



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION

O'AHU ISLAND BURIAL COUNCIL MEETING MINUTES

DATE: WEDNESDAY, MAY 13, 2009

TIME: 10:00 A.M.

PLACE: DEPARTMENT OF LAND AND NATURAL RESOURCES
1151 PUNCHBOWL STREET, ROOM 132
HONOLULU, HAWAII 96813

- I. CALL TO ORDER.** Chairman McQuivey called the meeting to order at 10:20 a.m. Hinaleimoana Falemei offered an opening pule.
- II. ROLL CALL.** Quorum was established with seven (7) commissioners present.
- III. INTRODUCTION OF COUNCIL MEMBERS, SHPD STAFF and DEPUTY AG.**
- OIBC Present:** Leimaile Quiteves Jace McQuivey Chuck Ehrhorn
Kawika McKeague Kehau Abad
Alice Greenwood Hinaleimoana Falemei
- OIBC Excused:** Shad Kane Cy Bridges Andy Keliikoa
Kehau Kruse Aaron Mahi
- SHPD Staff:** Nancy McMahan, Deputy SHPO/State Archaeologist
Linda Kaleo Paik, Cultural Specialist
- Deputy AG:** Rowena Somerville
- Public Attendees:** Anthony Benzon Amelia Gora Kekuewa Kikilo
Hilani Alomai Kalani Fronda Jean Rason
Tara McQuivey Jay & Mili McQuivey William Aila Sherrill Erickson
Thomas Shirai Jr. Haaheo Guanson David W. Shidler Greg Dicksons
Lani Ma'a Lapalio Kaleo Patterson Kealoha Kuhia Hal Hammett
Moses Haia Faith Miyamoto Randall Sakamoto June Cleghorn
Major David Haddock Kanoho Koko Kim Evans

IV. OPENING REMARKS. Protocol to address the council was explained by Chairman McQuivey including time limit of 4 minutes for testimony. McKeague, Falemei, and Quiteves expressed their appreciation for Chairman McQuivey's leadership (due to his term expiring in June, 2009). The council offered a deeply felt Mahalo mele to McQuivey. McQuivey thanked the OIBC for the opportunity to work with the OIBC and acknowledged the enrichment gained from the experience.

V. APPROVAL OF MEETING MINUTES. Discussion included:

- Corrections to **April 8, 2009 minutes** on page 5 for Moses Haia, Item J. He later corrected his statements by email. The minutes reflected his mana'o correctly at the meeting.
- Correction by Abad on page 4, item 1. She will email her statement for the record on the awarding of land and when a person passes on and the process of how the land award reverts or is passed on.

Motion by Hinaleimoana Falemei to approve the April 8, 2009 minutes as corrected, **seconded** by Leimaile Quiteves. **The motion passed by unanimous vote.**

VI. BUSINESS

1. ACTION ITEMS FOR DETERMINATION

A. Recognition for Lineal/Cultural Descendant to Remains reinterred at Pu'uiki Cemetery from an adjacent property, Kamananui Ahupua'a, Waialua District, Island of O'ahu [TMK: (1) 6-6-01: 08, 51].

SHPD staffer Kaleo Paik read the recommendation into the record (copy of memo distributed to all OIBC).

Kealoha Kuhia addressed the OIBC to acknowledge his claim and that his 'ohana wants to participate with the reinterment which has been done at Puiki cemetery. He detailed his genealogy to make claims to bring 'ohana together from Maui to O'ahu inclusive. Further, he elaborated on the spelling of his last name from Kuhia to his dad's spelling of Kuhea due to different spelling on birth certificates. Kuhea is the spelling of his ancestors on documents.

Testimony by Mr. Tom Shirai to deny the recommendation to recognize Mr. Kuhia to the na iwi from Waialua because it is a paper genealogy. Other reasons from Shirai includes:

- (1) Kuhia has never lived in Waialua,
- (2) Kuhia has not been involved in any burials at Waialua,
- (3) and that the Na Iwi kupuna has already been reinterred by Mr. Shirai. Shirai has worked with the cemetery land owners to document the activities at Puuiki (i.e., vandalism and correcting those wrongs), and lastly;
- (4) The organization is the community that have connections to Waialua and he has not participated in the community.

