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LAND  
STATE PARKS

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**HAWAII ISLAND BURIAL COUNCIL  
MEETING MINUTES**

**DATE: THURSDAY, FEBRUARY 15, 2007**  
**TIME: 9:00 AM**  
**PLACE: NATURAL ENERGY LABORATORY HAWAII AUTHORITY**  
**73-4660 QUEEN KA'AHUMANU HIGHWAY**  
**KAILUA-KONA, HAWAII**

**HIBC MEMBERS:** Charles Young, Chair  
Roy Helbush  
Leningrad Elarionoff  
Ronald Dela Cruz  
Ku Kahakalau  
Kaleo Kualii  
Cynthia Nazara  
Pele Hanoa

**Absent:** Ulu Sherlock, Vice-Chair  
Anna Cariaga  
Jacqui Hoover  
Dutchie Saffrey

**SHPD Staff:** Keola Lindsey, SHPD-History and Culture Branch

**Guests:** Debralee Kailiwai-Ray  
James Moore  
Tom Stewart  
Kapua Kane-Huihui  
Kathie Benoit  
Nick Benoit  
Iwalani Arakaki  
Clement Kanuha, Jr.  
Zachary Kanuha  
Ruby McDonald  
Arthur Mahi  
Iris N. Napaepae-Kunewa  
Raenette Kahaiali'i  
Hannah Reeves  
Mahealani Pai  
Halealoha Ayau

## **I. OPENING REMARKS**

HIBC Chair Charles Young (Young) called the meeting to order at 9:13 a.m.

Pele Hanoa (Hanoa) offered a pule.

The HIBC members and SHPD staff introduced themselves to the audience.

Ruby McDonald (McDonald) noted that there was no Deputy Attorney General present.

## **II. APPROVAL OF THE JANUARY 18, 2007 HIBC MEETING MINUTES**

*A motion was made to approve the January 18, 2007 HIBC meeting minutes. (Kahakalau/Hanoa)*

**Vote: All in Favor**

## **III. BUSINESS**

### **A. FINAL PRESERVATION PLAN FOR SITE 50-10-20-19415**

#### **PU'ULANI RANCH SUBDIVISION PHASE II**

#### **PU'UANAHULU AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND**

#### **TMK (3) 7-1-006:128**

**Information/Recommendation:** Discussion of the status of the final preservation plan. HIBC recommendations to the Department on appropriate short and long term preservation and protective measures for the burial site identified within the final preservation plan.

Keola Lindsey (Lindsey) referred the HIBC to a February 9, 2007 letter which summarizes the HIBC's determination to preserve the burial in place and HIBC recommendations on short and long term preservation measures and access. Coral Rasmussen is discussing the HIBC recommendations with her client. The Department has another 60 days to approve a final preservation plan.

Ku Kahakalau (Kahakalau) said she does not see the HIBC recommendation that any additional burials identified on the property be classified as "previously known".

Lindsey said the Department is reviewing that recommendation.

Young said the HIBC requested a response from the Department regarding that recommendation.

Kahakalau said regardless of what the Department determines, the HIBC should be on record that any additional burials be "previously known".

Kaleo Kualii'i (Kualii'i) asked if Hawai'i County has every responded to the issues at Pu'uanahulu.

Lindsey said nothing other Planning Director Yuen's appearance at the July 2006 HIBC meeting.

Young said he does not recall a formal written response.

Debralee Kailiwai-Ray (Kailiwai-Ray) provided the following written testimony:

*Aloha HIBC Members,*

*I am a recognized lineal descendant and Pu'uanahulu ohana representative. Attached to this testimony is our list of the sections and page numbers which need to be eliminated or added to the final preservation plan.*

*I believe previous recommendations by the Burial Council members have been made at several HIBC meetings. Our ohana strongly support the recommendations made by the HIBC council members. Although I'm not able to locate the recommendations in the January 2007 revised plan which I received on January 11, 2007 from Coral Rasmussen. I believe recommendations were also made by HIBC member, Ku Kahakalau last month January 18, 2007 meeting. Trying to find the changes and making sure it is satisfactory is not an easy task. The effort and time for all parties involved in this entire process is frustrating.*

*I have appeared before Burial Council members addressing many of our ohana concerns on this plan: we have specifically listed on the February 14, 2007 attachment on changes needed.*

*Mahalo nui loa,*

*Debralee Kailiwai-Ray*

**HIBC Chair Young left the meeting at 9:31 a.m. and appointed Leningrad Elarionoff to chair the meeting in his absence.**

Kailiwai-Ray said the access for descendants procedure and implementation schedule proposed in the plan is too complicated. Kailiwai-Ray said the plan also discusses the inscribed stones and says they are petroglyphs. Aunty Lei specifically pointed them out as grave markers.

Kailiwai-Ray said the County has said that they have red flagged the lots with burials and when they review something on those lots, the County calls someone.

