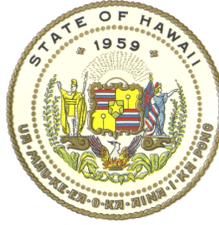


DAVID Y. IGE
GOVERNOR OF HAWAII



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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

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

DATE: Thursday, August 15th, 2019
TIME: 9:30 AM – 1:30 PM
PLACE: West Hawai'i Civic Center
Conference Room
74-5044 Ane Keohokālole Hwy.
Kailua-Kona, HI 96740

ATTENDANCE:

HIBC Members: **Present:**
Vice-Chair Kalena Blakemore (Puna)
Member Waiola Higa (Hāmākua)
Member Norman Ka'imulua (Kona)
Member Clifford Kapono (Hilo)
Member Scott Mahoney (Ka'ū)

Absent:
Chair Nālei Pate-Kahakalau (Hāmākua)

SHPD Staff: J. Kea Calpito, Burial Sites Specialist
Chris Omerod, Burial Sites Specialist

Guests: Tomasi Patolo, SCS, Inc.

I. CALL TO ORDER

Vice-Chair Blakemore calls to order the meeting at 9:37 A.M.

II. ROLL CALL/PULE

Member Higa conducts pule.

Clifford Kapono, Waiola Higa, Norman Ka'imulua, Kalena Blakemore, Scott Mahoney.

III. MINUTES

A. Request for Approval of the Minutes for July 18, 2019.

- Vice-Chair Blakemore requested that page numbers be added to the minutes.

MOTION: To approve the minutes with amendments
MOVED BY: Member Ka'imuloa
2ND BY: Member Higa
VOTE: Motion carried unanimously

IV. BUSINESS

A. DRAFT Burial Treatment Plan for Burial Site #50-10-57-30593 Located in Hōlualoa 1st Ahupua'a, North Kona District, Island of Hawai'i, TMK: (3) 7-6-021:017.

Discussion/Recommendation: Recommendation to the State Historic Preservation Division whether to accept or not accept the above DRAFT Burial Treatment Plan.

Summary:

- Tomasi Patolo of SCS, Inc. attending on behalf of Glen Escott informs the council that he is not familiar with the Burial Treatment Plan and does not know how far it has gotten. Vice-Chair Blakemore explained the project and the recommendation, the performance bond, of the council regarding the current BTP. Member Kapono stated "I would motion that we table this particular item so that the archaeological firm can be better prepared to make their case and answer the questions directly because it doesn't appear to me that we're gonna go anywhere on this cause there is the outstanding condition of the performance bond and the representative right now has no knowledge on that so we cant be led to believe something that's assumptive, so I motion that we table this particular item until next month." Member Higa seconds the motion.
- Vice-Chair Blakemore explained that a recommendation was made last month and further reminds the council of their scope of work. She explained that she has seen the same BTP's come back to the council several times and when recommendations are followed, additional recommendations are requested of the firms. She questions how pono it is for the council to continue to request new thing to be added into the BTP. She said that there is a template from Hawaii Administrative Rules (HAR) that specifically states what needs to be put into a BTP. A recommendation can be made for a provisional audit or performance bond, but it does not mean that they have to do it, that is something that may have to be amended in legislation. Vice-Chair Blakemore said that she feels that she can put this BTP up for a vote even though Glenn Escott is not present, that they know the BTP and the amendments made from last month's meeting.
- Member Higa explained that the bond is a good thing to have. Whether its legal or not or someone else has the responsibility, nothing will be done unless the council makes an issue out of it, that the council should have waited to vote on the bond until this meeting because they voted on the inclusion of a bond at last month's meeting and now want to approve the BTP without a bond.
- Patolo explained that the burial treatment plan is a standard thing. It is designed to protect iwi whether in place or relocated. He is not familiar with the performance bond because it is something new and was never a part of the process. He said he thinks Glen requested his attendance because Glen wanted to know if the plan would be approved or not by the council. He explained that even though he has not read this BTP he does know what's in it because it is a standard thing that they deal with all the time, the only thing that is new is the bond issue.
- Member Kapono stated "The burial plan is technically a mitigation plan because of a dispute resolution. We are council members not judicial members, we are here to bring council forward. I have read HRS and Federal NAGPRA law and in my opinion the

