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COMMISSION ON WATER RESOURCE MANAGEMENT

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STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
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APPROVED MINUTES O'AHU ISLAND BURIAL COUNCIL MEETING

DATE: Wednesday, August 10th, 2016
TIME: 10:07 AM
PLACE: Department of Land and Natural Resources
Board Room
Kalanimoku Building, 1st Floor
1151 Punchbowl Street
Honolulu, Hawaii 96813

ATTENDANCE:

Members: Charles 'Chuck' Ehrhorn, Interim Vice Chairperson
Kali Fermantez
Aulii Mitchell
Beverly Amaral
Danna Holck
Mana Caceres (arrived at 10:40 AM)

SHPD Staff: Regina K. Hilo, Burial Sites Specialist, History and Culture branch

Guests: Michelle Pammer, Cultural Surveys Hawaii
Lanii Maa Lapilio, Aukahi
Mishalla Spearing, Cultural Surveys Hawaii
Matt McDermott, Cultural Surveys Hawaii
Lin Ann Chang, American Savings Bank
Alan Kubota, American Savings Bank
Lahela Hekekia, Attendee
Gerry Lam, Descendant
Kaanohi Kaleikini, Descendant
Danielle Yafuso, First Hawaiian Bank
Bill Haole, Kawaiahao
Mike Lee, Descendant
Yuklin Aluli, Attendee

I. CALL TO ORDER

Meeting was called to order by Interim Chairperson Ehrhorn at 10:10 AM

II. ROLL CALL/PULE

Interim Chair Ehrhorn asked Council member Mitchell to offer pule.

Council member Mitchell offered a pule.

Council members introduced themselves: Aulii Mitchell, Danna Holck, Beverly Amaral, Chuck Ehrhorn, and Kali Fermantez.

Council member Holck reminded Ehrhorn that she needed to leave at 1:30 PM, therefore the meeting would lose quorum at that time.

Ehrhorn announced the above to the attendees and the Council

III. APPROVAL OF MINUTES

A. Minutes from 04/13/2016

B. Minutes from 06/08/2016

C. Minutes from 07/13/2016

Approval of all minutes was deferred to future OIBC meetings.

IV. CHAIR AND VICE CHAIR ELECTION

Election of a new Chair and Vice Chair

Ehrhorn read the above item onto the record

Ehrhorn stated that Hina is no longer on the Council and the Vice Chair position had been vacated for a while. Ehrhorn has been serving as interim Vice Chairperson. He opened the floor for nominations.

Motion: Council member Holck nominates Ehrhorn as Chair; Ehrhorn accepted

2nd: Fermantez and Amaral second.

VOTE: 5 AYES, carried unanimously

Motion: Council member Amaral nominated Mitchell as Vice Chair; Mitchell accepted

2nd: Ehrhorn

VOTE: 5 AYES, carried unanimously

V. BUSINESS

A. Discussion on O‘ahu Island Burial Council membership, roles, and responsibilities

Information/Discussion: Discussion on the above items.

Ehrhorn read the above item onto the record

Ehrhorn asked the Council for comments

Ehrhorn re-stated his comments from the July 13, 2016 meeting: that the Council needed to be consistent. The previous Council Chair requested the above item be placed on the agenda to allow discussion on membership roles and responsibilities and lessons learned from the past that will affect future generations.

Gerald Lam offered comments, that the Council’s labor is appreciated, and the community knows the burdens when dealing with iwi and iwi kapu, and sometimes not knowing the difference between the two, which are ignored by modernization, not like our modern day graves now. He stated that iwi kupuna are dealt with as they come up. For individual families dealing with their own family iwi, it is a heavy responsibility. The Council makes decisions about iwi, which are eternal. When iwi is touched, whether physically, through decision-making, or spiritually, you become responsible for them, forever. Lam can’t imagine that the Council does this to iwi, across the island. He stated that the Council members hanai the iwi, forever and ever, through all their future generations and progeny. He stated that this is a heavy kuleana.

Ehrhorn thanked him for his comments.

Ehrhorn stated that he has served on the Council since it was an interim Council, around 1987 or 1988, following the big issue on Maui: Honokahua. He stated that he has seen an evolution of respect and effective communication. Ehrhorn asked if there were other comments.

Council member Mitchell commented about the respect for iwi kupuna and repatriation not only as a word but a duty, and stated that praise be to the iwi kupuna for also showing us malama.

Kaanohi thanked the Council members who have made it to consultations with descendants and developers to hear the kukakuka. Recommendations carried out at the Council’s meetings are made at consultation meetings with descendants and developers.

Ehrhorn stated that he has asked SHPD Burial Sites Specialist Regina Hilo give him a call anytime a meeting is going to be held. He also stated that it is important for the moku representative to be involved too, at a local level.

Mitchell asked Regina if there was protocol for the Council members to contact the Council Chair or the SHPD to attend a site visit if it was requested of them.

Hilo responded that there is no formal procedure, but that it would be a good courtesy practice to contact the SHPD to inform the SHPD in case the SHPD's input is asked for. Mitchell thanked Hilo.

Fermanez stated his concern about vacancies and succession in relation to recent and recurring quorum concerns, how the Board functions, and the recommendation and appointing process.

Ehrhorn addressed all Council members, and said any member approaching the end of their term should make recommendations to the SHPD ahead of time.

Hilo commented that Council member Amaral is not the Koolaupoko representative, but the Large Landowner representative; the OIBC has 3 Large Landowner/Developer representatives.

Amaral stated that, though she is in real estate, she does not represent the company.

Hilo stated that she will follow up with Boards and Commissions.

Ehrhorn stated the rules for Landowner representatives are that they represent a company that owns at least 100 acres.

McDermott joked that she got 100 acres.

Amaral said she wished.

McDermott joked that she choose where she'd want it.

Amaral asked for the email address for Boards and Commissions, because it seems they made a decision on their own without notifying her, and she joined the Council on her own. Hilo stated she would send Amaral the email address.

Fermanez asked if it may have been a clerical error.

Hilo said perhaps.

Ehrhorn asked if Roddy Akau was present before Item B was discussed.

B. Department's Recommendation to Recognize Roddy Akau as Descendant to Unidentified Human Skeletal Remains Encountered at American Savings Bank Campus Project, Honolulu Ahupua'a, Kona District, O'ahu Island, TMK: [1] 1-7-026:004 and 016

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

Ehrhorn read the above agenda item onto the record.

Ehrhorn stated that Akau's recognition was deferred from last month because he was not present at the meeting. Ehrhorn stated that the Council would like the opportunity to sit down and exchange information [with the applicant seeking recognition]. Therefore, if he is not present, Ehrhorn suggested that they move on unless the applicant shows up.

Hilo stated that she would contact Akau after the meeting if Akau doesn't show up at the meeting. Ehrhorn thanked Hilo.

Item C. was taken next.

C. Draft Burial Treatment Plan for SIHP #50-80-14-7933 for the American Savings Bank Campus, Honolulu Ahupua'a, Honolulu (Kona) District, O'ahu, TMKs: [1] 1-7-026:004 and 016

Discussion/Determination: Discussion and determination whether to preserve-in-place or relocate unidentified human skeletal remains at the above location. Council discussion and recommendation to the SHPD on the proposed burial treatment plan.

Ehrhorn read the above item onto the record.

The project was introduced by Lani Maa, Aukahi; Lin Ann Chang, American Savings Bank; and Matt McDermott, Cultural Surveys Hawaii

Ehrhorn stated that the Council cannot make a determination at this meeting because the SHPD has not finalized its review of the AIS, but that the Council did still want the opportunity to discuss and see how things are going.

Maa stated that it was down to the wire, and half of the AIS has been reviewed.

McDermott said that the glass was half full; everyone laughed.

The project proponents, listed above, introduced themselves.

McDermott began a PowerPoint presentation. Copies of the Draft BTP were distributed at the previous OIBC meeting on July 13, 2016; Regina is reviewing a soft-copy submittal. The project proponents are waiting for approval of the AIS before the Council can make a determination on the Draft BTP. McDermott restated that the project discussed is American Savings Bank Campus project, mauka of Aala Park, on Beretania Street. Current use is a paved parking lot; an 11-story office-block tower will be built. The bottom floor will be open parking and the bank branch, with parking above; floors 6 through 10 will be office space, with a mezzanine above. Consultation from February to March was about the AIS; May to August was meetings with cultural descendants, coming to the OIBC, focused on the burial treatment plan. Recognized cultural descendants are the Kaleikini 'ohana, the Caceres 'ohana, Michael Lee, and Gerald Lam. Mr. Roddy Akau may be having second thoughts about coming forward for recognition, and CSH will confirm with him if that is his decision. AIS figure in the PowerPoint were referred to. There was a pond in the project vicinity, LCA731 to Palile or Palila, which discussed descendants buried on the property. The initial 10 test trenches were spread throughout the 1.3 acre project area, then additional trenches were focused on areas of finds: LCA boundary wall, a structure foundation from the 1900's to 1950's, and iwi kupuna defined as previously identified Native Hawaiian burials based on consultation with the SHPD and the information on hand collected by CSH which are the subject of the burial treatment plan. Blue trenches were to document area extent, which showed conflicts with the proposed building. CSH wanted to explore the area further to see if there were additional finds and/or additional conflicts with the proposed building's support foundation. U-shaped area was completed excavated. AIS has been under SHPD review for a few months.