Kailiwai-Ray said there are several versions of the plan and it is hard to figure out which one is current and incorporates all the recommendations and requested revisions.

Kahakalau asked if the HIBC will see the final preservation plan which has all the recommendations and requested revisions.

Lindsey said the final preservation plan will have all the requested revisions and recommendations the Department concurs with and the landowner agrees to and the HIBC can request that final plan.

Leningrad Elarionoff (Elarionoff) requested that Kailiwai-Ray go over each revision she is requesting in the attachment to her written testimony.

Kailiwai Ray went over her requested revisions to pages 11, 21, 22, 24, 25 and 29 of the plan.

Elarionoff asked if the buffers will be measured from the center of the site or from the edge.

Lindsey said generally, buffers are measured from the edge of the site.

Kailiwai-Ray said the entire section of the plan which discusses access to the site by descendants needs to be eliminated.

Kailiwai-Ray said the implementation schedule proposed in the plan should be eliminated because it says that the landowners can amend the approved plan, there should be no amending a plan that the SHPD has already approved.

Kahakalau asked if there are problems with eliminating the access procedure and the implementation schedule from the plan.

Lindsey said the landowner needs to agree to whatever access procedure the descendants want. The implementation provides a specific timeframe for delineation of buffers and recordation of restrictions on the property deed.

Kahakalau said the concern on the implementation schedule is the reference to the landowner making amendments to the approved plan.

Lindsey said the landowner cannot make amendments to an approved plan.

Kailiwai-Ray asked if that wording can be revised.

Elarionoff said the HIBC can take a recess so Kailiwai-Ray can discuss revising that wording with Lindsey.

***A motion was made to recess the HIBC meeting. (Kahakalau/Nazara)***

**Vote: All in Favor**

**The HIBC meeting was recessed at 9:57 a.m.**

**Elarionoff called the meeting back to order at 10:03 a.m.**

Kailiwai-Ray said that the portions of the implementation schedule which reads “as submitted or amended by the owners of Lot 128” should be eliminated. The third paragraph which discusses visits by descendants should also be eliminated.

Kahakalau asked Kailiwai-Ray if the buffer should be measured from the edge of the site instead of the center.

Kailiwai-Ray agreed.

McDonald referred the HIBC to a SHPD memo which discusses the registering of family burials in Pu’uanahulu on multiple TMK including the subject property. The memo is from Marc Smith to Edward Ayau and is dated August 8, 1995, Doc No: 9508ms06. The burials on all the TMK listed on the memo should be classified as “previously known”.

Hanoa said these issues have been going on for along time and the still aren’t pau. Something is wrong with this.

*A motion was made that the HIBC strongly supports the testimony of Debralee Kailiwai-Ray submitted on February 15, 2007 in regards to changes to the January 15<sup>th</sup> burial plan for the burial site in Pu’uanahulu Ahupua’a, TMK (3) 7-1-006:128. The HIBC supports the request that the buffers be measured from the edge of the site. (Kahakalau/Hanoa)*

**Vote: All in Favor**

*A motion was made that the HIBC strongly supports and concurs with Debralee Kailiwai-Ray’s requests for revisions to the implementation schedule portion of the plan. (Kahakalau/Hanoa)*

**Vote: All in Favor**

*A motion was made to recommend that any inadvertent discovery on the subject parcel be classified as previously known and treated with the same preservation measures as Site 19415. (Kahakalau/Hanoa)*

**Vote: All in Favor**

*A motion was made to close agenda item III.A. (Hanoa/Kahakalau)*

**Vote: All in Favor**

## **B. BURIAL TREATMENT PLAN**

**KAPALA’ALAEA 2<sup>ND</sup> AHUPUA’A, NORTH KONA DISTRICT, HAWAI’I ISLAND  
TMK (3) 7-7-008:001 AND 7-7-010:072**

**Information/Recommendation:** Information presentation of the burial treatment plan by Archaeological Consultants of the Pacific, Inc. HIBC recommendations to the Department on

appropriate short and long term preservation and protective measures for the burials sites identified within the burial treatment plan.

James Moore (Moore) of Archaeological Consultants of the Pacific introduced himself and provided an overview of the burial treatment plan. The plan proposes 17 burial features be preserved in place. A 10 meter temporary buffer and 5 meter permanent buffer is proposed.

Kuali'i asked if all the features identified as burials, even those not tested will be preserved in place.

Moore said yes, some sites were identified as burials based on morphology.

Elarionoff asked Moore to explain identifying a site as a burial based on morphology.

Moore said some sites that were not tested were identical in description to sites that were tested and found to have burials.

Kuali'i requested that the permanent and temporary buffers be increased to 20 feet and 40 feet respectively.

Kuali'i asked if there are identified descendants.

Moore said Ruby McDonald and Clarence Medeiros, Jr. are identified as cultural descendants.

