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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

MAUI / LĀNA'I ISLANDS BURIAL COUNCIL
MEETING MINUTES

DATE: June 21, 2017
TIME: 9:00 AM
PLACE: County of Maui, Planning Commission
Conference Room
Kalana Paku'i Building, 1st Floor
250 S. High Street
Wailuku, Maui, HI 96793

I. CALL TO ORDER

The Burial Council Chair Kapulani Antonio called the meeting to order at 9:00 AM

II. ATTENDANCE:

Members: Kapulani Antonio - Chairperson
Dane Maxwell – Vice Chairperson
Kaheleonalani Dukelow
Johanna Kamaunu
Leiane Paci

SHPD Staff: Kealana Phillips, Maui Burial Site Specialist
Ikaika Nakahashi, Cultural Historian
Barker Fariss, SHPD Lead Archaeologist

Excused: Sol Church
Kalani Ho-Nikaido
Nani Watanabe

Guests: Noelani Ahia
Kaniloa Kamaunu – Hui Pono Ike Kanawai

Thelma Shimaoka - OHA
Trevor Yucha – Cultural Surveys Hawai‘i
Dana Naone Hall
Les Kuloloio
Clare Apana
Amy Halas
Eliana Halas
Trinette Furtado

III. APPROVAL OF MINUTES

A. April 19, 2017

- Council member Kahele Dukelow motion to accept minutes as presented
- Council member Dane Maxwell second
- Motion to accept minutes as presented is carried

IV. BUSINESS

A. **Cultural Descendancy Recognition of Princess Lehuanani to Unidentified Human Skeletal Remains at 0 Front Street, Moku‘ula, Loko O Mokuhinia, Malu Ulu O Lele Park, Ahupua‘a of Lower Waine‘e and Waiokama, Moku of Lāhainā, Island of Maui, TMK: [2] 4-6-007:002**

Discussion/Determination: Discussion and determination whether to recognize the above individual as a cultural descendant to unidentified human skeletal remains at the above location.

- SHPD Burial Sites Specialist Kealana Phillips address the council on this subject.
- Mr. Phillips states that application was submitted in early April. Upon review of the application and supporting documents, it was determined that a recommendation to the burial council could not be made now based on the lack of sufficient evidence to support her claim.
- Letter dated May 8, 2017 was sent to Princess Lehuanani requesting further information. Princess Lehuanani replied that she did not feel comfortable sending her genealogical information to the department. That was the last communication between the applicant and the department.
- The applicant was informed of the MLIBC meeting and that her Descendancy application would be placed on the agenda, however, Mr. Phillips states that Princess Lehuanani lives on O‘ahu and more than likely will not be present for the meeting.
- Burial Council Chair Kapulani Antonio open agenda item for public testimony
- Community member Les Kuloloio address the council.
- Council member Kahele Dukelow asked Mr. Kuloloio, to clarify whether he will apply for Descendancy to Moku‘ula, Mr. Kuloloio responded yes. Mr. Kuloloio stated that SHPD already has the information and that he will work with department to update information if needed.
- Council member Johanna Kamaunu wanted to clarify if department will review what is already on file for Mr. Kuloloio in regards to Descendancy for Moku‘ula.

- SHPD Cultural Historian Ikaika Nakahashi replied that for every new human skeletal remain discovery, an individual applying for Descendancy recognition must file application for each new discovery, even though individual may already be recognized as a descendant to past remains in the ahupua‘a in question. Mr. Nakahashi explained that for each new discovery, a new file is created thus needing applicant to file application pertaining to that specific burial.
- Burial Site Specialist Kealana Phillips reminded council that information submitted by the claimant fails to establish lineal descent and the department does not submit a recommendation to the council that the claimant be recognized as a cultural descendant, the matter shall be deferred pending the submission of additional information by the claimant HAR 13-300-35(h).

B. Council recommendation to the State Historic Preservation Division Whether to Preserve In-Place Unidentified Human Skeletal Remains Designated TS1, TS2, TS4, TS5 & TS6, Discovered at MLP Phase IX tmk 3-8-007:153 pors.