McDermott talked about the U-shaped area and . the burials discovered: Burial 1 is extended; Burial 2 is a flexed burial; Burial 3 is an extended individual; Burial 4 is an extended individual; Burial 5 is a sub-adult, probably; Burial 6 is a pit feature found between two burials, not tested. Burial 7 consist of cranial fragments in disturbed sediments, secondary fill. Foundation elements for the proposed building conflicted with the burials. Project proponents went back to the building architects and engineers to see what options could be done to accommodate preservation-in-place; engineers moved the building 3 feet Ewa and redesigned foundation elements to avoid impacting the burials. Burial 7 would be moved to the preserve area; protective barriers approximately 8 feet wide would be installed from the current surface down to the water table, about 5 to 6 feet, dug ahead of time, with a steel cage installed and concrete poured within to create a reinforced concrete barrier between the foundation elements and the burials. Proximity of the protective measures would be 6 inches to within 1 foot. The barriers will be put in place before installation of the foundation elements. McDermott referred to slides in the PowerPoint presentation. A burial preserve area would be established, as put forth in the BTP, where originally there would be 3 parking stalls, as a landscaped area. Burials would be preserved just within the building edge, in a landscaped area; vegetation will be sufficiently dense to deter pedestrian traffic. Landscaping plans were discussed to accommodate the low-light setting beneath the building; plant types include kupukupu, nanu, lauae, and green ti. Draft BTP addresses relocation [of Burial 7] and preservation-in-place; long term preservation measures include moving

the building to accommodate preservation in place, installation of protective barriers before construction of building foundations is done. A 5-foot buffer around the preserve area consisting of a 4-foot high plywood barrier will be installed before construction; if work needs to be done in that area, the barrier will be slightly collapsed, then reinstalled once work in the area is completed. There will be initial excavation in the vicinity for landscaping and maintenance which will be shallow compared to the depths of the burials. Preserve area will be recorded with the Bureau of Conveyances for perpetual protection. There was a meeting with descendants and Roddy Akau and Gerald Lam were present; there was a general consensus but questions about having the building be over the burials themselves, and that the area will be actively used. Preservation in place would utilize on-site pohaku for the landscape surface treatment, not imported moss rock. As part of the monitoring plan, any pohaku encountered would be selected and stored on site there; if pohaku are not found during monitoring, the pohaku would no longer be elements in the landscaping design and it would only include vegetation. SHPD decided that further documentation of the LCA boundary wall during monitoring is sufficient mitigation; because the wall includes mortar, the pohaku are not good for landscaping. Also discussed at the descendant meeting were auger cap piles, and doing the work from the current parking lot surface; the significance of the arrangement of the burials; and the kuleana of taking care of the iwi. McDermott stated that the next steps are SHPD approval of the AIS and acceptance of the BTP for placement on the agenda for OIBC determination; working out the appropriateness of the burial treatment proposed; he asked if there were any questions.

Ehrhorn asked the Council if there were any questions; none were received.

Ehrhorn asked the attendees if there were any questions or comments.

Gerald Lam stated that what was done is incredible. The input on the caring of the iwi was discussed at the meeting with ASB. Lam stated his family has a number of individuals still living, which includes his eldest aunty who is 99. There is still uncomfortableness of dealing with graves. Lam's family recognizes the burials as iwi that are kapu because of the configuration. Lam was trained to take this kuleana; the Kaopulupulu line was ended by Kahana [Kahahana], so the Lanikaula line which came from Molokai had to precede and take over, the Kuihea line from the Maweke. Therefore it seems obvious to Lam that this is Kaopulupulu's line through Palile, which ends at the shark god caves, which is where the kai comes into the honua. At the other end is Uluhaimalama. Lam, his family, and Roddy Akau who is not present and does not like public confrontation; his and his family's Hawaiian way is to choose, to make a choice, to not stand in anyone else's way for them to go about and do something of their own free agency, by choice.

Lam: "...so the mana`o is, because there are graves, iwi, that are kapu as well in their configuration, that they [are] spoiling the `āina which is kalani as well, is, not gonna work. And so they have no answer and, quote unquote, go figure it out. But the last thing that my family, me, and anyone else [is] gonna do is stand in anybody's way. Um, whatever they want to do, they do what they wanna do. Um, and um. We'll just, um, our family, um, we'll just try and help, malama, as much we can, and what we can't, we just, we 'oki. Um, and um, and even if it comes to a point where, you know we just have to let people go, to aloha, and people can go. [inaudible] We help wherever we can. We give whatever input we can, and then we `oki, which means our thing, what was done before, we just hold kapu. Again, if it comes to that point, because, for us, we don't control that. We have no land titles, which no exist, and nobody recognizes an allodial title anymore, it's been converted into the land claim or the land commission down the line. Allodial titles for natives don't exist anymore, they are part of the system, fee-simple, one and the same. Because there's no Hawaiian sovereign and so there's no allodial in that sense. It's merged into a fee-simple ownership. And so, we don't have any say, we don't have anything, we're not going to come up to do anything, [it's a] freedom of choice and happiness. Make choice on our own, so, that's what it boils down to, just to be constructive, as helpful as possible. With aloha. We know what is correct for us and what is pono, what would be hewa, and we'll act on our own, accordingly. And just ho`omaika`i and po`omaika`i and everything as much we can. Um, and that's all. But they do feel uncomfortable, of course, and, if you build anything over or around, near, to such iwi. And that's all, unless something can be helped figured out, and, you know, um. And our family will just make the record and go our way."

Ehrhorn: "Thank you. Kaanohi, do you have anything you want to add?"

Kaanohi: "Yeah, when we had our consultation, that's about the same thing he shared. For me and my family, we wouldn't have these hukihuki manao; you either for it or you against. And we wouldn't go for, "Oh, you know, if you want to go do it, go do it, we gonna support you." If we were against it, we

would not support you. So I'm not with that hukihuki sense or mana'o. But that's not on me, that's not on my family, it's on him and his family. That's what they do. But for my 'ohana, we don't see it as the building. Yeah, it's somewhat over the burials, but they're not being disturbed. And the fragment that's being moved was already disturbed. So it's being moved to a safer location. And we really don't know if there were many more that were disturbed with past impacts, work, excavation that was done for prior buildings. This building is going to be deeper, I mean taller, so of course the subsurface disturbance has to go deeper, and that's why, that's how easy they were found. But they're going to be preserved in place. I think that makes a difference. They're not going to be disturbed. And my family did not understand the configuration of the location of the burials. Because, from what we've seen in plots burials that deep, they were moved around. Where the coffins were or [where] the iwi was originally placed sometimes they get moved around, underground. So the configuration you see now was not its original placement. [inaudible] So I am not understanding what the family, their family, means by the configuration, the placement of the graves. But maybe it's their family's mana'o."

Ehrhorn: "Ok, thank you. Um, if there's no other...."

Kimo Frankel: "Um, can I say something? My name is David Frankel, I'm an attorney at the Native Hawaiian Legal Corporation. And we represented Kaanohi and represented in pending cases and past cases. Um, this is the second time I've been to [a] burial council meeting where this has come up. What disturbs me is, this is a bank, right? And a bank is one of the more conservative institutions in terms of protecting themselves and their assets. And it is astounding to me that they, the bank, went so far in its development plans before the whole AIS process began. And this is, um, we should have learned, and you would think that a bank would have learned from WalMart, Ward Villages, the rail, and Kawaiahao. And, um, it's just astounding to me that it's a bank that is coming to you. Because banks are really hard to get loans from; you have to make sure that there's not going to be any problems. And these guys went this far, in this study. And I don't know what the solution is in this regard, [because] we keep suing, because we don't want cultural descendants and lineal descendants to be put in a position that they are actually being put in, and listen. It's appalling to me because all the structural work and plans should not have been done until you complete a really good AIS first. And I don't know if the Burial Council can write a letter to all the banks, reminding them how 6E works. They should know; they've got lawyers. Anyway, I just thought you folks needed to know."

Lin Chang: "Can I say something? I'm Lin Chang, from American Savings. And, we're not here to point fingers. But for the bank's perspective, we will say that we went through the process. We are, as you said, a bank, and in the business of lending money to people. We're not land developers. So, we hired on consultants and they guided us through the process. The State Department of Planning and Permitting gave us [a] foundational permit. They bypassed the process. So only upon us learning, we hired Lani as our cultural consultant, to help us with other parts of the project, you know, to make sure, from a protocol perspective, we did the right thing, because we're always about doing the right thing. Only upon Lani coming on board with us did she raise the question and say, "Oh, was an AIS done?" And it was only at that point, at that time, did we learn an AIS was required. Like I said, we're not in the process of developing land; we had consultants. So, not to say who led us down the wrong path, you know, whether it was them issuing us a permit without going to SHPD, or our consultants, but I would say that, upon us learning, you know based on our input with Lani, that we immediately started the AIS process, hired on Cultural Surveys. So, unfortunately, it is what it is, but there was never any intention to do the wrong thing."

