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GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

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CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MAUI / LĀNAʻI ISLANDS BURIAL COUNCIL
MEETING MINUTES

DATE: November 15, 2017
TIME: 9:00 AM
PLACE: County of Maui, Planning Commission
Conference Room
Kalana Pakuʻi 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 9:03 AM

II. ATTENDANCE:

Members: Kapulani Antonio - Chairperson
Dane Maxwell – Vice Chairperson
Kaheleonalani Dukelow
Scott Fisher
Leiane Paci

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

Excused: Sol Church
Nani Watanabe
Kalani Ho-Nikaido
Johanna Kamaunu

Guests: Annette L. Hew – Self / Kakanilua
Victoria N. Kaluna-Palafox - Self
Jennifer Atkinson - Self
Rikki Torres-Pestana – Hale O Lono
Ke ‘eaumoku Kapu – Aha Moku o Maui
Ramsay Taum – PBR Hawai ‘i
Amy Halas – Self
Lala Johnson
Erin Wade – County
Claire Apana
Dana Hall
Les Kuloloio
Kaniloa Kamaunu
Jocelyn Costa
Kaleikoa Kaeo

III. APPROVAL OF MINUTES

A. September 20, 2017

- Council member Scott Fisher motion to accept minutes as written
- Council vice chair Dane Maxwell second
- All aye; no nay
- Motion is carried to accept minutes as presented

IV. BUSINESS

A. Cultural Descendancy Recognition of Ke ‘eaumoku Kapu to Unidentified Human Skeletal Remains Found 439 Waine ‘e St, Ahupua ‘a of Pua ‘anui, Lāhainā District, Island of Maui, TMK: [2] 4-6-006:017

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

- Burial Sites Specialist Kealana Phillips address the council. Mr. Phillips read the letter of recommendation drafted by SHPD to the MLIBC. The letter of recommendation stated that the applicant, Ke ‘eaumoku Kapu, had provided genealogical evidence connecting him to Nueku Namau ‘u, who once resided in the ahupua ‘a of Waiokama, adjacent to Ko ‘oka. Thus, SHPD recommended that the MLIBC recognize the applicant as a cultural descendant to the unidentified human skeletal remains.
- Mr. Phillips clarified that HAR 13-300-35 (g), states that the claimant must provide genealogical connections to a Native Hawaiian ancestor(s) who once resided or are buried or both, is the same ahupua ‘a to be recognized as a descendant. However, in this case, because there are a number of ahupua ‘a that are located in this area, SHPD allowed for claimant to provide

