHPD burial program staff, the Maui/Lāna`i Islands Burial Council and the SHPD archaeological staff has a direct bearing on the Lahaina Courthouse affair and has caused Cultural Surveys Hawai`i undeserved harm in this case.

Our additional concern is that no reasonable notification was given to Cultural Surveys by the Burial Council that it was considering the Lahaina Courthouse matter - let alone censure. Not only was there no chance for Cultural Surveys to present facts, there was no chance for SHPD archaeological staff to present clarifying information which we believe would have exonerated Cultural Surveys of allegations before the Burial Council.

We feel an injustice has been done to Cultural Surveys Hawai`i by the Maui/Lāna`i Burial Council. We believe that the facts make this clear. We hope, upon a thorough and dispassionate analysis of the background of the case and of the Burial Council's actions, that your office would recommend a revocation of the censure on the following grounds: 1) that the Burial Council acted in haste without any real effort to ascertain the facts of the matter, 2) that Cultural Surveys Hawai`i had no reasonable notification or chance of self-defense in advance of the Council's actions, 3) that your office has in fact thoroughly examined the case and determined that the burden of responsibility for the violations of the SMA permit lies elsewhere, and 4) that your office has in fact determined that the Burial Council's actions were based on a misunderstanding of what had actually transpired.

We would like to point out that to date (12/18/1998) we have had no direct communication from the Maui/Lāna`i Islands Burial Council whatsoever in this regard. We regret that virtually all we know about what was actually said and done at that meeting is from articles in the *Maui News*. We feel that the absence of official notification is clearly inappropriate, and of-a-piece with the inappropriateness of this entire Maui/Lāna`i Islands Burial Council action. We have requested a copy of the minutes of the meeting from SHPD, but it is our understanding that it may take your office several more weeks to provide a copy of the minutes. We understand from Ms. Lynn Otaguro at the State Office of Information Practices that we may request an audio tape of the 10 December 1998 Maui/Lāna`i Islands Burial Council meeting and we now request a copy of that tape from SHPD.

Again, we would like to thank the State Historic Preservation Division for their efforts to ascertain the facts in the Lahaina Courthouse/ Burial Commission actions matter. We at Cultural Surveys Hawai`i find the contents of the two SHPD letters to be generally accurate, insightful and appropriate. It has been our purpose to address any and all allegations of wrong-doing, to present the facts of the matter, and to present our position. We look forward to working with the State Historic Preservation Division to bring this matter to resolution.

*Mahalo* for your consideration



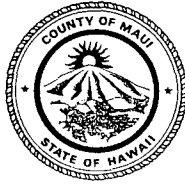
Hallett H. Hammatt, Ph.D.

- cc. **Ms. Lisa Nuyen**
- Dr. Ross Cordy
- Mr. Kaiana Markell
- Mr. Marshall Chinen, Attorney at Law
- Ms. Lynn Otaguro, State Office of Information Practices

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

January 26, 1999

Mr. Glenn Mason, AIA  
Mason Architects, Inc.  
119 Merchant Street, Suite 501  
Honolulu, Hawaii 96813

Dear Mr. Mason:

RE: Maui Planning Commission Review of Special Management Area  
Permit Violations for the Old Lahaina Courthouse, TMK: 4-6-1:  
009, Lahaina, Island of Maui, Hawaii (SM1 970002)

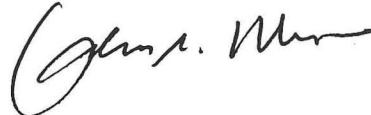
At its regular meeting of January 12, 1999, the Maui Planning Commission (Commission) reviewed documents and heard testimony relative to the Special Management Area Use Permit violations for the Old Lahaina Courthouse. After a lengthy discussion, the Commission cited the failure of the applicant to comply with the conditions of approval and the County's breakdown in the permit process which would have assured compliance with the conditions. The Commission requested that during test excavations for archaeological work, Lahaina school students be invited to visit the site and learn from the research work.

The Maui Planning Department (Department) is in receipt of the notice from Mason Architects to the principals of King Kamehameha III Elementary School, Lahaina Intermediate School, Lahainaluna High School and Princess Nahienaena Elementary School, extending an invitation to visit the Old Lahaina Courthouse site. This complies with the request of the Commission.

Mr. Glenn Mason, AIA  
January 26, 1999  
Page 2

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office at 243-7735.

Very truly yours,



JOHN E. MIN  
Director of Planning

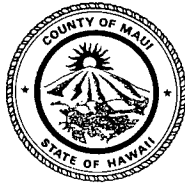
JEM:ATC:osy

c: Grant Y. M. Chun, Managing Director  
Jeff Chang, Department of Parks and Recreation  
Clayton Yoshida, AICP, Deputy Planning Director  
Aaron Shinmoto, PE, Planning Program Administrator (2)  
LUCA (2)  
Dana Naone Hall, Hui Alanui O Makena  
Charles Maxwell, Maui/Lanai Burial Council  
Ross Cordy, Department of Land and Natural Resources, State Historic  
Preservation Division  
Keoki Freeland, Lahaina Restoration Foundation  
Maui Planning Commission Members  
Ann T. Cua, Staff Planner  
Project File  
General File  
(s:\all\ann.lahcrt2.mpc)

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

January 27, 1999

Hallett H. Hammatt, Ph.D.  
Cultural Surveys Hawaii, Inc.  
733 North Kalaheo Avenue  
Kailua, Hawaii 96734

Dear Dr. Hammatt:

RE: Request for Maui Planning Commission Documents of the Lahaina  
Courthouse Project Relating to Archaeological Conditions, TMK: 4-  
6-1:9, Lahaina, Island of Maui, Hawaii

Enclosed please find a copy of the Maui Planning Commission's approval letter dated June 30, 1998 for the Special Management Area (SMA) Use Permit for the Lahaina Courthouse. The Maui Planning Department (Department) has also included a copy of the Maui County Cultural Resources Commission's approval letter dated May 8, 1997, which is referenced in Condition No. 15 of the SMA permit approval.

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office at 243-7735.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Min".

JOHN E. MIN  
Director of Planning

Hallett H. Hammatt, Ph.D.  
January 27, 1999  
Page 2

JEM:ATC:osy

Enclosures

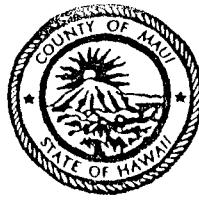
c: Clayton Yoshida, AICP, Deputy Planning Director  
Ann T. Cua, Staff Planner

Project File

General File

(s:\all\ann\hammatt.ltr )





COUNTY OF MAUI  
PLANNING DEPARTMENT  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

572 0000

June 30, 1997

Mr. Richard Haake  
Managing Director  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

Dear Mr. Haake:

RE: Special Management Area Use Permit for the Old Lahaina  
Courthouse Project and Related Improvements at  
TMK 4-6-1: 009, Lahaina, Maui, Hawaii (SM1 970002)

At its regular meeting of June 24, 1997, the Maui Planning Commission reviewed the above request, and after due deliberation, voted to grant approval of the transfer subject to the following conditions:

1. That construction of the proposed project shall be initiated by June 30, 1999. Further, initiation of construction shall be determined as construction of offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Failure to comply within this two (2) year period will automatically terminate this Special Management Area Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said two (2) year period.
2. That the construction of the project shall be completed within five (5) years after the date of its initiation. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use Permit.
3. That final construction shall be in accordance with preliminary architectural plans dated December, 1996.
4. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels, and traffic disruptions.
5. That full compliance with all applicable governmental requirements shall be rendered.

**EXHIBIT D**

6. That the applicant shall submit plans regarding the location of any construction-related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase to the Maui Planning Department for review and approval.
7. That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of the building permit. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a certificate of occupancy.
8. That waste from the restoration and refinishing be disposed at the Construction and Demolition Landfill on North Kihei Road near its intersection with Honoapiilani Highway.
9. Prior to beginning any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR SHPD), for review and approval. Objects and artifacts recovered shall be conserved at an appropriate facility on Maui if at all possible.
10. If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by the DLNR, SHPD.
11. That appropriate measures shall be taken to minimize noise impacts on King Kamehameha III School.
12. That when pruning the Banyan Tree, the intrusive branches shall be cleanly cut back to a lateral without stubbing.
13. That a certified arborist be hired to conduct the pruning and that the applicant shall present its detailed pruning plans to the Arborist Committee for its review and approval.
14. That prior to construction of the underground concrete wall which will serve as a root barrier, the intrusive roots be cleanly cut to preserve the tree.
15. That full compliance with the conditions of the Maui County Cultural Resources Commission contained in their letter dated May 8, 1997 shall be rendered.

Mr. Richard Haake  
June 30, 1997  
Page 3

In addition, the Commission recommended that the students of various schools be invited to witness and learn from the trench digging as part of the installation of the concrete root barrier. Finally, the Commission also requested that the administration consider installing bicycle racks within the park.

Enclosed for your information is a copy of the Department's Report and Recommendation Memorandum dated June 24, 1997.

Thank you for your cooperation. If further clarification is required, please contact Ms. Ann Cua, Staff Planner, of this office.

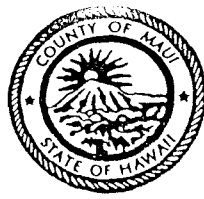
Very truly yours,



*for* DAVID W. BLANE  
Director of Planning

DWB:ATC  
Enclosures

cc: Glenn Mason  
Clayton Yoshida, AICP, Planning Program Administrator  
Ann Cua, Planner  
Barbara Long, Maui Planning Commissioner  
LUCA (2)  
King Kamehameha III School  
DLNR, SHPD  
Sue Kiang, Maui County Arborist Committee  
Cultural Resources Commission  
Project File  
General File  
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**COUNTY OF MAUI  
PLANNING DEPARTMENT  
250 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793**

May 8, 1997

Mr. Glenn Mason  
Spencer Mason Architects, Inc.  
1050 Smith Street  
Honolulu, Hawaii 96817

Dear Mr. Mason:

RE: Maui Cultural Resources Commission Approval of the Restoration of the Old Lahaina Courthouse, TMK: 4-6-1: 9, Lahaina, Island of Maui, Hawaii (HDC 970002)

At its regular meeting of May 1, 1997, the Maui Cultural Resources Commission reviewed the above request and after due deliberation, voted to grant Historic District Approval of the above project, subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the repairs and restoration be constructed in accordance with the plans approved by the Maui Cultural Resources Commission on May 1, 1997.
3. That the final architectural plans shall be submitted to the Maui Planning Department for review and approval.
4. That if architectural changes are made to the building during development of the project, said plans shall be submitted to the Maui Planning Department to determine if the components of the revisions still meet the intent of the permit. If the Maui Planning Department finds the deviation in plans to be major, the project shall then be forwarded to the Maui Cultural Resources Commission for review and approval.

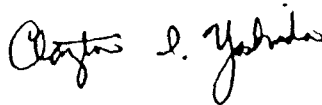
Mr. Glenn Mason  
May 8, 1997  
Page Two

5. That prior to any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources (DLNR), State Historic Preservation Division (SHPD), for review and approval.
6. If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by DLNR, SHPD.
7. That the use issue shall be resolved with DLNR.
8. That the restroom facilities within the Lahaina Courthouse Building shall have controlled access.
9. That the Maui Cultural Resources Commission be advised of the County's decision regarding use of the Lahaina Courthouse Building for review and comment.

A copy of the Maui Planning Department's Report and Recommendation dated May 1, 1997, is enclosed for your use.

Thank you for your cooperation in this matter. If additional clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office.

Very truly yours,



*for* DAVID W. BLANE  
Director of Planning

401  
CULTURAL SURVEYS HAWAII, INC.  
Archaeological Studies

Hallett H. Hammatt, Ph.D.  
733 N. Kalaheo Ave., Kailua, Hawaii 96734  
Bus: (808) 262-9972/Fax: 262-4950  
e-mail: csh@dps.net

99 JAN 19 12:47  
DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

January 15, 1999

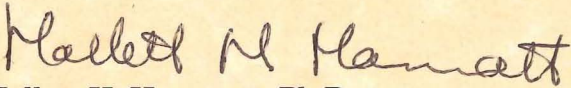
Mr. John E. Min, Planning Director  
Maui Planning Commission  
250 S. High St.  
Wailuku Maui 96793 Fax 243 7634

Subject: Request for Maui Planning Commission documents of Lahaina  
Courthouse Project relating to archaeological conditions

Dear Mr. Min:

I would like to request that you send to Cultural Surveys Hawaii, copies of all documents relating to archaeological conditions that originated at Maui Planning Commission concerning the Lahaina Courthouse Project. Specifically, we are interested in any correspondence from MCPC that was incorporated as conditions of the SMA permit. Thank you.

Sincerely,



Hallett H. Hammatt, Ph.D.