Ehrhorn: "Yeah. Let me just summarize. We've been going through this project for years now, no, months now."

Chang: "Seems like years now."

Ehrhorn: "I know, I agree partly with what you said. It has been a real issue with this council; that iwi should be considered, by the architect, just like any other site constraint. Whether it's a stream or a good tree, and you design around it. Well, you don't always know where the iwi is, and I think you guys have done a tremendous job, after the fact in coming in and trying to resolve the problem. I mean, moving a building....I'm an architect, and moving a building three feet, you didn't actually physically move the building but the changes on the drawings to move a building are quite extensive, and I'm sure it cost you a lot of money. Now, you deserve to pay the money; I mean, I'm not begrudging you that, but I think your efforts are very, very good. I think the iwi, I'm impressed with the way, yes, the building is over the iwi, but how high is the iwi, or the ground to the bottom of the building, it looks like it's pretty high."

Chang: "Eighteen feet to the first level."

Ehrhorn: "Eighteen feet. That's pretty significant; so I think the design, um. You've accommodated the iwi really well, and after the fact. My problem has been, on the Council, as I said I've been hanging around since 1988. It's a fact that people always come in at the 11th hour and ask us for special dispensation. It's a thing that has always upset me. So, anyway, any other comments? Kaanohi?"

Kaanohi: "Yeah, one more comment. When I first went to that site for consultation that first day, ASB was going to be doing test trenches. Then, after I learned there were LCAs, I kinda threw the hint that we'd need to do an AIS. And I think it was during the test trenches that, and you can correct me if I'm wrong, Matt, but they got hints of the iwi there, and that's what opened up the idea of an AIS."

Ehrhorn: "Opened up the idea of an AIS?"

McDermott: "It was in the initial three test trenches that we found the first burial finds. So, it was...."

Ehrhorn: "By the way, who's the architect on the job?"

Chang: "Leo Daly, for the [inaudible]."

Alan Kubota: "Alan Kubota, American Savings Bank. When the bank bought the property, there were already plans for the foundation permit issued to the previous owner. The architectural drawings were already done for a medical facility; we did not change the building plan, we developed the foundation pretty much similar to that. The question was raised, early on, to, if there was an AIS or should we do an AIS? And the answer was, "No, DPP issued the foundation permit to the previous owner." All of the consultants that we had basically said, "No. because we're going to the process of DPP." And if DPP had already confirmed, they would have kicked it back. So we were not, our architects' firm were not the original architects for that. That was from the previous owner that had already done that. So when we learned that new information, we contracted with Cultural Surveys to do the AIS."

Ehrhorn: "Well, I think that was the right thing to do. Gerald?"

Lam: "They have really done a, ASB has done a, I. You know, I think they've done incredible in coming forward and doing all that they could do. And they're the ones that decided, as a grassroots, our perspective, and what always gets lost, is that this is a spiritual matter. You can do things physically, you know, to make it nice and so forth. But it's a spiritual matter, which is much like I have mentioned before with the Pohaku ka Luahine. In Moanalua Valley. That alone, on the Historic Register, kept the H3 from going through Moanalua Valley, they moved it to Halawa because you can't build anything near because you upset the 'āina. It's a spiritual matter. Um, there's no time and space for spiritual hewa. The relevance and materiality of a concrete wall barrier, and make it nice, and 50 feet above, and 20 feet above, is not material in sense of a spiritual matter, where you upset the 'āina. In the [inaudible] and circumstance of the iwi, those that are aboriginal inheritance of the 'āina itself. And so that's what the grassroot area is looking at, that spiritual, and it does coincide someplace, somehow, with the physical and material aspects of, "Ok, don't touch them, um, as long as you don't touch them you can build around, and if you don't build right on top and you build twenty feet above, make it look nice and it's ok." It somehow interfaces somewhere, not cleanly, but in the other perspective, the grassroots, it's the spirit of our kupuna. They were buried without that expectation of this kind of development, of course. And so, that's all. So, we just keep in mind that, for the cultural perspective, this is mostly a spiritual matter. When it comes into the physical realm, that's where we in the grassroots tend to get lost. Legalities, the barriers, the accommodating to build our modern buildings, so on and so forth. We kinda get lost in that. And so that's why, you know, many of us will just move on. And others won't, and so on."

Ehrhorn: "Ok."

Fermantez: "Can I make one quick comment? I mean, so, consistently as a Council we've tried to be critical, but also fair. And to be fair, you know, we know the bank and we've been apprised many times of these things. We know Matt, we know Lani, we know the Kaleikini 'ohana, and we now know the Lam 'ohana with respect to this place. So, this project.. To be fair, the process has been, I mean in response to your concern, once things were, without pointing finger, the process has been, at least in my mind, exemplary. I mean, it's been a standard kind of process we've gone through."

Frankel: "Can I respond to that? And I understand your appreciation for American Savings Bank in that approach since they've discovered things."

Fermantez: "Right."

Frankel: "But I'm asking, I'm pointing at a more fundamental issue. If you are loaning money to institutions that develop, it should be part of your protocol, to tell, as part of your loans, as well as

your practices if you're going to do it, to ask have you done an AIS? That needs to be institutionalized. And that, the fact that it wasn't here, is the source of the problem. Before you purchase property, if you're a bank, you should have an Archaeological Inventory Survey done because of exactly what is going on here. And everyone needs to know that now. And the fact that people don't is alarming because it is putting people in a situation where they're being made to make a choice which they really shouldn't have to make. And this goes back to Ward Villages, where this Council approved the disinterment of burials, but you didn't have to. You approved the disinterment because the developer said, "Well, if you don't, we're going to drive our pile drivers right through where the burial were." And the reason that happened was because they didn't do an AIS prior to the work."

Ehrhorn: "Ok, well, I think you made your point. And we've got to move on."

Frankel: "Ok."

Ehrhorn: "That isn't exactly what happened at the Ward Warehouse."

Frankel: "Actually, it is."

Ehrhorn: "No, we were involved in it...."

Frankel: "As was I. I represented Kaanohi in it."

Ehrhorn: "I know, I know, but we can talk about this all day until the cows come home. "

Fermantez: "Clearly, it's an evolving process, too. Right? Things are different, and they're changing, and again, to be fair, the explanation has been given as to previously identified and what has been previously done. I'm not a lawyer, and other are and use the term due diligence and all that kind of thing. And in this case, to be fair, that's what I'm trying to be fair, with this project. And I appreciate what has been done here."

Mitchell: "What I'm feeling from the support of and advocacy from our community, Native Hawaiians, is that we know not everything is learned in once place. But as lāhui, as a nation, we should come together to move forward on something. What I'm feeling is, that spirituality of this burial issue, is, what kupuna is saying is to be maka'ala. To be alert. But even though they say it's maika'i, still be maka'ala, be alert. And what I'm feeling now, too, is that there is legal ramifications being brought forth. It's just a feeling. We also want to support and advocate for those who are actually on site when the burials are found, who give wonderful practice of their protocol, in blessing them when they are found. I'm talking about our cultural monitors, those who come on site, they have the 'ike, they have the knowledge, and trust later that when they're needed, they can also make the place maika'i as well. So, just be maka'ala, that the spiritual essence of this is what is wanting to be aware of. And what else has been said here today. This is what I feel."

Lani: "Mahalo nui kakou."

Bill Ha'ole: "I just wanted to ask a question, because the situation that is being discussed is so prevalent and so often. My question is actually relating to how well trained are the licensing, permitting agencies in some of these issues too. Because sometimes we get more, as projects get moved forward, and in fact it shouldn't have been gotten to do that. Are they really well-equipped and trained in knowing some of these issues that need to be done, or is there something that the OIBC Council can offer so that they are more ma'a with some of these things that can be done before they get to this level?"

Ehrhorn: "To partially answer your question, this has been a concern of ours as of several years ago. Two or three years ago when we tried to set up meetings with DPP. They are aware of the issues. And frankly, today I was surprised to hear that they issued a permit of this magnitude without asking a question. Now they don't, I don't think they have the power to require an AIS, but they do have the wherewithal to say, "Hey, just as a warning, this is Hawaii. There are iwi in many, many locations, and when you do your project, you should do some due diligence."

Frankel: "They do have the legal ability to require an AIS, actually. That's how 6E-42 works."

Ehrhorn: "Ok, thanks. The City does?"

Frankel: "Yeah."

Ehrhorn: "Ok, well, thank you."

Fermantez: "That's precisely your point. That process, which is not our process, right?"

Frankel: "Right."

Ehrhorn: "Ok, well thank you for the question. Before we move on to the next item, First Hawaiian Bank, another bank on the role here, I just want to note that Mana Cacerese just arrived."

Caceres: "Mahalo."

Ehrhorn: "Mana, good to see you. So when Danna has to leave us at 1:30 PM, we'll still have a quorum."

Item D was taken next.

D. First Hawaiian Bank East Mānoa Road Branch Project, Mānoa Ahupua'a, Honolulu (Kona) District, O'ahu, TMKs: [1] 2-9-013:036 and [2] 2-9-022:025
Information/Discussion: Update on the above project.

Ehrhorn read the above item onto the agenda.