council is simply feather bedding what DLNR wants to do. We are here representing these districts and the people of these districts. The Council is not here as an addendum to DLNR, the Council is not related to the State in any way. It is the council's fiduciary responsibility to ensure that the people that are impacted by this have the full knowledge and scope of the law. You can believe what you want but as I said before you are all subject to litigation and private suit. The second thing, that I continue to bring up, that over the year that I have sat on this council I have asked for the AG's Office. They have refused by not answering in a timely fashion. So, I am led to believe that what ever the council does is within their scope, but I am exercising the full expression of what I believe the law to be, and in that, we cannot approve a condition that is not contractual, and this is a contract. We do not have the full scope of what was discussed but other people are led to believe and now its being changed arbitrarily because someone with the mitigation plan did not show up, I find that to be absurd, this is my opinion." Vice-Chair Blakemore told Member Kaponu thank you, we heard you. Member Kaponu stated, "I'm not done speaking. So we sit here on equal position, the Chair has no authority over any of us other than to conduct the meeting orderly so you don't have any more weight over this thing than I do." Vice-Chair Blakemore replied that she is trying to conduct the meeting orderly. Member Kaponu replied "so cutting me off does not allow me to take my first amendment right so we really need to pay attention to this." Vice-Chair Blakemore asked how much time is needed and if three minutes is adequate. Member Kaponu replied, "if you can be quiet for a minute I can finish up." Vice-Chair Blakemore request that Member Kaponu not speak to her like that. Member Kaponu asked, "how would like me to speak to you." Vice-Chair Blakemore responded "kindly." Member Kaponu asked "could you kindly allow me to speak and not question me?" Member Mahoney asked if they would like a recess because it is getting carried away.

- Member Mahoney would still like to discuss so the voting is placed on hold. He agreed with the scope of responsibilities mentioned by Vice-Chair Blakemore and said that if everything that was requested of Glenn to be put into the BTP was done at the last meeting then why is the council waiting. Vice-Chair Blakemore explained that the amendments were made but Member Kaponu requested the addition of a performance bond at the last meeting. Member Ka'imulua said that Glenn Escott didn't have time to take it home and think about it because there is nothing written about it. Member Mahoney said that if the bond issue is at the point where legislative rule is needed then why does the council have to wait and why does Mr. Escott have to wait again.
- Member Kaponu said "last month the bond issue came up in the beginning under business. I motioned that there be a bond so that if there is any pilikia during the audit so this bond provision allows people to have legal counsel to come forward. This was done at the beginning of the meeting. So, when Glenn Escott showed up with his plan for approval, there was now another provision that he became subject to. Glenn didn't know any more about this bond provision than any of the council members because it was discussed at the beginning of the meeting. It was not like they didn't tell Glenn and then requested it at the last minute, it was part of the business that was discussed early on."
- Vice-Chair Blakemore said that the performance bond was not on the agenda. It was brought up outside of the agenda before the first item of business. She explained that there was a presentation at the end of the meeting from Kai Markell during which he said that the council can vote, make recommendations, and make motions, but if its not on the agenda it can be null and void. So, this was brought up at the beginning of our meeting and it wasn't agendized and the council voted.
- Vice-Chair Blakemore said that she knows it's a good thing, but it is a recommendation and it has no legal standing. It has to be changed and amended in HAR and that once the BTP is put forth and it starts in motion there is ninety days and if a decision isn't made

the council forfeits their right to make a decision because of the timeclock that has been started.

- Member Kapono stated, “In my opinion everything you’ve said is not true. So, we are a council to provide council. We’re not here to write law. But, law is a function of an intent and every law speaks to the spirit of the law. Why do you have this? Why are we here? If I didn’t say something on the agenda, then I can’t speak? That’s bullshit, I could have stayed in Ka‘ū. So, I’m here, we have to think as we’re designed. I’m called a council member, to bring council. I have to have an agenda on what I’m going to speak of, that’s absolutely horse shit. How many ways do you want me to say that? We are here as independent people with guaranteed liberties of freedom of speech and expression. Now you are telling me we can’t do that? You are in violation of my first amendment rights. That means nothing to you. Would a cause of action, a litigious action, then mean something to you? With your permission I am going to test that, and you are being notified that I will bring a complaint against you, in your person and in your capacity. So, you’ve been notified.”
- Vice-Chair Blakemore asked the council if there was anymore discussion on the topic.
- Member Higa explained that the bond was voted on before Glenn came and Glenn was going to go back and talk about it to the developer, the council doesn’t know if he did and he would like to know the answer. He stated that he understands the idea, that it was put on Glenn at the last minute, but the council all agrees that it’s a good thing, and unless it is challenged, they will never act on it.
- Member Mahoney said he doesn’t understand how this performance bond got on this thing because he feels that it is a legislative thing and the council does not have the power to do it. Glenn doesn’t know what it is and out of consideration for the developers the council should at least honor all the work that they have done and move on without it. This question should have gone to the AG to see if this is possible. But, to hold this up will be forever and what about all these guys that do all this work. He said he understands Kapono’s concern but the kuleana is not only with the developer, the kuleana is with the cultural or the lineal. A lot of these people said we’re going to mālama the graves and one or two years later they forget or pass on. So someone needs to be responsible on both sides because we’re only concerning ourselves with the iwi. I’m sorry I missed the last meeting but I’m just catching the tail end.
- Member Kapono stated, “The performance bond is basically an insurance policy that every business has when doing a project. So our example is that if there is a legal cost or anything that is needed by the lineal or cultural people against the developer. That shouldn’t be a condition, they shouldn’t be penalized because they don’t have the cash. So, this performance bond is like an insurance policy to cover that discrepancy. Over the year there’s been no AG to said what can and what cannot and people coming to ask what can we do. We are led to believe that the only thing we can do is preserve in place or move and I am of a different opinion. This man here is an agent or archaeological specialist and he doesn’t have the information to commit or inform and we can’t hold him responsible. So, the logical thing is to postpone this till next meeting where Glenn can come back, and they can review or whatever questions we have can be answered.”
- Member Ka‘imuloa said that a letter should be written to the AG about the bond and if it can be done or if its legal and see what comes back. Member Mahoney said this should have started last month to address the issue because we’re holding something up that the guy agreed to everything but this part because he doesn’t know what it is. What about if you buy a house and find iwi. Now you are responsible and have to put up a bond. You can talk about the large-scale development part when you bring it down to a small guy that just owns a house and he has iwi there, he will be held to the same thing. So, this question is a lot greater than we’re looking at, it goes all the way down and all the way