Discussion/Recommendation: Discussion and recommendation to SHPD whether to preserve in-place unidentified human skeletal remains at the above location.

- Council member Dukelow asked if there is a present request by MLP for a determination?
- Burial Sites Specialist Kealana Phillips replied that no they haven't. Not at this moment.
- Cultural Historian Ikaika Nakahashi reminded the council that SHPD will make the determination, once the land owner officially requests it. SHPD will have three working days to provide determination once it is request by MLP.
- Council member Dukelow that because of the possibility MLP can ask for a determination before next meeting, council should discuss item as well as make a recommendation to the department.
- Council member Johanna Kamaunu stated that normally council makes determination simply to preserve in place or relocate without adding much context to decision. Council member Kamaunu request that the council use historical context when making recommendation.
- Council Chair Antonio seeking feedback from council before discussion as to how we are going to discuss item B, whether focusing on burials or including the sand dunes as well.
- Council member Kamaunu stated that a buffer should be recommended and a plan of recourse discussed if landowner fails to acquires to determination by the department.
- Council member Dukelow stated that it would be difficult to provide specific recommendations because representative from landowner is not present.
- Council member Kamaunu would like a definition for the council of what land is to set a standard for our discussion/recommendation. Ms. Kamaunu stated that in Bouvier's Law Dictionary, land is defined as "going to the center of the earth and the sky above it." That would sort of address the issue of what lies under the 'iwi. If we were to consider this definition of land, developers would not be able to cut into a pu'u, creating a cone like figure at the top.
- Council Chair Antonio opened the meeting up for public testimony
- Community Member Noelani Ahia address the council

- Ms. Ahia asked the council if the council recognizes the history of the battle of Kakanilua? And if it is recognized officially in documents? Wahipana? Second question is who can claim cultural Descendancy in regards to the battle. Ms. Ahia stated that she is a descendant of Kalaniopu‘u and Ms. Ahia is wondering if she can claim Descendancy as someone who is connected to the battle.
- Ms. Ahia referenced a portion of NAGPRA, where inadvertent remains are discussed. Ms. Ahia stated that per NAGPRA where inadvertent are concerned, a SHPD representative gathers information from individuals who know of possible families (both lineal and cultural) connected to the remains. NAGPRA defines cultural affiliation as a relationship of shared group identity that can be responsibly traced historically or pre-historically between present day NHO and identifiable early group. Cultural affiliation is broad term encompassing all scenarios that can’t be linked to lineal descendant or specific NHO. Ms. Ahia also stated that per NAGPRA, although identifying potential cultural affiliation for human remains may be a pressing concern in other contexts this is not the case in Hawai‘i.
- Ms. Ahia stated that in all NAGPRA documentation, SHPD needs to consult with OHA regarding inadvertent finds. It appears there is no communication between organizations; Need to be a broader discussion. Ms. Ahia would like clarification about those issues.
- Council member Dukelow responded to Ms. Ahia and stated that when speaking about inadvertent finds, that is not the kuleana of the council, despite being consulted with. The determination is made by the department in regards to disposition of inadvertent finds. Council member Dukelow read aloud 13-300-35, information pertaining to Recognition of Lineal and Cultural Descendants.
- Ms. Ahia asked if she could trace her lineage to the battle, could she claim Descendancy? Ms. Ahia again question council if the battle of Kakanilua is recognized?
- Council member Dukelow responded that yes, we do recognize that historically that it did occur. But in relation to a specific location, the council has not discussed that. Ms. Ahia asked if council would be willing to comment on that.
- Council Chair Antonio responded that there is a lot of factors to discuss when speaking about the remains of the warriors that perished during the battle of Kakanilua. It is a very complex issue and very difficult to pinpoint location of burials due to the secretive nature of burials at that point in time.
- Council vice chair stated that where the battle of Kakanilua is invoked, the archaeological evidence does not support the claim. There is no trauma identifiable on the iwi that would indicate having been through war. Mr. Maxwell stated that the battle is recognized culturally, but not enough archaeological evidence of past cases to support claim.
- Council member Kamaunu asked what is the purpose for council to recognize Kakanilua. Ms. Ahia responded that because it was stated that it wasn’t recognized in the past. Archaeology is a western idea; our burials does not follow western rules, ideas.
- Council member Kamaunu defined what a burial site is per NAGPRA. Ms. Kamaunu mentioned Lorrin Thurston recognized Kakanilua. Wailuku Alpine Club recognized Kakanilua as well. Something significant happened in this area. People respected the area.

