



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD. STE 555
KAPOLEI, HAWAII 96707

Kaua'i Ni'ihau Island Burial Council
Meeting Minutes

DATE: Wednesday, November 18, 2015
TIME: 09:00 am to 10:50 am
PLACE: Department of Transportation
Conference Room
1720 Haleukana Street
Lihue, Hawaii 96766

KNIBC MEMBERS: Keith Yap, Landowner/Developer Representative
Mauna Kea Trask, Koloa Representative
Janet Kao Bradford, Lihue Representative
Wayne Palala Harada, Napali Representative

ABSENT/EXCUSED: Barbara Say, Hanalei Representative
Nathan Kalama, Kawaihau Representative
Debra Ruiz, Waimea Representative
Leiana Robinson, Niihau Representative

SHPD STAFF: Kauanoe Hoomanawanui, Kauai Island Burial Sites Specialists
Regina Hilo, Oahu Island Burial Sites Specialist

GUESTS: Liberta Albao, Queen Kapule, Hawaii Civic Club
Robin Danner, Anahola Hawaiian Homes Association (AHHA)
Kaliko Santos, Office of Hawaiian Affairs (OHA)-Kauai
Missy Kamai, Cultural Surveys Hawaii (CSH)
Bill Folk, Cultural Surveys Hawaii (CSH)
Puanani Rogers, AMAC/Aha Moku-Kauai
Aulii Mitchell, Cultural Surveys Hawaii (CSH)
Jim Powell, Scientific Consultants Solutions (SCS)
Eric Fujikawa, County Of Kauai (COK)
Donald Smith, Department of Transportation (DOT)
Fred Reyes, Department of Transportation (DOT)

I. OPEN REMARKS:

Keith Yap, KNIBC Chair called the meeting to order at 9:02am.

II. ROLL CALL/PULE:

Lihue Representative Janet Kao Bradford gave pule.

Chairman Yap, KNIBC members and the SHPD staff introduced themselves.

III. APPROVAL OF MINUTES

A. July 15, 2015

Chairman Yap deferred the minutes to the next upcoming meeting due to no quorum.

B. September 16, 2015

Chairman Yap deferred the minutes to the next upcoming meeting due to no quorum.

IV. BUSINESS

A. Kumu Camp, Anahola Ahupua'a, Ko'olau District, Island of Kauai, and TMK (4) 4-8-001:001. Information/Discussion/Update: Discussion and update on the consultation listed above. Presentation by Anahola Hawaiian Homes Association.

Robin Danner of Anahola Hawaiian Homes Association introduced herself. The president Kipukai Kualii was not able to attend so they have asked me to represent them today. The association was asked to come and talk story with Kauai Niihau Island Burial Council (KNIBC) regarding the Kumu Camp project. We have been three years in operation and five years in planning. We are in the Environmental Assessment (EA) phase and acting out on the after the fact assessment. After our project was developed Department of Hawaiian Homes Land (DHHL) directed us to follow through with the after the fact environmental assessment. The State Historic Preservation Division (SHPD) has asked us to update the KNIBC on our status. I have brought a map describing our project along the Anahola Bay on an 8 acre parcel with 5 acres being used for the Kumu camp. In 2009 we first started and on 2010 we were given a right of entry by the department. We envisioned a camp ground for homesteaders and the general public. The area where Kumu camp and near the beach park is the second largest area of drug traffic on the island. In 2010 we developed a camp ground and began to bring back families to the property. We started to clean out the area and brought over the tentalows from the Molokai Ranch. They are attached to basic platforms. The improvements are all temporary platforms, a total of fifteen. The environmental assessment in which Kauanoe has a copy includes a finding of no significant impact. The only structures are the ten platforms with tentalow structures a pavilion and a comfort station. The comfort station is not operable till the EA is completed. Before the EA in 2010 we hired an archaeologist to perform testing pits throughout the property. Members of the community such as Luella Lemn suggested there are no burial grounds in the area. The Archaeological survey test pits did not discover any burials. The elders of Anahola say the reason no burials were found is that the plantation folk planted the ironwood trees and the area was a moving sand area. The survey indicated that the moving sand would not allow for proper burial grounds. The survey test pits confirmed that finding, as well as the mitigators such as if burials are found we would follow the proper burial laws. We wanted to share through the survey and the impact assessment that included community members that indeed there are no burials.