up. That is why they should find out if its legal or not and if it is we can start enforcing that. But, to hold this up with something we're not even sure of yet I can not agree to.

- Patolo said that it is mitigation but that they write it in terms of making sure the burials are protected. He mentioned that the bond shouldn't be a part of the BTP, and that it should be something that stands alone because we are not responsible for add-on information like that, that it is beyond the scope of what they do. Patolo stated that he doesn't feel the BTP should be held up because of the bond issue.
- Member Kaponu said "the way things have been going has been working with SHPD either approving or disapproving bury in place or moving. This audit provision to make sure that what we're saying is done is only recently introduced during my tenure. So in continuum to makings sure that people are doing what they are saying. We want to make sure that there is no financial impediment and that's why there is a bond performance. I am familiar with this bond performance, I've done this type of work so this isn't something that penalizes anyone, it just ensures that what we're advocating, saying and agreeing to gets done. So, what I continue to say without the presence of the AG here. They have led us to believe a certain thing, what becomes clear to me is that they're not applicable to this process. Therein as council we are providing council to the people we represent in their best interest."
- Member Higa said that his concern is if it can affect homeowners and people buying real-estate. Maybe this is something that needs to be discussed more. So, instead of tabling it why don't we go ahead and vote on whether to do this with or without the bond and then we actually talk about the bond more because there is more, if we make this bond it will affect me, you, all of us.
- Vice-Chair Blakemore thanked everyone for their mana'o and said that this is a good idea but asked Member Kaponu to said that this should go on the agenda so it can be talked about and formalized. Vice-Chair Blakemore called for a vote for tabling the BTP until next month.
- Member Ka'imulua asked if SHPD staff can get the ball rolling on the bond issue and writing a letter to the AG office. Member Kaponu said "Kea has a lot to do and to put this on him is unfair. Under due diligence it should be the council. If you want to support something and want to know something collectively then everybody has got to put in an equal share. Everyone should put the same amount of effort forward. Vice-Chair Blakemore agreed with the motion and said that she believes that this would be following the chain of command. Hinano needs to know what is going on and the only way he is going to figure it out is if it starts from the bottom up. Member Higa said the he believes if Kea drafts a letter, then all the members should sign it. Member Mahoney agreed that it is Keas job and that the council should see the final draft for approval. Then everyone can agree and sign it. He said Member Kaponu brought up AIS an important issue because they have seen times where they forget and don't follow through. The walls were promised, and other things were promised and never gets done.
- Kea said he sees the pros and cons to both, and he is fine with writing a letter but by him writing the letter, it would be coming from his voice as opposed to the council's voice on what they want and that it becomes DLNR writing to the AG Office. He said he can convey the message but it's not the council writing to the AG Office directly and explained to the council what the typical chain of command would be. Vice-Chair Blakemore said that there is nothing wrong with Kea constructing correspondence and the council also making their own.
- Shane Nelson from the OHA explained that if the council wants to be a little more autonomous, they could develop a subcommittee for fact finding. Vice-Chair Blakemore asked who would be included in that subcommittee. Nelson replied that based on the Sunshine Law, a subcommittee can be created to include members of the council, university professors, and lawyers.