ATC

# Mason Architects, Inc.

## Fax Transmittal

'99 JAN 14 A7:41

To: Principal, King Kamehameha III  
Elementary School (808 662.3958)

Principal, Lahaina Intermediate (808  
662.3968)

Principal, Lahainaluana High School  
(808 662.3997)

Principal, Princess Nahienaena  
Elementary School  
(808 662.4023)

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED  
Date: January 13, 1999

Fax: see above

From: Glenn Mason, AIA

Project: Lahaina Courthouse Restoration

Transmitting: This sheet.

MAI Job Number: 9720

Total pages = 4

We were asked by the Maui County Planning Commission to let the Lahaina area schools know about some excavations for archeological work at the Old Lahanai Courthouse (makai of the Banyan Tree). If you think there may be any interest in having some students come to the site to view the work, please call or fax my office so we can set up a time for such a visit. The archeologist will be exposing a pig skeleton and a possible buried wall. Other excavations may reveal archeological features.

The excavation work will start next week Monday, January 18, and will progress throughout the week. Although we are not certain about how long the excavations will take and how long they will remain open, my guess is that the optimal time for a visit would be later in the week; on Thursday or Friday. An archeologist will be on site all week and as long as it takes to do all this research work.

cc: Ann Cua, Planning Department, County of Maui (243.7634)  
Jeff Chang, County of Maui (243.7934)  
Cultural Surveys Hawaii (262.4950)

# Mason Architects, Inc.

## Fax Transmittal

'99 JAN 11 08:01

To: Dee Frederickson (808 572-8900)  
 Dana Naone Hall (808 244-6775)  
 Ross Cordy, SHPD (692-8020)

DEPT OF PLANNING  
 COUNTY OF MAUI

Date: January 10, 1999

Fax: see above

MAI Job Number: 9720

From: Glenn Mason

Total pages = 4

Project: Lahaina Courthouse Restoration

Transmitting: Draft "Specifications" for archeological survey, with plan

For your review and comment. Much of what I have written was done to make sure I understood clearly what we are after here. I would appreciate any suggestions you might have to "finalize" this.

David Shideler, of Cultural Surveys Hawaii, has reviewed this already and made a few suggestions, which I incorporated. My intention is to also use the attached to tell the Contractor what we are doing and what we expect the excavator to do.

cc. Jeff Chang, County of Maui (243.7934)

Ann Cua, Planning Department, County of Maui (243.7634)

David Shideler, Cultural Surveys Hawaii (262.4950)



## LAHAINA COURTHOUSE RESTORATION

### Specifications for the Archeological Inventory

The following is an outline of the work required for additional testing, as suggested by Ross Cordy at the Cultural Resources Commission meeting of January 7 and as discussed at that meeting.

#### A. Description of Excavations to be Done:

##### **Trenching**

Trenches A, B, C and D shall be 4 to 4.5 feet deep and about 24 inches wide. The excavations shall be by back hoe, to be supplied by the Contractor for the project. To the best of the backhoe operator's ability, trench excavations shall be dug so a depth of 6 to 8 inches of soil shall be removed with each scoop of the back hoe. Excavations may be continuous, unless the work is stopped by the archeologist present. The lengths of the trenches indicated below are for the purposes of initial estimates of the work. Changes to the lengths may be made by mutual agreement of archeologist on site, Dana Hall, and one representative each from the Maui Cultural Resource Commission and the State Historic Preservation Division (where the term "the parties" is used in the following text it refers to these four individuals).

Trench A shall begin at the Kaanapali face of the trench previously dug for the water line and extend in a line toward Hotel Street, parallel to Wharf Street, for a distance of 35 feet.

Trench B shall begin approximately 5 feet mauka of the side walk and extend 35 feet in a mauka direction. This trench shall be located about 3 feet to the Kaanapali side of the water line excavation and be roughly parallel to that earlier excavation.

Trench C shall begin about 10 feet mauka of the sidewalk and run 35 feet in a mauka direction.

Trench D shall start about 8 feet from the sidewalk and run toward Kamehameha School for a length of about 35 feet. The ends of Trench C and D may intersect, forming an "L".

##### **Pit Excavations**

Two pit excavations shall be dug; one at the location of the pig bones uncovered during earlier excavations, and one at the location of the basalt feature noted by Dee Frederickson. The purpose of these excavations is to expose these features for observation by the parties.

These excavations shall be done by hand, by the archeologist. The archeologist shall obtain the help of Dee for approximating the location of the basalt feature.

B. Schedule:

Excavations shall begin at a time suitable to all parties, but in any case, as soon as possible. The initial goal would be to have a backhoe available by Monday, January 18.

The County Planning Department and all other parties shall be notified of the planned excavations at least 3 days in advance of commencement. The excavations shall occur as continuously as possible. Upon completion of all the trenches, the trenches shall be left open until such time as the State Historic Preservation Division, Dana and Dee have inspected the trenches.

C. Safety

Safety at the trenching area shall be the responsibility of the Contractor. At a minimum, the Contractor shall provide these safety precautions:

At the close of each day's work the trenches shall be covered with plywood boards to prevent people from accidentally falling into the trenches. In addition, the area around the trenches shall be separated from the surrounding areas by orange plastic fencing.

The pits dug at the pig bones and basalt feature shall be protected as appropriate by the archeologist.

D. Report on Findings

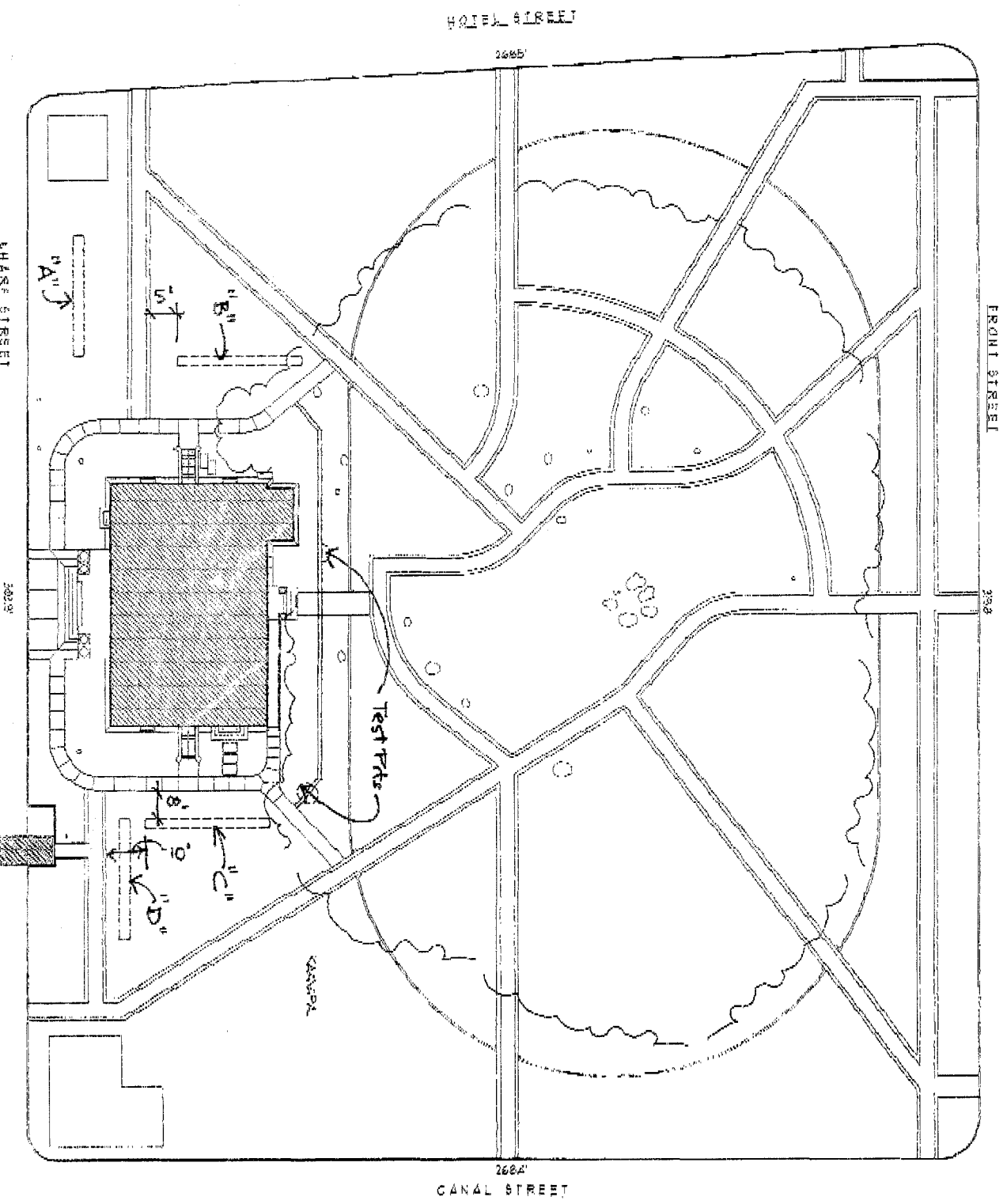
At the completion of the excavations and inspections, the results shall be documented in a professional manner and incorporated into the final Report on the Findings at the site. Such report shall be to the satisfaction of the Historic Preservation Division.

E. In Case of Findings of Significant Archeological Resources

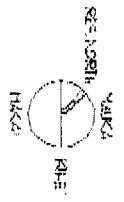
If significant archeological resources are found that would mandate large increases in archeological fees, the County Planning Department and the parties shall be notified and a scope of work for further investigations shall be mutually agreed upon.

If human remains are found, all work shall be stopped and the State Historic Preservation Division and the Burial Council shall be notified.

ARCHAEOLOGICAL SURVEY SITE PLAN




RESTORATION OF THE OLD LAHAINA COCKEHOUSE  
 609 WARD STREET, LAHAINA, MAUI, HAWAII 96794



January 8, 1999

MEMORANDUM

TO: MAUI PLANNING COMMISSION

FROM: JOHN E. MIN, PLANNING DIRECTOR 

SUBJECT: LAHAINA COURTHOUSE, TMK 4-6-1:9, Lahaina, Maui  
(SM1 970002) (HDC 970002) - Chronology of Events

The following is a chronology of events relative to Dana Hall's December 3, 1998 letter concerning the Lahaina Courthouse Historic District and Special Management Area Permit Approvals.

December 19, 1996      CRC approval letter regarding the Historic Structures Report for the Lahaina Courthouse. Approval includes 14 recommendations. Number 14 states that, "Archaeological testing, as well as monitoring should be considered for subsurface work for utilities, and the root barrier for the banyan tree.

May 8, 1997            CRC Historic District approval letter for Restoration of the Old Lahaina Courthouse subject to 9 conditions.

Condition No. 5 states, "That prior to any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR SHPD), for review and approval.

June 30, 1997

Maui Planning Commission (MPC) SMA Permit approval letter for the Courthouse subject to 15 conditions

Condition No. 7 states: "That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of the building permit. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a certificate of occupancy.

A preliminary compliance report was not submitted prior to issuance of the building permit.

Condition No. 9 states, "Prior to beginning any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR SHPD), for review and approval. Objects and artifacts recovered shall be conserved at an appropriate facility on Maui if at all possible.

An inventory survey was not conducted prior to beginning any ground-altering activities. Per Glen Mason, project consultant, an inventory survey has since been completed by Cultural Surveys Hawaii.

Condition No. 10 states that, "If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by the DLNR, SHPD.

According to the applicant, no significant historic sites were found.

December 10, 1997      The Planning Department signed off on the building permit for the Courthouse (BPC 971986).

December 3, 1998      Dana Hall, on behalf of Hui Alanui o Makena, submitted a letter regarding the potential violation of SMA Permit Conditions for the Lahaina Courthouse. In her letter she refers to the following:

Recommended condition No. 14 of the December 19, 1996 approval by the CRC on the Historic Structures Report relative to archaeological testing as well as monitoring.

Letter from DLNR SHPD dated April 2, 1997 commenting on the SMA Permit application. Letter recommended 2 conditions to be attached to SMA permit.

These 2 recommended conditions were adopted by the Planning Commission in their SMA Permit approval.

Condition Nos. 7, 9, and 10 of the SMA Permit dated June 30, 1997 (referenced above).

December 15, 1998      Letter from DLNR SHPD outlining what the applicant should have done and recommending that the Planning Department decide if fines or censure be applied to this violation. Also recommended that no additional subsurface land alteration be approved for this project until the written findings of monitoring to date are submitted to DLNR SHPD and the CRC can be evaluated.

December 15, 1998      Second letter from DLNR SHPD acknowledging a meeting between Ross Cordy, representatives of the Burials Program and David Shideler of Cultural Surveys Hawaii, Inc.

Recommends archaeological test excavations around the courthouse under the direction of a

professional archaeologist. Trenches must be left open for inspection by DLNR staff archaeologists and CRC archaeologist. Based on evaluation of open trenches, needed mitigation measures shall be presented to the County in the form of recommendations. The findings from the initial monitoring, test excavations and any final mitigation shall be written up as archaeological report to be accepted by the SHPD.