Kuali'i thanked Moore for identifying some of the sites as burials without testing them because they matched the description of some of the sites tested.

Kahakalau said the second 'okina is missing from Kapala'ala'ea on the cover page. Kahakalau said there is no historic background within the plan and that is something that should be in the plan.

Moore said he can take the historical section from the inventory survey and put it in the plan.

Roy Helbush (Helbush) asked if there is a development plan for the property.

Tom Stewart (Stewart) of Kaupulehu Land, LLC said not at this time. The overall intent is single family housing.

Ron Dela Cruz (Dela Cruz) said there are quite a few burials on the property and it is important to see how close the development is going to be. This is a cemetery. Chances are that more burials will be found.

Moore said there are agricultural features in between the burials.

Stewart said once the buffers are established, it gives them a better idea of what is going to happen in terms of planning the project.

Kuali'i asked if there is a timeframe for the development.

Stewart said ideally one year.

Kuali'i said once the buffers are set, a conceptual plan could be generated and the HIBC can review those conceptual development plans.

Lindsey said there would be 90 days after the HIBC's determination to preserve in place or relocate to approve a final preservation plan.

Stewart said the conceptual plans would be a very rough draft.

Dela Cruz said without seeing the development plans, he is having a hard time.

Elarionoff asked Moore about the marine midden identified at Site 23541 Feature F.

Moore said the site may have been used for other purposes and the midden may have come after the burial.

Elarionoff asked Moore what a "capstone" is.

Moore said large stones which are on top of the remains.

Elarionoff asked Moore to explain the statement "post-Contact period after Christian influences arrived".

Moore said it is a description of the style of the burial and items that were or were not identified with the burial.

Elarionoff asked Moore to define "pre-Contact" period.

Moore said prior to 1778.

Elarionoff asked about the language on page 16.

Moore said it is language that will be incorporated into the property deed.

**Young returned to Chair the HIBC meeting at 10:47 a.m.**

Elarionoff asked if the descendants will be responsible for maintaining the burial site.

Moore said no, but they will have the opportunity to and to stabilize the site if it is desired.

Elarionoff said access to the site should be worked out with the descendants and not decided by only the landowner.

Dela Cruz said page 16 of the plan refers to reinterment.

Moore said it should say preservation in place.

Kahakalau asked if the property will be subdivided.

Stewart said that is the plan.

Kahakalau said the approved conditions and restrictions for the burials should run with the subdivided lots.

Cynthia Nazara (Nazara) said she agreed with Dela Cruz on the need to see a development plan especially because of the density of the burials on the property.

Stewart said the County pushes maximizing the amount of homes on the property. Stewart if they could, there would be 5 homes, but the County pushes for 50.

Kahakalau suggested a no build setback in addition to the buffer zone.

Young asked if Stewart has subdivision approval.

Stewart said no.

Young asked what are the plans for the property.

Stewart said it is a catch 22 because developers want to see what the buffers around the sites are going to be before starting the planning because it is very costly. Stewart said he does not mean to put it on the County, but he might be able to draw up to sets of plans, one which he would like to see and one which the County would like.

Young said the subdivision and development plans would provide some clarity to the HIBC.

Kahakalau asked if Stewart would agree to an HIBC site visit.

Stewart said he would encourage it.

Elarionoff said he would like to see a conceptual development plan before the site visit.

Stewart said he will talk to the County and get their feedback on the density of the development.

Iwalani Arakaki (Arakaki) said she has given the HIBC her grandmother's deed to property in this area. They are saying Kapala'ala'ea, she says La'aloa.

Lindsey said he will work with Arakaki on her descendancy claim.

McDonald asked where the proposed language for the deed came from. The conceptual development plan is very important to see. McDonald would like to go on the site visit.

McDonald said her mother pronounces it Kapala'alaea.

Elarionoff asked about the translation.

McDonald said she did not ask.

Kahakalau suggested linguistic research into the place name and getting oral histories regarding the meaning.

Mahealani Pai (Pai) said he has done some research on Kapala'alaea. The place has to do with the Lonoikamakahiki ritual and the smudging of the akua. It was to memorialize the ritual by naming the ahupua'a Kapala'alaea.

Moore said the proposed language to be incorporated into the deed is the standard language they have been using for 15 years.

Kuali'i asked if Moore has met with any of the cultural descendants.

Moore said a letter was sent.

***A motion was made to schedule a closed site visit to TMK (3) 7-7-008:001, 099 and 7-7-010:072 once a conceptual development plan is submitted to the HIBC. Recognized descendants and the landowner will be allowed on the site visit. (Kahakalau/Kuali'i)***

McDonald asked where parcel 72 is.

Moore explained the location of parcel 72 is on page 6 of the plan.

McDonald requested a TMK map clearly showing the location of the TMK parcels.