MOTION (1): To table the item until next month
MOVED BY: Member Kapono
2ND BY: Member Higa
VOTE: Motion failed by majority [YAY:2 (Kapono, Ka‘imuloa,); NAY: 3 (Higa, Blakemore, Mahoney)]

MOTION (2): To recommend that SHPD accept the BTP
MOVED BY: Member Higa
2ND BY: Member Mahoney
VOTE: Motion carried by majority [YAY: 4 (Higa, Ka‘imuloa, Blakemore, Mahoney); NAY: 1 (Kapono)]

MOTION (3): To pursue information on the performance bond and the audit provision up to the AG and respond back how that can be put forth.
MOVED BY: Member Ka‘imuloa
2ND BY: Member Mahoney
VOTE: Motion carried by majority [YAY: 4 (Higa, Ka‘imuloa, Blakemore, Mahoney); NAY: 1 (Kapono)]

B. Discussion on Hawai‘i Island Burial Council Membership, Roles, and Responsibilities.
Information/Discussion: Discussion on the above item.

- Member Kapono stated, “The discussion of Hawai‘i Island Burial Council roles and responsibilities discussion limits our scope of discussion only to a previous discussion. That redundancy is ludicrous. We’re talking about the same thing again, why is it even on the agenda. This speaks to the efficacy of the agenda, the agenda is worthless.” Vice-Chair Blakemore said she will answer the question. Member Kapono said “this is my opinion, I’m speaking, I have the floor. So, under this “B” thing we have a chance to opportunity to speak to our role and responsibility as council members and that’s what I want to speak to in this short piece. What is happening on Mauna Kea is impacting the world. I would want to motion that this council pass a resolution where we support the people on Mauna Kea that are moving forward to bring a sense of balance to our culture and to our society inclusive of kanaka and non-kanaka maoli. But that we support the energy that’s up there. Simply put, either you are for it or you are against it.” Shane Nelson informed the burial council that they have already adopted a burial treatment plan for Mauna Kea Management. Member Mahoney asked if it is possible for the council as a body can do this. Shane Nelson said that it is important for the council to make this statement because it reaffirms the burial treatment plans that were submitted.

MOTION: That the Hawai‘i Island Burial Council support the people who are actively protecting Mauna Kea
MOVED BY: Member Kapono
2ND BY: Member Higa
VOTE: Motion carried unanimously

V. INADVERTENTS/COMMUNICATIONS

A. Inadvertent Discovery of Unidentified Human Skeletal Remains Encountered on July 19, 2019, During Monitored Excavation Activity for the Lono Kona Sewer Improvement Project, Honua‘ula and Keopu Ahupua‘a, North Kona District, Island of Hawai‘i, TMK: (3) 7-5-022:142.

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

Summary:

- Chris Omerod informed the council about the inadvertent discovery.
- Member Kaponu asked “is this a breach of practice because what’s established is in the inadvertent discovery of skeletal remains, the first person that supposed to be called is the cops, and the cops been notified, and they make the appraisal then it goes to DLNR who then calls SHPD and then gets involved. When SHPD is involved, therein they got to default to the Burial Council and it’s our responsibility to solicit either lineal or cultural descendants for this area and collectively come to an agreement weather or not traditionally that the bones are to be buried in place or they’re supposed to be relocated. So, the fact that you took action without the process puts you in a precarious position. If any of the bones are damaged or that. And here’s the thing, when they inadvertently find bones, they find bones where? In a specific quadrant did they screen the entire area or just that one little corner? Just by human nature it doesn’t appear to me that if this is a sacred place where they are burying people you found one person, but you didn’t find the others and you’re only going to be talking about this. This sets the precedence for everything that you are going to do. No, this is why the process has got to be followed and that whatever time it takes this is the way its written and that’s what’s got to be done.”
- Chris explained that the Burial Council has jurisdiction over previously identified remains and inadvertent discoveries falls under SHPD.
- Shane Nelson informed the council about his concerns with the inadvertent discoveries of this area. He explained that the EA/ CIA is not supportive to the landscape and should be reviewed due to lack of due diligence.
- Vice-Chair Blakemore asked if the council makes a recommendation to reevaluate the EA, who would it be sent to? Shane Nelson said that it would go through the chain of command with SHPD and DLNR.
- Kea Calpito discussed the process when inadvertent discoveries are made. He explained that qualified archaeological monitors are available on site to determine if a burial is historic or not.

VI. ANNOUNCEMENTS

- A. The Next HIBC Meeting is Scheduled for Thursday, September 19, 2019, 9:30 AM at the Division of Forestry and Wildlife Conference Room, 19 E. Kāwili St., Hilo, HI 96720.**

VII. Adjournment

Meeting Adjourns at 11:16 A.M.

*****THE ABOVE MINUTES WERE APPROVED AT THE 09/19/2019 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 in room 555 of the Kākuhihewa Building located at 601 Kamokila Boulevard, Kapolei, Hawai'i 96707. Persons with disabilities requiring special assistance should contact the division in advance at (808) 692-8015.