- December 18, 1998      Response from Cultural Surveys Hawaii to DLNR SHPD
- December 28, 1998      After-the Fact Approval Letter by the Planning Department of a Preliminary Compliance Report dated December 10, 1998. Compliance Report was circulated to the CRC and the Maui Planning Commission.

The following, which will be passed out to the Commission at its meeting, was excerpted from the project's SMA Permit Application submittal document:

Copy of Applicant's statement that an archaeologist will be required to be present for all sub-surface excavations.

The Maui County Cultural Resources Commission, at its regular meeting of January 7, 1999 discussed the letter submitted by Dana Naone Hall. Individuals speaking on the issue included Glenn Mason, applicant on behalf of the County of Maui, David Shideler of Cultural Surveys Hawaii, Inc., Ross Cordy of DLNR SHPD, Dana Hall, Charles Maxwell, Leslie Kuloloio, and Buck Buchanan.

Additional information distributed at the CRC meeting included a letter to Bert Ratte of the Department of Public Works and Waste Management dated January 5, 1998 and a letter to Don Hibbard, DLNR SHPD from Hallett H. Hammatt of Cultural Surveys Hawaii, Inc. dated December 28, 1998. Both letters are attached to this memorandum.

After lengthy discussion, the commission recommended that the applicant work with DLNR SHPD and the Maui/Lanai Burial Council to develop the scope of work for the originally required inventory survey for the Lahaina Courthouse property. The approved scope of work will be submitted to the Planning Department, the CRC and the Planning Commission for informational purposes.

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10100

CULTURAL SURVEYS HAWAII, INC.  
Archaeological Studies

Hallett H. Hammatt, Ph.D.  
733 N. Kalaheo Ave., Kailua, Hawaii 96734  
Bus: (808) 262-9972/Fax: 262-4950  
e-mail: csh@dps.net

'98 DEC 30 P12:31

12/28/1998

TO: Dr. Don Hibbard, Administrator, State Historic Preservation Division  
FROM: Hallett H. Hammatt, Ph. D., Cultural Surveys Hawai'i  
REGARDING: Requested response of the SHPD to the Maui/Lāna'i Islands Burial Council actions of 10 December, 1998.

Aloha to you Dr. Don Hibbard:

We know that you are aware of the actions of the Maui/Lāna'i Islands Burial Council of 10 December, 1998 censuring Cultural Surveys Hawai'i for violating the conditions of special management area permits. This matter continues to be before the press and we are enclosing a copy of a third article from the *Maui News* dated 12/21/1998 for your information.

We seek clarification of your office's position on the following two points.

The author of the article, Ms. Valerie Monson, makes a clear reference to Cultural Surveys Hawai'i as: "...the firm that SHPD also found to be in violation of an SMA permit in Makena just a few months ago." The clear indication is that SHPD has determined Cultural Surveys Hawai'i to be responsible for the violation of two SMA permits (Makena and Lahaina Courthouse). We request your continued investigation into these matters over which we are continuing to be much accused and a statement as to your office's present position on this issue. Cultural Surveys Hawai'i maintains that the facts clearly indicate that the responsibility for compliance with the conditions of the permit lies with parties other than CSH. This seems to be the core issue underlying the Burial Council's unfortunate action and we need to know where your office stands. We have no documentation from SHPD asserting what Ms. Monson has publically claimed regarding SHPDs findings. If such documentation exists would you please forward it to us.

On a related matter you will note that the *Maui News* article of 12/21/1998 continues to pillory Cultural Surveys over notification of SHPD of the (pig) bone report. The quotation in this article that: "Hibbard said that the SHPD archaeological staff and Maxwell should have been notified of the discovery...Hibbard said contacting Maxwell and SHPD 'would have avoided unnecessary confusion'" clearly indicates in the context of the article that the SHPD holds Cultural Surveys in error over notification and further as responsible for the "unnecessary confusion". We maintain that Cultural Surveys Hawai'i is faultless in this regard. We believe that some of your staff are clear of the facts in this matter.

We look to you, Dr. Don Hibbard, as an administrator of SHPD/DLNR with an administrative function over the Burial Councils, to give an independent assessment of this entire affair and recommendations of whatever your office believes is appropriate. We hope, that upon a thorough and dispassionate analysis of the background of the case and of the Burial Council's actions, that your office will recommend a revocation of the censure on, amongst other grounds, that 1) the burial council acted in haste without any real effort to ascertain the facts of the matter, 2) that Cultural Surveys Hawai'i had no reasonable notification or chance of self-defense in advance of the Council's actions, and 3) that your office has in fact determined that the burden of responsibility for the violations of the SMA permit lies elsewhere.

We request that your office institute specific protocols to ensure that the hasty Maui/Lāna`i Burial Council's actions are not repeated. These protocols would deal with issues of reasonable notification of appropriate parties in advance of any Burial Council's considerations, opportunity of the accused to provide data in defense in advance of Burial Council actions, proper notification of Burial Council actions, and the opportunity of the accused to call upon appropriate State and County agencies to prepare independent "technical" evaluations in advance of Burial Council's actions.

Of-a-piece with this whole affair, we have received no direct communication from the Maui/Lāna`i Burial Council except through the *Maui News* articles. Thus we would like to, again, request that a copy of the tape of that Burial Council meeting of 10 December, 1998 be made available to Cultural Surveys as soon as possible.

We would like to thank the State Historic Preservation Division for their efforts to ascertain the facts in the Lahaina Courthouse/ Burial Commission actions matter. It has been our purpose to address any and all allegations of wrong-doing, to present the facts of the matter, and to present our position. We look forward to working with the State Historic Preservation Division to bring this matter to resolution.

*Mahalo* for your consideration



Hallett H. Hammatt, Ph.D.

cc. Ms. Lisa Nuyen  
Dr. Ross Cordy  
Mr. Kaiana Markell  
Mr. Marshall Chinen, Attorney at Law  
Ms. Lynn Otaguro, State Office of Information Practices

## County's courthouse renovation under scrutiny

By VALERIE MONSON

Staff Writer

LAHAINA -- The State Historic Preservation Division issued recommendations last week to correct the violations that have occurred during the county's renovation of the Old Lahaina Courthouse and asked the Maui Planning Department to decide if fines or censure are warranted.

SHPD administrator Don Hibbard filed two reports Wednesday, pointing out that no archaeological inventory survey had been done and no archaeological monitoring plan had been filed or approved, as were required. While Hibbard was satisfied that human bones had not been disturbed during digging, he was not pleased with what took place overall in the known historic district of Lahaina.

"In sum, no human burials or skeletal remains were found at the project area," said Hibbard in one of the reports. "However, the historic preservation obligations of this project clearly were not and have not been fulfilled."

Planning Director Lisa Nuyen said Friday that she hadn't yet seen the reports addressed to her and couldn't comment on whether fines or censure would be imposed by the department against any of the various agencies or firms working on the project.

"It's still a matter of investigation," she said, adding that her office was talking to SHPD, the mayor's office and others involved "to understand what happened."

Nuyen said she expects to update the Maui Planning Commission on the issue at its Jan. 12 meeting when the special management area (SMA) permit violations will come up on the agenda.

Earlier this month, the Maui/Lanai Islands Burial Council unanimously voted to censure Oahu-based archaeologist Hallett Hammatt and his firm, Cultural Surveys Hawaii, for its apparent role in the violations. Members also blasted Maui County for possibly issuing a building permit for the project without filing a required report.

Hammatt faxed a four-page letter to The Maui News on Friday night, taking issue with the Burial Council. He was particularly upset that his firm had not received "reasonable notification" of the Dec. 10 meeting to present its side of the case.

"We feel that the lack of official notification is clearly inappropriate, along with the entirety of the Maui/Lanai Islands Burial Council actions," he said. "An injustice has been done to Cultural Surveys Hawaii."

Glenn Mason of Mason Architects, the overseeing architect of the entire project, told The Maui News Thursday that he accepted at least partial responsibility for the violations at the courthouse and said he felt the Burial Council was too harsh in its criticism of Cultural Surveys, the firm that SHPD also found to be in violation of an SMA permit in Makena just a few months ago. \*

"What's being said about this project is way out of line," said Mason.

He said he hopes all parties can come together, correct the mistakes that were made and work to make the renovated courthouse, built in 1859 during the reign of the Hawaiian monarchy, a source of pride for everyone.

"I'm hoping people can make this constructive and not destructive," Mason said of future discussions. He added that this was the first time he'd applied for an SMA permit and "some things honestly slipped through." He admitted, however, that communication between various agencies on the project could have been better.

Mason also said that no major damage had occurred.

"The bottom line is nothing was found," he said. "Literally, no harm was done. That doesn't excuse the fact that the procedures should have been followed better. I think everyone is saying now, 'We need to work on this to do a better job.'"

But Dana Naone Hall, a former Burial Council member who first made the SMA permit violations public, was disturbed that so many precautions had been taken and apparently ignored within the Lahaina Historic District, an area well-known to contain subsurface cultural layers or burials. Hall produced several letters from the Planning Department and SHPD to Mason and Maui County Managing Director Richard Haake, among others, with requirements that were never followed. In fact, in a letter sent Jan. 5, 1998, Hibbard specifically told the Land Use and Codes Administration to add SHPD's monitoring recommendations to the first sheet of the construction plans "to avoid any misunderstandings with utility and construction contractors."

The Burial Council became involved in the project when it learned that bones had been unearthed then covered up without the knowledge of its own chairman, Charles Kauluwehi Maxwell Sr. In the reports, Hibbard said that the SHPD archaeological staff and Maxwell should have been notified of the discovery. Although Hibbard has accepted the opinion of a Cultural Surveys archaeologist that the bones were those of a pig, Hibbard said contacting Maxwell and SHPD "would have avoided unnecessary confusion."

Hibbard found fault with both Cultural Surveys and Mason for starting archaeological monitoring without notifying SHPD and for failing to submit a monitoring scope (the size and details of the area that would be monitored by an archaeologist) for SHPD review and approval.

"The archaeological firm should know that such scope approval is commonly needed," wrote Hibbard. "Our letter of Jan. 5, 1998, spelled it out and minimally, Mr. Mason was aware of that requirement."

Hammatt, who denied receiving a copy of the Jan. 5 letter, said while his firm was aware that scope approval is "commonly" needed, "we were not aware that it was needed in this case. In fact, we had good reason to believe otherwise."

Hibbard also criticized Cultural Surveys for not knowing that an archaeological survey was required. Even though Mason Architects took responsibility for failing to inform Cultural Surveys that the survey was required, Cultural Surveys "should have known that a plan was usually needed and they should have so advised Mr. Mason."

Hammatt said that, again, his firm was aware that a plan is "usually" needed, but was "of the understanding that no such plan was needed in this case."

Hibbard recommended that, before any further land alteration at the site takes place, more testing or trenching be done under the direction of a professional archaeologist. All trenches, he added, "must be left open for inspection by our staff archaeologists and by the archaeologist attached to the Maui County Cultural Resources Commission; so we can evaluate firsthand the interpretation of fill and any new layers that might be uncovered."

After evaluating information gathered from the trenches, recommendations will be made to the county regarding any necessary changes. Those findings and mitigation plan must then be submitted to -- and approved by -- SHPD.

Mason indicated he would follow those requirements.

"I'm just interested in fixing it now," he said.

The issue will get repeated public review next month. In addition to coming up before the Planning Commission, the courthouse violations will also be addressed by the Cultural Resources Commission on Jan. 7 in Lahaina and the Burial Council, tentatively scheduled to meet Jan. 28 in Wailuku.

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RECEIVED  
LAND USE & CODES  
'98 JAN 20 P2:55  
MICHAEL D. WILSON, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
DEPUTIES  
GILBERT COLOMA-AGARAM  
AQUACULTURE DEVELOPMENT  
PROGRAM

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION  
33 SOUTH KING STREET, 6TH FLOOR  
HONOLULU, HAWAII 96813

COUNTY OF MAUI  
WAILUKU HI 96793  
AQUATIC RESOURCES  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
DIVISION  
LAND DIVISION  
STATE PARKS  
WATER AND LAND DEVELOPMENT

January 5, 1998

Mr. Bert Ratte  
Department of Public Works  
Land Use and Codes Administration  
250 South High Street  
Wailuku, Hawaii 96793

LOG NO: 20645 ✓  
DOC NO: 9712BD04

Dear Mr. Ratte:

**SUBJECT: Chapter 6E-42 Historic Preservation Review of Proposed Old Lahaina  
Courthouse Renovations  
Kuia Ahupua`a, Lahaina District, Island of Maui TMK 4-6-1: 09**

This is a Historic Preservation review of proposed renovations to the Old Lahaina Courthouse in Lahaina, Maui. Our review is based on reports, maps, and aerial photographs maintained at the State Historic Preservation Division; no field check was conducted of the subject properties.