**Vote: All in favor**

***A motion was made to close agenda item III.B. (Hanoa/Helbush)***

**Vote: All in favor**

**A motion was made to recess the HIBC meeting. (Helbush/Elarionoff)**

**Vote: All in favor**

**The HIBC meeting was recessed at 11:21 a.m.**

**Young called the meeting back to order at 11:35 a.m.**

### **C. “FORBES CAVE”, KAWAIHAE, SOUTH KOHALA, HAWAI’I ISLAND**

**Information/Recommendation/Determination:** Discussion of the repatriation process for certain items recovered from a cave in Kawaihae. HIBC determination on how the items should be classified pursuant to NAGPRA. HIBC determination on how to convey the HIBC’s position on how the items should be classified and a final disposition for the items to the proper authorities and/or organizations. HIBC determination on whether the full HIBC should attend any future claimant meetings and how such a meeting should be worded on a future HIBC agenda to meet the requirements of Chapter 92, Hawai’i Revised Statutes.

Lindsey said there was a claimant meeting at the Bishop Museum on January 5<sup>th</sup>. Lindsey said he is not aware of any timeframes for additional meetings or deadlines.

Kahakalau said these are items from this Island and any meetings should be held on Hawai’i Island.

Young said there was also a discussion on whether the entire HIBC could attend any meetings on O’ahu and have the opportunity to view the items. The end discussion was to have the meetings on Hawai’i Island and invite the other claimants here. There is a March 1<sup>st</sup> deadline.

Lindsey said he has not seen anything regarding that deadline.

Halealoha Ayau (Ayau) said it is absolutely appropriate for the HIBC to raise the issue with Bishop Museum why discussions on funerary items from Hawai’i Island are being held on O’ahu and why the items from Hawai’i Island are being held on O’ahu.

Ayau said the HIBC should hold off on a request to view the items. In the last week documents have been found that indicate the identity of the person in the burial cave. Ayau said he hopes the cave will never be referred to as “Forbes Cave” because it is the name of a thief. The appropriate name for this cave should be “Mahi”. Research is being done to find the original testimonies to prove this statement. This is no longer a organization matter, it is a family matter and Hui Malama supports the Mahi family.

Pai said the family is saddened that this matter has been brought back to the museum and now they have to go through this gain. The family testified on this back in 2000 at Spencer Park. The family supports bringing the items back to the Moku o Keawe and the discussions on this matter be on this Island.

Kahakalau said the documents show the Mahi family being connected to the cave and the Mahi are planning to file a lineal descendant claim.

Ayau said the documents identify a specific Mahi, a Konohiki in Kawaihae 1<sup>st</sup> in 1820-1830 under Kalanimoku. His wife was Kaneahiku and it seems it is her that gives the testimony. This is sworn testimony at the time of the mahele and the research is to find these original documents.

If the Mahi family decides to file the lineal claim, under NAGPRA, the lineal descendants would trump all the other claimants. The Bishop Museum is trying to determine the most appropriate claimant. What is problematic about this is that there is a co-conspirator in the theft of the moepu deciding whether to give them back to the family. The Museum conspired with David Forbes in 1905 in the theft of these moepu.

Another route is for the Mahi to sue the Museum. This is a theft and no thief can be a legitimate owner of these items and the Museum does not have any right to determine who gets the items. Hui Malama will support the family and help in any way the Mahi desire.

It is unclear what process Bishop Museum is following now. The Museum announced in 2001 that the repatriation was over and then they reopened it again. If they are starting the process over again, the claimants have to file again. Once the HIBC's claim is verified, the HIBC needs to support the family. NAGPRA places lineal descendants above organizations. The lineal descendant recognition process is much harder than under the State, but the Mahi can also file a claim as a organization if the Museum does not recognize their lineal claim and the other organizations should support the family.

Young asked where the HIBC would stand if the Mahi decide to sue the Museum.

Ayau said he did not know, but the bigger question is whether the family has standing to sue. In Ayau's opinion the answer is yes. The second question is whether the legal rights of the family were violated. The answer is clearly yes.

Kahakalau said the HIBC was strongly advised by the Attorney General's office not to intervene in the lawsuit and the result was that the HIBC was not consulted or kept informed as the process of removing the items went forward.

Ayau said Hui Malama refused to cooperate with the Federal Court in the removal of the items and Ayau was jailed for it. Other organizations that wanted to intervene were denied and that was ludicrous. Ayau said he respectfully disagrees with the Deputy Attorney General who advised the HIBC not to intervene, it was a scare tactic.

Hanoa said how can people from other Islands claim items from Hawai'i Island.

Ayau said Judge Ezra was swayed by the media. There were reports that Hui Malama had sold the items on the black market. Judge Ezra never thought Hawaiians would be this responsible to just put these items back because they were stolen.

Pai said it is time for the families to huki like kakou.

Young said the HIBC has been consistent in the position that the items should be returned. The HIBC is a claimant and will support the Mahi family.