McDermott, CSH, and Diane Yafuso, First Hawaiian Bank, presented updates on the project. Yafuso apologized to the Council, as she would need to whisper on account of losing her voice. She expressed her and the bank's appreciation for the Council's input and time.

McDermott discussed results of the archaeological inventory survey. Project falls under 6E, and FDIC involvement includes Section 106 review, ongoing since 2015, previously focused on the architectural issues but also now before the OIBC as a consulting NHO. Letter mailed to the OIBC after the previous OIBC meeting in July is listed under VI. Inadvertents/Correspondence, Item E. Retaining wall 7 ft high with residential structures atop, parking spaces below. Residential buildings are enclosed by basalt and mortar walls. Residential structures will be demolished, 2-story commercial building from 1955 will be demolished, 3-story commercial building from 1960 will be renovated and modified, including a new addition. Mass excavation will be done to develop two-level parking. Historic use (1855 LaPasse map) of the area is for agriculture and residential. 1870 map documents East Manoa Road coming through the project area, a large auwai and Manoa Stream. Area east of the auwai and Manoa Stream was agricultural land; the puu, the raised area, was not used for agriculture. Several Land Commission Awards in the area, one in the project area itself; important placenames are Kolowalu and Pamo. LCA data documents agricultural use of the area. 1919 U.S. War Department map documents the well-developed East Manoa Road, residences and buildings along it, but no buildings in the project area itself. 1950 Sanborn map, fire insurance map, documents Koaniani Way but not Keama Place, with 3 residential buildings shown. 1956 Sanborn map documents commercial building along with the 3 residences. Previous archaeological studies in the vicinity of, but not located on, the project parcel yielded inadvertent burial discoveries, cave sites, a heiau, and historic residential structures.

Reconnaissance-level survey for residential structures, same for the historic buildings before renovation and remodeling. AIS focused on sub-surface archaeology. All standing architecture has been well-documented. Predictive model indicated agricultural use, landscape of puu and the LCA in vicinity indicated possible habitation, including remnants of historical structures like cesspools, privies, trashpits. Hill would have been terraced to create level foundations for structures. Shovel test pit dimensions were standard 2 ft. by 2 ft. by 2 ft. in depth, hand excavation in areas with the large, low lava rock walls. In other areas, 2 ft. by 20 ft. backhoe trenches were used. Work started on July 13, 2016, with initial work being done with attention to possible soil contamination, then downgraded as the levels were within the acceptable threshold for residential and commercial use. Initial work was done in Tyvek suits, with a week off for soil samples to be analyzed. Shovel test pits had a mix of disturbed sediments and decomposing bedrock, which looked as if it had been moved around to level the area for foundation construction of the structures. One test pit was excavated to a depth with a fill layer of concrete rubble, broken glass, rusted metal related to demolition before the existing buildings were built in the 1900's. There was also evidence of an old, buried surface, prepared before the buildings were put in in the 1950's. Ewa-side of the big, retaining wall was an articulated sub-adult, relatively shallow. Another trench was dug to test the possible extent of burials, which included a small pit feature with previously disturbed remains which had been gathered and put in the small pit feature; those remains were from two other sub-adults and one adult. MNI is 4, but only one is represented by an intact burial. CSH is consulting with SHPD on what to do, there will be a driveway in the area; AIS trenching was extended to include the driveway, and no other human skeletal remains were encountered in that area. Corner will be landscaped, so the burials could be preserved in place. Mass excavation will need to be done where the residential buildings are, therefore testing in the corner will need to be done as well; testing beneath the retaining wall is difficult because doing so would undermine the wall foundation. Excavation under the house on the opposite side of the retaining wall would be difficult as well. Photos of the shovel test pit stratigraphy and test trench stratigraphy were referred to. A slide of

the project area was referred to. A slide of the trench stratigraphy with the burial feature protected from exposure and photography was shown for explanation of the soil types observed. A slide of architectural design was referred to. OIBC is a NHO under Section 106 consultation, therefore the OIBC received a letter from the project proponents. Additional organizations contacted include OHA, the Lifesource Foundation, Manoa Heritage Center, and community groups, who will also be contacted to share the results of the AIS study with. DoCoMo and Historic Hawaii Foundation as well. AIS testing strategy for the wall is being developed with the SHPD; burial discovery notification advertisement will be published in Ka Wai Ola and the Star Advertiser; CSH will work on the burial treatment plan with the descendants that come forward, and the report will come before the OIBC for their consideration; archaeological monitoring plan will be written.

Ehrhorn asked if the retaining wall would be pushed back 13 feet.

McDermott stated it would be pushed back about 13 feet.

Ehrhorn asked if the parking lot would be where the retaining wall is located.

Yafuso stated that the retaining wall would be taken down and a new one would be built.

McDermott stated that the current level of the area in front of the retaining wall is the same planned level of parking lot's ground floor, though it would be pushed back 13 feet.

Ehrhorn asked if additional testing would be done if the wall was pushed back 13 feet.

McDermott stated additional testing would be done, with methodology being developed with SHPD.

Ehrhorn asked if it meant the house would need to be demolished, along with the wall.

McDermott stated that doing so would enable testing to be done.

Yafuso stated that previously, the SHPD told FHB that the three residential units could not be demolished until the AIS was complete, which is why hand-dug shovel test pits were employed as a testing strategy. The testing strategy has already been approved by the SHPD, and CSH is following through with the testing. Additional testing, as appropriate, is being developed by CSH in consultation with the SHPD.

Ehrhorn asked if there was any indication of where the iwi contained in the pit feature could have originated from.

McDermott stated that it is probably from within the vicinity, including from earlier work along East Manoa Road or when the previous parking area (the historic surface mentioned previously) was excavated, but a specific location is unknown. Based on the AIS results, it appears the driveway is clear. Foundation wall that is 7 feet high likely has a footing of approximately 3 feet side, and the testing trenches are already against the footing.

Ehrhorn stated that the retaining wall was likely constructed at a time when there wasn't much concern about footings.

McDermott stated that the archaeological crew is trying to determine how thick the footing is, using a pick and shovel.

Mitchell asked about the driveway area would be tested, as the iwi were found at shallow depths.

McDermott stated the test trenches were extended as far as possible, with no additional finds.

Ehrhorn asked if the planned parking lot would be in the same location as the current parking lot.

McDermott stated it would be at the current grade.

Mitchell stated it was important to get the name of the puu.

Kaanohi asked about the in situ burials.

McDermott stated there was one in situ burial, a subadult. The other remains were concentrated in a small area, representing two individuals.

Kaanohi asked if there was already a design for the building, as the AIS should have been done before the building design. Therefore the AIS should be done before anything is designed.

McDermott stated that SHPD consultation has been ongoing since 2015, but primarily focused on the architecture. The AIS was discussed only recently.

MKLee stated the puu is important because there is a cave that goes through the mountain to the Koolau. Therefore, if there is a shaft present, there could possibly be iwi kupuna placed there.

Mitchell asked that consultation include members of the original families awarded the LCA's, if there are any surviving members.

McDermott stated he intends to talk with the neighbors of the project parcel to get their input about families who have lived near or within the project parcel for a long time. One of the residents of the structures to be demolished, who recently vacated the structure, was part of the HAZMAT investigation team; McDermott will talk with him and his wife.

Kaanohi stated that Kolowalu in Manoa is an extension of her family's land in Honolulu, also Kolowalu, and Kukuluaeo (Kakaako), also Kolowalu. There could be more stories about the puu. Ehrhorn asked about soil test reports, as cinder could be indicative of a cinder cone.

McDermott stated that the term puu could be a misnomer, as Manoa has been described as an undulating area, therefore the usage of puu may only mean a higher area, not a cinder cone. McDermott would look into it. He stated the geology of the area is complicated. There are at least three different distinctive types observed during excavation.

Kaanohi requested Hui Malama be added to the list of consulting parties, and send all materials to her.

Item E was taken next.

E. Howard Hughes Corporation Block N East Project, Kaka'ako, Honolulu Ahupua'a, Kona District, O'ahu Island, TMKs: [1] 2-3-002--1 (por.), 086, and 087

Information/Discussion: Update on the above project.

McDermott provided project updates.

McDermott stated that this was a project in which AIS testing results influenced the development and design of the project. The new project is named Aalii. The entire footprint of the new project has been studied extensively by previous AIS studies. McDermott referred to slides in a PowerPoint presentation. A new Burial Site Component has been written and submitted to the SHPD addressing the Block N East project, as the Block I project has an accepted Burial Treatment Plan upon the recommendation of the Oahu Island Burial Council.

Block N East will now have a 7 story parking structure, a 40 story residential tower, with a residential and commercial wrap. The cluster of burials on Queen Street will now be in a landscaped area. The other burial will be part of a central courtyard.

The Block N West burial treatment plan will be delayed until there is a design plan concept for the area. Burials addressed under the HART rail have already been treated.

Burial Preserve area has a BTP. Peripheral remains will be moved to the central preserve area. Interim protection measures include a 4-ft high plywood wall barricade surrounding the area. Howard Hughes redesigned their foundation elements to avoid the burials. The preserve area beneath the building has also been extended as well.