Chairman Yap asks if the design is temporary is the tents temporary. Danner answers we hope not as we spent a year and a half with volunteers picking up some of the most horrendous things. The paraphernalia we found led us to take a year and a half to make sure the grounds were safe. That experience was emotional and painful so our board felt the land was severely abused and we feel a campground that did not put in deep foundations. The campsite locations would only be located on post and pier in areas that were allowable. The experience of cleaning the area led us to develop with only surface impacts. Yap asked if the comfort stations will allow for you to go underground. Danner answers we have two options a septic tank that would be pumped and the second would be to install a permanent septic system per the department of health. Once the EA is done a final decision will be made if we want a tank waste water system or a septic system in the ground. SHPD's recommendation only recommends we have an archaeological monitor while we dig the septic system or tank installation. Yap asks if you are operating and Danner answered yes we are operating with a portable toilet.

Vice Chairman Trask asks if there is a burial site in the area. Hoomanawanui answers we do have a burial site number within the TMK, 50-30-08-116. Danner adds it's located on the 3 acres not being used by Kumu

Camp on the same TMK, SHPD did issue a letter. Hoomanawanui adds there is a burial with a site number however the Archaeological Survey that did do test pits did not locate burials in the same area described to have burials. Danner adds the EA went deeper than the survey completed by Dye to conclude there are no burials in the area. Trasks asks if the group consulted with SHPD prior to the proposed project. Danner answers no only through the after the fact EA process did we begin to consult. Trasks states we as council members should be concerned as in HRS §6e-8 there is compliance by other government agencies which are required to consult with SHPD. To me DHHL has the most noble of goals through the Hawaiian homes commission act establishing homesteads and engaging in agricultural and commercial activities. In protecting burials I always site this saying by Kamakau, “aohe mana ai loa I ka mea make” not even a mouth full of food could feed the dead. If a development will affect a burial site with a site number we will work carefully. If there is a burial site with a site number the criteria established must have been sufficient and we shall work to protect it. If it’s on DHHL and they are housing native Hawaiians on a burial site we should consider the living. If it’s a project not housing native Hawaiians and in fact a commercial enterprise found on trip advisor I think it’s a different consideration. If the will is there at DHHL to fast track a project to house tourist there should be a concurrent will to house native Hawaiians. There are homeless issues and Hawaiians should not be homeless in Hawaii. This is concerning because of the after the fact issues. The process is important. DHHL does not have the ability to avoid the 6E-8 statute and we do think it’s appropriate to ask for you to come to the next meeting to discuss further. Danner states first and foremost we appreciate your commentary about housing as we have over 20,000 people on the wait list. The Hawaiian homes commission act is often misrepresented the act states three major uses. One homes farms and ranches and number two nonprofit uses such as Kumu Camp and the third section in 207 is commerce, mercantile. The Kumu camp falls under two of these criteria. Unlike the solar projects which is within the commercial section 204. This project is well within 207 and much needed in the nonprofit and that Kuhio knew you needed nonprofits and organizations. Deterring the horrendous drug problem we suffer with in the Anahola Community. The after-the-fact is not because of the AHHA board but a direct effect of DHHL previous land manager. She provided an RP and we asked about an archaeological survey as she stated a survey was not required we did not feel good about that so we hired Tom Dye to complete the survey. We finished it and felt good and knew the burial process, no excavating was done. It’s a campground and the Environmental Assessment (EA) came about two years ago. Now the old land manager is gone we were allowed to complete the after the fact EA as well as a survey. In no way intentional on behalf of the AHHA board as they did an archaeological survey. In the land license we are not allowed to discriminate focused on our homestead community as well as the Kauai community. We are not going to say no to anyone it’s healthy for our cultural exchange. Trasks adds my comments aren’t made to criticize the board. I was citing section 101 the purpose of Hawaiian home lands. When you look up Kumu Camp on TripAdvisor it’s listed as a hotel and it’s understood to be that. I look at this issue in my role in the community and when I read comments that refer to Kumu Camp saying its glamping, Danner says glamorous camping. Trask continues that given the site number there is a strong enough feeling on DHHL with beneficiaries and the community is divided and wanted to articulate those concerns on record and addressed in the near future. Danner clarifies through the mitigation it has been a structured avenue without flying accusations around and appreciate SHPD’s letter laying out clear mitigations. You can’t mitigate gossip and we are very appreciative of the EA system. The AH HA members were very happy to complete the EA no matter what the costs. We identified what the impacts and what are the mitigations. The county and state processes that have made it easier to do mitigate those items.

Chairman Yap weighs in the information provided that there is no impact to the area is news to us and we wish we had the information a long time ago. We expected to be consulted in the beginning of the project to see if there were any impacts on burials that we needed to address. Danner adds they made a site inspection and it was really good. In defense of this community the DHHL advised us not to communicate to the KNIBC and they continued to do the Archeological Survey otherwise. They were unaware of all the requirements and we were informed it was courtesy and not a requirement and we learned.