Ayau said there was a discussion earlier on going to view the items. Ayau said the HIBC should ask the Mahi first. These are moepu.

Kahakalau said that all the members of the HIBC do not want to view the items.

Ayau said he never wants to see those moepu again.

Dela Cruz said the claimants meetings should be held here. Claimants from other Islands should give proxy to families and groups from Hawai'i Island to determine the final disposition. The family should place a kapu on Honokoa so that there will be no more disturbance to the area. Dela Cruz would support a motion by the HIBC to support the Mahi family on what their wishes are.

Elarionoff asked if there is a statute of limitations. Elarionoff said his mother was born and raised above Honokoa in Kawaihae Uka. His family talks of other caves in the area. If the Mahi are recognized to this cave, and have jurisdiction what would happen to the other caves in the area.

Ayau said the statute of limitations applies to criminal case. Ownership is a civil issue.

Elarionoff said if there is a way to place all of Honokoa off limits.

Ayau said the answer is yes, and the Hawaiian Homeland Chairman, Micah Kane needs to answer how that will be done.

Ayau said John Carta has been sentenced by the Federal Court to one year in prison for stealing items from another cave in the area, Kanupa Cave. The second man, a storeowner from Kona, Daniel Taylor will be sentenced soon. The claimants encouraged the State to prosecute these men as well. Ayau said he recently found out the Federal Government will be transferring the items to the State because the State is preparing to bring charges against Carta and Taylor.

Zachary Kanuha (Z. Kanuha) said he supports bringing the items back where they belong.

Raenette Kahaiali'i (Kahaiali'i) said she is a descendant of the Lono family and the Lono and Mahi are related. Kahaiali'i supports bringing the items home.

Kahakalau asked if the times can be temporarily curated somewhere before being returned to Kawaihae. The Pu'u honua o Honaunau National Park has been used in the past.

Young said the idea is for temporary curation on this Island instead of on O'ahu until the final disposition is determined.

Kuali'i said if the HIBC want the items returned, the HIBC needs to have an idea where the items will be held.

Nalei Napaepae Kunewa (N.Kunewa) said the HIBC needs to support the family. No government agencies should be involved. The family will make the decisions.

Hannah Reeves (Reeves) said she supports the family. Reeves thanked the HIBC for all their hard work and listening to the people.

Arthur Mahi (Mahi) said the iwi need to be protected. The items should be returned and the cave should be sealed up.

Dela Cruz said he prays that our kupuna guide us in bringing all of these iwi and items that have been removed back home.

Young said the HIBC needs to reaffirm our standing as a claimant.

Kuali'i asked if it will benefit the family for the HIBC to be a claimant.

Ayau said if the HIBC supports the family, yes.

Young said the HIBC needs to request the claimant meetings be held on Hawai'i Island, support the family, to request the items be held on Hawai'i Island until a final disposition for the items is determined and request the DHHL designate Honokoa kapu.

Junior Kanuha (J. Kanuha) offered the use of Keolanahihi as a place to temporarily hold the items until they are taken back to Kawaihae.

Ayau said he would recommend Hawai'i Volcanoes National Park because that is where the remainder of the items are located. Reunite them there until they can go back to Kawaihae.

Elarionoff said he appreciated all of Ayau's efforts and work in this matter.

Ayau said it was all to serve the ali'i.

*A motion was made that the HIBC Chair write a letter to the Bishop Museum that all future claimant meetings be held on Hawai'i Island, that the items be returned to Hawai'i Island and the HIBC reaffirm their standing as a claimant to the items. (Kahakalau/Hanoa)*

**Vote: All in Favor**

*A motion was made that the HIBC Chair write a letter to DHHL Chairman Micah Kane that Honokoa, Kawaihae be established as a preservation area and be kapu. (Kahakalau/Hanoa)*

Young said the families would be allowed access.

**Vote: All in Favor**

*A motion was made to close agenda item III.C. (Hanoa/Kahakalau)*

**Vote: All in Favor**

*A motion was made to move agenda item V.A. before agenda item IV.A (Kahakalau/Hanoa)*

**Vote: All in favor**

## **V. INADVERTENT DISCOVERIES**

**Information/Recommendation:** Informational presentation by SHPD staff regarding the inadvertent discovery of human skeletal remains on the following tax map key parcels. HIBC recommendations to the Department on short and long term measures for the sites.

### **A. Kohanaiki Ahupua'a, North Kona District, Hawai'i Island TMK (3) 7-3-009: 3, 14**

**Kuali'i recused himself from voting on any recommendations on this agenda item as he may have a conflict of interest.**

Lindsey provided an overview of the case. There have been two inadvertent discoveries of human skeletal remains within the "Shores at Kohanaiki" project area. The SHPD has determined to preserve the iwi at one site in place. The SHPD has determined to relocate the iwi from the second site. Lindsey said it is his understanding that the relocation has not occurred as of the date of the meeting.