Discussion included the following:

- Alice Greenwood notes the recognition is for cultural descendancy. Staff concurs it is for cultural not lineal as defined 13-300 (2).

- Shirai opposes Kuhia's genealogical connection to the area because Kuhia has not stepped foot there nor anyone from his family is buried there. He shared the cemetery list of all burials there and says there is nothing to tie Kuhia to that place. Shirai does not want to comment on the genealogy connections. He does not want to be selfish. The connections for him are great down there – the community knows all the 'ohana who are there from plantation time to now. Everyone knows everyone from living with each other in the community. There are other families too not just his 'ohana. Shirai said it's about the burials, not about grabbing land.
- Amelia Gora introduced herself as a recognized descendant for the Nuuanu area pointed out that both Shirai and Kuhia are related to her lineage too. The point is that these cousins are taking care and not want a fight. For genealogy, my father folks all raised in Waialua too...a lot of cousinships there and at Punaluu too. Gora said she kept a distance and now comes back to this work. She sees Kuhia as a representative of our family too when he makes claims. Also, Gora recognizes both of them as my 'ohana.
- Jean Rason stated we do not need this disagreement, it creates hewa. Rather than create more hewa here...you don't actually physically live on that 'aina...you have been uprooted, not your choice its cultural survival...it something should not be a problem between ohana. Not want to see anyone fight over anything even if he not be there in a long time, better go kuka somewhere and solve this misunderstanding. The community still has the say, you the one malama and that is the strong point in itself and have a little more weight.
- Kaleo Patterson has ohana buried in that area too. The system we have now not concern us with all we want to do, a flaw is lack of knowing that there are rights for active 'ohana in asserting rights to malama na iwi kupuna. There are ahupua'a tenants rights. There can be a dilemma when someone comes with genealogy to that place too.
 - McQuivey discussed definition of cultural descendency (the AG read the definition again) and wants this to be a legal outcome. Somerville read 13-300 (2) genealogical connections. Quiteves commented that the first criteria is to show genealogical links to ancestors of the ahupua'a who are also buried in the area... it is a cultural link to native Hawaiian ancestors who once resided or are buried or both in the area.
 - Abad does this person meet the criteria set by the law – yes. However, there is no active burial case here. Why are we discussing this case? I would vote yes on this. If the issue before us to relocate than Shirai has more weight than Kuhia. That's not the issue here.
- Shirai stated an apology if came across negative. He is open to mana'o of Gora and Patterson. McQuivey appreciates Shirai's passion to malama na iwi. Greenwood said she has experienced similar as Kuhia – 'ohana from different places – and the government consults with organizations not the 'ohana.

- Patterson added that his ohana is buried in that area too. His concern is that ahupua'a tenants actively involved need to be acknowledged as well as those who are genealogically associated with the burials or the ahupua'a. We all need to work things out with the community involved as well as those who have connections to the place and to the people.

- The Chairman had the AG read the definition of a recognized claimant and note that council is looking for a legal resolution here. Discussion by OIBC on the definition and whether the Kuhia request meets the criteria. It was noted that there is no burial issue as the remains have been reinterred at the cemetery. Also, there is a common ground to support all who malama na iwi kupuna, to all the families who come forward to kokua and the need to communicate and work with each other. The focus is to malama na iwi kupuna.
- Kuhia reiterated his line is through Kaumananui, an ali'i who was awarded Apana 7 and who is buried in the church yard at Liliuokalani Church, Waialua. That's our uncle's grave.

MOTION by Greenwood, seconded by McKeague to accept the recommendation.

No additional discussion by OIBC.

Vote was unanimous. Motion passed by unanimous vote.

Note: 11:30 a.m. No break requested, meeting moves forward.

MOVED ITEM 2.D. The Chairman asked the OIBC to take out of order Item 2.D as the information from this item will help with Action Item V. B. There were no objections from the OIBC. The change in agenda order was by consensus.

D. Kyo-ya Hotels and Resorts, LP for Princess Ka'iulani Renovation and Redevelopment Project and Diamond Head Tower Redevelopment Project Waikiki Ahupua'a, Kona District, Island of Oahu. [TMK: (1) 2-6-022: 001, 041; 2-6-01: 12, 13]

Information/Discussion/Recommendation: Update presentation by Kyo-ya Hotels and Resorts, LP, Cultural Surveys Hawai'i, Inc. and Aukahi, on the proposed Princess Ka'iulani Renovation and Redevelopment Project and the Diamond Head Tower Redevelopment Project.

