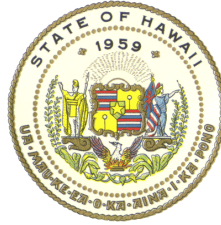


DAVID Y. IGE
GOVERNOR OF HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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
KAHO'OLAWE 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

**DRAFT MINUTES
HAWAI'I ISLAND BURIAL COUNCIL MEETING**

DATE: Thursday, September 17, 2020
TIME: 9:30 AM – 1:30 PM
PLACE: Online via Zoom

Zoom Meeting Link:

<https://us02web.zoom.us/j/81954136818?pwd=YXIvTVBmQmEwSkRzeHUxcmxXNkI6dz09>

**Meeting ID: 819 5413 6818
Passcode: 6jJF7Y**

ATTENDANCE:

HIBC Members:

Present:

Chair Nālei Pate-Kahakalau (Hāmākua)
Vice-Chair Kalena Blakemore (Puna)
Member Norman Ka'imuloa (Kona)
Member Scott Mahoney (Ka'ū)
Member Waiola Higa (Hāmākua)
Member Desmon Haumea (Ka'ū)
Member Clifford Kaponu (Hilo)

SHPD Staff:

Kea Calpito, Burial Sites Specialist
Chris Omerod, Burial Sites Specialist
Sean Nāleimaile, Hawai'i Island Lead Archaeologist
Tiare Elizares, Office Assistant III
Linda Chow, Deputy Attorney General (Attorney General Office)

Guests:

Lokelani Brandt, ASM Affiliates, Inc. (V.D.)
Angela Neller
Claire Cordero, Descendant (V.B.)

I. CALL TO ORDER

Chair Kahakalau calls to order the meeting at 9:34 A.M.

II. ROLL CALL/PULE

Chair Kahakalau conducts pule.

Nālei Kahakalau, Kalena Blakemore, Scott Mahoney, Clifford Kaponu, Norman Ka'imulua, Waiola Higa (Desmon Haumea arrived later)

III. RULES OF CONDUCT

IV. MINUTES

A. Approval of the Minutes for July 16, 2020.

Summary:

- Vice-Chair Blakemore
 - Add page numbers
 - Add update on Kumukahi to next agenda

MOTION: To approve the minutes
MOVED BY: Vice-Chair Blakemore
2ND BY: Member Mahoney
VOTE: Motion carried unanimously

B. Approval of the Minutes for August 20, 2020.

Summary:

- Member Kaponu
 - Did not receive minutes in email
 - Courts being closed is reason for motion at last meeting
 - Dispute resolution, mitigation plans, democratic process
 - Uncomfortable making rulings until everyone has fair access
 - Not every person has access to internet to attend meetings for testimony
- Vice-Chair Blakemore
 - Note that Vice-Chair Blakemore was not present for the discussion and vote on motion made by Member Kaponu regarding developer issues coming to the HIBC during COVID-19
- Deputy AG Chow
 - Note in minutes when council members leave a meeting
 - Council can discuss motion made last month, at next month's meeting to reconsider
 - The courts have never been closed
 - Court are not open physically to have people come in but are open for purposes of filing and hearings
 - Some courts may have closed for a few days to clean if a positive COVID case was identified, but filing could still happen
 - Suggests if the council wants to address the motion that was made can do so at the next meeting
- Member Mahoney
 - Concerned with motion made at last meeting
 - Does the council have any authority to deny presentation from developers?
 - Chow replied: As a state board, you are required to allow anybody who wants to present testimony to present testimony to you and the rules provide that anybody who's proposing a BTP be allowed to present informational presentations to the council and that's provided in the rules

so to say there's a limitation as to who can make a presentation would be contrary to the Sunshine Law and the specific burial council rules in place.

- The burial council is required to look at their duties and one of those is to follow the Sunshine Law and what the courts do and other means that people have to address their concerns is not really within the jurisdiction of the council to determine.
- Chair Kahakalau
 - Information from Chow is helpful and appreciated and would have been good to know at the last meeting

MOTION: To approve the minutes
MOVED BY: Vice-Chair Blakemore
2ND BY: Member Mahoney
VOTE: Motion carried by majority [YAY: 5 (Kahakalau, Blakemore, Higa, Mahoney, Ka'imuloa); ABSTAIN: 1 (Kaponu)]

V. BUSINESS

A. Discussion on Hawai'i Island Burial Council Membership, Roles, and Responsibilities.

Information/Discussion: Discussion on the above item.

The Council may elect to go into executive session pursuant to HRS §92-5(a)(4), to consult with the council's attorney on questions and issues pertaining to the council's powers, duties, privileges, immunities, and liabilities.