The subject property falls within the Lahaina Historic District (State Site 50-50-03-3001) which applies to much of the 19th century architecture in town including the Old Lahaina Courthouse. Subsurface historic sites have also been located during archaeological monitoring of public utilities in many locations of old Lahaina town. For this reason, we feel that archaeological monitoring should be conducted of all excavations associated with the removal of sewer laterals, sidewalk repairs, and the relocation of the water meter for this project -- to identify and document any historic sites that might be present.

Prior to beginning construction, a monitoring scope of work should be submitted to our Division for review and approval. The monitoring scope should specify types of sites expected to be found during monitoring (i.e. types of subsurface deposits) and how these remains will be adequately recorded and treated. Also included should be measures to ensure that construction will be halted in the event that such remains are encountered, so that an archaeologist may evaluate the find and determine what mitigation procedures should be implemented. We also request that SHPD monitoring recommendations be added to the State Historic Preservation Requirements listed on Sheet 1 of the construction plans, to avoid any misunderstandings with utility and construction contractors.

Mr. Bert Ratte  
Page 2

We have reviewed renovations to Lahaina Courthouse Renovation with Glenn Mason, and believe the project meets the Secretary of the Interiors Standards for Rehabilitation. We concur that the project will have "no effect" on the historic character of the structure.

If you have any questions please contact Boyd Dixon at 243-5169.

Aloha,



DON HIBBARD, Administrator  
State Historic Preservation Division

BD:jen

cc. Maui County Planning Department (fax: 243-7634)

BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



STATE OF HAWAII '99 JAN

DEPARTMENT OF LAND AND NATURAL RESOURCE  
HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamehaha Boulevard  
Kapolei, Hawaii 96707

RUSH

MAUI  
PLANNING  
DEPARTMENT

JOHN  
CLAYTON  
PLANNING  
ZAED  
JILL

	FYI	COMMENTS	SEE ME	ASSIGN	FILE	DRAFT RESPONSE
JOHN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLAYTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PLANNING	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ZAED	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Due Date:

By: *J* Date: 1/11/99

January 6, 1999

Hallett H. Hammatt  
Cultural Surveys Hawaii  
733 North Kalaheo Avenue  
Kailua, Hawaii 96734

LOG NO: 22747 ✓  
DOC NO: 9901RC06

Dear Dr. Hammatt:

**SUBJECT: Archaeological Monitoring Report -- Lahaina Courthouse  
Lahaina, Lahaina District, Maui  
TMK: 4-6-01: 9**

We received your monitoring report on January 6, 1999 (Hammatt & Shideler 1999. Written Findings of Archaeological Monitoring at Lahaina Courthouse, Lahaina, Lahaina District, Maui Island, Hawaii. Cultural Surveys Hawaii ms.).

Actually, our letter of December 15, 1998 (Log 22628/Doc 9812RC12) was written prior to my staffs' December 14 meeting with Mr. Shideler of your staff, and that letter was superceded by our second letter of December 15, 1998 (Log 22665/Doc 9812RC32). In the second letter, we recommended that the findings from the initial monitoring be combined with the later work to come and background review material as one integrated report (similar to a survey report). Thus, we will not review this report at this time. The current report simply presents the information that Mr. Shideler brought into our office.

If you have any questions, please feel free to call Ross Cordy (692-8025).

Aloha,

Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

c: Glen Mason, Mason Architect  
John Min, Planning Dept., County of Maui





STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
801 Kamehaha Boulevard  
Kapolei, Hawaii 96707

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

January 6, 1999

Hallett H. Hammatt  
Cultural Surveys Hawaii  
733 North Kalaheo Avenue  
Kailua, Hawaii 96734

LOG NO: 22748 ✓  
DOC NO: 9901RC07

Dear Dr. Hammatt:

**SUBJECT: Proposal for Additional Archaeological Work -- Lahaina Courthouse  
Lahaina, Lahaina District, Maui  
TMK: 4-6-01: 9**

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This responds to your written proposal sent to us on January 5, 1999 (Hammatt & Shideler 1999. Draft Proposal for an Archaeological Mitigation Plan at the Lahaina Court House, Lahaina, Lahaina District, Maui Island, Hawai'i. Cultural Surveys Hawaii ms.).

First, we should clarify that we do not consider this needed work to be mitigation work. It is work being done to fulfill the inventory survey condition and evaluate the monitoring findings to date. Assuming the County will accept the recommendations made in our second letter of December 15, 1998 to the Maui County Planning Director (Log: 22665/Doc 9812RC32), we believe the next archaeological work should keep its trenches open so our staff and the Commission's archaeologist can evaluate the deposits. Then, on-site, we can have a discussion of any needed mitigation work for the final land alteration for this project, with recommendations then formally made to the County in writing by our office and the Commission separately.

Second, we believe that the area of the Lahaina Courthouse project or the area of potential impact should be reasonable. The project has been confined to areas near the Courthouse. Thus, we suggest that the area of impact be considered to be bounded by Hotel and Canal Streets and from Wharf Street to 50 feet behind the Courthouse. Thus, the bulk of the park would not be in the study area. While the entire park is of interest and may have archaeological sites under the remaining portion, historic preservation project areas should fairly be constrained to project impact areas.

Third, the aims of this work should be to determine if all cultural layers in the project area are post-1860 fill. The nature of the terrain during human occupation times prior to the filling of the area for Courthouse construction should also be evaluated through excavation (the layers' nature) and through archival work (the background work noted in our letter). If remains of the old fort are found, that is fine. But the focus should be on the entire impact area. Given this, we suggest the following:

Hallett H. Hammatt  
Page 2

1. Four 10 meter long backhoe trenches of 1.5 meter depth. (The depth is similar to your recommendation; the length is longer to give a greater perspective of deposits.)
  - a. Two near Wharf Street, parallel to the street -- on each side of the Courthouse steps. These should be nearer the street corners than the steps, to give a wide view of the layers in the project area.
  - b. One extending parallel to Hotel Street, halfway or more toward the Courthouse.
  - c. One extending parallel to Canal Street, halfway toward the Courthouse.
  
2. One small 2 x 1 meter unit next to the Courthouse, to see how deep the building sits in the surrounding soils. (This conforms with your recommendation.)

The above must be dug with an archaeologist on-site. These tests should reveal quite clearly what the cultural layer and pre-cultural layer patterns are in the project area.

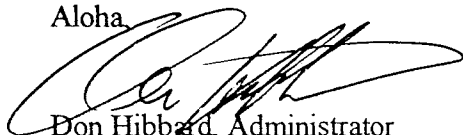
Obviously, any artifacts of likely 1800s age should be recovered and reported and any features visible in the trenches must be documented.

Again, the trenches should be kept open, so archaeologists from our office and from the Commission can view the trenches in consultation with Cultural Surveys Hawaii archaeologists.

Last, findings should be combined with those of the initial monitoring and background review, as recommended in our second December 15, 1998, letter.

We do not recommend that remaining subsurface construction work (for landscaping) be allowed to proceed yet. The above testing should take place first and be evaluated by our office and the Commission's archaeologist and recommendations be made to the County, to avoid further public concern about this project.

Aloha



Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

c: Glen Mason  
John Min, Planning Department, County of Maui

## LAHAINA COURTHOUSE RESTORATION Specifications for the Archeological Inventory

The following is an outline of the work needed for additional testing, based on on-site discussions with Ross Cordy of the State Historic Preservation Division, Dana Hall, and Les Kuloloio of the Maui/Lana'i Islands Burial Council and as summarized by Ross Cordy at the January 7 meeting of the Maui Cultural Resource Commission.

### A. Description of Excavations to be Done:

#### **Trenching**

Trenches A, B, C and D shall be 4 to 6 feet deep and about 24 inches wide. The excavations shall be by back hoe, to be supplied by the Contractor for the project. To the best of the backhoe operator's ability, trench excavations shall be dug at a slow pace no deeper than 6 inches at a time with each scoop of the back hoe. Excavations may be continuous, unless the work is stopped by the archeologist present. The lengths of the trenches indicated below are for the purposes of initial estimates of the work. Changes to the lengths may be made by mutual agreement of archeologist on site, Dana Hall, and one representative each from the Maui Cultural Resource Commission and the State Historic Preservation Division (where the term "the parties" is used in the following text it refers to these four individuals).

Trench A shall begin at the Kaanapali face of the trench previously dug for the water line and extend in a line toward Hotel Street, parallel to Wharf Street, for a distance of 35 feet.

Trench B shall begin approximately 5 feet mauka of the side walk and extend 35 feet in a mauka direction. This trench shall be located about 3 feet to the Kaanapali side of the water line excavation and be roughly parallel to that earlier excavation.

Trench C shall begin about 10 feet mauka of the sidewalk and run 35 feet in a mauka direction.

Trench D shall start about 8 feet from the sidewalk and run toward Kamehameha III School for a length of about 35 feet. The ends of Trench C and D may intersect, forming an "L".

#### **Pit Excavations**

Two 1 meter square hand-excavated test units shall be dug; one at the location of the pig skeletal remains uncovered during earlier excavations,

and one at the location of the basalt feature noted by Dee Fredericksen. The purpose of these excavations is to adequately expose these features for observation and interpretation by the parties. The features shall remain intact until consultation occurs among the parties to determine appropriate mitigation measures.

These excavations shall be done by hand, by the archeologist. The archeologist shall obtain the help of Dee for approximating the location of the basalt feature.

B. Schedule:

Excavations shall begin at a time suitable to all parties, but in any case, as soon as possible. The initial goal would be to have a backhoe available by Monday, January 18.

The County Planning Department and all other parties shall be notified of the planned excavations at least 3 days in advance of commencement. The excavations shall occur as continuously as possible. Upon completion of all the trenches, the trenches shall be left open until such time as archeological staff from the State Historic Preservation Division, Dana Hall, Dee Fredericksen of the Cultural Resource Commission and a representative from the Maui/Lana'i Islands Burial Council (if they wish to send a representative), and the archeologist have inspected the trenches together.

C. Safety

Safety at the trenching area shall be the responsibility of the Contractor. At a minimum, the Contractor shall provide these safety precautions:

At the close of each day's work the trenches and hand-excavated test units shall be covered with plywood boards to prevent people from accidentally falling into the trenches. In addition, the area around the trenches shall be separated from the surrounding areas by orange plastic fencing and caution tape.

D. Report on Findings

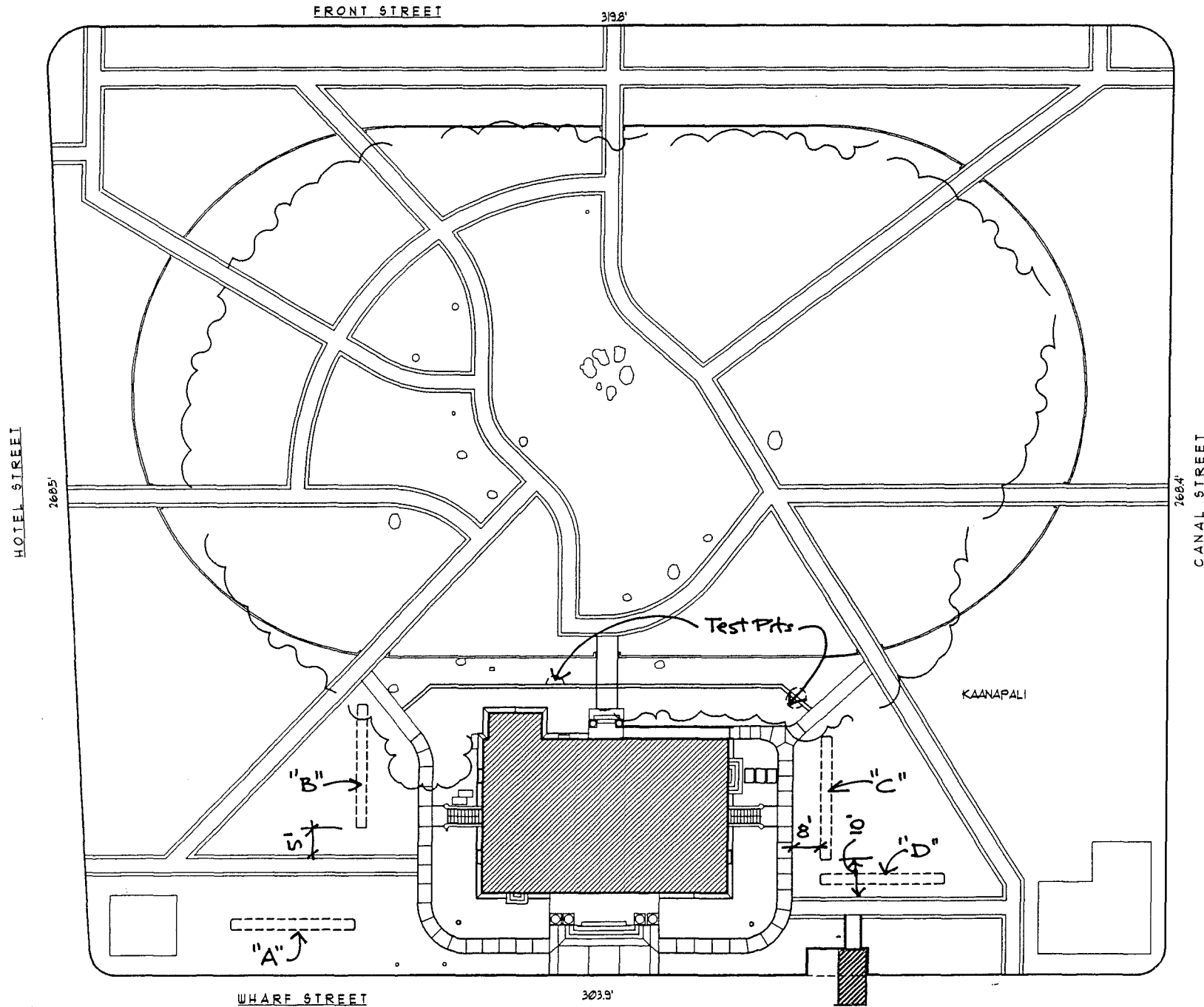
At the completion of the excavations and inspections, the results shall be documented in a professional manner and incorporated into the final Report on the Findings at the site. Such report shall be to the satisfaction of the State Historic Preservation Division. The report shall include a background section reviewing historical records and archeological findings relevant to the project area.