Chairman Yap opens the floor for discussion to the public with no response.

B. National historic Preservation Act, Section 106 and Hawaii Revised Statutes, Chapter 6e Consultation for the Project to Replace Temporary Wainiha Bridges, Halele'a District, Kauai Island, Wai'oli, Waikoko, Waipa, Lumahai, and Wainiha Ahupua'a. TMK: Wainiha Bridge 1: (4) 5-8-002 por.; (4) 5-8-006:030, 031, 032, 033, 046, 060, and 999 por. Wainiha Bridge 2-3: (4) 5-8-006:009, 011, 017, 018, 019, 030, 999 por.; (4) 5-5-005:005, 007, 021, 028, 999 por.; (4) 5-5-006:014, 888 por.; (4) 5-6-002:002, 004, 999 por. Waipa Bridge: (4) 5-6-004:014, 022, 023, 999 por.; Waikoko Bridge: (4) 5-6-003:002, 999 por. Potential Staging Areas 1 & 2: (4) 5-7-003:003, 999 por.
Discussion/Recommendation: Discussion and recommendation on the consultation listed above.
Presentation by County of Kauai, Department of Transportation, and Federal Highway Administration.

Fred Reyes of the Department of Transportation (DOT) introduced himself. Vice Chair Trask asks if the County of Kauai is in anyway connected to the project, Fred answers no. Donald Smith of DOT introduces himself as the head of design as well as acting district engineer here on Kauai. The Wainiha bridge project includes replacement of Wainiha Bridge 1, 2, and 3. They will be essentially in the same location as the existing bridges except for the detour routes which will be on the makai side of the existing structures. The project timeline we don't know for sure we are hoping within the next 2-3 years possibly longer. The one lane bridges and goes back to one lane bridges. The significance is the transportation of the materials to get to the Wainiha we will also have to build temporary detour structures for Wai'oli and Waikoko as well. That's an overview of the project. Chairman Yap suggests impact to the river banks, Reyes answers yes they will be on the same alignment as the historic roadway. Smith states there aren't finalized plans and the current plan is to go behind the old abutments to lessen the impact with new abutments to span. It makes the bridge a little longer but lessens the impact to the river banks. Reyes states we have had community meetings and have provided a copy of the presentation to Kauanoe. Smith continues if there is anything you can identify up front will aid in the development. Trask adds Kamakau wrote in 1870 Ka Poe Kahiko, page 43. The main thing was to hide the bones and they were buried under newer houses in roadways in banks of taro patches or anywhere they could be concealed. You may expect to find burials in taro patches and just so you know there is a potential. Reyes clarifies we will have an archeological monitor on site. Smith suggests Nicole Winterton is the environmental coordinator of the federal highways and will continue to relay the information to her so that the information may be relayed. Smith states we can't tell you for sure yet what the temporary abutments and will have disturbance however minimized. We will keep the KNIBC updated once we finalize the plans.

Chairman Yap opens the floor for discussion with no response.

C. National Historic Preservation Act, Section 106 Consultation Rectangular Rapid Flashing Beacon Crosswalk and Sidewalk Improvements Districts of Kawaihau, Koloa, and Waimea; Island of Kauai; Waikaea and Moikeha (Border), Lawai and Paua Ahupua'a; Federal-Aid Project No. SRS-1500(086); Work Order No. 105, TMK (4) 2-3-014:999, (4) 1-3-003:999, (4) 1-3-008-999.
Discussion/Recommendation: Discussion and recommendation on the consultation listed above.
Presentation by County of Kauai, Department of Transportation, and Federal Highway Administration.

Vice Chair, Koloa Geographic Representative Trask recuses himself for the record. Eric Fujikawa from the County of Kauai introduces himself and is here to present the project done through the county. We have a federal grant to help improve transportation and safety for the pedestrians and children near school areas. This particular project is focused on three areas, first Kapa'a Middle School off Olohena Road, Kalaheo School along the intersection of Papalina & Pu'u Road, and Kekaha Elementary School along Alae Road. The first two sections, beginning with Kapa'a Middle School where we would be installing two sign posts with the flashing beacon off Olohena to help bring attention to student crossing and stop traffic for the existing crosswalk that's there today. It will be similar to the ones on Rice Street that are flashing entailing a sign post installation approximately three feet down with a sleeve. The flashing beacons and placard would also be attached to the post. The next one is similar at the intersection of Papalina and Pu'u road installing two flashing beacon posts there to help crossing. We are also improving handicap section of the crosswalk to be ADA compliant. We sent the plans to DCAP to get there approval as well. We will not be excavating below the existing concrete slab. The third project out in Kekaha will be the addition of two signs at the intersection of Iwipolena and Alae road to aid the crossing along the schools property. We will also be