Kahakalau asked what the relocation was based on and what the mana'o of the recognized descendants is on the relocation.

Lindsey says the Department considers input from the recognized descendants, HIBC regional representatives and the landowner. The Department copied the then recognized descendants a letter seeking their input. Lindsey said he did not do the mailing himself but has full confidence that the letters were sent to the descendants the SHPD has addresses for. Some descendants did respond to the SHPD with their thoughts on the matter as the letter requested. Only a small number of the total descendant group responded.

Kahakalau asked for a breakdown on the responses.

Lindsey said all but one were in favor of preservation in place. Less than ten descendants responded.

Kahakalau said one of the HIBC regional representatives has recused himself, so she assumes the second representative was consulted.

Lindsey said notified and given the opportunity to provide input and recommendations to the Department.

Kahakalau asked if a recommendation was made.

Lindsey said he does not recall one.

Young asked if before the decision to relocate was made, the positions of the descendants were known to the Department.

Lindsey said yes.

Young said if the relocation is to occur, where will the iwi go to.

Lindsey said at a previously identified burial site within the project area.

Young asked why the developer requested relocation.

Lindsey said project plans called for approximately 10 feet of engineered fill to be placed over the burial location.

Young asked if the lava tube was surveyed.

Lindsey said yes, by the archaeological monitor who was called when the lava tube was breached. The families have recently expressed concerns that there could be additional iwi under the rubble fronting the entry to the cave. The Department recently authorized the developer to remove that rubble with an archaeological monitor and a representative of the family present to inspect the area for additional iwi. If additional burials are found, the inadvertent process would be initiated for those additional burials. If there are multiple burials, the Department must give higher consideration for preservation in place.

Kahakalau asked if Department means the Hawai'i Island office or O'ahu.

Lindsey said he does not see a difference. The Administrator of the Division ultimately signs the approval letters, but staff gathers all of the background information. Lindsey said it would be wrong for him to say he was not involved with the decision, he was very much so involved in making the decision.

Kahakalau asked what the recommendation from Hawai'i Island was.

Lindsey said the Department approved relocation.

Dela Cruz asked if relocation was to protect the iwi from the collapse of the cave or from what was going to be built there.

Lindsey said it was because project plans called for the cave to be collapsed and for 10 feet of fill to be compacted in that area. Current project plans propose a residential lot in that elevated portion of the lot. The elevation changes affect a larger portion of the project than just the lot.

Kuali'i said the problem is that the State does not have anyone to independently review engineering plans. The State relies on the developer to provide the engineering requirements.

Lindsey agreed that he is not an engineering expert.

Kahaiali'i distributed documents to the HIBC. Kahaiali'i requested that her testimony be recorded verbatim. Kahaiali'i is a lineal descendant to Kohanaiki, although she is not recognized by the State.

Kahaiali'i asked if all the other iwi found within the project area have been reinterred and the caves sealed.

Lindsey said not reinterred, preserved in place.

Kahaiali'i asked how many HIBC members had gone to the cave.

Kuali'i indicated he had.

Kahaiali'i asked how many HIBC members are archaeologists.

No HIBC members responded in the affirmative.

Kahaiali'i asked which HIBC members are experts in Hawaiian culture. Hanoa and Kahakalau responded in the affirmative.

Kahaiali'i asked Lindsey if he remembered the Kahaiali'i coming to his office on February 7, 2007.

Lindsey said yes.

Kahaiali'i asked Lindsey if he recalled saying relocating the entire burial would be difficult.

Lindsey said yes.

Kahaiali'i asked Kuali'i if he thought the entire burial could be relocated.

Kuali'i answered in the negative.

Kahaiali'i asked Kuali'i if he was consulted on this matter by Melanie Chinen.

Kuali'i said no.

Kahaiali'i asked Nazara if she was consulted on this matter by Melanie Chinen.

Nazara said no.

Lindsey said both were notified of the discovery via copies of letters and telephone calls and given every opportunity to provide input on the matter. The definition of "consultation" is what is being questioned. The Department feels the regional representatives were consulted as required.

Kuali'i said he was not consulted.

Kahaiali'i said her family received a letter from David Eadie of Rutter Development requesting a meeting. Kahaiali'i said they met Dennis Frost of Rutter Development at the burial site on the project area on February 5, 2007. At 10:00 a.m. on February 7, 2007 they went to the project again and were met by barricades. The families went around the barricades and proceeded to the construction trailer and met Frost and the archaeological monitor because they were expected.

The family requested the rubble fronting the cave to be removed to inspect that area for additional iwi. The family requested they be present along with a monitor when the rubble is removed. The family went to talk to Lindsey about removing the rubble and he drafted a letter for Melanie Chinen to sign.

Kahaiali'i said they have done everything possible to cooperate with the State and the Developer. The State has continuously lied about consulting with the cultural descendants. Kahaiali'i said the cultural descendants are here at the meeting and they did not get called and they did not get a letter.

