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DRAFT Minutes pending KNIBC Approval
KAUA'I & NĪHAU ISLANDS BURIAL COUNCIL MEETING

DATE: Wednesday, September 16th, 2015
TIME: 9:00 am
PLACE: Kauai DOT Building
Conference Room
1720 Haleukana Street
Lihue, Hawaii 96766

ATTENDANCE:

Members:

Keith Yap, Chair
Nathan Kalama
Palala Harada
Janet Kaeo Bradford
Barbara Say
Leiana Robinson

Absent:

Uilani Ruiz

Staff:

Regina K. Hilo
Mary Jane Naone
Susan Lebo

Guests:

Kaliko Santos, OHA
Missy Kamai, Cultural Surveys Hawaii
Ardulan Nikou, AECOM
DLNR Engineer (name inaudible)

I. CALL TO ORDER

Keith Yap, Kauai Niihau Island Burial Council (KNIBC) chair, called the meeting to order at 9:05 AM.

II. ROLL CALL/PULE

Nathan Kalama offered prayer to open the KNIBC meeting.

III. MINUTES

A. July 15, 2015

Deferred to next meeting

IV. BUSINESS

A. Draft Environmental Assessment (DEA) for Kumu Camp, Anahola ahupuaa, Koolau District, Island of Kauai, TMK: [4] 4-8-001:001

Information/Discussion: Update on the above area.

Update provided by Mary Jane Naone (MJN)

MJN: Kumu Camp – educational camp for kids and cultural practitioners

- After-the-fact EA, environmental assessment
 - Structures were built, post-on-pier construction, in the dunes
 - There were previously identified burial grounds that have SIHP numbers
 - SHPD is investigating whether there were any impacts to the burial grounds
 - Tom Dye (archaeologist) had done limited testing for Kumu Camp
 - Report was not submitted to SHPD
 - Tom didn't realize the project was moving forward
 - Project moved forward before getting clearance that the structures were not going to impact a burial site
 - Tom didn't find anything during subsurface testing
 - The sand is blown in
 - Tom said it was a sterile sand dune
 - Site visit with Tom tomorrow
 - Will reconcile where the testing took place and where the structures went in
 - 10 metal-frame tent bungalows
 - Above ground tents with stakes
 - Also a restroom with a subsurface septic system
 - SHPD doing more work with DHHL
 - Delilah is there now
 - Ensure that after-the-fact EAs do not happen

KY: Did the county give them a permit?

MJN: This was not a project permitted through the county

Kaliko Santos (KS): Based on my previous experience as a burial council member, DHHL is not a federal agency however at times acting as if they are.

- Can bypass county rules
- Has only started building relationships in the past several years

KY: Sounds like we have to build relationships with them.

- Would be akamai of them to keep us in the loop

KS: Chair, DHHL were informed of burials there, but the reaction back then was to disregard

- Had been told by neighbors about the burials

KY: There are signs there, right? Indicating the burial grounds?

MJN: I don't think so.

- Burial ground was identified by Bennett in 1931, and was only told that the dune area was a known burial ground
- No archaeological investigation has really occurred there

- Pat Hunter Williams came and talked about it during the July meetin
- KS: The community has come forward to acknowledge that this area is a burial ground.
- DHHL was encouraged to come to the KNIBC
 - OHA submitted comments on the EA
 - One recommendation was to expand the community comments to families that have been there a long time
 - The EA was so insular that individuals consulted for the project are also part of their group
 - DHHL did go in with an attitude that they could do what they wanted
- KY: HRS? They're building on a known burial.
- MJN: We're going to reconcile where the tentaltows were put and where testing took place that was negative
- KY: Even just the general vicinity of the area, if they're inclined to move.
- Community was concerned
 - It's our recommendation for them to work with us
 - We need to proceed
- MJN: Our letter asked for more information and a detailed scope-of-work for future plans.
- Will probably ask for an AIS
 - May ask DHHL to move the structures to areas they have tested already
- Barbara Say (BS): We don't build on the iwi. That's all I have to say.
- KY: Yes that is our concern.
- It was an identified community concern at the last meeting
- MJN: Would it be helpful to attach the letters we've issued to the agenda when it goes out in the future to see what our response was before we get to the meeting?
- KY: Yes.
- Janet Kaeo Bradford (JB): Yes we don't have a copy of that letter.
- MJN: In the future, we'll be sure the correspondence is distributed prior to the meeting.
- JB: Can we get a copy of the EA?
- MJN: Yes, I'll forward that to you.
- KY: Any other questions?
- (no public comments)
- KY: Ok, moving on.

