



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

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MINUTES
MOLOKA'I ISLAND
BURIAL COUNCIL MEETING

DATE: Tuesday, December 30, 1998
TIME: 9:30 a.m.
PLACE: Queen Lili'uokalani Children's Center -- Lili'uokalani Trust
Moloka'i Office, Activity Room
Kalama'ula (Kalaniana'ole Colony)
Kaunakakai, Hawai'i 96748
Telephone: 553-5369

ATTENDANCE:

Members: Edwina H. Cacoulidis Luana Hamakua
Myrle P. Florea Ron Kimball
Anna Goodhue Pearl A. Hodgins
William Akutagawa

Staff: Ka'iana Markell, Burial Sites Program Director

Guests: Donald Kalaiwaa, Jr., Hui Malama ina kupuna o Hawai'i Nei - Moloka'i
(Hui Malama)
Pilialoa L. Kalaiwaa, Hui Malama
Makaleka James, Cultural Historian
Raymond K. Naki, Jr., MATP
Mark A. Tom, MATP
Lin Ward, MATP
Mililani Hanapi, Hui Malama
Anthony K. Naki, MATP
Kalanuia Ritte, MATP
Gandharva Ross, MATP
Leimana K. Naki, Lineal Descendant

Zallarina Kalipi, MATP
Alapa'i Hanapi, Hui Malama
Arleone Dibben-Young, Nene O Moloka'i
Richard Young, Nene O Moloka'i
Mahealani Davis, Native Hawaiian
Walter Ritte, Moloka'i Resident
Graydon A. Keala, Native Hawaiian
Glenn Davis
Robert Alcain

ABSENT: Lawrence Aki

I. OPENING REMARKS

Chairperson William Akutagawa (Akutagawa) stated that the purpose of today's meeting is to update everyone on the Mapulehu Glass House matter and receive testimony from guests thereafter.

II. APPROVAL OF MINUTES OF THE NOVEMBER 19, 1997 MEETING

Action on the **Minutes of the November 19, 1997 Meeting** was deferred to the next meeting in order to allow council members additional time to review content.

III. BUSINESS

A. MAPULEHU GLASS HOUSE

Information/Recommendation: Discussion of burial treatment and proposed development plans by Nene O Moloka'i.

Ka'iana Markell (Markell) updated everyone about the proposed development of a nene breeding education facility at the Mapulehu Glass House site by the landowner. Part of the plans require burial treatment plans because there are existing burials, there's a history of burial disturbances, and there's still iwi on the surface in some areas. Ground disturbing work by the landowners has come to a stop about three weeks ago per DLNR in order to assess the situation. The main and immediate concern is that iwi is still exposed. Some are still in push piles which, when it rains, gets eroded. The second issue is identify what other burials may be present; and thirdly, what happens when iwi comes up in the future. We'll take testimony today and are mainly interested in the existence of burials or the nature of the site, but other relevant information is welcome, too.

Mahealani Davis (Davis) stated that we've got a history of bones being unearthed -- full burials; a history of artifacts found and surface finds anytime the trees were pulled out or when horses kicked up dirt; and there's bones on the surface laying in the sun right now which is bad. How much more does the State need before this development is stopped until what has been uncovered is properly reburied and the property assessed?

Markell replied that we have to be aware of the forces outside of the law, the Hawaiians, and the program. I have to be responsible to keep within the law and with the decision that I make. I need to gather as much information possible in order to determine whether these burials and proposed development can co-exist.

Mililani Hanapi (Mili) asked if the State could swap lands with people who buy lands that are sensitive to the community?

Markell said anything's possible.

Alapa`i Hanapi said that he concurs with Davis's testimony and feel there's sufficient evidence that burials are there. What's happening with the iwi that was there from the last time? No pau clean up yet. What about the open grave of the kupuna wahine? I want to go on record that I put the iwi back. I'm responsible and obligated by tradition, custom, and culture to malama my kupuna; and if I don't know who the lineal descendants are, I won't leave them exposed to the sun because that's hewa, a sin. Where's Sara Collins, Don Hibbard, Dawn Chang? I am officially requesting their presence here. I'm upset. E kala mai ina po`e keia. Questions need to be answered. How come Arleone Dibben-Young (Arleone) had possession of pictures of those burials? Who said she could have those photographs? I suspect I know who gave it to her. How come the burials administration give directives that are countermanded by the archaeologists? I'm requesting an official investigation into this matter.