Kahaiali'i asked if the majority of the descendants desired preservation in place, why did the Department determine to relocate.

Lindsey said the Department considers input from all parties.

Kahaiali'i said the HIBC reps and the descendants were not notified or consulted.

Lindsey said there are descendants at the meeting who called him personally in response to the letter. Maybe the letter did not reach all 120 descendants on the list, but there are definitely people at this meeting who called him and said I got your letter and this is what I think.

Kahaiali'i said why the Department determined relocation if the majority of the descendants was to preserve in place.

Lindsey said the Department looked at the need for collapsing the tube and filling. It appears to be a cost factor and design issues from the Developer.

Kahaiali'i asked what that means to the descendants.

Lindsey said probably nothing.

Kahaiali'i said she has been informed that Frost is trying to move the rubble during the meeting with no family members present.

Lindsey said he cannot speak for Frost, but told him all the family members would be at the meeting today, so scheduling that work tomorrow would be better.

Kahaiali'i asked what will happen if Frost removes the rubble today.

Lindsey said he is not sure.

Kahaiali'i said the descendants of Kohanaiki want the iwi preserved in place and the families should be allowed to conduct cultural protocol their way.

Young said the department making the determination on inadvertents has always been problematic for the HIBC. The Department makes the determination and the HIBC makes recommendations.

Kunewa said the kupuna of Kohanaiki have come together and formed a hui in response to the discoveries that have been made. There is no question that the families are the lineal descendants of these lands. The families have tried to communicate with this developer and have received no response. Now there are inadvertent finds and this one is a baby. There are more, this is not the last one. We have waited for a year for a response and now they want to talk. The developer has ripped this 'aina and now there is nothing left. The developer has tried to talk to the kupuna individually, but that is not going to happen, the families are still here and we are united. The damage has to stop. The hui appreciates any support the HIBC can provide.

Pai said there has been a long battle in Kohanaiki makai with a landmark court case. The iwi in this 'ana have gone back to the 'aina. The iwi must be preserved in place. The 'ohana is concerned that there may be more under the rocks and that is why there was the request to remove those rocks with the machine but the family must be there.

Pai said he received a call that frost was trying to move the rocks today and that puts the family on edge. The family wants to move forward and do the right thing. Preservation in place of the iwi is appropriate so the developer can redesign.

The 'ohana is growing and they have a good network. Pai said the family is looking for support from the HIBC to preserve these iwi in place.

J. Kanuha said he agrees with what the other 'ohana have said. What is right is right. J. Kanuha said Lindsey stated that people in this room have been notified and consulted and J. Kanuha is wondering who they are. The families need to wrok together and help each other. They are not here for money and it is sad they have to go through this.

Kahakalau asked if J. Kanuha is a recognized cultural descendant to this area.

J. Kanuha said yes.

Kahakalau asked if he received a letter.

J. Kanuha said no.

Kahakalau asked how many recognized cultural descendants present at the meeting received a letter.

No descendants answered in the affirmative.

McDonald said she is appalled at the arrogance of this Department in saying that they based their determination on consultation with the descendants. That is ho'opunipuni. The Department is required to notify the Office of Hawaiian Affairs.

Lindsey said the department notifies OHA via email notification to [burials@oha.org](mailto:burials@oha.org).

McDonald said her family took care of Kohanaiki for years and years. They have a lineal connection to this land. They cannot identify who these iwi are, but they belong to all the 'ohana. The iwi should be preserved in place.

Kahaiali'i said they have tried to work with the Developer. The developer cannot find anyone to relocate the iwi because Hawaiians know that the iwi should be preserved in place.

Z. Kanuha said there is no way all the iwi can be relocated. The iwi have gone back to the 'aina, they are almost dust. Z. Kanuha said they are trying to work with frost and Rutter Development. The families want to sit down and talk about all these issues.

Kahakalau asked when the relocation of burials are approved, is there cultural protocol.

Lindsey said the relocation plan calls for cultural protocol.

Kahakalau asked if there is monitoring of cultural protocol, who did it, etc.

Lindsey said it is not required.

Kahakalau asked what the record of the HIBC over the last ten years is in terms of preservation in place or relocation.

Lindsey said preservation in place.

Kahakalau said the cultural descendants and HIBC are for preservation in place and the Department should be considering it. Kahakalau said she is disheartened because developers keep coming here and saying they did a good job in the survey and then there are inadvertents. Kahakalau said she would like to see a break down of how many inadvertents have been recorded after the inventory surveys have been approved. There is a need for data that can be looked at and analyzed and changes can be made.

Kahakalau said her feeling is that the Department is not representing the interests of the people. If these were her iwi, she would not want them moved.