- genealogical connections to an ancestor that is buried and or resided in or in close proximity to the ahupua`a in question (Ko`oka).
- Mr. Phillips also explained that SHPD was careful in that it verified, based on the evidence provided, that applicant identified with an ancestor that received land from the Great Mahele (resided at house lot in Waiokama) and not just applied for land (not awarded).
 - Council member Kahele Dukelow asked if council is able to be flexible with respect to the rules stated in 13-300-35 of genealogical connection to ancestor needing to reside and/or buried in ahupua`a.
 - Mr. Phillips responded that it is case by case. With respect to this case, SHPD looked into the area in question (a large number of ahupua`a in close proximity to one another) as well as background of applicant.
 - Cultural Historian Ikaika Nakahashi explained that ahupua`a, historically, are pollical boundaries. Depending upon the ali`i at the time, boundaries would shift. Must take into account time period of map, when looking to use the map to verify boundaries of ahupua`a to verify information.
 - Council member Leiane Paci explained that the rules are straight forward with respect to ancestor needed to reside and/or be buried in same ahupua`a, Ms. Paci recommended that if council are to recognize descendant, explanation should be provided in letter of recommendation.
 - Cultural Historian Nakahashi stated the spirit of the law was to recognize people from that area, that lived there. If a question of the definite boundaries of the ahupua`a were to be asked, Mr. Nakahashi would say nobody really knows.
 - Mr. Ke`eaumoku Kapu address the council.
 - Mr. Kapu explained the frustration of getting recognition of Descendancy from the State. Mr. Kapu explained that he has genealogical connections to the lot where the burial was found, but because he cannot identify who that person was who was discovered, he can only apply (recognized) as a cultural descendant.
 - Change laws; understands that that will need to go through legislation. Mr. Kapu explained that allowing (recognized) descendants to work with landowner to do what's best for the iwi is the goal.
 - Mr. Kapu asked if the iwi is still in place or did the landowner/archaeologist do anymore work since the initial discovery?
 - Burial Site Specialist Phillips answered that he is not aware of any further work being done at property since the initial discovery, and subsequent reporting of discovery to SHPD.
 - Mr. Kapu requests an update/correspondence of what's going on and possible site visit.
 - Burial Site Specialist Phillips said he will make contact with archaeologist/landowner.
 - Council member Paci wants to make sure that approval fits into rules and the criteria used to make decision is included in letter. Ms. Paci explained that reasoning should be clear so that if someone reads the letter of determination (acceptance) in the future, they will be clear of why decision was made.
 - Burial council chair Kapulani Antonio open the meeting up for public testimony re: agenda item.
 - Rikki Torres-Pestana representing Hāmākuapoko, Hale O Lono address the council.
 - Dana Hall address the council.
 - Ms. Hall explained that criteria for recognition of Descendancy should remain consistent. Oahu has not recognized anyone using Moku, for example.
 - Inaudible....

- Ms. Hall stated that applicants need to understand the effects of recognition as a lineal descendant vs. cultural descendant as detailed in HAR 13-300-35(f).
- Leslie Kuloloio address the council
- State of Hawai'i and Federal Government need to improve. What does it mean to be identified as an American; Hawaiian?
- Word *Moku*, as used in the rules, need to be readdressed according to Mr. Kuloloio.
- There are many different interpretation/definitions of the Hawaiian words.
- Mr. Kuloloio recommended to the Council that they ask questions to the department; be thorough when evaluating the letters of recommendations for Descendancy that the department drafts
- According to Mr. Kuloloio, the council should have the reports from the Hawai'i Archaeology Society (meet once a year) to review in hopes of providing clarity with respect to the variety of terms, language that is used. That way everyone is on the same page.
- Annette Hew address the burial council.
- Burial Council Chair Antonio called for a recess @ 9:48AM
- Burial Council Chair Antonio reconvened meeting @ 9:53AM
- Jennifer Atkinson address the council.
- **Motion to go into executive; All in favor; no object**
- **Executive Session @ 10AM**
- **Motion to end executive session; all in favor; no object**
- **Executive Session end @ 10:05AM**
- Council Chair Antonio close public testimony on item
- **Council member Scott Fisher make a motion to recognize Ke'eaumoku Kapu to the unidentified human skeletal remains at 439 Waine'e St, TMK 2-4-6-006:017**
- **Council member Dukelow second motion.**
- **Council member Paci move to amend.**
- **Ms. Paci add to motion, Approval include explanation of the proximity of family burials in relation to the unidentified burial in both ahupua'a identified in application to meet criteria in HAR 13-300-35.**
- **Ms. Dukelow second amended motion**
- **All aye; no opposed**
- **Motion Carried**

B. Discussion of Treatment of Human Skeletal Remains in SHPD Curation from Home Maid Bakery Inc 988 Lower Main St, Wailuku Ahupua'a, Wailuku District, Island of Maui, Hawai'i TMK: [2] 3-5-037:048
Information/Discussion/Recommendation: Discussion on the above topic.