Summary:

- Deputy AG Chow
 - Have council move into executive session for the purposes of recording what the council is in executive session and the minutes would be kept from public review and keep the minutes separated if needed

Council goes into executive session, 11:27 AM – 11:35 AM

Minutes on separate file

MOTION: To swap item A with D
MOVED BY: Member Higa
2ND BY: Vice-Chair Blakemore
VOTE: Motion carried unanimously

MOTION: That the council go to executive session
MOVED BY: Member Mahoney
2ND BY: Vice-Chair Blakemore
VOTE: Motion carried unanimously

MOTION: That the council exit executive session
MOVED BY: Member Higa
2ND BY: Vice-Chair Blakemore
VOTE: Motion carried unanimously

B. Descendancy Recognition Application of Claire E. Cordero (Whittington) to Unidentified Native Hawaiian Skeletal Remains Located within SIHP #50-10-74-24403 and -24407, Hi‘ona‘ā Ahupua‘a, Ka‘ū District, Island of Hawai‘i, TMK: (3) 9-5-014:017.

Information/Discussion/Determination: Discussion and determination whether to recognize the applicant as a cultural descendant to unidentified Native Hawaiian skeletal remains at the above location.

The Council may elect to go into executive session pursuant to HAR §13-300-25(d). The Council may close a meeting whenever location or description of a Native Hawaiian Burial site is under consideration. The chairperson, by concurrence of a majority of members present at the meeting, shall be authorized to require the public to leave the meeting while the confidential matter is being discussed and reopen the meeting once the confidential matter is no longer being considered.

Summary:

- Chair Kahakalau
 - The council would like to recognize sister independently
 - Good to have Deputy AG today and to hear what other councils are doing
- Vice-Chair Blakemore
 - Asked applicant for background information
 - Cordero provided genealogical and childhood information, and connection to the area
 - The council has made exceptions to the recognizing applicants who were unable to attend the meeting
 - Would be ok with recognizing an applicant who is unable to attend the meeting, and is a biological sibling with the same mother and father
- Member Kapono
 - Position on the iwi
 - Cordero replied: Would like more information to make a position, but believes the iwi should be preserved in place
- Member Mahoney
 - Are there any cultural or lineal descendants associated with site?
 - Kea replied: The ones that were recognized at the previous meeting
 - Recommends that if the council does approve Cordero, the same decision should apply to the sister (also on agenda, item C)
 - Member Kapono concurs
 - Member Ka‘imuloa disagrees and wants to see applicant in person
 - Member Higa agrees
 - Understands why Member Ka‘imuloa wants to see applicant in person
 - Recommends that Cordero goes out to see the sites
- Deputy AG Chow
 - Cultural descendancy
 - OIBC recognizes an ‘ohana and allow a representative to come forward
 - The requirement is that they show a connection and a sister would have the same family connection

MOTION: To recognize Claire Cordero as a cultural descendant
MOVED BY: Vice-Chair Blakemore
2ND BY: Member Higa
VOTE: Motion carried unanimously

C. Descendancy Recognition Application of Elizabeth Legaspi (Whittington) to Unidentified Native Hawaiian Skeletal Remains Located within SIHP #50-10-74-24403 and -24407, Hi‘ona‘ā Ahupua‘a, Ka‘ū District, Island of Hawai‘i, TMK: (3) 9-5-014:017.

Information/Discussion/Determination: Discussion and determination whether to recognize the applicant as a cultural descendant to unidentified Native Hawaiian skeletal remains at the above location.

The Council may elect to go into executive session pursuant to HAR §13-300-25(d). The Council may close a meeting whenever location or description of a Native Hawaiian Burial site is under consideration. The chairperson, by concurrence of a majority of members present at the meeting, shall be authorized to require the public to leave the meeting while the confidential matter is being discussed and reopen the meeting once the confidential matter is no longer being considered.

Summary:

- Member Ka‘imuloa
 - Suggests that this item be dropped to the end of the meeting to give the applicant time to attend to the meeting
- Member Mahoney
 - Council should have discussion and take a vote
 - Chair Kahakalau agrees
- Vice-Chair Blakemore
 - Makes motion to recognize applicant as a cultural descendant
 - 2nd by Member Mahoney
- Deputy AG Chow
 - No requirement in law that a cultural descendant has to personally show up to a meeting
 - If council believes information that is submitted is sufficient, the can approve the claim
- Chair Kahakalau
 - Mary Paris
 - Kea informed the council that she wouldn't be able to attend the meeting
 - Member Ka‘imuloa add her back to the agenda for next month

MOTION: To recognize Elizabeth Legaspi as a cultural descendant

MOVED BY: Vice-Chair Blakemore

2ND BY: Member Mahoney

VOTE: Motion carried by majority [YAY: 5 (Blakemore, Mahoney, Higa, Kahakalau, Kaponu); NAY: 1 (Ka‘imuloa)]

D. DRAFT Burial Treatment Plan for Sites 50-10-74-24403, Features A, B, C, H and Site 24407, Hi‘ona‘ā Ahupua‘a, Ka‘ū District, Island of Hawai‘i, TMK: (3) 9-5-014:017.

Information/Discussion: Information and discussion on the above DRAFT BTP.