E. In Case of Findings of Significant Archeological Resources

If significant archeological resources are found that would mandate large increases in archeological fees to conclude the Lahaina Courthouse project,

the County Planning Department and the parties shall be notified and a scope of work for further investigations shall be mutually agreed upon.

If human remains are found, all work shall be stopped and the State Historic Preservation Division and the Maui/Lana'i Islands Burial Council shall be notified.



ARCHEOLOGICAL SURVEY SITE PLAN

1" = 40'-0"

RESTORATION OF THE OLD LAHAINA COURTHOUSE


649 WHARF STREET, LAHAINA, MAUI, HAWAII 96761



January 4, 1999

MEMORANDUM

TO: MAUI COUNTY CULTURAL RESOURCES COMMISSION

FROM: JOHN E. MIN, PLANNING DIRECTOR 

SUBJECT: LAHAINA COURTHOUSE, TMK 4-6-1:9, Lahaina, Maui  
(SM1 970002) (HDC 970002) - Chronology of Events

The following is a chronology of events relative to Dana Hall's December 3, 1998 letter concerning the Lahaina Courthouse Historic District and Special Management Area Permit Approvals.

December 19, 1996 CRC approval letter regarding the Historic Structures Report for the Lahaina Courthouse. Approval includes 14 recommendations. Number 14 states that, "Archaeological testing, as well as monitoring should be considered for subsurface work for utilities, and the root barrier for the banyan tree.

May 8, 1997 CRC Historic District approval letter for Restoration of the Old Lahaina Courthouse subject to 9 conditions.

Condition No. 5 states, "That prior to any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR SHPD), for review and approval.

June 30, 1997

Maui Planning Commission (MPC) SMA Permit approval letter for the Courthouse subject to 15 conditions

Condition No. 7 states: "That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of the building permit. A final compliance report shall be submitted to the Planning Department for review and approval prior to issuance of a certificate of occupancy.

A preliminary compliance report was not submitted prior to issuance of the building permit.

Condition No. 9 states, "Prior to beginning any ground-altering activity, a qualified archaeologist shall conduct an inventory survey with subsurface testing of the project area. The results of the survey shall be documented in an acceptable report to be submitted to the Department of Land and Natural Resources, State Historic Preservation Division (DLNR SHPD), for review and approval. Objects and artifacts recovered shall be conserved at an appropriate facility on Maui if at all possible.

An inventory survey was not conducted prior to beginning any ground-altering activities. Per Glen Mason, project consultant, an inventory survey has since been completed by Cultural Surveys Hawaii.

Condition No. 10 states that, "If significant historic sites are found, an acceptable mitigation plan shall be prepared for review and acceptance by the DLNR, SHPD.

According to the applicant, no significant historic sites were found.



December 10, 1997      The Planning Department signed off on the building permit for the Courthouse (BPC 971986).

December 3, 1998      Dana Hall, on behalf of Hui Alanui o Makena, submitted a letter regarding the potential violation of SMA Permit Conditions for the Lahaina Courthouse. In her letter she refers to the following:

Recommended condition No. 14 of the December 19, 1996 approval by the CRC on the Historic Structures Report relative to archaeological testing s well as monitoring.

Letter from DLNR SHPD dated April 2, 1997 commenting on the SMA Permit application. Letter recommended 2 conditions to be attached to SMA permit.

These 2 recommended conditions were adopted by the Planning Commission in their SMA Permit approval.

Condition Nos. 7, 9, and 10 of the SMA Permit dated June 30, 1997 (referenced above).

December 15, 1998      Letter from DLNR SHPD outlining what the applicant should have done and recommending that the Planning Department decide if fines or censure be applied to this violation. Also recommended that no additional subsurface land alteration be approved for this project until the written findings of monitoring to date are submitted to DLNR SHPD and the CRC can be evaluated.

December 15, 1998      Second letter from DLNR SHPD acknowledging a meeting between Ross Cordy, representatives of the Burials Program and David Shideler of Cultural Surveys of Hawaii.

Recommends archaeological test excavations around the courthouse under the direction of a professional archaeologist. Trenches must be left open for inspection by DLNR staff archaeologists

and CRC archaeologist. Based on evaluation of open trenches, needed mitigation measures shall be presented to the County in the form of recommendations. The findings from the initial monitoring, test excavations and any final mitigation shall be written up as archaeological report to be accepted by the SHPD.

December 18, 1998      Response from Cultural Surveys Hawaii to DLNR SHPD

December 28, 1998      After-the Fact Approval Letter by the Planning Department of a Preliminary Compliance Report dated December 10, 1998. Compliance Report is also attached.

The following, which will be passed out to the Commission at its meeting, was excerpted from the project's SMA Permit Application submittal document:

Copy of Applicant's statement that an archaeologist will be required to be present for all sub-surface excavations.

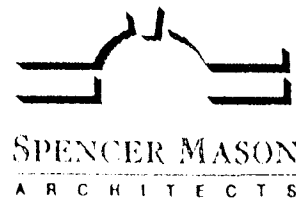
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# Application for Special Management Area Permit

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## Old Lahaina Courthouse

Prepared for the  
County of Maui



December 1996

### 3.1.4 Archeological Resources

Excavations in the park area will be required for the installation of new electrical, water and sewer service. The new conduits and pipes will be installed primarily in the same corridors that the existing lines are in. As a result, many of the excavations will be in already disturbed soil.

There will be some excavations for back-flow preventers, landscape sprinklers and secondary electrical lines that will fall outside of these existing corridors. It will be required that an archeologist be present during all sub-surface excavations. In the event that any archeological resources are uncovered, work in that area shall be stopped and appropriate mitigation shall be determined by the State Historic Preservation Division and County of Maui and accomplished by the contractor before the work can commence.

### 3.1.5 Noise and Air Quality

The effects of the project on noise and air quality will be limited to the construction period. Noise will be generated by the tools and equipment required for the construction. Since no heavy equipment or pile driving is required these effects should be minimal. It is not anticipated that noise will be troubling to the school or surrounding commercial activities due to the distance separating the Courthouse from those other buildings.

Dust will be generated by the movement of equipment around the building and by the removal of plaster and other building materials. Regular watering will help to reduce these emissions. In addition, the perimeter construction barrier will act to confine most of the dust to the immediate work area.

### 3.1.6 Scenic and Open Space Resources

It is proposed to prune those limbs of the Banyan tree which are encroaching so close to the building that they threaten to damage the walls and foundations. This work will be performed by a reputable tree-surgery firm experienced in this type of work.

The park grounds immediately around the Courthouse will be improved with new landscaping, landscape sprinklering, and sidewalks. Parking will be removed from the makai side of the building and that area will be landscaped. The landscaping will consist primarily of various indigenous ground covers and grass, all suitable for xeriscape landscaping.

The proposed rehabilitation work on the Old Lahaina Courthouse will conserve all historic materials in the building. This is a positive effect. The only significant change to the interior of the building will be the addition of an elevator to make the second floor handicapped accessible. This will be done with

LINDA LINGLE  
Mayor

LISA M. NUYEN  
Director

DONALD A. SCHNEIDER, II  
Deputy Director



CLAYTON I. YOSHIDA  
Planning Division

AARON H. SHINMOTO  
Zoning Administration and  
Enforcement Division

COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

December 28, 1998

Mr. Glenn Mason, AIA  
Mason Architects, Inc.  
119 Merchant Street, Suite 501  
Honolulu, Hawaii 96813

Dear Mr. Mason:

RE: After-the-Fact Approval of a Preliminary Compliance Report for a Special Management Area Use Permit for the Old Lahaina Courthouse Project, TMK: 4-6-1: 009, Lahaina, Lahaina District, Island of Maui, Hawaii (SM1 970002)

The Maui Planning Department (Department) has reviewed the above-referenced after-the-fact Preliminary Compliance Report dated December 10, 1998, and finds it to be acceptable.

You are reminded that five (5) copies of the Final Compliance Report shall be submitted to the Department for review and approval prior to the issuance of a Certificate of Occupancy.

Enclosed please find two (2) letters from the Department of Land and Natural Resources, State Historic Preservation Division (DLNR, SHPD) dated December 15, 1998 outlining the project's noncompliance with conditions of the Special Management Area and Historic District Permit approvals. You are hereby requested to address issues identified by DLNR, SHPD, in the project's final compliance report.

Mr. Glenn Mason, AIA  
December 28, 1998  
Page 2

Thank you for your cooperation in this matter. If further clarification is required, please contact Ms. Ann T. Cua, Staff Planner, of this office at 243-7735.

Sincerely,



LISA M. NUYEN  
Director of Planning

LMN:ATC:osy  
Enclosures

c: Clayton Yoshida, AICP, Planning Program Administrator  
Aaron Shinmoto, PE, Planning Program Administrator (2)  
Office of Planning (w/Enclosures)  
Maui Planning Commission (w/Enclosures)  
Maui County Cultural Resources Commission File (w/Enclosures)  
LUCA (2) (w/Enclosures)  
98/CZM File (w/Enclosures)  
Ann T. Cua, Staff Planner  
Project File (w/Enclosures)  
General File  
(s:\all\ann\lacrtpre.com)



ARCHITECTURE  
RESTORATION  
RENOVATION  
RESEARCH

# Mason Architects

10 December 1998

Lisa M. Nuyen  
Planning Department  
County of Maui  
250 S. High Street  
Wailuku, Maui, Hawaii 96793

Subject: Preliminary Compliance Report for the  
SMA Use Permit for the Old Lahaina Courthouse Project  
TMK 4-6-1:009, Lahaina, Maui, Hawaii (SM1 970002)

Dear Ms. Nuyen:

A building permit was received for this project on 3 February 1998. This preliminary compliance report was not submitted prior to the award of the permit, but is being submitted at this time to comply with the requirements of the Maui Planning Commission.

There were 15 conditions put upon this project by the approval of the Maui Planning Commission at their June 24, 1997 meeting. This report will summarize the compliance for each of those items. The numbers below correspond to the number of the condition contained in their June 30 letter to you.

1. *Construction of the project will commence by June 30, 1999.*

Response: We have complied with this condition. On-site construction began in late February.

2. Construction of the project will be completed within 5 years of the date of its initiation.

Response: We will comply with this condition. The total elapsed time of construction will be less than one year.

3. Final construction shall be in accordance with the preliminary architectural plans dated December 1996.

Response: We will comply with this condition. This has been, and will continue to be, done.

4. Mitigation of short-term impacts of the project relative to soil erosion from wind and water, noise, and traffic.

Response: The contractor installed a 12-foot high geo-textile barrier around the site to control dust. Construction noise was relatively minor except for a one or two days during the demolition process. The contractor has done, and will continue to do, as much of this work as possible during times that will minimize the effects of this noise on surrounding users.

5. Compliance with all applicable government requirements shall be rendered.

Response: To the best of our knowledge we have made every attempt to comply with applicable government requirements. However, the submission of this compliance report is late.

6. The applicant shall submit plans regarding the location of construction-related structures:

Response: There were no construction-related structures other than the barricade. The location of the barricade followed the outline of the area of work shown on the Title sheet of the drawings as submitted for permit.

7. Compliance Reports.

Response: This has not been filed in a timely manner. This Preliminary Compliance Report is being submitted as a partial fulfillment of this requirement. A final Compliance Report will be submitted at the completion of construction.

8. The waste from the site:

Response: It became impossible to comply with this condition. The Construction and Demolition Landfill on North Kihei Road near Honoapiilani Highway was closed prior to the start of demolition on this contract (apparently due to underground fires). Demolition materials were dumped at the County Landfill.