B. The Native American Graves Protection and Repatriation Act (NAGPRA)

Information/Discussion: Discussion on NAGPRA process.

Updates provided by Regina Hilo (RKH) and Susan Lebo (SL)

RKH: going through our inventory now

- Ideally want to kanu before the end of the year in coordination with the burial council
 - Not sure if that timeline is realistic
 - Trainings coming up in October and November
 - 4 other islands that need to be handled
 - If not December, then maybe January?
- Coordination also w State Parks
 - Reinterment facilities at their individual state parks
 - Assess how much space is available

- Coordinate with KNIBC as well

KY: So you guys are doing this for all the islands?

RKH: Yes, all the islands.

- Inventory process is lengthy
- Realize this is a core mission to the KNIBC

KY: So it's going to take until the end of the year?

RKH: Yes

KY: In the meantime, how are the facilities at Russian Fort?

RKH: We're coordinating with State Parks.

MJN: It needs to be cleared.

RKH: The vegetation is really overgrown.

KY: Questions, comments, council?

(no comments)

KY: Moving on to item C.

C. Draft Burial Treatment Plan for SIHP #'s 50-30-06-2231, -2232, -2233, and -2234, for the Menehune Road Rockfall Mitigation Project, Waimea Ahupua'a, Waimea District, Kaua'i Island, TMK: [4] 1-6-003:056, 1-6-005:017, and 1-6-010:001-003

Discussion/Determination: Discussion and determination whether to preserve in place or relocate human skeletal remains at the above location.

Discussion and information about the project presented by Missy Kamai (MK), Ardulan Nikou (AN) and DLNR Engineer

MK: Aloha, I'm here to provide updates about the project, I'm here with

AN: Ardulan Nikou, AECOM

DLNR Engineer introduced himself

KY: Give us a briefing. Has anything changed since the last time?

MK: No.

KY: This is the netting that will go over the area (passes photo print out around)

MK: The one thing we should say is that it will not be accessible to the public. As it is now, it's difficult to access. But once the netting is on, it will not be accessible. You'll be able to see it, but not get to it.

KY: I don't think those burials were meant to be visited.

Barbara Say (BS): They've been there forever. We don't want anybody to come up there and maha'oi.

MK: It's just one of the rules and regulations that accessibility should be provided, but as it is, access is limited. Once the mesh goes over, it won't be accessible to families who want to go there to visit.

KY: Anyone else have comments about this?

Chair will lead a motion to approve this draft plan.

Motion: To approve this draft plan

Motioned by: Chair KY

2nd: BS

Passed unanimously

MK: Mahalo. We really needed this. The rocks are falling and there are homes below.

KY: Thank you for the briefing before because it helps us make better informed decisions.

RKH: Chair, can we entertain a motion to preserve-in-place or relocate?

Motion: to preserve-in-place the burials discussed previously

Motioned by: Leiana Robinson

2nd: BS

Passed unanimously

Discussion: wood pieces found inside the caves, similar to coffin pieces found at a Hanapepe project

Once iwi is found, no further exploration is done

Pre-contact burial, found with midden and artifacts, coral abraded

V. SHPD INADVERTENT DISCOVERIES/OTHER CORRESPONDENCE

A. Inadvertent Discovery of Human Skeletal Remains (Burials #11 and #12) at the Coconut Marketplace, South Olohena Ahupua'a, Puna District, Island of Kaua'i, TMK: (4) 4-3-002: 018.

Information/Discussion: Discussion on the above find.

Updates provided by RKH

RKH: These are burials #11 and #12 at Coconut Marketplace.