A pule was offered by Luana Hamakua (Hamakua).

Hamakua said that she did some genealogy research in order to obtain additional oral history from people who had lived or worked in Mapulehu in the past. Because I didn't know anything about the nene, I also did

The nene used to be in low land areas but were moved up to the higher elevations because of human habitation. The biggest predator to the nene was man. An exhaustive three-year study that was completed in February 1996 showed that 69.9% of the nene raised in the higher elevations, the goslings that hatched would die within five days from dehydration, starvation, and poor weather conditions during the nene breeding season which shows that the State has been releasing the nene in the wrong place for 48 years. This is the first time that the nene will be released in lower elevations other than on Kaua`i which has been active now for three years. In a 12-year period, they now have 125 birds on Kaua`i. Fossil remains prove that the birds were at sea level prior to human habitation.

Raymond Naki (Raymond) agreed with Arleone.

Arleone said that Moloka`i and Kaua`i are good as potential habitats for nene because it's mid-elevation or upper most elevation that's acceptable to the breeding of the nene, biologically speaking.

David asked if the success of the program on Kauai maybe due to the fact that there are no mongoose on the island and is your project a breed and release program?

Arleone replied that her project is a breed and release project, and said that on Kaua`i, the mongoose has nothing to do with the nene population. Mostly humans, dogs, and cats affect it.

Glenn Davis (Glenn) stated that he went to the release program on Kauai and said the biggest predators were dogs and cats. The reason it's so successful is because there's no mongoose and it's in a swamp area where there's a lot of fresh water.

Arleone said that's inaccurate on some ways.

Mili said that our focus is burial grounds. Maybe we can bring someone from the Nene project come and talk about scientific things, but I think that the burials should be our focus.

Walter Ritte (Walter) said it's interesting that the nene, the burials, and historic sites fall under the jurisdiction of DLNR.

Akutagawa suggested that a council member should make a motion to conduct a general meeting on Moloka`i within the next 30 days with all the department heads of every applicable agency -- DLNR, Attorney General's Office, OHA, U.S. Fish and Wildlife, and affected parties.

Raymond asked Arleone if she knew about the push piles before they purchased the property.

Akutagawa said that his question could be answered after discussion of a pending motion.

A motion was unanimously accepted to conduct a public meeting on Moloka`i within the next 30 days involving parties associated with the Mapulehu Glass House matter to include Don Hibbard from SHPD; Mike Buck from the Division of Forestry and Wildlife (DOFAW); Dawn Chang from the Attorney General's Office; Collette Machado from OHA; Arleone Dibben-Young and Richard Young; the Moloka`i Island Burial Council; and members of the community. Further, this public meeting shall begin at 6:30 p.m. at the Kilohana Community Center. A formal written request will be sent to all parties by Akutagawa after the council members review and approve the draft. (Hodgins/Kimball).

Vote: All in favor.

Arleone stated that they weren't aware of any additional push piles at the time they purchased the property.

Markell said there's a process in SHPD when lineal descendants come forward. Kana`i Kapeliela, SHPD's Cultural Historian, takes information and makes a recommendation to the burial council who then takes a vote. Thus, a lineal descendant is given preferential treatment in deciding what happens to their kupuna.

Mili shared some customs -- before the constitution was established, the entire control of the land was vested in the king. According to the opinion of learned men, the land belongs to the common people, and property rights are to be vested in the commoners. In the old days, the inheritance of the family burial place, the caves, the secret burial places of our ancestors were handed down from these to their descendants without intrusion of a single stranger unless by consent of the descendant so that whenever a death occurred, the body was conveyed to its inheritance. This immovable barrier belonged to the burial rights of all time. The rules of kings and chiefs or their land agents might change, but the burial rights of families survived on their land. Here is one proof of the people's right to the land. With this right of the common people to the land is connected an inherit love of the land of one's birth and inheritance from one's ancestors so that men do not willingly wander from place to place but remain on the land of one's ancestors. Thus, as kanaka maoli, we're supposed to yield to the descendants.