9. Archeological monitoring of the site.

Response: See the attached letter by Cultural Surveys Hawaii. In short, they were on site for the first three days of excavations. At that time, we were told verbally by that office that there was no need for further monitoring because it appeared that the entire site had been filled. Since this was based on excavations for the sewer line, the deepest excavation to be made on the site, we informed the County and the Contractor of this fact, with a warning to the Contractor that if they encountered anything that wasn't dirt, to contact us for follow-up. They did this on two occasions, which are discussed in Cultural Surveys Hawaii letter of November 27, 1998, received by our office on December 2. The recommendations of the archeologist hired for this project were followed.

Additional test pits will be done on the site by Cultural surveys Hawaii, in accordance with a request made by the State Historic Preservation Division. After research is completed on the test pits, a monitoring report by the archeologist will be submitted at the end of the project.

10. Discovery of significant historic sites.

Response: No significant historic sites have yet been found.

11. Appropriate measures shall be taken to minimize noise impacts on King Kamehameha III School.

Response: This was done. There were complaints made by the School at one point during the construction, during the demolition of sidewalks. These complaints were addressed by the Contractor within 24 hours.

12. Pruning of the Banyan Tree:

Response: The pruning of the Banyan tree was done in accordance with the instructions from the Arborists Committee. There was no stubbing and the pruning was supervised. The pruning was done by Jeff Gray, a certified arborist, of Ehukai Tree Trimming. Mr. Gray is also on the Arborist Committee and corresponded with Mr. Ernie Rezendes, Chair of the Committee, about the work prior to its execution.

13. Certified arborist required.

Response: See above.

14. Cutting of intrusive roots of the Banyan Tree.

Response: Success with this item is mixed. The larger roots were usually cut. Smaller roots were often severed by the back hoe.

15. Compliance with the Conditions of the Maui County Cultural Resources Commission, contained in their May 8, 1997 letter.

Response: The response to the Cultural Resources Commission conditions are listed below:

1. Compliance with applicable government requirements: Answer is the same as #5 above.
2. Work shall be done in accordance with May 1, 1997 plans approved by the Commission:  
This has been, and will continue to be, done.
3. Final architectural plans to be submitted to the Planning Department for review and approval:  
This has been done.
4. Architectural changes made to the building during the project shall be submitted to the Maui Planning Department:  
No significant changes were made to the plans.
5. Qualified archeologist shall conduct an inventory survey with subsurface testing of the project with results of the survey to go to DLNR.:  
This requirement has not been complied with, due to an oversight. The archeologist was present on site at the beginning of the excavations and was instructed to stop the work if anything was found and to contact the State. Additional test pits will be done to verify the extent of the fill conditions, per the wishes of the State of Hawaii Historic Preservation Division, DLNR.
6. If significant historic sites are found, contact DLNR, SHPD:  
No significant historic sites were found.
7. The use issue will be resolved with DLNR:

Discussion on this topic are on-going, but to our knowledge, uses have not been completely finalized, and will not be finalized until a building management team has been selected.

8. Restroom facilities within the Lahaina Courthouse Building shall have controlled access:  
The intent of the project, and basis of the design, was that the restrooms will be used only by those using the building and that access will be controlled. This is a management issue that should be attached as a condition of the management contract for the building.
9. The Maui Cultural Resources Commission shall be advised of the County's decision regarding use of the Courthouse Building:  
This has not yet been done, as this issue has still not been completely resolved.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Glenn Mason", followed by a horizontal line extending to the right.

Glenn Mason, AIA

cc. Richard Haake, Managing Director

CULTURAL SURVEYS HAWAII, INC.  
Archaeological Studies

Hallett H. Hammatt, Ph.D.  
733 N. Kalaheo Ave., Kailua, Hawaii 96734  
Bus: (808) 262-9972/Fax: 262-4950  
e-mail: csh@dps.net

Glen Mason  
Mason Architects, Inc.  
119 Merchant St. #501  
Honolulu, HI 96813  
Fax 526-0577  
536-0556

Dear Mr. Mason,

November 27, 1998

This letter is in regard to archaeological monitoring of the Lahaina Courthouse renovation project. Observations made during three inspections of the project area indicate that constant archaeological monitoring of excavations within the fill layer is not necessary.

During the initial monitoring in the *mauka* portion of the project area (October 5-6, 1998), the encountered stratigraphy consisted of a thick, imported fill layer (over 1.0 m. deep, a dark brown loam containing historic/modern debris) on top of beach sand (extending to the base of the trench). No cultural layers or deposits were observed.

A second visit to the project (November 17, 1998) was in order to inspect materials (a ceramic plate and scattered cow bones) encountered during backhoe excavations. During this inspection it was observed that the materials were located within the fill layer. Both the plate and the cow bones appeared to be disassociated from their original context; in other words, they were deposited as part of the fill. In the *makai* portion of the project area, where the plate was located, the fill layer was often mottled with light brown soil and sand lenses and ranged in depth from 50 cm. to over 1.0 m. Again, no cultural layers or deposits were observed.

A third visit to the site (November 25, 1998) to inspect additional bones (an articulated pig skeleton within the fill layer) encountered during excavation resulted in the same observations: no cultural layers or deposits were observed other than the modern pig remains.

Due to these observations, we recommend that any excavation within the fill layer proceed without archaeological monitoring as our inspections have indicated that this layer appears to be devoid of intact cultural deposits. However, we will remain on-call in the event that such deposits or inadvertent finds (*ie* potential human remains) are encountered. If this occurs, please continue to contact our office immediately, as you have done in the past.

Mahalo,



Melody Heidel  
for Hallett H. Hammatt, Ph.D.

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MASON ARCHITECTS, INC.



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamokila Boulevard  
Kapolei, Hawaii 96707

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'98 DEC 18

DEPT. OF LAND AND NATURAL RESOURCES

December 15, 1998

Lisa Nuyen, Planning Director  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

LOG NO: 22628  
DOC NO: 9812RC12

Dear Ms. Nuyen:

**SUBJECT: Old Lahaina Courthouse Project -- SMA Violation Concerns  
Lahaina, Lahaina District, Maui  
TMK: 4-6-01: 009**

Our staff was contacted in late November of subsurface construction work at this project and the possible find of skeletal remains. According to our records, no subsurface work was to occur without the completion of a prior archaeological survey and any needed mitigation (our letter of April 2, 1997 on the SMA, Hibbard to Blane Log 19246/Doc 9703SC25). Also, according to our records archaeological monitoring was to be done of the sewer laterals, sidewalk repairs and the relocation of the water meter, with our office to approve a monitoring scope prior to the land alteration (our letter of January 5, 1998, Hibbard to Ratte Log 20645/Doc 9712BD04). Neither a survey nor approved monitoring plan have yet to occur to our knowledge. We contacted Ann Cua of your staff to try to find more about the situation. She too had heard about the concerns and proceeded to check. We more recently received a copy of Dana Hall's letter of December 3, 1998, to you, myself and others. Our staff have further checked with Doc Fredericksen (of Xamanek Researches and a member of the Maui County Cultural Resources Commission) who had visited the site on November 22, with Cultural Surveys Hawaii who had been hired as an archaeological monitor, with Glenn Mason (the architect overseeing the project), and with Dana Hall.

Based on our review of the situation, we established the following:

1. Multiple construction trenches were opened up in the project area (a trench for a sewer line in October, and in November 2 additional trenches). These have all evidently been backfilled.
2. An archaeological inventory survey (with subsurface testing) should have occurred prior to any land alteration. If significant deposits had been found, there may have been the need for mitigation work prior to land alteration. Such a survey did not occur.
3. An archaeological monitor had been hired to monitor the construction trenches, by Glenn Mason. This monitor was Cultural Surveys Hawaii. Our office was not sent a monitoring scope for the project, and did not approve any such scope.

4. The archaeological monitor was not present continuously on-site. When the first trench was opened (beginning October 5, 1998), a monitor was present for two days. At that time, Cultural Surveys Hawaii concluded that there were no intact deposits of old Lahaina present; rather there was a layer of modern fill. Cultural Surveys concluded there was no need to further monitor continuously, and Glenn Mason accepted their recommendation. The monitor was called to the project site two other times when bones were encountered in new trenches (November 17 and 25) (G. Mason, 12/9/98 personal communication; Letter Hammatt to Mason, November 27, 1998). Bones proved not to be human, and Cultural Surveys still saw only modern fill and no earlier intact archaeological deposits. Our office was not contacted by either Glenn Mason, nor Cultural Surveys asking if continuous on-site monitoring could be discontinued. (In fact, we were unaware that any monitoring was occurring.)

5. The three monitoring visits resulted in the conclusion by Cultural Surveys that a modern fill (50-100+ cm deep) was present on top of beach sand and that construction was solely within the fill. No intact cultural layers were seen. We cannot verify the accuracy of Cultural Surveys' claim without seeing a report or without a field inspection of open trenches. However, on November 22, 1998, Dee Fredericksen visited the site and observed in one of the trenches an apparently intact archaeological feature of possible early 1800s age. No monitor was present to evaluate or record this feature. The trench with the feature has since been filled back in.

6. No human burials or skeletal remains were found. When bones were found, the construction subcontractor immediately contacted Cultural Surveys, which led to their field checks of November 17 and 25. No archaeologists on our staff were contacted about the possible presence of human skeletal remains. On November 25, 1998, bones found were viewed by a Cultural Surveys monitor (John Winieski). Cultural Surveys identified the remains as an articulated pig within the modern fill layer. This information was passed to the local Maui Island Burial Council member. [Ms. Hall's letter notes that a question exists as to whether the pig was in fill. We cannot evaluate this concern, because our office did not see the open trenches and because we have yet to see an archaeological monitoring report which would provide evidence that the deposits at the project were indeed modern fill.]

7. On November 27, 1998, Cultural Surveys Hawaii recommended that "constant archaeological monitoring of excavations within the fill layer is not necessary" (Letter Hammatt to Mason, Nov. 27, 1998). Cultural Surveys Hawaii asked to monitor only on call, in the event that intact cultural deposits or inadvertent finds (e.g., burials) were found. Our office was not asked to evaluate such a marked change in a monitoring scope.

8. We understand from Mr. Mason that some minor land alteration related to landscaping is still planned (included digging holes for coconut trees and other vegetation) in the near future.

Based on the above, we can make the following findings:

1. No archaeological inventory survey was done. This was needed to determine if significant historic deposits were present in various parts of the parcel (e.g., archaeological deposits of old Lahaina). It should

have been done well before any land alteration. If extensive intact deposits were present, then data recovery might have been necessary prior to land alteration. The presence/absence of intact deposits in parts of the parcel not monitored still probably need evaluation.

2. Archaeological monitoring of the construction trenches was done, but our office was not notified of the intent to start monitoring, and no monitoring scope was sent to our office for review and approval. (The archaeological firm should know that such scope approval is commonly needed; our letter of January 5, 1998, spelled it out and minimally Mr. Mason was aware of that requirement.) Monitoring was done for two days at the beginning of infrastructure trenching, and the monitor concluded that only modern fill was present, and monitoring was discontinued. The presence of modern fill was a surprise, as most (if not all) parties expected intact deposits of old Lahaina to be present. It may be that primarily modern fill was present. However, Cultural Surveys and Mr. Mason's unilateral decision to terminate monitoring was not appropriate. Cultural Surveys is well aware that major scope deviations need approval by our office. Termination of continuous monitoring should have been requested of our office, and possibly a field check would have been needed to verify the presence of modern fill. It turns out that at least one intact feature of possible early 1800s age was present in one of the trenches (as seen by D. Fredericksen), and a few others could have been present. No monitor was on-site to record those features.

3. No human burials or human skeletal remains were found. The contractor properly contacted their monitor when bones were found, and the monitor found them not to be human, and the local member of the Maui/Lana'i Islands Burial Council was so notified. However, our archaeological staff and the Chair of the Burial Council were not notified. Notification would have avoided unnecessary confusion.

4. If modern fills were primarily the only archaeological deposits present at the project site, then the above problems (although not excusable) may have resulted in minimal damage to the historic record. Clearly one (and maybe a few) intact features of possible early 1800s age were present and not recorded -- they are now reburied. However, again, evidence that the fills were modern is not yet available. The trenches are now filled in, so the evidence must come from the archaeological monitoring report.

In sum, no human burials or skeletal remains were found at the project area. However, the historic preservation obligations of this project clearly were not and have not been fulfilled.

We recommend:

1. That your agency decide if fines or censure be applied to this violation. Clearly, a SMA condition and proper historic preservation compliance work did not occur (no survey, no approved monitoring plan, termination of continuous monitoring without approval). Damage to significant historic properties could have occurred if intact deposits had been present. Fortunately, it appears likely that the deposits were probably primarily modern fill (although this must still be verified). It may be that a few intact features were present and were not recorded.