- Burial Site Specialist Kealana Phillips address the council on this matter.
- Mr. Phillips explained to the council that SHPD currently has 2 sets of iwi kūpuna currently in SHPD curation facility from 1994.
- Site numbers of these iwi kūpuna are 50-04-3924 and 50-04-3556
- Mr. Phillips stated that he followed up with Scientific Consultant Services Inc., who had worked on this parcel in the past, seeking any information about a Burial Treatment Plan. A copy of a draft (incomplete) BTP was forwarded to SHPD for site 50-04-3924 (parcel 48). When Mr. Phillips questioned SCS, Mr. Phillips was told BTP was not finalized because project did not get completed. Thus, the iwi kūpuna have remained in SHPD possession.
- Mr. Phillips advised the burial council to take a look at meeting minutes from the March 22, 1996 MLIBC. In that meeting, a motion was passed to approve

- the relocation of the burial identified at site 50-50-3924: 02 to the Southernmost corner of the lot based on the agreement reached between Mrs. Domingcil; a identified lineal descendant and Mr. Kozuki; the landowner of parcel 48. Mr. Phillips explained that in that same meeting, another motion was passed that the four individuals recovered from the Home Maid Bakery expansion project, the other burial found on parcel 48, and all scattered remains from both parcels 49 and 48 be reinterred at the new burial site created in the southern most corner of parcel 48.
- Vice Chair Maxwell asked SHPD if there currently is a preservation area on property. SHPD replied not to their knowledge. Another question proposed by Council member Dukelow about whether there is other iwi reinterred on property. Burial Site Specialist Phillips replied not to his knowledge. There were burials found during the original building of the bakery, according to Mr. Phillips. These burials were re-interred at Maui Memorial Park, in plots bought by Mr. Kozuki.
 - Council member Paci asked that at the time of the meeting, are there any new discoveries reported to SHPD from the work that was recently done? SHPD replied no.
 - Mr. Phillips stated the he was contacted by a descendant of the area, Mr. Jeffrey Mertens. Mr. Mertens is the nephew of Mrs. Domingcil and explained that Mrs. Domingcil is deceased.
 - Council member Fisher recommended if contact cannot be made with recognized descendants, might be a good idea to reach out to landowner about reinternment.
 - Chair Antonio open the meeting up public testimony on item
 - Victoria Kaluna-Palafox address the council
 - Ms. Kaluna-Palafox explained that there was a red fence that had gotten pushed during the recent grading and grubbing. Ms. Kaluna-Palafox also mentioned the discovery of an iwi, reported to DLNR (no response) as well as MPD.
 - SHPD pushed the issue to get work stopped; County, after initially issuing a stop work order, allowed project to continue and ultimately completed.
 - Council member Fisher, asked who monitor/monitoring firm was for recent parking lot project.
 - Lead Archaeologist Barker Fariss address the council. Mr. Fariss explained recent project for parking lot, when Homemaid Bakery went to County to get a permit, County said they did not need one because it did not meet their statutory regulation. SHPD was not triggered. SHPD was not aware that this project did commence, until it was reported to SHPD by the community. SHPD did conduct a site visit, (Barker Fariss, Kealana Phillips), accompanied by a DOCARE officer. On October 11, 2017 to shut project down until we could figure things out. County obliged, stop work order issued on October 11, 2017. October 12, 2017 county released stop work order, however the county did not alert SHPD of the release of the order, until the following day October 13, 2017. SHPD requested county to reapply stop work order, which the county reinstated on October 18, 2017, a week after they started. Currently, Homemaid is applying for an after the fact permit, which would trigger SHPD involvement. SHPD is currently looking into the matter, as there is over 20 years of documentation, showing that they should have not gone through with project, according to Mr. Fariss.
 - Mr. Fariss stated the project was done under the radar.
 - Lala Johnson address the council.
 - Mrs. Domingcil identified rock found at project parcel with names etched on rock: Punohu and Kama (cousins), descendants of Ms. Johnson.