Presentation by Dave Shidler of Cultural Surveys Hawaii (CSH) with updates on the Princess Kaiulani project:

- The work on the Archaeological Inventory Survey has moved forward as discussed previously with OIBC and the SHPD.
- The work there encountered an extended burial encountered in east corner (former Ainahau estate) trench of project, the 22 trenches revealed 5 additional na iwi fragments in the south corner where the old congregational church was once located. All the burials in the south corner was moved by Kawaiaha'o Church and the land changed owners.
- Regarding the ethnicity of the extended burial it is CSH's belief that in 1825 there was a change of burial practices from flex to extended, so CSH cannot say absolutely this post-dates 1825. If the ethnicity is undetermined, than the SHPD makes the determination. CSH notes that east burial is close to LCA2084 which is relatively close to that burial. The burials at the church

cemetery which was about 180 feet from the eastern burial was overwhelming Hawaiian.

- CSH notes that the burial site is in the makai portion of the former Ainahau estate established by Archibald Cleghorn in 1872 and associated with Princess Kaiulani. Shidler believes it is Hawaiian based on the demographics in that time frame, geographic location to a kuleana and the church's predominantly Hawaiian burials. In informal discussion with SHPD it was raised that this burial within Ainahau, which was a rather cosmopolitan place at that time, could be a haole gardener or a Chinese cook, or non-Hawaiian person. Shidler said he cannot rule that out; he does not know for sure and just have an opinion. CSH is deferring to SHPD in the burden of proof required for this determination.
- In the case of former church cemetery, records show that all na iwi were removed in 1916. A high number of the small quantity were Hawaiians buried there between 1880 and 1907, then later removed to Kawaiaha'o Church. All of the remains found were disturbed by prior development. Shidler stated he would again defer to SHPD as to that being a native Hawaiian site as the church no longer considered it a cemetery once all the burials were located and the land was sold. In other words, the church made an effort to remove it as a native Hawaiian burial site when it relocated all of the burials.
- CSH reiterated that all na iwi are located in situ in the trenches/area found. There is very limited traffic in the areas of the burials.
- Shidler shared updates on the Moana project where extensive testing done in the 52 square meter and encountered one human toe bone in disturbed context from prior development. Again the fragment was left in place with determination to the SHPD. CSH thinks it is native Hawaiian, older than 50 years, and will defer again to SHPD to make an ethnic determination. It was noted that any lineal or cultural claims will be on hold until an ethnic determination is made.
- SHPS staffer Kaleo Paik reminded the council that when the SHPD makes a determination it does not come to the OIBC.
- Lani Lapalio of Aukahi Inc., added they have begun discussions with the recognized Waikiki cultural descendants.
- Ehrhorn commented that the previous church cemetery is not a Hawaiian burial site because the church removed and relocated all the burials. CSH notes it was a cemetery from 1916 until the church in good faith relocated all the burials and sold the land.

Testimony from public:

- Kuhia stated their 'ohana have a claim to na iwi there, as a cultural descendant to an ancestor who once lived there. The iwi will be cared for, found in the quarry. What do with the fragments and where bury...perhaps the Waikiki mound. Kanu as soon as possible so they can be safe too.

- Shirai added he was also raised in Kapahulu, near old post office, and went to Ala Wai Elementary. On weekends, he would go country with his grandparents. Shirai described his family work, live, play in Waikiki and the connections and being pa'a in one place, yet one's family can be live and be from different areas too.

NOTE: There was no recommendations on this item from the OIBC.

**B. Recognition for Lineal/Cultural Descendants to Human Remains located at Kyo-ya Hotel & Resorts Project, Waikiki Ahupua'a, Kona District, Island of O'ahu
[TMK: 2-6-022: 001 and 2-6-001: 12, 13]**

Information/Discussion/Determination: Staff recommendation for cultural descendant.

SHPD staffer Paik stated it's been discussed that CSH has not been able to make an ethnic recommendation, and that the OIBC only can make recommendation on Hawaiian burials. In short, until the SHPD makes the determination, the OIBC cannot vote on this recommendation. McMahon added that the Archaeological Inventory Survey (AIS) report from CSH should provide the documentation to the SHPD for review and comments.