2. No additional subsurface land alteration be approved for this project until the written findings of the monitoring to date (including drawn profiles of layers and photographs of the layers if available) are submitted to our office and the Maui County Cultural Resources Commission and can be evaluated. After that evaluation, then it should be determined by our office and the Commission what appropriate measures are needed prior to any further land alteration. [Minimally, we would probably recommend that more

testing be done across the parcel -- with that testing and the prior monitoring of the trenches to serve as the test units for the required inventory survey and its report. The additional testing would provide enough information to establish the nature of deposits across the parcel, to aid in the planning for the remaining land alterations for this project and for any future projects. If modern fill is indeed present with almost no intact remains of early 1800s archaeological deposits, then perhaps no further archaeological work would be needed. However, this issue cannot be evaluated at all until we and the Commission are able to review the written findings from the monitoring. Cultural Surveys Hawaii staff is scheduled to come in to our office on December 14 and brief us on their findings.] Once our office and the Commission decide what next steps are needed, then recommendations on how to proceed would be given to your agency by our office.

3. Whatever your agency decides on fines/censure or still needed historic preservation actions, we recommend that it must be made clear to Mr. Mason and their archaeological consultant Cultural Surveys Hawaii that when archaeological data recovery or monitoring is to occur, usually approval of a scope of work by our office is needed and that no major deviation from that scope can occur without prior written approval by our office and your agency. This is a safety check to prevent inappropriate mitigation and monitoring.

4. Also we recommend that Cultural Surveys Hawaii be advised that in the future when finds of possible human skeletal remains are made and members of the public aware of the finds, that when the finds turn out to be non-human, as a courtesy it would be beneficial that they call our archaeological staff and the Burial Council chair to let them know the situation. This way should any public concern arise, the proper information can be passed to your staff or directly to the public. This would prevent unnecessary confusion.

Please let us know how you would like to proceed on this matter. We will continue to advise you as we get more information. If you or your staff have any questions, please feel free to call Ross Cordy, our Branch Chief for Archaeology (692-8025).

Aloha,



Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

c Glenn Mason, Mason Architects  
Hallett Hammatt, Cultural Surveys Hawaii  
Dana Naone Hall  
Dee Fredericksen, Xamanek



BENJAMIN J. CAYETANO  
GOVERNOR OF HAWAII



'98 DEC 18 P1:10

MICHAEL D. WILSON, CHAIRPERSON  
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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamokila Boulevard  
Kapolei, Hawaii 96707

AQUATIC RESOURCES  
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WATER RESOURCE MANAGEMENT

December 15, 1998

Lisa Nuyen, Planning Director  
Planning Department  
County of Maui  
250 South High Street  
Wailuku, Maui, Hawaii 96793

LOG NO: 22665  
DOC NO: 9812RC32

Dear Ms. Nuyen:

**SUBJECT: Old Lahaina Courthouse -- SMA Violation Concerns**  
**Lahaina, Lahaina District, Maui TMK: 4-6-01: 9**

This follows up on our letter of earlier this week. On Monday (December 14, 1998), several of my staff (Ross Cordy, Branch Chief for Archaeology & Kana'i Kapeliela and Ka'iana Markell of our Burials Program) met with David Shideler of Cultural Surveys Hawaii to review the situation and their documents on the archaeological findings for this project.

Again, as a brief introduction, Glenn Mason did not have an archaeological inventory survey done. Cultural Surveys was unaware of this condition. Cultural Surveys was contracted to monitor construction. Mr. Mason did not notify them of the requirement to have a monitoring plan submitted to our office for approval. Cultural Surveys, however, should have known that a plan was usually needed and they should have so advised Mr. Mason. No monitoring plan was submitted to our office, nor was any plan approved by our office. As noted in our prior letter, we leave it up to your agency to decide if fines or censure be applied to the violations.

Cultural Surveys monitored the digging of the initial long trench from Canal Street to behind the Courthouse on October 5 & 6, 1998. They apparently were not notified when two short wing trenches were excavated, but they did evaluate these trenches when they were called to the site when a plate was found (November 17, 1998) and when possible human bones were found on November 24th (these bones being pig). They monitored both the trenches and the back dirt piles at these times. In our meeting they provided us with monitors' notes for each of the 4 days they were on site, with stratigraphic profiles and photographs of the trenches showing the layers, and with a photo and evaluation of the plate that was found. This is not an acceptable final monitoring report, but it is sufficient information to evaluate the claim that no intact cultural layers were present -- that modern fill of ca. 50-100+ cm were found on top of beach sand (the latter not cultural). Based on this evidence

1. We agree that it does appear that the trenches that were dug exposed only fill on top of non-cultural beach sand. Cultural Surveys believes that this fill was initially deposited ca. 1859 to create a flat area for the Courthouse's construction and that later intrusions into the fill occurred (e.g., utility lines, later artifacts). Evidence for fill included scattered historic artifacts and faunal remains (e.g., saw cut cow bone, the plate), scattered cobbles and boulders, and an abrupt boundary with the lower beach sand layer. We would feel more comfortable with this conclusion if our staff could observe the stratigraphy in open trenches, but the records and evaluations do seem reasonable. This suggests that no significant deposits were present in the trenches.

- a. It is possible -- based on Dee Fredericksen's observation of the trenches that at least one feature of old 1800s Lahaina vintage was present. Mr. Shideler said that the feature was not visible when his staff inspected the trenches. It was not recorded, but it is still present --buried in the trench. This is a problem, but it is relatively minor.
- b. The suggestions that the pig might have been a "sacred" interment (which we have heard of through second-hand information) also seems unfounded, as it would have been dug into fill after 1859 and after the Courthouse's construction.

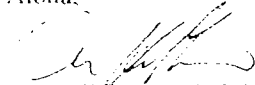
2. We are concerned that the remainder of the Courthouse area has not had its subsurface deposits evaluated, which would have occurred had an archaeological inventory survey been done. Further land alteration (landscaping and tree planting) is planned. The entire project area needs to have its subsurface deposits evaluated prior to such land alteration -- to determine if important deposits are present and, if so, how to mitigate any adverse impacts..

Thus, to address the remaining archaeological concerns, we recommend:

1. Prior to any further land alteration (including planting and tree planting), archaeological test excavations (which can be back-hoe trenches) be representatively placed around the Courthouse -- notably in the Canal/Wharf street quadrant, but also with new trenches opened in back and on the Wharf/Hotel street quadrant. This work must be done under the direction of a professional archaeologist. The trenches must be left open for inspection by our staff archaeologists and by the archaeologist attached to the Maui County Cultural Resources Commission, so we can evaluate first-hand the interpretation of fill and any new layers that might be uncovered.
2. Based on the evaluation of the open trenches, our staff and the Commission's archaeologist shall discuss any needed mitigation work for the final land alteration for this project (e.g., the planting/landscaping) and make recommendations to the County. Minimally, monitoring may be needed.
3. The archaeological findings from the initial monitoring, the test excavations and any final mitigation shall be written up as an archaeological report (to include background archival/archaeological review common to an archaeological inventory survey). That report must be acceptable to the State Historic Preservation Division.

If you have any questions, please feel free to call Ross Cordy of my staff (692-8025).

Aloha,



Don Hibbard, Administrator  
State Historic Preservation Division

RC jen

- c. H. Hammatt, Cultural Surveys Hawaii  
C. Maxwell, Chair, Maui/Lana'i Island Burial Council  
Maui County Cultural Resources Commission  
Dana Hall

180  
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STATE OF HAWAII '99 JAN 11 P12:27

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamehaha Boulevard  
Kapolei, Hawaii 96707

AQUATIC RESOURCES  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

January 6, 1999

Hallett H. Hammatt  
Cultural Surveys Hawaii  
733 North Kalaheo Avenue  
Kailua, Hawaii 96734

LOG NO: 22747 ✓  
DOC NO: 9901RC06

Dear Dr. Hammatt:

**SUBJECT: Archaeological Monitoring Report -- Lahaina Courthouse  
Lahaina, Lahaina District, Maui  
TMK: 4-6-01: 9**

We received your monitoring report on January 6, 1999 (Hammatt & Shideler 1999. Written Findings of Archaeological Monitoring at Lahaina Courthouse, Lahaina, Lahaina District, Maui Island, Hawaii. Cultural Surveys Hawaii ms.).

Actually, our letter of December 15, 1998 (Log 22628/Doc 9812RC12) was written prior to my staffs' December 14 meeting with Mr. Shideler of your staff, and that letter was superceded by our second letter of December 15, 1998 (Log 22665/Doc 9812RC32). In the second letter, we recommended that the findings from the initial monitoring be combined with the later work to come and background review material as one integrated report (similar to a survey report). Thus, we will not review this report at this time. The current report simply presents the information that Mr. Shideler brought into our office.

If you have any questions, please feel free to call Ross Cordy (692-8025).

Aloha,

A handwritten signature in black ink, appearing to read "Don Hibbard".

Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

c: Glen Mason, Mason Architect  
John Min, Planning Dept., County of Maui



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION  
Kakuhihewa Building, Room 555  
601 Kamokila Boulevard  
Kapolei, Hawaii 96707

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND  
STATE PARKS  
WATER RESOURCE MANAGEMENT

January 6, 1999

Hallett H. Hammatt  
Cultural Surveys Hawaii  
733 North Kalaheo Avenue  
Kailua, Hawaii 96734

LOG NO: 22748 ✓  
DOC NO: 9901RC07

Dear Dr. Hammatt:

**SUBJECT: Proposal for Additional Archaeological Work -- Lahaina Courthouse  
Lahaina, Lahaina District, Maui  
TMK: 4-6-01: 9**

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This responds to your written proposal sent to us on January 5, 1999 (Hammatt & Shideler 1999. Draft Proposal for an Archaeological Mitigation Plan at the Lahaina Court House, Lahaina, Lahaina District, Maui Island, Hawai'i. Cultural Surveys Hawaii ms.).

First, we should clarify that we do not consider this needed work to be mitigation work. It is work being done to fulfill the inventory survey condition and evaluate the monitoring findings to date. Assuming the County will accept the recommendations made in our second letter of December 15, 1998 to the Maui County Planning Director (Log: 22665/Doc 9812RC32), we believe the next archaeological work should keep its trenches open so our staff and the Commission's archaeologist can evaluate the deposits. Then, on-site, we can have a discussion of any needed mitigation work for the final land alteration for this project, with recommendations then formally made to the County in writing by our office and the Commission separately.

Second, we believe that the area of the Lahaina Courthouse project or the area of potential impact should be reasonable. The project has been confined to areas near the Courthouse. Thus, we suggest that the area of impact be considered to be bounded by Hotel and Canal Streets and from Wharf Street to 50 feet behind the Courthouse. Thus, the bulk of the park would not be in the study area. While the entire park is of interest and may have archaeological sites under the remaining portion, historic preservation project areas should fairly be constrained to project impact areas.

Third, the aims of this work should be to determine if all cultural layers in the project area are post-1860 fill. The nature of the terrain during human occupation times prior to the filling of the area for Courthouse construction should also be evaluated through excavation (the layers' nature) and through archival work (the background work noted in our letter). If remains of the old fort are found, that is fine. But the focus should be on the entire impact area. Given this, we suggest the following:

Hallett H. Hammatt

Page 2

1. Four 10 meter long backhoe trenches of 1.5 meter depth. (The depth is similar to your recommendation; the length is longer to give a greater perspective of deposits.)

- a. Two near Wharf Street, parallel to the street -- on each side of the Courthouse steps. These should be nearer the street corners than the steps, to give a wide view of the layers in the project area.
- b. One extending parallel to Hotel Street, halfway or more toward the Courthouse.
- c. One extending parallel to Canal Street, halfway toward the Courthouse.

2. One small 2 x 1 meter unit next to the Courthouse, to see how deep the building sits in the surrounding soils. (This conforms with your recommendation.)

The above must be dug with an archaeologist on-site. These tests should reveal quite clearly what the cultural layer and pre-cultural layer patterns are in the project area.

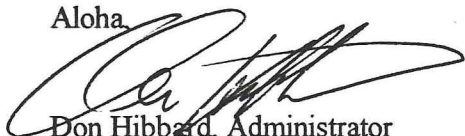
Obviously, any artifacts of likely 1800s age should be recovered and reported and any features visible in the trenches must be documented.

Again, the trenches should be kept open, so archaeologists from our office and from the Commission can view the trenches in consultation with Cultural Surveys Hawaii archaeologists.

Last, findings should be combined with those of the initial monitoring and background review, as recommended in our second December 15, 1998, letter.

We do not recommend that remaining subsurface construction work (for landscaping) be allowed to proceed yet. The above testing should take place first and be evaluated by our office and the Commission's archaeologist and recommendations be made to the County, to avoid further public concern about this project.