- Trinette Furtado address the council on this agenda item.
- Did go through HRS 6E, HAR 13, council has authority to recognize a cultural/lineal descendant, but Ms. Furtado mentioned that that is not necessary when identifying burial sites. Ms. Furtado read aloud 13-300-31, burial site identification.
- Council member Kamaunu wanted to clarify where Ms. Furtado got the information for burial site identification.
- Ms. Furtado replied Summary of Law site. It talks about the burial council law generally. It goes into how people can identify burial sites. How the council can attend site visit, look and make designations on a map, if so needed.
- Ms. Furtado mentioned that the idea behind her testimony is that just because council has limited decision making power, one being recognition of Descendancy, even if person cannot be recognized as descendant, it is still important to get their mana'o that they may share information that could possibly identify possible burial sites.
- Kaniloa Kamaunu address the council on this agenda item.
- Mr. Kamaunu mentioned that the law of the county and the state favors one side, the developer. So, this body does have the power, the mana to decided who is a cultural or lineal descendant. Mr. Kamaunu stated that it would be in the best interest of the community, if individuals could be recognized and assist the council with the kuleana of protecting the rights of the kanaka.
- Mr. Kamaunu mentioned that consciously as people, you can always decide. If functionality goes against human conscious, Mr. Kamaunu stated that you must go with human conscious because, by law must go with human conscious because in the end, you will be responsible.
- Mr. Kamaunu stated that it is within the council power to determine to gets recognized as a descendant. And it is up to the council to make sure that those who get recognition follow through with the kuleana.
- Dana Naone Hall address the council on this item on the agenda.
- Please refer to written statement attached to form for Ms. Hall testimony.
- Clare Apana address the council on this item on the agenda.
- Community member Apana address council regarding the battle of Kakanilua, consequences of moving burials and the issue of sand mining.
- Ms. Apana asked the council to make a motion to allow her hui to put together a presentation of information gathered through research and present to the council regarding the battle of Kakanilua. Ms. Apana also wanted council to keep in mind what happens to the original burial area when a burial can move.
- Amy Halas address the council on this item on the agenda.
- Community member Halas stated that she was there on Saturday April 29, 28 hours after Mayor Arakawa recommended that the council consider a moratorium, from the LDS church on Maui Lani parkway, witness endless trucks removing sand from MLP 9. Question is if there were any archaeological monitors there?
- Ms. Halas read aloud a section of a book by Lorrin Thurston, 1936 book, entitled Writings of Lorrin Thurston.
- Ms. Halas stated that she hopes that the pu'u is preserved and would like to see ML Phase 9 become a cultural preserve. It is a wahipana and would really like to see if preserved.
- Les Kuloloio address the council on this item
- Mr. Kuloloio mentioned that now, Mr. Kuloloio would like the council to refer to agenda item B. Mr. Kuloloio stated that there is a lot of good mana'o that has