Walter asked Arleone why do you want to continue doing what you're doing -- which is creating a full-on battle between our ancestors and the nene. Why are you creating this battlefield?

Arleone disagreed. They're both native Hawaiian and can co-exist. She doesn't feel she's creating a battlefield.

Robert Alcain (Alcain) stated that iwi is the foundation of our cultural significance. If there's problems to the `aina, my feeling is to eliminate the problems. In this instance, I the nene is the problem. Iwi is top priority. The nene should be eliminated.

Kimball asked Raymond Naki if he was related to Charlie Crane who claimed lineal descendency at Mapulehu and if he claimed lineal descendency through SHPD as well.

Raymond said that just being a kanaka maoli is enough to malama the iwi.

Kimball asked Markell to clarify the process.

Markell said the burial rules define the process. Basically, you submit genealogy or without recommendation by the department, the council can take testimony from any individual and confer recognition.

Davis asked the council to be cautious of the precedence being set of non-Hawaiians purchasing land in Hawai'i to develop million-dollar projects, burials are disturbed on their property, they claim total innocence, and demand compensation.

Raymond says there should be a reward for providing personal knowledge of those individuals who have disturbed and destroyed iwi.

Hanapi stated for the record about two newspaper articles from George Peabody and Arleone that after a directive by the council for a cultural monitor to be present and for no subsurface work, I see kids in this photograph here with digging implements used for subsurface work (hoes, o`o, shovels) and there's a bulldozer here and it looks like they were digging. Where was the cultural

monitor? I was never informed or notified. Then Arleone said she was going to do some planting. The second article says that Dr. Sara Collins gave Arleone official clearance -- Collins came to Molokai to do some research on the grounds and stayed overnight at Arleone's home and in less than three hours claimed there's no problem yet Davis, who was an original employee of Ellen Osborne, says there were artifacts and funerary objects all over the place, in addition to the open grave that's still there. I've seen much activity going on the property yet where's the cultural monitor. Collins found no evidence of burials, subsurface cultural deposits or sites of any kind in these areas -- I don't believe. This doesn't show me that Arleone is working with the community. When I went on the property after talking to Pearl Petro, I exercised my gathering rights as a kanaka maoli, I see that the flags were moved from where the bones found on the surface was moved and no caretaking of that area. I've seen an area behind the glass house that looks like it's been graded with the machine still there. I feel bad and I've been misled, misinformed, and deceived.

Markell said that a response from Don Hibbard to the letter from Hui Malama is forthcoming.

(Anna Goodhue was excused from the meeting.)

Hanapi asked if when Arleone found the first burial disturbances, did they comply with the law and notify the proper authorities? When was SHPD notified? I found out through my wife who overheard a lady talking about it. Plus, Arleone told me Dr. Collins told her not to call Hui Malama and the burial council about this yet it took her three weeks to come to Moloka'i.

Markell recalls Arleone did call SHPD. I think I spoke to Mili the following day. I'm not sure when the disturbance happened.

Arleone said October 13th and a site visit was scheduled prior to that for October 29th. Because the bones haven't been identified yet, it was determined to wait. That was not my decision.

Markell asked Arleone if the police were ever called?

Arleone said no, I was told not to.

Davis asked by whom?

Arleone said by Sara Collins.

Walter asked if there's a law that states you have to contact the Board of Health if you ever find bones?

Markell responded that under Rule 6E, whenever bones are inadvertently discovered, the police department of that jurisdiction and DLNR is supposed to be notified. Ideally, the notification comes to SHPD or the burial council, but you're in compliance with the law if you contact anyone from DLNR (e.g., a DOCARE officer).

Arleone asked Markell what is the 50 years determination

Markell responded that the reason why the police get called is to determine whether the remains is a recent homicide. We have jurisdiction for remains 50 years or older.