Consultation with recognized descendants has been ongoing, with the most recent consultation on August 1st, which led to the development of the BTP. Howard Hughes has a contract with Oiwi CR to provide cultural monitoring, with Cultural Surveys providing archaeological monitoring.

Ehrhorn asked about an area of the project parcel.

McDermott stated that area is for utility tie-in to Auahi Street.

Ehrhorn asked if there were any questions or comments.

Kaanohi stated there was a meeting on August 1st.

No other comments were received

Item F was taken next.

F. Draft Burial Site Component of a Preservation Plan for SIHP #50-80-08-7331 on Kunia Mauka Loa Ridge C&C Farmlands, Hono'uli'uli Ahupua'a, 'Ewa District, O'ahu Island, Hawai'i, TMK: [1] 9-2-053:057

Information/Discussion: Update on the above project.

Ehrhorn announced that Item F was taken off the agenda because the project proponents were not prepared to appear before the Council. Ehrhorn read the agenda item title onto the record; Ehrhorn stated that the project has been talked about before the Council several times.

Fermantez asked if the firm [doing the work] was new.

Hilo stated the firm is Explorations Associates.

Caceres stated that it is not the original firm, though Nancy [McMahon, Explorations Associates] has been on the project for a couple of years.

Fermantez stated that it has been awhile.

Caceres confirmed.

Hilo confirmed that it has been awhile.

Ehrhorn asked if it was the original firm.

Caceres stated that [McMahon's] firm was not the original [project] archaeologists.

Kaanohi stated the AIS was completed by a different company.

Hilo stated it was TCP Hawaii.

Ehrhorn stated a lady came before the Council [to discuss the project]

Kaanohi stated the individual attended with Nancy

Hilo stated it was Debbie Lui-Kwan.

Ehrhorn and Caceres stated they had a nice hike up there before.

Hilo confirmed she had been on a hike up there as well.

Caceres stated that he hasn't been up there since [his initial hike].

Item G was taken next. Ehrhorn asked Hilo if the item should be cancelled; Hilo stated that no AG was present. Hilo stated a request was made to the office.

David Frankel asked to comment.

Ehrhorn stated that G was only affective if the AG was present.

Frankel stated that he understood that and would like to testify, as a member of the public, because he has a right to as the item is on the agenda.

G. Consultation with the Attorney General regarding the Roles and Responsibilities of the O'ahu Island Burial Council regarding Kawaiahao Church Multi-Purpose Building Renovation Project, Honolulu Ahupuaa, Kona District, Island of Oahu, TMK: [1] 2-1-032:017.

Information/Discussion: Update on the above project.

David Frankel introduced himself.

Frankel: "My name is David Frankel, I'm an attorney for the Native Hawaiian Legal Corporation. We represent two folks: we represent Kaanohi in the lawsuit regarding Kawaiahao Church, and also represent Dana Hall. Dana Hall's lawsuit is the first one. I testified before this council, um, more than once but I don't believe any of you folks were there when we were talking about Kawaiahao. And so I want to give you some background that you need to know. You folks asked for representation from the Attorney General's office and advice years ago. And the Attorney General told you, it would not, that you had no say in the matter because the burials were not previously identified. Um, we argued that you folks needed to have separate representation because, at that time, this Council's interest was in conflict with SHPD. SHPD wanted to treat the burials as inadvertent and allow the Church to move them all. And this Council was not, um, supportive of that but they were told by the Attorney General that you folks had nothing to do and could not say anything. And so, you need to understand some context. Um, it is appropriate for you, as a Council, to ask the Attorney General, Doug Chin, to let you have separate independent counsel. And you need to, because what, at least, if your perspective is the same as it was a few years ago, your position is in conflict with SHPD's. And where there's a conflict, you need separate counsel. When we represented Kaanohi in the [HART] rail lawsuit, we identified this Council as having separate, independent interests from SHPD, and in fact, the Attorney General gave you separate representation: Jay Paige, and, what's the other guy I can't remember his name, represented you and represented a different position to the Supreme Court than Linda Chow, Bill Wynhoff and folks who argued for SHPD. So...."

Fermantez: "So that would be a legal precedent for this case?"

Frankel: "Correct. I want to point out you can do this. Another analogy is, in our lawsuit, our office represents a bunch of beneficiaries of the Hawaiian Homelands Trust and we sued over the State failure to provide sufficient funding to DHHL. And the Attorney General allowed DHHL to hire an independent attorney outside of the State system entirely, a private law firm, to provide separate legal representation. So that's another analogy and something that you could do. So, given the number of times you have requested the Attorney General advise you, and they've not advised you, or have stiff-armed you and said, 'You can't', it's appropriate to take the next step. You folks should be writing a letter to the Attorney General saying, 'We want separate representation.' Um, just so you know the status of things, I assume you do but in case you don't, after the Intermediate Court of Appeals and the Hawaii Supreme Court's decisions, the Circuit judge issued a decision finding that the Church [would]

have to do an AIS, and the more than 600 burials that were located on the Church grounds have to be designated as previously identified. Which means you folks do have the ultimate authority as to what's going to happen to those burials.

"So it's very important that you know that. Things are happening, the AIS plan has been done but the AIS itself has not. And, I think it's fair to say that the parties are still at loggerheads: the Church wants to leave all the burials out of the ground, and, um, Kaanohi and Dana want the burials put back, the way they came. Because what the Church did, they did knowingly, and they circumvented doing an AIS on purpose, in order to save money and time. [inaudible]

Fermantez: "When Danna [Holck] and I came on, it was around the last time the Burial Council did a visit to Kawaiahao."

Frankel: "That's been several years now."

Hilo: "2012."

Ehrhorn: "2012?"

Fermantez: "Four years, that's about how long. And then, I think, at some point, none of us [are] lawyers, but it was this legal thing, actually, I think the last time we actually addressed it. There's been a lot of, we've had this agendized for a while."

Ehrhorn: "Yup. The purpose of this item here, today, was to get input from the Attorney General as to what our rights and duties are, what are our limitations are. That's a question we've been asking for several years. And that's why we see some letters here."

Mitchell: "Which these two are: wants and needs from our last meeting. To have a site visit as well."

Ehrhorn: "I'll cover that in the next item."

Fermantez: "That's just my question."

Ehrhorn: "I'm glad to hear that somebody has ruled, that some legal person has ruled that we have. That these are....

Hilo: "Previously identified."

Ehrhorn: "Previously identified."

Fermantez: "When was this ruling?"

Frankel: "Well, I want to say, February or March of this year or so? I can't say specifically. We filed, I don't want to get too technical; we filed several over...."

Fermantez: "It was this year."

Frankel: "Yes, it was this year."

Fermantez: "You know, because I don't come to every meeting. And this has been a long, pending thing. It's hard to keep track of what's happening, and what our, clearly we have a kuleana, but what our legal kuleana within the structure of the work that's going to be done."

Frankel: "I really think you should not be relying on SHPD's attorney, you need your own separate counsel."

Ehrhorn: "I think there's, a couple years ago we actually took some action to get our own separate counsel."

Holck: "Yeah, we did. It was for the rail."

Hilo: "For rail?"

Ehrhorn: "No, not for rail, for Kawaiahao."

Fermantez: "I thought Hina, and that was the thing though that was kinda my impression, that we had..."

Holck: "We requested that of the Attorney General's office."

Ehrhorn: "We had to go get an approval from the Governor."

Hilo: "Mm hm."

Ehrhorn: "So it wasn't Hina, it was the previous one that got the approval. But as far as I know, we never followed up and got, you know. Where does the money come from?"

Amaral: "Question: is there a way we can get a copy of that ruling?"

Hilo: "David, you can send it to me."

Frankel: "Great. There's two rulings."

The Council thanked Frankel for his testimony.

Item H was taken next.

H. Kawaiahao Church Multi-Purpose Building Renovation Project, Honolulu Ahupuaa, Kona District, Island of Oahu, TMK: [1] 2-1-032:017.

Information/Discussion: Update on the above project.

Ehrhorn read the above item onto the record.

Ehrhorn asked if there were any updates.

Hilo stated that a request for a site visit was made to the Church. No other updates were given from the SHPD.

Ehrhorn: "We got a[n] email, Regina and I, I don't know if it went to all the Board members, or to Mike Lee, I wish he were here. He wants..."

Fermantez: "He was just here."

Ehrhorn: "Well, his stuff is still here, so he'll be back. He wants to have an update; correct me if I'm wrong, but he suggested that the entire Council should go down there and go into the room where these, where the iwi is being stored. And, um, after thinking about it, I feel that would be very unmanageable. So I'm recommending or suggesting to the Board that we appoint two people. For the whole Board to go down there you'd need to have an open meeting. That means everybody and their, that means everybody is invited. What I'd be willing to suggest or hoping we could do is have two Board members, because more than two people comprises a formal meeting. So we have two Board members to go down to the Kawaiahao Church, go into the room, inspect it and report back to us and say, "This is what we found."

"Regina, I suggested that she'd be willing to go along."

Amaral: "Aulii and I would like to go."

Ehrhorn: "Perfect. Any other pair?"

Holck: "Could you do separate ones? I'll go, if there are separate ones."

Hilo: "Ok, I'll check."

Caceres: "You can pair me up with Danna."