- SCS project
- AIS done, therefore previously identified burial documented
- All others discovered during monitoring
- These are interesting
- Burial 12: Shallow deposit, around the foundation slab for a kiosk
 - Parts had been previously disturbed, but most was in situ
 - Recommended relocation
- Burial 11: shallow deposit as well
 - Less than a foot below the surface
 - Recommended relocation
- Most of the burials had been disturbed by the previous utility lines
 - Those found in situ almost always have previously disturbed portions

KY: Do you know how much more they have to go?

MJN: Every time we go out there, they seem to be telling us they're almost done.

- Have asked the archaeological firm to slow down and focus on recovery of the burials and screening before moving on to monitoring
- Firm has been sympathetic to the pace of construction, but the focus has to be on documenting and recovering the burials rather than starting monitoring in a new area
- SHPD has been keeping a close eye on the monitoring process and the storage and curation of the iwi as well
- This was clearly a concentration of burials before, but it has been extensively disturbed

KY: That entire coastline. Marriot Courtyards, and the other one.

MJN: Yes, that's going to be a Hyatt.

KY: Closer to the ocean, closer to sandy areas that would be highly suspect and sensitive.

- Drive past there all the time and have no idea when they're going to be finishing

MJN: On the Eggbert side, they're planning on expanding the parking lot.

- Amending the permits now
- SHPD asking for monitoring for that

KY: Where are the remains being kept?

RKH: Curated in a secured kiosk.

- Each individual in its own container
- Off the floor
- Completing inadvertent paperwork

MJN: Concerns about limited staff on the job

- Communicated with Mike Dega to get more staff on island

KY: The planned reinterment area on site, are we still ok with the area?

RKH: Yeah, there's a lot of space.

KY: Questions?

(no comments or questions)

KY: Ok. Kauai Sands Hotel.

B. Inadvertent Discovery of Human Skeletal Remains at Kauai Sands Hotel, South Oloheua Ahupua'a, Puna District, Kauai Island, TMK: [4] 4-3-02:012
Information/Discussion: Discussion on the above find.

Updates provided by MJN and RKH

MJN: Talked with the SHPD administrator, and he is interested in pursuing violations on this project.

Kauai Sands got an SMA permit to do lobby renovations last year.

- SHPD reviewed the permit, and issued a letter that lacked a determination and a signature
- Letter was routed to MJN, she spoke with the hotel manager, and archaeological monitoring was required just for the lobby renovations
- What was not seen was the utility work
 - When they started installing the utilities, I got a call from Dan Ahuna, our OHA trustee, and Milton Ching, a monitor with SCS, on Friday, August 28th, saying that there was, in the backdirt pile between Kauai Sands and Coconut Marketplace, there had been workers at Coconut Marketplace that had seen iwi at the surface of the pile
 - MJN went on there and saw sizable pieces of cranium at the surface
 - Work was stopped immediately, and has been stopped since then, approximately two-and-a-half weeks
- Backdirt pile will need to be screened
- A monitoring plan will need to be developed
- Also considering asking for an archaeological inventory survey (AIS)
- Background on this project
 - In 2013, when putting in a utility line, they disturbed an infant burial
 - SHPD called for emergency monitoring, and 8 more burials were found
 - This is an area where everyone knew there were burials, yet the contractor went ahead and put a utility trench in the area.
 - We were not notified by the contractor when the burial was hit, it was a third party that informed us.

KY: Who's the construction company?

MJN: Shioi Construction.

KY: I'm surprised, and I'm really disappointed in them. Who's the hotel manager?

MJN: Hilme Doyle.

KY: When they did the work.

Nathan Kalama (NK): They called me to try to start up work again back in 2013. I told them no, they had to stop.

MJN: Wow, they called you to negotiate working again? They've been very persistent in trying to start work, pretty much right after they hit the burial. But we're resolute in investigating what has actually happened here.

- Meetings with the county because they issued the permits
- SHPD Administrator Alan Downer interested in pursuing violations
- Planning doesn't feel like they have the capacity to enforce SHPD's recommendations
 - County feels that they can alter SHPD's recommendations if they find what we're asking for unreasonable
 - Planner agreed that the permit was misleading
 - Lawyer said that no historic properties were going to be affected, and that any excavation would be done with a monitor present
 - They knew they were supposed to have an archaeologist
 - Asked Jim Powell to come over and look in the trench from time to time
 - Very little accountability in the correspondence

KY: Comments? I think we concur to pursue administrative violations.