Arleone said she was asked by Collins if she thought it was a recent homicide. I replied I don't think it is so Collins said let's wait until the site visit until the 29th so the remains can be identified and a DOCARE investigation can be opened which is why the gravesite is still open although the iwi has been reinterred. The site is still open because it's under active investigation.

Kimball asked Markell if it's safe to assume that Collins knows the law?

Markell said yes.

Kimball said his second question is does Collins in her capacity have the authority to override the law? Knowing that the department is aware of her actions, what will happen to Collins?

Markell said whatever is brought up today will go back and Don Hibbard who oversees Collins would respond.

Kimball said as a council member, I'd like to find out what happened about that.

Akutagawa stressed that as council members, we are held liable to staff representations.

Arleone said Collins stated that the remains hadn't been identified as human; therefore, no calls need be done until they're identified as human. The remains were reinterred by Alapa`i prior to the investigation being opened or Collins coming to identify the remains as in fact being human. That's why she directed me that way. The law requires that the remains be identified as in fact being human. She was following the law.

Kimball said he doesn't want to argue about this, but that's not what he heard initially. I thought the questioning was why didn't you call, and your response was Sara said not to. So if we play back these tapes, I'd like to see what's stated. I cannot remember it clearly. It's seems like it's an attempt to cover Sara. I don't blame you if that's your friend.

Akutagawa said we're not accusing anything. There's some stuff going on here and we need answers. I asked at the last meeting what is the relationship. If it's only on the professional level that's fine. We as council members need to be informed. We need to know what staff is doing.

Hanapi asked what about the pictures?

Akutagawa said he doesn't even know about that.

Arleone said Markell knows.

Akutagawa asked can anybody who just purchased land approach the department and say can I get the pictures? What's the policy of the department for releasing the pictures because according to our cultural practices, pictures of iwi is hewa.

Arleone said these photos were in the attorney general's file and it's a matter of public record and I'm entitled to make a copy.

Graydon Keala stated that SHPD acts on behalf of the law in conjunction with the burial council needs to go back and revisit the original intention of the act because a lot of the gray areas now, was clear. The fact that Collins or Hibbard spoke on behalf of SHPD. They are not the bottom line. You need to go back and revisit what the bottom line issue and intention of what the law was. The things about the photographs are clear and are the property of the lineal descendants. I can't believe that some disclosure wasn't made when the new landowners purchased the land.

Water mentioned that the issue of Collins saying whether it's animal bones or human bones is a loophole in this law. I heard that argument from Ellen Osborne when she kept digging and digging and it was deer bones.

Davis had assumed that Collins is an archaeologist and able to identify the difference in identifying bones. Davis asked Arleone is she's qualified to identify types of bones?

Arleone said it depends. We flag any bones, call Markell and Collins.

Davis asked Arleone if she was trained in being able to identify human remains and if you know they are human, to tell the age of them?

Arleone said no.

Markell said a letter is forthcoming from the department about those concerns. Markell asked if anybody else in the audience had any other information regarding burials on that property.

Hamakua said she has documents identifying Kaluna as a prior owner back in 1858. We have proof of them being born; thus, they're ancient. These families are direct lineage to Aunty Lani Kapuni. The Kaluna family came from Kipahulu, Maui. That's where her family came from, and her family was also Anakalea Kaluna who was a brother that was here that owned this land.

Akutagawa said it's important that Kana`i work on this case. The research that Arleone did are just registered names. There's a tremendous line of lineal descendants. It's not enough to just publish it in papers. It has to also be through word of mouth.

Markell said he'll try his best to get Kana`i to Moloka`i before the next meeting.

Richard Young asked if they had an interview this morning and asked if he would comment on that yet.

Markell said they talked to Charlie Crane this morning and will summarize the interview, have Akutagawa verify it with his recollection. It was very similar to what she did say. As far as the impact, I don't want to get anybody's hopes up right now.