- Claire Apana address the council.
- Ms. Apana described area as having a possible Heiau. Ms. Apana wants confirmation was role of SHPD Cultural Historian.
- Dana Hall address the council.... Inaudible
- Ms. Hall referenced 6E-11 – Civil and Administrative violations. If landowner unwilling to cooperate, 6E-11(b) states that it shall be a civil and administrative violation for any person to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department.
- Stock piled sand, which came from the bakery expansion, supposed to have a monitor if moved/relocated, according to Ms. Hall.
- No AIS. Disconnect between SHPD and landowner in the past.
- County exchange of land with landowner. Improvements project for Lower Main Street, including road widening, installation of side walk. During work, burials were found.
- Victoria Kaluna-Palafox address the council.
- Pile sand from 2008, was not to be touched, needed to be screen by archaeologist. However, heavy machine operator, who was told of this, decided to spread sand over the newly made parking lot.
- Les Kuloloio address the council.
- Add to recommendations to burial council and SHPD. Historical reference 1985-1987 Ritz Carlton findings, help to develop beginning of mālama iwi kupuna throughout the state of Hawai'i. 1987-1990, recognize need (legislation) to implement protection of iwi. 1990 first burial council originated. Disconnect amongst kupuna as to proper treatment of iwi; DLNR constant changing of personnel. Everyone still trying to figure things out. Current burial council, next generation to deal and continue important work that was started by the kupuna in the late 80's, early 90's. Too much changing of guard in leadership (legislature, governor, etc.) DLNR; OHA; multiple organizations, different rules, regulations, lack of team work; organizations working together, according to Mr. Kuloloio
- Recommendation to council, per Mr. Kuloloio, is to form a sub-committee to deal/solve specific issues, problems.
- Council Vice Chair Maxwell question that the iwi in SHPD curation, is that Previous ID or inadvertent?
- State Lead Arch Mr. Fariss replied that the AIS was not completed (parcel 48). Parcel 49 there was an AIS done/completed; undetermined whether iwi was found during the AIS (previously ID) or after (inadvertent). No AIS completed on parcel 48...Previously I.D. or inadvertent???
- Questions arose/discussed as to where is the data recover/preservation plan with respect to the iwi in question (SHPD curation).
- **Council member Dukelow move that council support the approved motion, originally made in 1996 MLIBC meeting, to approve relocation of burial identified at site 50-50-3924 to the Southernmost corner of lot, based on agreement reached between Mrs. Domingcil; a identified lineal descendant and Mr. Kozuki; the landowner of parcel 48.**
- **Council Vice Chair Maxwell second motion**
- **All aye; no nay**
- **Motion Carries**
- Council Chair Antonio re-open for public testimony
- Amy Halas address council
- Ms. Halas informed council that landowner, currently, applying for after the fact permit for parcel 48. Ms. Halas wanted to make aware that in grading and

grubbing permit application, in the box that asks if there are known burials, cemeteries, or other historic sites on the property, *no* is checked. Like areas in Maui Lani.

- Ms. Halas stated that it seems as though the rights of private landowners is trumping rights as guaranteed in HAR 6E. Issue comes up over and over again, Pu'ū one sand dune extent from Kapuna, Waihe'e, to Ma'alaea, Kihei all the way to Spreckelsville.
- Ms. Halas plead with council to set a precedent.

C. Kaulahao Reinternment at 0 Kuau Beach PL, Hāmākuapoko Ahupua'a, Hāmākuapoko District, Island of Maui, TMK: [2] 2-6-009:018
Information/Discussion: Discussion on the above topic.

- Burial Sites Specialist address the council on this item.
- Mr. Phillips explained that on Thursday October 26, 2017, members of Hui Alanui O Makena, Malama Kaulahao, MLIBC, and SHPD staff assisted with the reinternment of 153 iwi kupuna.
- Council Chair Antonio open public testimony
- Jocelyn Costa, Aha Moku representative of Hāmākuāloa address council.