constructing a thousand feet of five foot wide sidewalk parallel to Alae Road that will take you from Iwipolena to the Highway. The location of that sidewalk is approximately ten feet off set east of the current edge of the pavement. It would be along the shoulders of two crossing, Iwipolena and Elepai'o Road and across three driveways that are set to access Alae Road from their residence. That construction will be approximately a thousand feet long and ten inches down to accommodate base coarse and concrete thickness. This is the summary of what is happened and the section 106 contact was not able to make this morning and I'm here in his place. I am available for comments that I may relay to him.

Chairman Yap suggests we are mainly concerned with the silty sand and there is a high probability of having iwi in the sand. We suggest an archaeological monitor to make sure nothing comes out of the ground. Fujikawa states they do not have the monitoring inclusive of the budget.

Chairman Yap opens the floor for discussion and Missy Kamai of CSH asks who decided just these areas for those improvements. Waimea Canyon School and some other schools need these types of student crossing assistance. Fujikawa answers we put a call for applications with the process that includes members of the county discussing with schools that are interested in participating in the improvements. We work with interested schools to work in the application process. Yap gives thanks to Fujikawa for participating.

V. SHPD INADVERTENT DISCOVERIES/OTHER CORRESPONDENCE

A. Inadvertent Discovery of Human Skeletal Remains (Burials 1-12) at the Coconut Marketplace, South Olohena Ahupua'a, Puna District, Island of Kaua'i, TMK: (4) 4-3-002:018.

Update/Discussion/Recommendation: Discussion and recommendation on the above find.

Jim Powell of SCS introduces himself as the archaeological monitor for both Coconut Marketplace and Kauai Shores projects. The burials we found so far and I must make a point because there numbered burials it doesn't mean there complete burials. Some of them are highly fragmented remains from the original marketplace construction. The project here is laid out in replacing water, gas, sewer, and electric lines. Where they have been dug before in the original construction is where we are finding the original remains. We took a step back and consulted with two operators of the original construction and that we would find remains. And it came out to be true for these finds. There are semi known burials and burials we found with no knowledge. The area we are working in now is basically completed. The area to the right is the area that will be worked on probably at the first of the year. The third area is the foot print of the old theater and Buzz's Steak House. The burials we have found we have taken out of the situation and the fragmented remains were also taken out of their situation. The approved reinternment area for the iwi will be constructed and the iwi will be placed there after the project. The area is selected because we found a burial in the AIS and it currently remains there in place. Yap asks how big that area is. Powell answers depends how many burials are found within the project area. Yap asks what percentage of the project is completed. Powell answered it's around 65% complete with ground disturbance. Yap concludes we did suspect this scenario as the burials were previously disturbed. Powell clarifies we did a lot of new digging and only came up with four new burials.

Vice Chair Trasks gives thanks to Powell as well ABC representatives that came to us earlier. In this project with the exclusion of you Kauano'e as it relates to the Department. We know in the 70's when this was first constructed they found human skeletal remains. This site was heavily populated by the Native Hawaiians. Given what they found is unlikely these were individuals at the time for high rank, if so they would have been placed somewhere else more secure. Powell adds we found one individual buried with red sand and we only found three individuals in twenty years that I have been practicing. If anyone has any insight I would like any information to assist. Trasks suggest this came before us in early April. We moved and passed to recognize this TMK as a previously identified burial site. We asked Dega of SCS if he would be anticipating to find new remains. We know that they are going to be finding burials and at this point the inadvertent discovery described in the HAR, 13-300-2 includes the inadvertent discovery is an unanticipated finding of human skeletal remains and any burials goods resulting from unintentional erosion disturbance, or other ground disturbing activity. I maintain these are not inadvertent discoveries they were anticipated. In 13-300-

24, the council shall be authorized to take any other appropriate actions in furtherance of this chapter and nothing in this section shall be construed to limit the authority of the council as the matters provided in Chapter 6E. It's a matter of rule there is no legal hurdle to overcome. This is just a question of the will of the department to recognize this as a native Hawaiian previously identified. This will not stop development all it would do is put the landowner on notice and come to us before this happens. Versus Mr. Dega of SCS taking the hits and coming to us after the fact.