Richard said it's similar but the level of accuracy that's coming forward to somebody that has been raised there. We're honest and are working with you guys in strict compliance with the law. We want this and are working as hard as everyone else is to find out what's out there. I feel like we're being slanted and persecuted here in a situation where we've been honest with everyone and that we were not informed; the state told us this case was settled; this inadvertent discovery has set this into a situation almost out of control and animated. As our last meeting, I thought we were working together on a burial treatment plan. I've been accused of not submitting one. We have in fact done that. I don't hear any questioning other than attacking us from almost every angle. Under our best investigation in truly being born and raised there, was a great joy to me because he had a powerful testimony of which you have possession. We are very intimately aware of the property and the potential house site that was there, and the grave sites that were dredged up by Ellen. Charlie validated this. From what came down today, the fact that this information is not on the table makes us look precarious and like we're the big developer trying to make trouble for Moloka'i. We are here to do a good project for Moloka'i. I'm not here to make war. We are here and in the process to come and provide a burial treatment plan and to communicate to the community through this council. We've been doing that. If we needed to do more which is what you folks are saying, we're happy to do that. We have nothing to hide. If this project isn't righteous for the people of Moloka'i, we stand corrected. No one said to us don't do this property. The resolution was there. We were convinced of that. We brought this up at a previous meeting.

Akutagawa said, personally speaking, the difficulty is a no is a no and a no cannot be accepted as no. Why? The law sometimes doesn't work from the cultural standpoint. We cannot make more sense and understand that unless you know our culture. There's no place else we can go and we're trying to hang on to whatever we have left. Our people are buried there. We have concern for them. There are inconsistencies in the law. You are contending with people who have lived here for generations. You are coming inside; we have lived here. This situation is not black and white. We need to come to something. This is the third meeting before the council yet some of the members are still confused about the issues. All we're asking is tread lightly.

Richard asked Markell what was his reasoning for not speaking about Charlie's testimony today

Charlie Crane is a Naki. That guy behind you is a Naki. His father's father's father is a Naki. That's one part of it. My perspective, Markell talked about it, Charlie talked about it, Charlie was involved, too, Ellen Osborne, he the one spilled the beans and got it going. Charlie gave us information much more than we anticipated. Charlie is one part of the puzzle. One part of the property his ancestors are buried there. That is one perspective. There are many more in there. Let's look at the total.

Richard asked that this information be brought forward so that everybody could hear that because the conjecture is that it is a massive burial site.

Akutagawa said the conjecture is a massive burial site. The other parcels may contain other than the Naki's. There may be others.

Markell said that his testimony was inconsistent with what he told you so I didn't want to bring it up and piece-meal.

Kimball said he appreciated the fact that Markell takes the time to digest the material to make sure it's okay before getting to the council.

Naki said he just learned last night that iwi is still exposed from the time Ellen Osborne was there. I know what I'm going to do. I'm going to start preparing those iwi because the important thing that this iwi has been out and exposed. What do you have to say about these bones now?

Markell said he's willing to fly over personally and sift through whatever we've got to do. I can come and do it and help the family. I can't say the state is going to make them do anything or if the state will mandate anything.

Naki said you all are welcome to come.

Markell said the state can come in and I can bring my two guys in, get together with the community and we can take care of that.

Richard and Arleone said that's all they wanted to do from the beginning. We want to resolve the situation.

Kimball said he doesn't think Raymond is blaming anybody. His point is there's iwi exposed, what can be done? He's not pointing fingers at anybody.

Arleone said she always wanted to do this and get in there, clear the vegetation, analyze what we have there, review it, and make it right, sift through the iwi and get them back in the ground. We aren't doing anything --

Kimball said until the burial treatment plan is formally approved, Markell is putting himself on the line to try to satisfy Raymond.

Arleone said that's all they wanted to do but was told we couldn't until the burial treatment plan was approved.

Hanapi asked Arleone what is this about a letter from her about him trespassing?

Arleone said Hanapi did not ask permission.

Hanapi said he was exercising his native rights to be there. Hanapi asked Arleone why is she pushing the issue? We're anti-native and this project could possibly be a good program, but it's a bad location.