Ehrhorn: "That would be two meetings."

Fermantez: "I'll go with Chuck. But I could probably, Chair should go. And if it can be accommodated, I'd like to go as well as part of this. I mean, that's a heavy kuleana. We should probably all go, right? I mean, to be fair, right? I don't know how that works, though."

Hilo: "Procedurally."

Fermantez: "Yeah, as a meeting. But I think you should, actually, as Chair."

Ehrhorn: "Actually, when I talked with Regina, I suggested that Mana and I go, as an idea. So that would be three different meetings. That would be kinda difficult to set up, but if you can, that would be a good idea."

Hilo: "I'll make a request."

Ehrhorn: "I'll go with Mana. (To Kali) You can go with Danna."

Fermantez: "Oh, yeah, whenever."

Amaral: "Two can go in at a time. Is that what you're saying?"

Ehrhorn: "Do you understand that, Regina? What she's saying?"

Caceres: "Tag team."

Ehrhorn: "I think that would work out best for everybody. But there may be some strings about this." [inaudible]

Ehrhorn: "Mike, you came in late but did you hear the early part of my discussion? Our discussion? I was referring, I was reacting to the email which was sent that you would like a formal presentation from the Board telling people in the audience what are the conditions of the iwi, how are they being stored, um. Yeah, conditions, how are they being stored, does that kind of summarize what you...."

MKLee: "That summarizes it."

Ehrhorn: "Ok so what we're talking about is, because we can't have everybody go down there once because that's an open meeting and all that, and it would be a little tough, but what I'm suggesting is we can have two people at a time go into the room. And then at the next meeting we make a formal presentation to you and others as to what we saw and what our feelings were. And, uh, since we. So we feel we should all do it so we're pairing up, you know, Mana and I, Danna and our friend from the Windward side, and Beverly and Aulii. Now if we can do that all on one day, that's much better. But if, it may take three days. Regina is going to work on that."

Hilo: "Absolutely."

Ehrhorn: "God bless you."

Hilo laughed.

Amaral: "I have a question. Doesn't the Pastor have any say in this?"

Hilo: "Um, that is not my kuleana."

Bill Ha`ole: "I'm actually responsible for the iwi kupuna at Kawaiahao Church."

Ehrhorn: "Oh, I'm sorry."

Ha`ole: "And the arrangements for the visitation are fine, but they will be with me. I'm the one that you will be meeting with."

Amaral: "Oh, wonderful."

Ha`ole: "Um, the Pastor does have a say, but it's very....in this case, because there's so much [inaudible] the Pastor is an advisor in this and Chairman of the Board is our legal representative through the court proceedings. And I serve on the Executive Committee which is also overseeing some of the requirements of trying to meet by token of the law, by the legal process that we are going through. We're not opposed to visitations, but we are opposed to any discussions about, any kind of outside discussion. We prefer that the visitations be solemn, respectful, and also, um, quiet. And that we can discuss whatever outside. So, we have had, and it was only a couple years ago, Chair and Vice Chair of this Council, came in to visit, and, um, they eventually reported to this Council the conditions. And again, we are, [I am] speaking strictly as one responsible for the care of the iwi kupuna. We are always open within certain requirements, and respectful requirements, that we consult before we go in. And that is something that we will brief you [on]. Mostly what it is, we don't want to have any unpleasant discussions or even concerned discussions, any kind of 'eha, or any kind of hewa being discussed while we're in the presence of kupuna."

Amaral: "Sure."

Ha`ole: "We have to wait, I ask that we wait until pau with the visit, and then we go outside and we can have those discussions."

Ehrhorn: "I think we would all agree on that. It's been a while since..."

Ha`ole: "I'm sorry. My name is Bill Ha`ole, William Ha`ole, I was the former Chair of the Board of Trustees and I was recently the former moderator of the Kawaiahao Church."

Ehrhorn: "I'm sorry for not recognizing you earlier, but thanks for coming today."

Mitchell: "Mahalo."

Fermantez: "Was that the last time you've been here? It's been a few years."

Ehrhorn: "Several years."

Ha`ole: "It's been awhile. Because there have been so many different things happening, but it was also because of the legal process. There was no, um, real changes, you know, there was no real progress that we could actually report. And I'm still the one that's gonna be representing Kawaiahao Church here, when there's progress. We will let you know, whether there's progress or no progress. I still feel it's important to be present, whether there's progress or no progress. Today, there was no progress report yet."

Ehrhorn: "Bill, you heard my summary of our visitation. Does that sound ok to you?"

Ha`ole: "Yes, sir."

Ehrhorn: "Thank you. Mike?"

MKLee: "Question, Bill. Um, being respectful to the wishes that you laid down, as the rules, which I agree with, too; for observational purposes only, if they had a pad because this is my concern. You're spot on about no hakaka, puhiwa, take it with you, but for observational purposes, that people be able to write, you see the left hand box of the paper right there. Because people are going to look down and they're going to scan. But two eyes don't see the same thing. And this is just observation. This is not coming up with exchanging what one sees to another, down there. It's just, the second person, do you see the box three feet from the left-hand corner? And then they look down, and there, that's it. There's no exchanging of thoughts, there's just do you see the box on the left-hand corner? Then when they go up, did you see the box on the left-hand corner? Did you see the hole in the box? Yeah, ok. Because if they go down, two people look, they go up and say, did you see the the? Oh, no I didn't because I wasn't focused on that. Then are they supposed to go back down and then bring that in their mindset. It's just that it's an observational, conditional thing, and they're not trading their minds what one sees the other one confirms something when they go back up. And it's just the purpose of observation that we're on the same sheet of music. That's it. But is that, is that, allowable, that someone just have a pad, write, not even say anything, just write."

Ha`ole: "It is, for me. Anything, discussion said regarding malama, regarding the care, obviously that is important to have there. That's all I'm saying, yeah? That anything that, you know, that if your heart is

challenged and you really feel troubled about something, that is what I'm asking that you not bring in. We can talk about that outside. But if you notice something and you want to question something, we've allowed that. If it's something you're curious to know, again we don't really want to be in charge of how our heart is feeling at that time. I think you understand."

MKLee: "Now I understand."

Mitchell: "And no makou ka [inaudible] planning for us, as well. When it comes to ho'ihi, to give respect."

Ha'ole: "Because, I should share with you, when we do work with our iwi kupuna, we have music, we talk about the keiki and what they're doing in school, we talk about 'ohana things. Anytime we talk about Church business, we wait until pau and then we can talk about it. Or any kind of hakaka that is going on at home. We don't bring that inside. It's important that we do that."

MKLee: "Very good. Beautiful. Thank you for sharing that with us."

Ha'ole: "That's just what we do. They like to know what's going on with our families."

Ehrhorn: "But again, when all six of us go into the room, I mean, it's ok for pairs to talk. When we come back to the meeting here, we'll have that open discussion next month, where we say, "This is what I saw, this is what I felt."

MKLee: "Then I would like to ask, part of Section 6E, because we do this to other sites where we have kanu'ed the iwi, is, the lineal and cultural descendants, one of the reasons we are there is we participate. This is not an exclusionary process, just for the OIBC. Paulette is the only one recognized as a lineal descendant; she should be able to meet with you and whatever to go because we're afforded that. At the Hoakalei preservation and other places, um, at the new, what's that place in Waikiki that we need to go into the new...."

Ehrhorn: "The Zoo?"

Hilo: "IMP?

MKLee: "Yeah, International Market Place. They afford us, you know, to call them in advance to see that they have a key to take us into the private area. So one of my things was not, I want you guys to, because you're the body that oversees us, but what about us? Who speaks for us being able to do the same thing? And it's part of Section 6E, that in other venues we're allowed to do that, but right now in this conversation, that's not even mentioned."

Fermantez: "You seem to be able to speak for yourself pretty well."

MKLee: "I know, except this is a different, this is a whole different can of worms."

Ehrhorn: "What we're doing is, we're kind of formalizing a reaction to your request as a formal Council. Now there's nothing to keep you and Kaanohi or anybody else from going to the Church and making your own arrangements."

MKLee: "Well, we have Bill here. Our schedules, it's very busy, I'm very busy, but Bill is here and since he's here we have to go through the Chair. You are the Chair, and I'm asking you to ask Bill, this is protocol, you have to ask the Chair, not talk to anybody else. If Bill, um, how would we do that in this situation? On his side? You could ask for us."

Ehrhorn: "Well again, the question to Bill is what kind of protocols or procedures do you have to accommodate somebody like Kaanohi or Mike to have a visit down there on their own?"

Ha'ole: "It's been a long process, I think you know that, and there are many challenges, regarding my own cousin, Kaanohi. And we met off our cases often as 'ohana to deal with the same question. But currently, under advice of our own lawyers, because she is a plaintiff in one of our litigations, that we need to be making, I personally have been advised that it's clear where our lawyers' at [inaudible] regarding the ongoing case. But I'm not saying it can't happen, I'm not saying it won't happen, you know; we're trying to get to that point where, uh, it can happen. It had happened early on in the process, we were going through the consultations, and the display of disrespect and the level of anger that was expressed while in the presence of the kupuna caused us to really say, "No more, no more." And that's where we're coming from. You know. And I've been put directly in charge of it, you know, um, being also recognized as a cultural descendant here and on other projects, in order to make clear that that never, ever happens again. Like I say it's not that it's a 'no', but that we need to prepare people before we go in there."