Chairman Yap opens the floor for discussion and Puanani Rogers introduced herself of Kealia, Puna Moku giving thanks for bringing up Mike Dega. We had a meeting with him regarding water line replacements and we did tell him in that meeting. No matter what they say there will never be inadvertent finding of bones there. You know you are going to find burials as there is no such thing as inadvertent its intentional. Isn't there in some instances the use of non-ground disturbing tools to find burials? Couldn't you use the ground penetrating radar (GPR) in sand dunes so that you don't dig up the bones? Fragments are just as important as they are part of the same person just impacted. Yap concluded the use of GPR is inaccurate especially for finding bones. Missy Kamai asks if everyone agrees these discoveries are not inadvertent how can the SHPD change the determination in calling it previously identified and not inadvertent discovery. Yap answers identifying a burial and identifying a site that has something in there. It's hard to define however in this project we identified this site would have burials and we set a plan to take care of it. It's hard to say previously identified and you ask where is it and nobody knows its somewhere around there. It's not definitive enough for anyone to proceed. Kamai suggest using previous archaeological studies, Yap answers that is being used now. Trasks states it's a matter of will on behalf of the department and one of the duties of the council is to assist the department in the identification and inventory of the burial sites by providing information obtained from families and other sources. All we have is oral history and that's what we are working with none of us can point to say exactly where the burial is. The definition of burial site it means any specific unmarked location where prehistoric or historic remains and their associated burial goods. It comes down to what is a specific unmarked location. If it has to be exactly where the body is then I think that leads to absurd results because no one knows where it is. For example we the State, the County all work with TMKs and if we could distinguish the burials within those and protect them in a specific location such as a TMK. Not like the 1000 acre TMK to be flagged but possibly the 5 acre or less TMK that we could possibly flag as a known burial area. This way the existing landowners get a heads up as well as new owners who would like to develop on their property.

B. Inadvertent Discovery of Human Skeletal Remains at Kauai Shores, South Olohena Ahupua'a, Puna District, Island of Kaua'i, TMK: (4) 4-3-002:012.

Update/Discussion/Recommendation: Discussion and recommendation the above find.

Jim Powell of SCS introduced himself as the hired monitor for the Kauai Shores remaining trenching and ground disturbance in the renovation of the reservations and restaurant building. We approached the manager of the hotel when Shioi Construction asked us to provide monitoring for their construction work. KIUC did a trench from the road thru the driveway where iwi were discovered. At that point they were hired to continue monitoring and to sift the backfill that was generated from the digging of the trench. SHPD asked us to do data recovery in one of the areas to be trenched. We found an inadvertent yesterday and await SHPD guidance to move forward, the burial remains in place. Kauai Shores has a reinternment site on the property which began when the pool was constructed quite some time ago. We were putting utility lines in and found five or six burials that were reinterred. The planning department as well as SHPD has been participating unsure of the details.

Chair Yap asks how much more trenching is needed. Powell answers they are around 40feet from completing with the electric trench it will be a jacketed line. There is a sewer line that needs to be connected and we are currently doing data recovery on the grease trap 15 ft. x 9 ft. with a water line coming from the street that is half way done. No iwi has been recovered from that area. Further work involves removing the sidewalk on the state land on the makai side of the property. That should be a real problem as its three or four inches, we will be monitoring.

We have one question for you; the sand we have sifted thru a 1/8 inch screen recovering the iwi is being stored on site. They would like to use that in there landscaping to replenish the beach side of the property. We would like your opinion on that. Trasks asks where you would put it otherwise. Yap states he doesn't want them to cart it away. Powell suggest it's the proper thing to do is to put it back on the property. Puanani Rogers suggest putting it right back where it came from. Powell answers because there is a jacket that goes around the lines there isn't as much space as when the jackets weren't in place. Rogers's states not to be used with concrete, Powell answers no it's to be used on the beach side to grow some grass. I have been asked to present that question to you. Chairman Yap asks you are being cooperative now? Powell answers yes there is the owner the manager and Shioi Construction. Shioi Construction has been forward and upfront and contacted me to monitor. They noticed me next door at the Coconut Marketplace construction site and asked me the appropriate questions to protect the iwi. There is a legal thing in the background that I don't know anything about. Yap asks there willing to expand the internment to accommodate the remains that are being discovered. Powell states yes it has space as we just reentered a year ago. Trasks clarifies due to the quorum limitations today. To the extent we can indicate our position, we think it should be kept on site and used to replenish the trench.

VI. ANNOUNCEMENT

A. Next meeting date is scheduled for Wednesday, December 16, 2015

VII. ADJOURNMENT

Chairperson Yap entertained a motion for adjournment Trask seconded, Chair adjourned the meeting at 10:50 am.

Respectfully Submitted,

Kauanoë Hoomanawanui