- been discussed here, although it appears there is a lot more that is being discussed, than what is stated on this agenda pertaining to this item.
- Mr. Kuloloio believed that this item needs further study. Mr. Kuloloio recommends that this item be brought to the SHAW. During this archaeological convention is where all the archaeologist meet to discuss best archaeological practices of how to deal with cultural issues pertaining to work being done in Hawai‘i.
 - Mr. Kuloloio mentioned that this is not the role of the burial council; there is enough on the plate of the council. Mr. Kuloloio also questioned the battle in regards to the accuracy of knowledge and information that has been passed down and documented in various stories and reports.
 - Mr. Kuloloio stated that he is not negating anybody, but was adamant about getting the facts!
 - Burial Council Chair Antonio closes public testimony.
 - Council member Kamaunu asked what are the terms of going into executive session?
 - Council member Dukelow questioned what the parameters of for making statements or recommendations that are not on the agenda?
 - Cultural Historian Nakahashi stated that the council may go into executive session whenever location or description of a Native Hawaiian burial site is under consideration.
 - Council member Kamaunu does not feel comfortable making a recommendation without a decision being made without direction, context.
 - Council member Kamaunu believes that members on the council were selected for a specific reason. Ms. Kamaunu feels that way about this discussion about Kakanilua, that this is her kuleana, what she has been preparing for. MLIBC supposed to be a Consultation body, provide own recommendations. Not direction of the state. Council continually diminish importance b/c of needing to follow laws (guidelines). Ms. Kamaunu ask that whenever a recommendation is made by council, council should provide context, reason behind decision (recommendation) and historical facts to back up decision.
 - Council vice-chair asked the question to Ms. Kamaunu that if including the context and reasoning behind the recommendation, one of the reasons behind adding that into recommendation is to assist with future potential issues that may arise in the surrounding TMK’s.
 - Council member Kamaunu replied yes.
 - Council member Dukelow, stated that to provide more background/historical data to back up recommendation, a compilation of burials in the sand dunes would help greatly. Ms. Dukelow asked if SHPD could continue working on the tally of burials.
 - Council member Kamaunu mentioned that one of the problems is when an arch does its AIS, they should research it enough to find the important historical data, however, it appears they are not doing that, so it easier to acquire permit.
 - Council chair Antonio asked Burial Site Specialist Phillips about the status of the burial tally as requested by the council.
 - Burial Site Specialist Phillips replied that a plan is being formulated as to where is a good starting point to compile. Mr. Phillips stated that he has been in contact with members of the council, Archaeologist Lisa from ASH as well as members of the public seeking information. A question was raised as to how the department plans to formulate a tally, whether by ahupua‘a, etc.

- Mr. Phillips responded that the department is still trying to figure out the details because it was requested that the department provide a tally of all burials in the pu‘u one. So, it would be unfair if the focus were primarily on Maui Lani. Mr. Phillips mentioned that the sand dunes (pu‘u one) stretch from Kuau, Paia, through the central plains all the way out to Kihei, Wailea and in some parts of Lahaina.
- Burial Council vice-chair asked if MLP has any intention of addressing the council prior to asking for a formal determination from the department.
- Burial Sites Specialist Phillips responded that he cannot speak on behalf of Maui Lani, but mentioned that it would be in their best interest to do so before requesting an official determination. However, Mr. Phillips re-iterated he cannot speak for MLP.
- Council member Dukelow recommends that even though council is not prepared to provide context to back up recommendation pertaining to item B on agenda, Ms. Dukelow would like to go forward with recommendation.
- Burial council member Kamaunu agrees and stated later, we can re-visit issue and add context to support determination.
- Council member Dukelow wanted confirmation as to what does preserve in place mean?
- Cultural Historian Nakahashi responded that preserve in place pertains to the iwi kupuna in question. Any other provisions would have to be discussed.
- Ms. Dana Naone Hall instructed council to base decision on the criteria listed in 13-300-36
- Council member Dukelow asked the department what is the chances that the departments determination will be to relocate?
- Burial Site Specialist Phillips replied that it is and always will be the initial stance of the department to preserve in place, until proven otherwise.
- First motion proposed by burial council member Kahele Dukelow reads “the MLIBC recommends to the State Historic Preservation Division (Department) that the skeletal remains listed in item B be preserved in place citing criteria (1), (2), (3) of the Hawaii Administrative Rules 13-300-36.” Motion was seconded by burial council vice chair Dane Maxwell. All IBC members were in favor “aye”; council member Leiane Paci recused herself.
- Second motion proposed by burial council member Kahele Dukelow reads “the MLIBC recommends to the State Historic Preservation Division (Department) that any sand dunes associated with burials TS1, TS2, TS3, TS4, TS5 & TS6 should not be altered/disturbed in a way that would de-stabilize burials.” Motion was seconded by burial council member Johanna Kamaunu. All IBC members were in favor “aye”; council member Leiane Paci recused herself.
- MLIBC in recess at 11:14AM
- MLIBC resume meeting at 11:24AM
- Burial Council member Leiane Paci left meeting; No quorum
- SHPD Cultural Historian Ikaika Nakahashi read aloud a section of the Sunshine Law with regards to types of “permitted interactions” allowed by the Sunshine Acceptance of Testimony at Cancelled Meetings. If a board meeting must be cancelled due to lack of quorum or conference technology problems, the board