Ehrhorn: "Let me rephrase the question: what if Mike came up to you down there, at the site, and just said, "Hey, can I just take a quick walk around the room?"?"

Ha'ole: "I can't answer that right now. I really need some time to process it because, again, I'm responding primarily because there are so many different ways that we have been affected, legally, by

doing something from the heart. And we want to be very careful. I really need to get some legal advice from this point moving into the future. We want to be sure that....”

Holck: “How does Mike differ from any one of us?”

MKLee: “Exactly.”

Ha‘ole: “I can’t answer that right now. Honestly, I just want to be sure. I aloha them tremendously, I respect their work. But I also cannot act without consulting with the rest of the team, and it may be that it’s ok, but I need to consult with our team. Because I feel that, yeah, that should be automatic, just like how you’re asking me. But I need to make sure that we’re not walking into something that....”

Ehrhorn: “Well, once you consult with your team, can you be sure to get together with Regina? Phone call, email, or whatever it is so we can move this along.”

Ha‘ole: “I hope you understand....”

Ehrhorn: “Oh, I understand exactly where you’re coming from.”

Ha‘ole: “We gone through so many, there have been so many years, and we are so extremely cautious about everything we do. I would rather work with them more than....”

Ehrhorn: “Absolutely. Mike?”

MKLee: “Um, I appreciate Bill’s answer. I understand the notification process. I’m not part of any lawsuit, and I am talking just about me, as an individual, not a gang, not a group, no cameras, no nothing. Just to pay my respects, that’s the venue and the context.”

Ha‘ole: “I have your contact information. Let me run that by....”

MKLee: “Mahalo Bill. Is that...”

Fermantez: “To his point, so. Kaanohi, you’re a lineal descendant, recognized, because I don’t think that since I’ve been on the Board we’ve recognized anyone for Kawaiahao. Do you remember?”

Ehrhorn: “Yeah, we....”

Fermantez: “I mean, maybe I wasn’t here, but are there a number of....”

Frankel: “Dana is recognized as a lineal.”

Fermantez: “Is there a long, presumably it’s long, it must be, we’ve discussed it. There must be a long list.”

Frankel: “So, there’s actually a long list of....”

Fermantez: “Because there’s an actual list of names, right?”

Frankel: “So technically...”

Kaanohi: “I have several relatives there.”

Fermantez: “Right. So how many lineal and cultural have we recognized for Kawaiahao?”

Kaanohi: “Me and Dana.”

Fermantez: “Is that the only two?”

Hilo: “Yeah.”

Frankel: “However, there are a lot of folks out there that are lineal descendants that haven’t been recognized.”

Fermantez: “No, of course. That’s my question, because I don’t think since I’ve been on the Board we’ve recognized anyone, either cultural or lineal, for Kawaihao.”

Ehrhorn: “No, we have.”

Fermantez: “We rarely have recognized lineal, but this is a case where we could recognize a lot because of the documenting. That’s my question.”

Frankel: “Right.”

Mitchell: “If we’re looking at historic.”

Fermantez: “If they came forward. It’s a high standard to have lineal.”

Kaanohi: “And from what I see, there’s not too many descendants.”

Fermantez: “Ok see, I didn’t know that.”

Kaanohi: “For my family, I could get some going. But they’re ok with letting me malama that.”

Fermantez: “And that kinda. Koolauloa is famous for not having, you know. Right? Although they’re there and not recognized, right?”

Hilo: “Yeah.”

Caceres: “Yeah.”

Ehrhorn: “Ok. Any other comments on this point? Thank you for coming [directed to Frankel].”

Mitchell: “Mahalo nui.”

Amaral: “Thank you.”

Ehrhorn: “Any other comments? Kaanohi, you want to say something? Spit it out.”

Kaanohi: "Because they are to be treated as previously identified, I would like to have them returned as soon as possible. In the burial site, [inaudible]."

Ehrhorn: "Kaanohi said that, since we are, and I'm looking forward to that documentation, are, they are previously identified, that's how they're classified, they become more of our responsibility, therefore Kaanohi would like to see the Board here, the Council, would like to take action in getting them reinterred ASAP. Did I misunderstand anything?"

Kaanohi: "No, not a thing. I believe that should be part of your mana'o when you go visit."

Ehrhorn: "Understanding how that might happen?"

Fermantez: "So, how do we procedurally move forward with this idea of finding out our legal, I don't know the term, but, our legal kuleana? How do we procedurally do that, moving forward?"

Hilo: "At this point I don't have an answer."

Fermantez: "Because we were, we wanted to talk to the AG, and this idea of having. So how do we agendize that for the future so that this can be acted on?"

Hilo: "Well, seeing that the Attorney General did not show up today, and taking into account Mr. Frankel's testimony, there's a number of different options the division could take. So, I will be following up with both Mr. Frankel and our Attorney General and seeking counsel moving forward. I suggest that we continue to put this item on the agenda to see if the Attorney General will, indeed, come next month."

Mitchell: "And so, David, what is your last name?"

Frankel: "Frankel."

Mitchell: "Mr. Frankel's suggest to us to write letters to the Attorney General, that is something that you will take as your kuleana, we don't have to do that at this point."

Hilo: "Um, I would suggest that the Council do that as well. As individual members, write to the Attorney General."

Fermantez: "It has to be in legalese?"

[Laughter]

Fermantez: "It's a fair question, right?"

Hilo: "It's a fair question, but I don't know."

Ehrhorn: "Kaanohi?"

Kaanohi: "Instead of writing letters, see if you can pay him a visit."

Ehrhorn: "Say again?"

Kaanohi: "Pay him a visit instead of writing letters. That's always more [inaudible]."

Hilo: "That may be better."

Ehrhorn: "Sit on his doorstep. Of course, we did that one time, and it didn't work. As with that other governor. No, remember we took a walk over there?"

Hilo: "Totally."

Ehrhorn: "Ok, any other comments?"

[No comments received]

Section VI was taken next.

VI. INADVERTENTS/COMMUNICATION

A. Inadvertent Discovery of Human Skeletal Remains at 147 Ulupa St., Kailua Ahupua'a, Ko'olaupoko District, O'ahu, TMK: [1] 4-3-028:032

Information/Discussion: Discussion about the above find.

Hilo briefed the Council on the above discovery. Notification of inadvertent discovery of human skeletal remains was received at the SHPD on July 15, 2016. SHPD couldn't respond immediately with a site visit; CSH osteological and archaeological staff responded and confirmed the remains were human, and provided a field summary report. Mitigation was developed immediately, and IARII was hired on as the consultant to complete data recovery. Consultation regarding disposition of the remains is ongoing, with space on site for a burial preserve. MNI is three. Cultural layer in Kailua is shallow. Ehrhorn inquired about the project.

Hilo stated it's a private residential project; the SHPD is working closely with landowner and the firm retained to do the archaeological work.

Ehrhorn asked who the landowner was.

Yuklin Aluli introduced herself and discussed the project and her background, being raised, living, residing, and raising her family in Kailua. Project is a swimming pool in the backyard. Aluli is working with the SHPD.

Hilo stated Aluli has been very cooperative.

B. Inadvertent Discovery of Human Skeletal Remains at Kualoa Regional Park on July 15, 2016, Kualoa Ahupua'a, Ko'olauloa District, O'ahu, TMK: [1] 4-9-004:001
Information/Disuession: Discussion about the above find.

Hilo provided updates about the above item. SHPD is called for each discovery, and, if the SHPD cannot respond with the site visit, directives are given to park staff over the phone. The SHPD will be working with Kualoa Regional Park staff to arrange for reburial.

Fermantez asked if the discovery was construction-related.

Hilo stated it was due to natural events.

Kaanohi asked how many finds have been made so far, and where are the remains being curated.

Hilo stated the inventory available is from the time she started at the division, in November 2014.

Curation facility is on-site and climate controlled.

Kaanohi asked that the SHPD start discussing reburial.

Hilo stated that she hoped to provide an update at the September OIBC meeting.

Mitchell asked if the curation facility was on site.

Hilo replied affirmatively.

MKLee asked about records on-hand regarding burials and locations, and the mandated librarian position, and stated that 'kanu' cannot be done if there is no inventory. He stated that it should be discussed at staff meetings; MKLee stated that there are volunteer staff from companies who work on document scanning, and suggested that a request be made of the division if ok with the Attorney General to have outside companies assist. The library of iwi should not fall to Hilo to look through correspondence, that it should fall to someone, a computer expert to get this done.

Hilo stated she needed to talk with her supervisor and administrator regarding MKLee's concerns.

Mitchell stated 'In an ideal world.' All reports go through SHPD, which includes the contents within.

Fermantez asked if SHPD had an internship program.

Hilo stated she had an intern, dedicated to H&C, from January 2016 to May 2016.

Fermantez asked if the internship was ongoing.

Hilo replied no.

Ehrhorn stated he'd been to the curation facility at the Park many years ago, before the reinterment/burial platform was built. Ehrhorn asked about an nventory.