Summary:

- Lokelani Brandt
 - Providing an update on BTP
 - Additional descendant named Mana Nazarra came forward saying they had ‘ohana buried on the property

- Provided a copy of the Draft BTP and AIS to see if any of the sites are the burial in question, or if another sites was not included
 - Information is shared with potential descendants early on get oral history to help with the process
 - Some descendants don't identify themselves as subject to U.S. law
 - Oral history is a form of evidence to move a site out of a preservation plan and into a burial treatment plan
 - Plans to return to the council next month for determination
 - Concerned whether or not the council will review the BTP based on the motion made at the previous meeting
 - Member Mahoney
 - Concerned with showing other burial sites to a descendant who hasn't been recognized
 - Chair Kahakalau
 - Has the new descendant submitted paperwork
 - Brandt replied: Not yet
 - Brandt's intentions are maikai'i loa
 - Wants to see hard copy of BTP before determination can be made
 - Asked Kea about BTP clock
 - Kea replied: 45 days from when the BTP is listed for determination on the agenda
 - Member Kaponu
 - If all of this information in under Sunshine Law, then any discovery made on any site that the burial council would have jurisdiction over, would that not include that same information?
 - Chow replied: When information is provided regarding a particular burial site is being identified by lineal descendant that that information is provided in executive session which would be closed to the general public.
 - Clarification on 45 day time limit
 - Chow replied: 45 days from referral from the department and the BTP hasn't been referred to the department yet
 - Deputy AG Chow
 - Were the burials identified by in the AIS by trenching or from lineal descendants or oral testimony
 - Brandt replied: In the AIS
 - Burials were discovered in AIS and not through descendants so that information is subject to public disclosure – the family did not come forward to provide genealogy or information regarding a burial that has not yet been discovered.
 - Vice-Chair Blakemore
 - Concerned that an AIS can be made public
 - BTP gets vetted through SHPD before it goes to the HIBC for determination
 - Member Ka'imulua
 - Descendants who attended at the last meeting and some were unable to make the meeting – if they don't come for three meetings, then they are denied
 - Chow replied: The council can deny request for recognition and a denial is not permanent and the applicant can return in the future

VI. INADVERTENTS/COMMUNICATIONS

- A. Inadvertent Discovery of Unidentified Human Skeletal Remains Encountered on August 31, 2020, at the Kamehameha Schools Kahalu'u Makai Project, Kahalu'u Ahupua'a, North Kona District, Island of Hawai'i, TMK: (3) 7-8-013:002.**

Notification/Discussion: Notification and discussion on the above inadvertent discovery.

Summary:

- Chris
 - Remains found in same area as the previous
 - In-situ burial
 - Will be preserved-in-place
 - Remains that were found a few weeks prior will be interred with this individual
 - Member Ka'imuloa agrees
- Member Mahoney
 - Concerns with the location of the guard station
 - Kea informed the council that the guard station was never planned to be “on” the burial site, but nearby
- Member Kapono
 - NAGPRA and HRS
 - Everyone needs to pay attention to federal law
 - Chow replied: NAGPRA is very different from Hawai'i law, that institution that maintain burials are required to return them to descendants
 - Did SHPD check with descendants
 - Kea replied yes
 - Is there any criminal prosecution available to those who violate the spirit of the preservation of the iwi kupuna
 - Chow replied: not for violating the spirit but there's potential for criminal prosecution for violating the letter of the law
- Member Ka'imuloa
 - Agrees with the decision made
 - Wants an update on QLT project
 - Spoke with person building rock walls who said there were more iwi discovered at the site
 - BTP needs to be amended and landowners need to held accountable
 - Member Kapono asked if this is fraud and if the value of the site exceeds \$750 by HRS isn't that criminal
 - Chow replied: No because they haven't appropriated anything and the iwi doesn't belong to them
- Kea
 - Can put an update section on agenda but items need to be specified
 - Can't use vague placards to hold spots for general discussion per the Sunshine Law
 - Chow concurred, that items need to be specified

VII. ANNOUNCEMENTS

A. The Next HIBC Meeting is Thursday, October 15, 2020, 9:30 A.M. Location TBD.

VIII. ADJOURNMENT

Meeting adjourns at 12:19 P.M.

*****THE ABOVE MINUTES WERE APPROVED AT THE 10/15/2020 HIBC MEETING*****

Pursuant to §92-3 Hawai'i Revised Statutes (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 Hawai'i Island Burial Council at its November 17, 2005 meeting, oral testimony for items listed on the agenda is limited to three minutes per person, per agenda item.

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

Pursuant to §92-2.5(d) HRS, if a meeting must be cancelled due to lack of quorum, the present council members may elect to continue to receive testimony and presentations on items on the agenda.

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 located at 40 Po'okela St., Hilo, HI 96720. Individuals requiring special assistance or auxiliary aids or services (e.g., sign language interpreter, wheelchair accessibility, or parking designated for the disabled) at the HIBC meeting, please contact staff at least 72-hours prior to the meeting at (808) 933-7653 so that arrangements can be made.