V. COMMUNICATIONS

A. Letter Dated August 31, 2017 from PBR Hawaii & Associates, INC. re: Community Consultation for a Cultural Impact Assessment for Wailuku Civic Complex, Wailuku, Wailuku District, Island and County of Maui.
Information/Discussion/Recommendation: Discussion on the above letter.

- Ramsay Taum, Cultural Sustainability Planner for PBR Hawaii & Associates, INC., address council
- Primary reasoning for letter of correspondence is to seek info to complete CIA; no AIS done yet.
- Interviewing individuals from early 2017. CIA in 2011 done; project was not completed
- Council member Dukelow asked through Mr. Taum historical surveys, interviews, found anything council needs to be concerned about
- Mr. Taum replied that there may have been a lo'i, property of mo'i Lunalilo.
- Mr. Taum, in consultation with team, suggested that an AIS may need to be done because of that specific item, to confirm that.
- Majority of info continues to reference notion of presence of waiver; lo'i. Framing of project acknowledging *Na Wai 'Eha*.
- Previous CIA (2011), takes into account broader area of Wailuku; current interviews focus on specific location (project) in questions
- Council member Dukelow asked in previous CIA, any reference to burials
- Mr. Taum replied no; decided to go a little deeper this time. No trenching, no investigation on proposed project lot. May have had home lots; primary concern is potential lo'i of mo'i (significance).
- Council member Fisher asked if lo'i is confirmed, would project plans change.
- Mr. Taum responded that it would be up to council (consultations). If something identified, would like to find a place to relocate (if relocate is an option), so

- that work can continue. Mr. Taum stated that at this point in time, no work has started.
- Council member Fisher, asked if project is flexible enough to where if something is found, would project be able to be re-designed.
 - Mr. Taum replied that he cannot speak for architects; they are aware. Potential for something to be found. Response from consultation, determine how to handle situations if arise.
 - Engineers shifted original plan, based on where lo'i might be.
 - Council member Dukelow wanted confirmation that at this point in project, this is for informational purposes
 - Mr. Taum answered that the purpose of letter was to seek information (consultation) for CIA; letter sent in August. Recommend AIS, based on known information at time.
 - Council Chair open for public comment
 - Dana Hall address council.
 - Les Kuloloio address council.
 - Mr. Kuloloio stated he request to be part of consultation based on his lineage (genealogy).
 - Kaniloa Kamaunu address council.
 - Mr. Kamaunu request to be included in consultation based on lineage (genealogy).
 - Mr. Kamaunu stated that AIS should always be done; should not be a question about whether or not should be done. Results of AIS/Monitoring very concerning. Very worrisome that permits are being issued stating no historic sites on property; work started then start finding things, now considered inadvertent and more willing to be relocated.
 - Council member Dukelow wanted to clarify what triggers AIS, EIS, etc.
 - Culture Historian Nakahashi replied that SHPD requests AIS, monitoring. SHPD does not request EIS to be done.
 - Keahi??? Johnson address council.
 - Ms. Johnson request to take part in consultation process; descendant of area, same genealogy as Uncle Les
 - Jocelyn Costa address council.
 - Ms. Costa explained to council that she is a direct lineal descendant to Lunalilo.
 - Ke 'eumoku Kapu address council. Mr. Kapu explained that Mr. Taum did reach out to him re: this project as the CO of Aha Moku of Maui. Mr. Kapu did provide Mr. Taum with names of individuals to consult with. Mr. Kapu is happy for the inclusion of this item on agenda so that more people are being included in consultation; project is transparent. Mr. Kapu requests, being that consultation requests go to burial council (NHO), perhaps burial council can forward/include Aha Moku in process.
 - Council Chair Antonio close public testimony

B. Letter Dated October 12, 2017 from FirstNet re: Update Concerning Tribal and Native Hawaiian Outreach and Section 106 Consultation for Deployment of the FirstNet Nationwide Public Safety Broadband Network. Information/Discussion/Recommendation: Discussion on the above letter.

- No discussion on item.