Hilo stated she has talked with Kualoa Regional Park management, and asked that she would like to, with the archaeology branch, do a comprehensive inventory if one has not been done. The dialogue is ongoing.

Ehrhorn suggested that the next time Hilo go out there, she go with Ehrhorn and the Koolaupoko representative. He stated that this discussion seems to have been at the OIBC for a number of years now without any traction.

Kaanohi stated that she was a descendant.

Hilo stated that the Hoe 'ohana are descendants, as are a number of other individuals and 'ohana.

Kaanohi stated that she can make a request through her attorney.

Ehrhorn stated that if he, Amaral, and Hilo go together, it may be a good approach to getting issues addressed or moving forward.

Mitchell asked about repatriation at the state level.

Hilo stated that the question would need to be addressed by her supervisor.

Mitchell suggested that an internship be started at the high school level.

MKLee stated that, if Kaanohi's efforts don't bare fruit, to compel the Attorney General under 6E.

Ehrhorn stated that, since it's a State property being managed by the C&C, this is likely not a top priority project.

MKLee stated that the City has to follow State law.

Mitchell stated that, in his understanding of repatriation, it's left to the landowner. Hilo stated the dialogue is ongoing, in which all parties aware of and involved in the issues, interact to develop an acceptable solution. MKLee stated the SHPD has ultimate curation, 'for all time.' That SHPD is statutorily responsible. Ehrhorn urged the next item be taken.

C. Inadvertent Discovery of Human Skeletal Remains at Stanford Carr Keauhou Place Project on July 7, 2016, Kaka‘ako Ahupua‘a, Kona District, O‘ahu, TMK: [1] 2-1-030:051
Information/Disucession: Discussion about the above find.

Hilo provided updates on the above item. Consultation regarding disposition of Inadvertent Find 2 are ongoing.

D. Inadvertent Discovery of Human Skeletal Remains north of Kahana Boat Ramp on August 2, 2016, Kahana Ahupua‘a, Ko‘olauloa District, O‘ahu, TMK: [1] 5-2-005:020
Information/Disucession: Discussion about the above find.

Hilo provided updates on the above item. Hilo was contacted by the coroner, and HPD contacted Hilo immediately after. Hilo stated the remains are in an area subject to natural processes of erosion, which is how the exposure occurred. Consultation with the families of Kahana is ongoing regarding disposition of the remains.

Fermantez stated that people often fish in the area.

Hilo stated that a fisherman encountered the remains and contacted HPD. Hilo stated that she is in touch with the families of Kahana and has committed to availing herself to fulfill their wishes regarding disposition of the remains to the best of her professional ability.

Ehrhorn asked about covering the burial with sand.

Hilo stated the matrix is clay loam, and would be subject to tidal washout until the material is completely gone.

Fermantez stated that the erosion was exacerbated by the recent heavy rain and flooding in the area.

Holck asked if the burial was adjacent to the boat ramp.

Hilo stated it was a distance away from the ramp.

MKLee suggested a methodology for excavation of the remains.

Hilo stated that, as a professional archaeologist, she would not employ such a methodology because of potential to negatively impact the remains. She also stated that it was difficult to find herself in a position where nothing could be done, immediately.

Kaanohi asked whose decision it would be to malama the iwi.

Hilo stated that the jurisdiction is the SHPD's as an inadvertent discovery, and that consultation with the 'ohana of Kahana is ongoing. Additionally, State Parks has been notified, as has Hawaii DOT because the discovery is in the DOT right of way.

Kaanohi expressed concern that an immediate solution was needed, and the State may potentially take too long to formulate a response.

Hilo stated that she had no immediate response to Kaanohi, and re-stated that the Kahana families were informed soon after her site visit to the area of discovery.

Kaanohi asked who was informed.

Ehrhorn stated Kahana.

Hilo said Kahana, State Parks, and DOT.

Kaanohi stated to inform Hui Malama.

Hilo asked Kaanohi for the contact information.

Kaanohi stated to use her email address, as she is the President.

MKLee asked that, because the SHPD have jurisdiction of the iwi, the SHPD create a timetable for treatment of the iwi.

Hilo stated she would add that to her list of duties.

Kaanohi stated that Hilo should take this issue to Downer, and even above him if necessary.

Ehrhorn urged the Council to move on to the next item.

E. Letter from First Hawaiian Bank, dated July 12, 2015, received on July 15, 2016, Re: National Historic Preservation Act, Section 106 Consultation, First Hawaiian Bank's East Mānoa Road Branch Project, Mānoa Ahupua'a, Honolulu (Kona) District, Island of O'ahu, State of Hawai'i, TMK: [1] 2-9-022:025 and [1] 2-9-013:036
Information/Discussion: Discussion about the above correspondence.

Hilo stated the above item is regarding Section 106 Consultation, as the OIBC is considered a Native Hawaiian Organization under Section 106. Project updates were provided previously in the meeting by Diane Yafuso and Matt McDermott. Hilo directed the Council to submit any comments or concerns to her, and she would forward them to the project proponents.

Hilo stated that, for items F through L, History and Culture branch is working on a joint review with the Archaeology branch to articulate and address any concerns both branches of the SHPD may have with the projects. Any concerns from archaeology would be routed to Hilo, who would provide an update to the Council. Hilo stated that she could not answer any questions because the archaeology branch was not present at the OIBC meeting.

F. Letter from the U.S. Department of Transportation, dated July 25, 2016, received on July 27, 2016, Re: National Historic Preservation Act, Section 106 Determination, Western Kapolei Sub-Grade Crossing of the Former O'ahu Railway and Land (OR & L) Company Right-of-Way, State Inventory of Historic Places No. 50-80-12-9714, Hono'uli'uli Ahupua'a, 'Ewa District, O'ahu, TMK: [1] 9-1-015:002
Information/Discussion: Discussion about the above correspondence.

[Refer to Item E, above, second paragraph]

G. Letter from the Honolulu Board of Water Supply, dated July 22, 2016, received on July 27, 2016, Re: Honolulu Board of Water Supply Waterline Replacement Project, National Historic Preservation Act, Section 106 – Request for Comments; Project Name: Anoi Water System Improvements; Kāne'ohe Ahupua'a, Ko'olaupoko Moku, O'ahu
Information/Discussion: Discussion about the above correspondence.

[Refer to Item E, above, second paragraph]

H. Letter from the Honolulu Board of Water Supply, dated July 28, 2016, received on August 1, 2016, Re: Honolulu Board of Water Supply Waterline Replacement Project, National Historic Preservation Act, Section 106 – Request for Comments; Project Name: Wilhemina Rise Water System Improvements, Part V; Waikiki Ahupua'a, Kona Moku, O'ahu
Information/Discussion: Discussion about the above correspondence.

[Refer to Item E, above, second paragraph]

I. Letter from the Honolulu Board of Water Supply, dated July 28, 2016, received on August 1, 2016, Re: Honolulu Board of Water Supply Waterline Replacement Project, National Historic Preservation Act, Section 106 – Request for Comments; Project Name: Waianae Water System Improvements, Part III; Waianae Ahupua'a, Waianae Moku, O'ahu
Information/Discussion: Discussion about the above correspondence.

[Refer to Item E, above, second paragraph]

J. Letter from the Honolulu Board of Water Supply, dated July 28, 2016, received on August 1, 2016, Re: Honolulu Board of Water Supply Waterline Replacement Project, National Historic Preservation Act, Section 106 – Request for Comments; Project Name: Waialae Iki Well Renovation; Wailupe Ahupua'a, Kona Moku, O'ahu

Information/Discussion: Discussion about the above correspondence.

[Refer to Item E, above, second paragraph]

K. Letter from the Honolulu Board of Water Supply, dated July 28, 2016, received on August 1, 2016, Re: Honolulu Board of Water Supply Waterline Replacement Project, National Historic Preservation Act, Section 106 – Request for Comments; Project Name: Diamond Head Water System Improvements, Part II; Waikiki Ahupua'a, Kona Moku, O'ahu
Information/Discussion: Discussion about the above correspondence.

[Refer to Item E, above, second paragraph]

L. Letter from Scientific Consultant Services, Inc., dated July 29, 2016, received on July 29, 2016, Re: Preparation of a Cultural Impact Assessment for a Proposed Artificial Memorial Reefs Project, Maunalua Bay, 'Ili of Wai'ala Nui and Wai'ala Iki; Waikīki, Wailupe, Niu, Kuli'ou'ou, and Maunalua Ahupua'a, Honolulu (Kona) Moku, O'ahu, Hawai'i, TMK: [1] Zone 3
Information/Discussion: Discussion about the above correspondence.

[Refer to Item E, above, second paragraph]

(Closing Comments)

Ehrhorn stated that more was done on Kawaiahao today than over the past 3 years.

Fermantez stated that it must be the new leadership.

VII. ANNOUNCEMENTS

A. Next meeting date is scheduled for Wednesday, September 14th, 2016 at 10 AM

Meeting adjourned at 12:49

Approved and ratified at the Oahu Island Burial Council's meeting on September 14, 2016

Respectfully submitted by Regina K. Hilo, Burial Sites Specialist, History and Culture Branch, on 09/15/2016

APPROVED