members present may still receive testimony and presentations on agenda items from members of the public and may question them, so long as there is no deliberation or decision-making at the cancelled meeting. The members present must create a record of the oral testimony or presentations. At the next duly noticed meeting of the board, the members who were present at the cancelled meeting must provide the record and copies of the testimony or presentations received at the cancelled meeting. Deliberation and decision-making on any item, for which testimony or presentation were received at the cancelled meeting, can only occur at a subsequent duly-noticed meeting of the board.

V. COMMUNICATION

- A. **Letter Dated April 3, 2017 from Marshall H. Ando, Engineering Program Manager Design Branch, Highways Division re: National Historic Preservation Act Section 106 Consultation Honolua Bridge Rehabilitation/Replacement Lahaina, Maui, Honolua Ahupua‘a, Federal - Aid Project No. BR-030-1(37) Tax Map Keys (TMKs): 9204-1-001:005, 009 (por.) and 010, (2)4-2-001: 001 and (2)4-2-004: 032**
Information/Discussion/Recommendation: Discussion on the above letter.

- No discussion about item A

- B. **Letter Date April 18, 2017 from Habitat for Humanity Maui re: Proposed 10 homes at Kahoma Residential Project by Habitat for Humanity Maui; Lahaina, Maui, Tax Map Keys: (2) 4-5-037: 1, 2, 3, 4, 26, 27, 28, 29, 30, & 31 (formerly a portion of (2) 4-5-10:005)**
Information/Discussion/Recommendation: Discussion on the above letter.

- No discussion about item B

- C. **Letter Dated May 4, 2017 from Cultural Surveys Hawai‘i re: Cultural Impact Assessment Community Contact Letter for the Kā‘anapali Golf Course Revitalization Project (Planning Areas 1 to 5), Honokōwai and Hanaka‘ō‘ō Ahupua‘a, Traditional Lahaina and Kā‘anapali Moku, Maui island, multiple TMK**
Information/Discussion/Recommendation: Discussion on the above letter.

- Trevor Yucha from Cultural Surveys Hawai‘i address the council on this item.
- CSH beginning consultation process for CIA for subject project. 42 NHOs, agencies, cultural practitioners contacted. Owner/Developer considering some modifications, reductions of project; request that hold any presentations until the modifications of project is resolved. Owner/Developer request to defer presentation to the next MLIBC meeting. Mr. Yucha stated that CSH focus will be on CIA; may be archaeological component to project but the Owner/Developer has contracted a different firm for that.
- Council member Dukelow asked if the Owner/Developer knows that there are thousands of burials in this area.
- Mr. Yucha replied that he is sure they are
- Council member Kamaunu asked if CSH will be sending a copy of CIA

- Mr. Yucha replied that they can.

D. NAGPRA Consultation for iwi kūpuna found at Kaulahao, Ahupua‘a of Hāmākuapoko, Moku of Hāmākuapoko, Island of Maui, TMK: [2] 2-6-009:019 and [2] 2-6-009:023

Information/Discussion/Recommendation: Discussion on the above item.