SHPD staff recommended to defer this item until a determination is made on the remains ethnicity which has not been done as the AIS is yet to be reviewed by the department. The claimant filing for recognition is Kuhia who does not agree with the process to determine ethnicity. McQuivey assured Kuhia this is not a rejection, but that there is a process in place and his claim will be considered in due time.

2. INFORMATIONAL/RECOMMENDATION ITEMS

A. Informational Update on the Honolulu Rapid Transit Honouliuli, Ho'ae'ae, Waikele, Waipi'o, Waiawa, Manana, Waimano, Waiiau, Waimalu, Kalauao, 'Aiea, Halawa, Moanalua, Kahauiki, Kapalama, Nu'uaniu, Pauoa, Makiki, Manoa, and Waikiki Ahupua'a, 'Ewa and Kona Districts, Island of O'ahu. [TMK: Various] Information/Discussion/Recommendation: Council discussion and recommendations on the subject project.

- Abad updated the council on the sub-committee's meeting which included:
 1. Concern about what needs to be done between now and timeframe and back from there and that the Programmatic Agreement (PA) have to be done by June.
 2. There is still missing information as we don't know what the mitigation will be when there is a burial -- what will happen, the criteria, timeframe.
 3. Need to work with the task force for stronger AIS before construction occurs. However, it's a short time and we don't know what that BTP will look like. The task force is willing to have more frequent meetings with Transit team to evaluate OIBC participation.
- Faith Miyamoto of the City Transit team thanked the OIBC for their input. Transit has come up with documents that has everyone's concerns. In regards to a Memorandum of Agreement (MOA) for

cultural and a Programmatic Agreement (PA) for archaeological, there now will be only one document. It is unknown if MOA or a PA, but the concerns will be in one document.

- Miyamoto said whether OIBC be an invited signatory versus a concurring party -- that issue repeatedly brought up with FTA and they will make the decision on that. Miyamoto sent a letter supporting OIBC be a signatory of sorts. There's a six week timeframe for the document. They are waiting on an answer from FTA. Further, Miyamoto notes that an MOA will be specific on what actions will be taken, whereas in a PA, we do something but don't have all the details now.
- McMahon added that the majority of historical places or historic sites are architecture, i.e. buildings, Chinatown, Pearl Harbor is a national landmark.
- Miyamoto added there is a draft PA with comments and incorporates all the historic mitigation in the original PA comments. The PA would identify all those plans in the future. We would put together a BTP without specifics, but what it might look like with an outline to include those things OIBC be comfortable with. Miyamoto notes that the OIBC is very sincere about what looking for, in an outline form and how it will be implemented and not shortcuts – want to see a mitigation plan. This was discussed this morning task force meeting and we will work on a BTP outline then have work sessions to discuss as the subcommittee wants to meet more frequently and get some things done in that time.

NOTE: There were no comments from the public.

B. Kamehameha Schools for Kāpaeloa Project, Kawailoa Ahupua'a, Waialua District, Island of O'ahu. [TMK: (1) 6-1-003: 023, 27, 37-39, 41]. Information/Discussion/Recommendation: Presentation by Kamehameha Schools, Cultural Surveys Hawai'i, Inc. and Group 70 International, Inc., on the proposed Kāpaeloa project near Waimea Bay.

Both commissioners McKeague and Abad recused due to professional work with this project. This created a shortage for quorum. Jace asked the Deputy AG to rule on this situation. Deputy AG Sommerlin noted this was an informational presentation. No comments can be made by the 'recused' commissioners. Others may make comments only on the presentation.

Kim Evans, planner with Group 70, Kalani Fronda and Kikiloi Kikuewa from KSBE, and Doug Borthwick from CSH made a presentation on the proposed project located in Haleiwa. The project is preliminary and still conceptual before go into planning. KSBE is part of the North Shore regional plan with two parcels for development. An aerial map was displayed to show the parcels are located in Haleiwa along the shoreline for development, there is previous archaeology done in the area, and they are doing outreach to the families who lived there for generations. At this point in surveying the area where shoreline is there will be a 40' set back, and any sensitive areas will be minimized at the shoreline. The team has met with SHPD, OHA, and today is a courtesy call to OIBC. Next meetings will be with community folks, families, etc. of North shore area. It is very early in the planning. They will also consult with Hui Malama I Na Kupuna O Hawaii Nei regarding burials as well as the core families in the community.