VI. SHPD/INADVERTENT DISCOVERIES/CORRESPONDENCE

A. **Inadvertent Discovery of Human Skeletal Remains on the coastline near Pu 'ūpiha Cemetery, reported to the Maui Office of the State Historic Preservation Division on October 30, 2017, Ahupua 'a of Paunau, Moku of Lāhainā, Island of Maui, TMK: [2] 4-5-004:012**

Information/Discussion/Recommendation: Discussion about the above find.

- Burial Sites Specialist Kealana Phillips address the council on this item.
- Victoria Kaluna-Palafox address the council.
- Ms. Kaluna-Palafox wanted clarification from SHPD how iwi is determined to be over from an individual who has passed over 50 years ago.
- Lead Archaeologist Fariss exclaimed that that is a something he is more than happy to discuss, perhaps individually, not at current forum.
- Ke 'eaumoku Kapu address the council.
- Mr. Kapu asked if SHPD has made a determination as to where the current iwi in SHPD curation facility will be re-interred.
- Burial Sites Specialist Phillips replied that the discussions (with county) has not gotten to that point yet.
- Mr. Kapu explained that exposed burials due to erosion at that area has been going on for some time now. Previous burials found at Pu 'ūpiha, have been re-buried in County cemetery at Puehuehuiki cemetery (at entrance of Lāhainā); Unmarked burials.
- Mr. Kapu recommends that any burials discovered at Pu 'ūpiha get re-interred on site, or in close proximity to site (not in another ahupua 'a or Moku) where convenient for county. Hold County accountable!
- Jocelyn Costa address the council
- Ms. Costa question process (6E) with respect to when any bones are found. Police called, archaeologist, medical examiner make determination. That will give jurisdiction to of iwi to SHPD. If process not followed, authority to turn iwi over to SHPD is circumvented.
- Kaleikoa Kaeo address council.
- Mr. Kaeo read to council 13-300-24(c) – council shall make recommendations to the department regarding appropriate management, treatment, and protection of Native Hawaiian burial sites, and on any matters related to Native Hawaiian burial sites.
- Specifically looking at “inadvertent discoveries” vs. previously identified sites
- What is a complex? Site vs Complex. How much burials need to found before identified as site, complex. Recommend council clarify, make a determination. Mr. Kaeo states that the council responsibility (13-300-24(c)), is perhaps not to follow the law, but to question rules.... fix problems that persist. Clarify things.
- Mokaē/Hāmoa, sand area. Burials been exposed over the years. According to Mr. Kaeo, it is a known burial site (family burials).
- Mr. Kaeo questions what type of discovery needs to occur to make it a burial. Fragments vs. whole skeletal remains (long bones).
- Mr. Kaeo questions, who decides, gives Hana Hotel permission to continue with project at a known burial site?

- The process in place is wrong, according to Mr. Kaeo. If *in situ* is found, SHPD is more willing to PIP, but if previously disturbed, fragments, etc., why is it that department willing to relocate iwi? What constitutes a burial? A burial? Mr. Kaeo believes that despite fragments, isolated finds, etc. a burial is a burial and should be protected (PIP).
- Council Vice Chair wanted clarification from SHPD as to the difference between fragments, isolated finds, in situ, previously disturbed.
- Cultural Historian Nakahashi read aloud definition of burial site – any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods, if any, are interred and its immediate surrounding archaeological context, including any associated surface and subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.
- Mr. Nakahashi explained that wherever there is a bone, that is considered a burial site.
- Council member Paci provided example; Doesn't matter how much bones; context; interpretation; how it's found.
- Council member Fisher provided example.

B. Training for Maui/Lānaʻi Islands Burial Council on membership, roles, and responsibilities.

Information/Discussion: Discussion on the above item.
(BRING BLACK TRAINING BINDER)

- Item deferred to following MLIBC meeting

Meeting adjourned at 12:06 AM

Minutes by Kealana Phillips. SHPD Burial Site Specialist