- Classic example of an attempt to circumvent the system
- They were aware, they had a big ceremony with us and said they'd protect the preserve area into perpetuity for future ones
 - And a year later, they're doing it again.

BS: Don't be intimidated by Shioi.

KY: They should have known better. Where are the remains being curated now?

MJN: They're in a locked facility in the Coconut Marketplace curation unit, being kept separately from the Coconut Marketplace collection.

- Temporarily secured on site

KY: But we're not planning on putting them back in Coconut Marketplace, right?

MJN/RKH: No.

KY: Will be put back in the burial site by the tree.

MJN: They've been adamant about resuming activity that does not include ground disturbance.

- Asked for a list of activities
- Went out there with the DoCARE officer yesterday and went item by item
- Administrator is sending letter to the AG
- Running utility line through the existing tiki torch line, which is approximately a foot below the surface, but the trench excavation was 3 feet below the surface if not more
- Firms contracted to prepare a BTP and/or an AIS are aware that there are burials and historic properties in the project area
- Purposely misleading language
- Working with the county to develop processes

C. Emergency Access Road from Coastal Path to Beach at Palikū Beach (Donkey Beach), SIHP # 50-30-08-1899, Keālia Ahupuaʻa, Kawaihau District, Kauaʻi Island, TMK: [4] 4-7-004:006

Information/Discussion: Discussion on the above project.

Updates provided by MJN and RKH

MJN: Will make copies of the letter for distribution.

KY: This is the old path.

MJN: No.

KY: So this is a new path.

MJN: Yes. We got a call at our Kapolei office that the county had grubbed a road at Donkey Beach through the burial preserve.

- Grubbed road
- Naupaka removed
- Wrote a letter to the County that this is a 6E-11 violation
- Spoke to Lenny Rapozo, who indicated the maintenance guys didn't realize it was a burial preserve although it's marked on all sides
- County and Mayor have committed to restoring the site by replanting naupaka and following the preservation measures in the burial treatment plan
- Visit with DoCARE indicated that there was no subsurface disturbance to the burials
- Will work with them to develop a memorandum of understanding with the county to ensure that they are aware of the archaeological sites they are working around
 - They get copies of the burial treatment plans
 - They are committed
 - SHPD requested that they come and give a presentation to the burial council about restoration of the site at next month's meeting

KY: Can you take pictures of the area?

MJN: Yes, ok.

KY: Comments? Questions? Sounds like you're busy.

(no comments)

KY: Our next meeting is October 21st.

VI. ANNOUNCEMENT

A. Next meeting date is scheduled for Wednesday, October 21, 2015

VII. ADJOURNMENT

Motion to adjourn

Motioned by: Nathan Kalama

2nd: Janet Kaeo Bradford

Moved

Meeting adjourned at 9:47 AM

Pursuant to §92-3 HRS, all interested persons shall be afforded an opportunity to present oral testimony or submit data, views, or arguments, in writing on any agenda item. Additionally, pursuant to a policy adopted by the Oahu Island Burial Council at its September 14, 2005 meeting, oral testimony for items listed on the agenda is limited to three minutes per person, per agenda item.

Pursuant to sections §92-4, §92-5(a)(8), and §6E-43.5, Hawaii Revised Statutes (HRS), and upon compliance with the procedures set forth in section 92-4, HRS, the council may go into a closed meeting to consider information that involves the location or description of a burial site.

A request to be placed on a burial council meeting agenda must be made with the Burial Sites Program staff at least two weeks preceding the scheduled meeting date. In addition, the request must be accompanied by all related documents. Failure to comply with this procedure will delay the item to the following month's agenda.

Materials related to items on the agenda are available for review at the State Historic Preservation Division in room 555 of the Kakuhihewa Building located at 601 Kamokila Boulevard, Kapolei, Hawaii 96707. Persons with disabilities requiring special assistance should contact the division in advance at (808) 692-8015.