Note: Under advice of counsel regarding the quorum, the council can take comments only from the audience. Public testimony from the following included:

- Shirai said KSBE met last month with community and is doing a good job.

- Kuhia will be recognized for Waialua and be notified when this job is coming through.

Note: Chairman Mckeague came out of recuse. Abad is still recused for the next item. Quorum is established again for the meeting.

- C. Kaka'ako Master Plan for Kamehameha Schools Property, Kaka'ako Ahupua'a, Kona District, Island of O'ahu.** [TMK: 2-1-30:01; 2-1-53: 4, 5, 27; 2-1-54: 1, 25, 27, 28, 32; 2-1-55; 1-3, 6, 9, 17, 18, 21, 26, 32-35, 38; 2-1-56: 2-3, 7, 8]. **Information/Discussion/Recommendation:** Presentation by Kamehameha Schools, Cultural Surveys Hawai'i, Inc. and Aukahi, on the proposed archaeological inventory survey plan for phase 1B, three commercial properties on Keawe Street, on Kamehameha Schools property in Kaka'ako.

Presentation by Lani Lapalio of Aukahi Inc., Hal Hammett of CSH, Kekuewa of KSBE. The presentation included the following points:

- Update on the master plan which went to the Land Commission last week and the public comment period started. Folks can go to HCDA website www.hcdaweb@org and the master plan is on the website too.
- The next phase for the AIS of the Keawe parcels (see handout map of parcels). That is the Keawe Street commercial block. KSBE will do consultation process with SHPD, and others as before and seek the same kind of info on historic sites, burials etc. up to modern times.
- Hammett discussed the trenching on page 13, yellow lines are the trenches in the AIS plan. Mauka lot 35 trenches are being proposed there with Lot 4 Alu Like parcel with a building and 8 trenches. Commercial lot 17 trenches (no.24) will focus on open areas and propose significant testing in the buildings too, which is being innovative and pro-active work. Context of testing for AIS, we did GPS studies and find that process to see can plot out sand layers here for potential burials, identify the sand layers with higher risk.
- There has been three meetings with recognized claimants of the ahupua'a. Discussion is ongoing as there are no burials encountered at this time.

Public comment included:

- Kuhia stated there are a lot of kupuna to malama, this is good, we got in ground level here and no kupuna found. They are working with Lani and everything up on the table for the project. His ohana will malama na iwi.

[D. moved to second item on agenda by consensus.]

- E. Legislative Task Force. Information/Discussion/Recommendation:** Council discussion and recommendation on SB1083, HB1662, SB1642, HB910, SB1004 and SB86. McKeague had nothing to report on any formal actions on above bills.

- F. Update on vacancies to the O'ahu Island Burial Council. Information /Discussion / Recommendation.** [Division update on members of the Council whose terms are ending on June 30, 2009 and update on progress in submitting names to the Governor for two seats that will be vacated for representation in the large landowner/developer category.] **This item deferred by the chairman.**

G. Status Update on Section 106/NAGPRA Correspondence.

Information/Discussion/Recommendation: Report from the council's designees established to screen the review of Section 106/NAGPRA Correspondence. Council updates, discussion and recommendations.

Greenwood expressed concerns with the Army on sensitive areas for their projects. She has called them and got no answers, sent email and still no answers on this concern. The 106 committee received a report on bridge in Waianae which is a concern as it is ready to collapse, the community elders have communicated on this matter.

H. Kaena Point Advisory Committee Update

Information/Discussion: Councilwoman Quiteves to give an update on the Kaena Point project under DLNR.

Quiteves reported that the advisory council is:

- Addressing the fence issue.
- Working on fact that most damage comes from off-road vehicles to the 'aina
- Working with DOCARE on enforcement of current laws
- Working with fisherfolks on their concerns (i.e. night fishing, access)
- Considering a survey for traditional cultural practices
- Concerned about the sand dunes and any burials there

Quiteves wanted the OIBC to support her representation there. Also, SHPD is on the council but did not see Cayan at the meeting. McMahon noted that Cayan is appointed to represent SHPD as advisory only.