- Burial Sites Specialist Kealana Phillips address Council on this item
- Burial Sites Specialist Phillips explained to council the reason behind including this item on the agenda is to update the council on the where the department is in the NAGPRA process for the iwi kūpuna from Kaulahao.
- Mr. Phillips explained to the council that NAGPRA consists of two parts: 1) consultation 2) posting of the Notice of Inventory Completion on nps.gov, Notice of Inventory Completion Database
- Mr. Phillips explained that SHPD drafted a letter to initiated consultation on May 4, 2017. Letter was sent out to 5 Native Hawaiian Organizations: OHA, Malama Kaulahao, Aha Moku, Hui Alanui O Makena and MLIBC. Mr. Phillips stated that on June 1, 2017 a second letter drafted to inform the 5 NHO's that the comment period would be closing on June 9, 2017. In this final request for consultation letter, SHPD informed the consultative parties that a claimant has come forward as the lead Tribe/NHO.
- Mr. Phillips explained despite the ending of the consultation period, SHPD will continue to consult. Currently, SHPD is putting together the draft NIC, with the goal of finalizing it and having it posted on the NIC database sometime soon.
- Council member Dukelow wanted clarity with regards to the statement that a claimant comes forward; what does that entail? Ms. Dukelow asked how does the protection, collection, caring of the 'iwi get impacted?
- SHPD Lead Archaeologist Barker Fariss explained that NAGPRA only applies in a case by case basis. So, in this case, pre-consultation period between SHPD and all NHO's has occurred. Second letter had a deadline for which SHPD wanted comments back. Now the process is to draft the NIC and provide that to National NAGPRA. Mr. Fariss explained that, Melanie O-Brian from National NAGPRA will work with Kealana to get that published in the register. Once it is published, 30-day comment period. If any other claimants come forward, then those deliberations will take place with SHPD. If nothing is resolved, National NAGPRA (board) will get involved and would make the final determination.
- Mr. Fariss explained that in terms of the physical remains itself, 'iwi is curated at our facility per Secretary of Interior Standards. SHPD would not release iwi unless we are certain that they would be held in a same sort of facility until such time that they can be re-patriated. When the physical transfer happens, it is also a legal process; Sign document stating SHPD is repatriating remains to individuals. At that point, SHPD has no longer legal control over iwi.
- Council Vice Chair Maxwell asked for the Kaulahao burials, is this the only vehicle to have them re-interred?
- Mr. Fariss explained that this is a legal gray area. There is a question about what laws apply. There are the Hawai'i Burial Laws and they are the Federal NAGPRA Laws.
- Mr. Fariss mentioned that now, SHPD needs to get clarification from the State Attorney General and find out what the legal position of SHPD is.

- Mr. Fariss explained that it is his understanding that if iwi is not disturbed and left in original context, NAGPRA probably does not apply. But once, it is removed from original context, must become legal control of someone (State of Hawai‘i), then in that case, Federal Law would perhaps override state law, depending upon how the AG feels.
- Council member Dukelow asked what about iwi that is curated by the developer?
- Mr. Fariss responded that that is something that the AG needs to weigh in on. It could be the case that the State should have legal control over those iwi.
- Council member Dukelow asked if the practice of Developers curating iwi is within NAGPRA guidelines? Mr. Fariss replied that it is certainly not within NAGPRA guidelines, but whether NAGPRA applies is the question. Ms. Dukelow asked if that is within State Law? Mr. Fariss replied that it is the practices that has come before. Question of Law needs to be figured out by the AG.
- Council Vice Chair Maxwell stated that it is odd that SHPD is going through the NAGPRA at this point, for this case, when SHPD does not know for sure whether 6E or NAGPRA will be followed.
- Mr. Fariss replied that there is no harm going through NAGPRA. It is a thorough process, including a long consultation process. No danger of overstepping if going forward with NAGPRA process.
- Mr. Fariss stated that before we go further into the discuss about NAGPRA, it may be prudent to get the opinion of the AG.
- Mr. Fariss noted that there is the Letter of the Law and the Spirit of the Law. Spirit of the law is to help the ancestors return on their journey home. The intent outweighs in most people’s hearts and minds, the legal letter of the law. Mr. Fariss mentioned that when we do know exactly where human remains came from and if they can be re-interred close to or where they originally came from, by in large National NAGPRA will always go for that.

VI. INADVERTENTS

- A. **Inadvertent Discovery of Human Skeletal Remains at Kaulahao, reported to the Maui Office of the State Historic Preservation Division on May 24, 2017 Ahupua‘a of Hāmākuapoko, Moku of Hāmākuapoko, Island of Maui, TMK: [2] 2-6-009:019 and [2] 2-6-009:023**
Information/Discussion/Recommendation: Discussion about the above find.

- Kealana Phillips, SHPD Burial Sites Specialist address council

Meeting adjourned at 11:52 AM

Minutes by Kealana Phillips. SHPD Burial Site Specialist