Aloha



Don Hibbard, Administrator  
State Historic Preservation Division

RC:jen

c: Glen Mason  
John Min, Planning Department, County of Maui

9939

CULTURAL SURVEYS HA  
Archaeological Stud

Hallett H. Hammatt, Ph.D  
733 N. Kalaheo Ave., Kailua, Hav  
Bus: (808) 262-9972/Fax: 262  
e-mail: csh@dps.net

18 December 1998

TO: Dr. Don Hibbard, Administrator, St  
FROM: Hallett H. Hammatt, Cultural Surv  
REGARDING: Response to SHPD letters pertainin  
Commission actions matter

RUSH

MAUI  
PLANNING  
DEPARTMENT

	FYI	COMMENTS	SEE ME	ASSIGN	FILE	DRAFT RESP.
LISA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
CLAYTON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AARON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JILL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ATC, TRB 12/21/98	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Due Date: \_\_\_\_\_  
By: CTJ Date: 12/21/98

Dear Dr. Hibbard:

We would like to thank the State Historic Preservation Division for its efforts to ascertain the facts in the Lahaina Courthouse/ Burial Commission actions matter. We look forward to working with the State Historic Preservation Division to bring this matter to resolution.

Given the present situation, we at Cultural Surveys Hawai'i feel the need to clarify points and address issues raised in two recent SHPD letters (Log No: 22628, Doc No. 9812RC12 dated December 15, 1998 and Log No. 22665, Doc No: 9812RC32, dated December 15, 1998) to Lisa Nuyen, Planning Director, Planning Department, County of Maui . We hope to clear up any possible remaining misunderstandings and to make Cultural Surveys Hawai'i's position clear.

**Letter from Don Hibbard to Lisa Nuyen dated December 15, 1998 (Log No: 22628, Doc No. 9812RC12)**

page 2, paragraph # 4

We wish to clarify the content and time frame of the conclusions and recommendations of Cultural Surveys. The pertinent document here is the letter from Cultural Surveys to Glen Mason dated November 27, 1998 (copy supplied to SHPD). The letter specifically proposes that "constant archaeological monitoring of excavations within the fill layer is not necessary". This conclusion was based on monitoring of the project on the following days: 10/5/1998, 10/6/1998, 11/17/1998 and 11/25/1998.

This is not quite the same as the statement in the SHPD letter that: "Cultural Surveys Hawaii concluded that there were no intact deposits of old Lahaina present". This wording could be construed to suggest something other than what Cultural Surveys intended - i.e. that our recommendation applied only to monitoring of the fill layer. Furthermore the SHPD letter suggests this determination was made in the time frame of 5 October 1998, which could be construed as hasty.

*Mahalo* for your consideration

A handwritten signature in cursive script, appearing to read "Hallett H. Hammatt", with a long horizontal line extending to the right.

Hallett H. Hammatt, Ph.D.

- cc. Ms. Lisa Nuyen
- Dr. Ross Cordy
- Mr. Kaiana Markell
- Mr. Marshall Chinen, Attorney at Law
- Ms. Lynn Otaguro, State Office of Information Practices

10100  
CULTURAL SURVEYS HAWAII, INC.  
Archaeological Studies

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733 N. Kalaheo Ave., Kailua, Hawaii 96734  
Bus: (808) 262-9972/Fax: 262-4950  
e-mail: csh@dps.net

'98 DEC 30 P12:31

DEPT OF PLANNING  
COUNTY OF MAUI  
RECEIVED

12/28/1998

TO: Dr. Don Hibbard, Administrator, State Historic Preservation Division  
FROM: Hallett H. Hammatt, Ph. D., Cultural Surveys Hawai`i  
REGARDING: Requested response of the SHPD to the Maui/Lāna`i Islands Burial  
Council actions of 10 December, 1998.

Aloha to you Dr. Don Hibbard:

We know that you are aware of the actions of the Maui/Lāna`i Islands Burial Council of 10 December, 1998 censuring Cultural Surveys Hawai`i for violating the conditions of special management area permits. This matter continues to be before the press and we are enclosing a copy of a third article from the *Maui News* dated 12/21/1998 for your information.

We seek clarification of your office's position on the following two points.

The author of the article, Ms. Valerie Monson, makes a clear reference to Cultural Surveys Hawai`i as: "...the firm that SHPD also found to be in violation of an SMA permit in Makena just a few months ago." The clear indication is that SHPD has determined Cultural Surveys Hawai`i to be responsible for the violation of two SMA permits (Makena and Lahaina Courthouse). We request your continued investigation into these matters over which we are continuing to be much accused and a statement as to your office's present position on this issue. Cultural Surveys Hawai`i maintains that the facts clearly indicate that the responsibility for compliance with the conditions of the permit lies with parties other than CSH. This seems to be the core issue underlying the Burial Council's unfortunate action and we need to know where your office stands. We have no documentation from SHPD asserting what Ms. Monson has publically claimed regarding SHPDs findings. If such documentation exists would you please forward it to us.

On a related matter you will note that the *Maui News* article of 12/21/1998 continues to pillory Cultural Surveys over notification of SHPD of the (pig) bone report. The quotation in this article that: "Hibbard said that the SHPD archaeological staff and Maxwell should have been notified of the discovery...Hibbard said contacting Maxwell and SHPD 'would have avoided unnecessary confusion'" clearly indicates in the context of the article that the SHPD holds Cultural Surveys in error over notification and further as responsible for the "unnecessary confusion". We maintain that Cultural Surveys Hawai`i is faultless in this regard. We believe that some of your staff are clear of the facts in this matter.



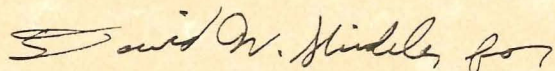
We look to you, Dr. Don Hibbard, as an administrator of SHPD/DLNR with an administrative function over the Burial Councils, to give an independent assessment of this entire affair and recommendations of whatever your office believes is appropriate. We hope, that upon a thorough and dispassionate analysis of the background of the case and of the Burial Council's actions, that your office will recommend a revocation of the censure on, amongst other grounds, that 1) the burial council acted in haste without any real effort to ascertain the facts of the matter, 2) that Cultural Surveys Hawai'i had no reasonable notification or chance of self-defense in advance of the Council's actions, and 3) that your office has in fact determined that the burden of responsibility for the violations of the SMA permit lies elsewhere.

We request that your office institute specific protocols to ensure that the hasty Maui/Lāna`i Burial Council's actions are not repeated. These protocols would deal with issues of reasonable notification of appropriate parties in advance of any Burial Council's considerations, opportunity of the accused to provide data in defense in advance of Burial Council actions, proper notification of Burial Council actions, and the opportunity of the accused to call upon appropriate State and County agencies to prepare independent "technical" evaluations in advance of Burial Council's actions.

Of-a-piece with this whole affair, we have received no direct communication from the Maui/Lāna`i Burial Council except through the *Maui News* articles. Thus we would like to, again, request that a copy of the tape of that Burial Council meeting of 10 December, 1998 be made available to Cultural Surveys as soon as possible.

We would like to thank the State Historic Preservation Division for their efforts to ascertain the facts in the Lahaina Courthouse/ Burial Commission actions matter. It has been our purpose to address any and all allegations of wrong-doing, to present the facts of the matter, and to present our position. We look forward to working with the State Historic Preservation Division to bring this matter to resolution.

*Mahalo* for your consideration



Hallett H. Hammatt, Ph.D.

cc. Ms. Lisa Nuyen  
Dr. Ross Cordy  
Mr. Kaiana Markell  
Mr. Marshall Chinen, Attorney at Law  
Ms. Lynn Otaguro, State Office of Information Practices

## County's courthouse renovation under scrutiny

By VALERIE MONSON

Staff Writer

LAHAINA -- The State Historic Preservation Division issued recommendations last week to correct the violations that have occurred during the county's renovation of the Old Lahaina Courthouse and asked the Maui Planning Department to decide if fines or censure are warranted.

SHPD administrator Don Hibbard filed two reports Wednesday, pointing out that no archaeological inventory survey had been done and no archaeological monitoring plan had been filed or approved, as were required. While Hibbard was satisfied that human bones had not been disturbed during digging, he was not pleased with what took place overall in the known historic district of Lahaina.

"In sum, no human burials or skeletal remains were found at the project area," said Hibbard in one of the reports. "However, the historic preservation obligations of this project clearly were not and have not been fulfilled."

Planning Director Lisa Nuyen said Friday that she hadn't yet seen the reports addressed to her and couldn't comment on whether fines or censure would be imposed by the department against any of the various agencies or firms working on the project.

"It's still a matter of investigation," she said, adding that her office was talking to SHPD, the mayor's office and others involved "to understand what happened."

Nuyen said she expects to update the Maui Planning Commission on the issue at its Jan. 12 meeting when the special management area (SMA) permit violations will come up on the agenda.

Earlier this month, the Maui/Lanai Islands Burial Council unanimously voted to censure Oahu-based archaeologist Hallett Hammatt and his firm, Cultural Surveys Hawaii, for its apparent role in the violations. Members also blasted Maui County for possibly issuing a building permit for the project without filing a required report.

Hammatt faxed a four-page letter to The Maui News on Friday night, taking issue with the Burial Council. He was particularly upset that his firm had not received "reasonable notification" of the Dec. 10 meeting to present its side of the case.

"We feel that the lack of official notification is clearly inappropriate, along with the entirety of the Maui/Lanai Islands Burial Council actions," he said. "An injustice has been done to Cultural Surveys Hawaii."

Glenn Mason of Mason Architects, the overseeing architect of the entire project, told The Maui News Thursday that he accepted at least partial responsibility for the violations at the courthouse and said he felt the Burial Council was too harsh in its criticism of Cultural Surveys, the firm that SHPD also found to be in violation of an SMA permit in Makena just a few months ago. \*

"What's being said about this project is way out of line," said Mason.

He said he hopes all parties can come together, correct the mistakes that were made and work to make the renovated courthouse, built in 1859 during the reign of the Hawaiian monarchy, a source of pride for everyone.

"I'm hoping people can make this constructive and not destructive," Mason said of future discussions. He added that this was the first time he'd applied for an SMA permit and "some things honestly slipped through." He admitted, however, that communication between various agencies on the project could have been better.

Mason also said that no major damage had occurred.

"The bottom line is nothing was found," he said. "Literally, no harm was done. That doesn't excuse the fact that the procedures should have been followed better. I think everyone is saying now, 'We need to work on this to do a better job.'"

But Dana Naone Hall, a former Burial Council member who first made the SMA permit violations public, was disturbed that so many precautions had been taken and apparently ignored within the Lahaina Historic District, an area well-known to contain subsurface cultural layers or burials. Hall produced several letters from the Planning Department and SHPD to Mason and Maui County Managing Director Richard Haake, among others, with requirements that were never followed. In fact, in a letter sent Jan. 5, 1998, Hibbard specifically told the Land Use and Codes Administration to add SHPD's monitoring recommendations to the first sheet of the construction plans "to avoid any misunderstandings with utility and construction contractors."

The Burial Council became involved in the project when it learned that bones had been unearthed then covered up without the knowledge of its own chairman, Charles Kauluwehi Maxwell Sr. In the reports, Hibbard said that the SHPD archaeological staff and Maxwell should have been notified of the discovery. Although Hibbard has accepted the opinion of a Cultural Surveys archaeologist that the bones were those of a pig, Hibbard said contacting Maxwell and SHPD "would have avoided unnecessary confusion."

]

Hibbard found fault with both Cultural Surveys and Mason for starting archaeological monitoring without notifying SHPD and for failing to submit a monitoring scope (the size and details of the area that would be monitored by an archaeologist) for SHPD review and approval.

"The archaeological firm should know that such scope approval is commonly needed," wrote Hibbard. "Our letter of Jan. 5, 1998, spelled it out and minimally, Mr. Mason was aware of that requirement."

Hammatt, who denied receiving a copy of the Jan. 5 letter, said while his firm was aware that scope approval is "commonly" needed, "we were not aware that it was needed in this case. In fact, we had good reason to believe otherwise."

Hibbard also criticized Cultural Surveys for not knowing that an archaeological survey was required. Even though Mason Architects took responsibility for failing to inform Cultural Surveys that the survey was required, Cultural Surveys "should have known that a plan was usually needed and they should have so advised Mr. Mason."

Hammatt said that, again, his firm was aware that a plan is ``usually" needed, but was ``of the understanding that no such plan was needed in this case."

Hibbard recommended that, before any further land alteration at the site takes place, more testing or trenching be done under the direction of a professional archaeologist. All trenches, he added, ``must be left open for inspection by our staff archaeologists and by the archaeologist attached to the Maui County Cultural Resources Commission; so we can evaluate firsthand the interpretation of fill and any new layers that might be uncovered."

After evaluating information gathered from the trenches, recommendations will be made to the county regarding any necessary changes. Those findings and mitigation plan must then be submitted to -- and approved by -- SHPD.

Mason indicated he would follow those requirements.

``I'm just interested in fixing it now," he said.

The issue will get repeated public review next month. In addition to coming up before the Planning Commission, the courthouse violations will also be addressed by the Cultural Resources Commission on Jan. 7 in Lahaina and the Burial Council, tentatively scheduled to meet Jan. 28 in Wailuku.

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