I. Marine Corp Base Hawaii Projects Update, Ahupua'a of Kāne'ohe, Ko'olau Poko District, Island of O'ahu. Information/Discussion/Recommendation: Council discussion and recommendations with cultural resource personnel from Kaneohe Marine Corp Base Hawai'i.

Major Haddock and June Cleghorn provided updates. Haddock apologized for missing the last two meetings and will make an effort to attend if not traveling. The Programmatic Agreement (PA) for the Mokapu burials was discussed in February and the timeline with a list of items to do to get the PA drafted and reviewed. The Draft PA is almost done, then it goes through an internal review by the base agencies. Then it will be presented to the OIBC.

The MCBH is also having a claimants meeting in late June to discuss the PA and reinterments. June Cleghorn will send a letter of invitation to the OIBC to attend.

Last time the DOD was in process of native Hawaiian consultation protocol – part included training so MCHB and cultural communication course from DOD, Hawaiian community, OHA, Trustees and staff. There was positive outcome for more DOD courses to improve communications and consultation with the Hawaiian community.

OIBC discussion on the following items:

- Abad commented that the OIBC is a venue for others who cannot participate with the DOD. She felt the claimants meeting is a good place to discuss protocol on consultation.
- McQuivey asked if the OIBC is still a claimant and if so, who is representing the OIBC. Abad recalled years ago the OIBC withdrew as a claimant since the families came forward and they would take the lead. It was also noted that Aaron Mahi would attend the meetings not as 'ohana but as OIBC.
- McQuivey asked council to formalize that involvement since on paper the OIBC is a claimant. Mahi will continue to attend and share information with the council. Cleghorn will send an invite to the meetings as a courtesy.

Public comments included the following:

- Kealoha Kuhia filed his genealogy for Mokapu with the Pratt 'Ohana. He read about Mokapu, the metes and bounds of Kaneohe....this is LCA 4452 for Queen Kalama. He stated that we're anti-America and want military to leave our land. Here to fight back for our land from America ...we never gone to the meeting, but we will be there for the military to pack their bags and leave.

J. Update on the Ke'eaumoku Wal-Mart burials. Information/Discussion: Update on the burials found at the Wal-Mart store on Ke'eaumoku Street. Chairman McQuivey invited Moses Haia of Native Hawaiian Legal Corporation (NHLC) to clarify his statements in the previous minutes for the record. Haia thanked McQuivey for the courtesy.

McQuivey stated the OIBC has requested updates on this litigation, there were none which indicated a disconnect with SHPD and the AG office. He notes that attorneys cannot talk about everything in public forum, we are not asking that. We are asking for an update and why the na iwi kupuna is being held up from being reinterred.

McQuivey reported what he knows as follows:

1. That the case is close to a settlement agreement.
2. That no one can discuss details since it is not finalized. Draft and signatories in process. Appeal coming and how affect OIBC is unknown.
3. That the OIBC is concerned about na iwi kupuna, how quick to get them kanu as right now they are the evidence in case. That is the court system and it takes time.
4. That there is concern that the burial site is too small and that part of the settlement will be a larger vault.
5. That all the recognized claimants are in agreement for reinterment as soon as possible.

Public comments included the following:

- Kuhia stated he is also a claimant and that the 'ohana has a burial treatment plan.
- Haia noted that when he left the last meeting, he realized he had switched the two cases he is involved in. Further in the matter of the Wal-Mart case, the SHPS is a defendant not the OIBC. Please make that one correction.

Abad commented that the OIBC should be updated and consulted on na iwi kupuna there. McQuivey noted it may be a matter of governance. Further, the chairman noted he will be on vacation next month and not attending the OIBC. He recommended there be a vote for a new chairman, and once the council's make up is finalized in June to determine his participation and that Vice-chairman McKeague will be in charge next month.

VII. SHPD INADVERTENT DISCOVERY REPORT

None for the month April 2009.

VI. ADJOURNMENT. Motion by Ehrhorn to adjourn, seconded by McKeague. Meeting ended at 1:50 p.m. #

NOTE: Meeting minutes recreated in September, 2009 from tape of OIBC meeting on 5/13/09. There was difficulty hearing many of the speakers.