Z. Kanuha said there is only one archaeological monitor on the project.

**Dela Cruz left the meeting at 2:33 p.m. and quorum was lost.**

**Young called the meeting back to order at 2:41 p.m. with a quorum of members present.**

Kahakalau referred to §13-300-40, HAR. Kahakalau asked if the Department mailing the letter to the descendants was documenting the burial context. Kahakalau asked if there is a relocation plan for the iwi.

Lindsey said the SHPD approved a relocation plan which was in compliance with the HAR.

Young said the SHPD has stated in a letter that all required sections of the HRS and HAR have been implemented for previously identified and inadvertent sites. We may be in an area on interpretation. Young said the HIBC should provide clarity as to what the HIBC would like to see.

Kahakalau said there are huge issues over what the Department said they did and what the HIBC was hearing was done. The relocation plan said the SHPD notified the Kona representatives of the HIBC of the inadvertent and discussed the matter with them. This contradicts what the Kona representatives said today. Kahakalau said this is something we here from around the islands about this Department. The representations made by the Department are not accurate and those are huge issues.

Lindsey asked if the Kona representatives are saying they were not notified and kept informed as the SHPD made the determination to relocate.

Kahakalau said she heard it was not discussed with them. A letter was sent.

Lindsey said there was more than letters, Lindsey called them himself.

Kahakalau said the law requires more than updates, it requires consultation. The descendants are saying they were not consulted either.

Lindsey said if the descendants are saying they did not get the letter, Lindsey does not know what to say. The SHPD had the descendant list and the addresses and Lindsey had confidence that the letters went out.

Young said that is a procedural issue that the Department needs to fix. The HIBC's concern at this point has to be these iwi.

***A motion was made that the HIBC strongly recommends to the Department that the HIBC concurs with the wishes of the cultural descendants that the iwi should be preserved in place. The mana'o of the descendants and the HIBC should be strongly considered in retracting the decision to relocate the iwi. (Kahakalau/Hanoa)***

Z. Kanuha said the developer already has the green light to move the iwi. It could happen tomorrow.

Young said the HIBC needs to go on record with a position supporting the families.

Elarionoff said if the Department and the developer move forward with the relocation, the question can be asked why did it happen if the HIBC supported preservation in place.

Hanoa said it is wrong the Department made this decision without consulting the HIBC.

Dela Cruz said the rocks fronting the cave will be removed and should additional iwi be discovered, the Department will consider those additional iwi and their determination to relocate the iwi we know about.

Lindsey said the HAR require greater consideration for preservation in place when there are multiple iwi.

Kahakalau said the relocation plan said the moving of the iwi will be worked out with the SHPD, HIBC and the descendants. The HIBC has not been consulted and this is a violation of the developer's plan.

**Kahakalau withdrew her motion**

*A motion was made that the HIBC send a letter to the Department regarding this inadvertent discovery that the HIBC concurs with the descendants that the iwi should be preserved in place and this should be considered in retracting the approval to relocate the iwi. (Kahakalau/Hanoa)*

**Vote: All in Favor**

*A motion was made that an immediate communication be sent to the developer and the Department to cease and desist any and all reinterment efforts until the stipulations made in the relocation plan are implemented. Specifically, working out the details of the relocation with the HIBC, SHPD, the landowner and the lineal and cultural descendants as stated in the plan. (Kahakalau/Hanoa)*

Kahakalau said she wants to go on record that the HIBC does not approve the relocation decision but if it happens, the approved relocation plan needs to be followed.

Elarionoff said the approved plan needs to be followed.

*A motion was made to send an immediate communication to the Department and the developer stating that the HIBC approved a motion that the iwi should be preserved in place. In the event relocation of the iwi should occur, it should be done in accordance with the approved plan. (Kahakalau/Hanoa)*

**Vote: All in Favor**

Kahakalau said a discussion on policies surrounding inadvertents should be on a future HIBC agenda. The process is not working and changes need to be made. The island councils can discuss the matter between themselves and start lobbying the Legislature.

Kahakalau requested that when inadvertents are on the HIBC agenda in the future, the HIBC receive all documentation on the matter.

*A motion was made to close agenda item V.A. (Elarionoff/Hanoa)*

**Vote: All in Favor**

#### **IV. CASE UPDATES**

##### **A. SIHP SITE 50-10-45-24851**

**WAIKAHEKAHE NUI AND WAIKAHEKAHE IKI AHUPUA'A, PUNA DISTRICT, HAWAI'I ISLAND**

**TMK (3) 1-6-091:054 and (3) 1-6-090: 048, 049, 056, 055, 076, 077, 078, 079 and 080**

**Information/Recommendation:** Discussion of the history of SIHP Site 50-10-45-24851. Discussion of a HIBC letter dated December 11, 2006. HIBC recommendations to the Department on appropriate protective measures for the site.

Lindsey referred the HIBC to SHPD letters contained within their mail packet. The Department has contacted each of the landowners of property above the lava tube containing the burials notifying them of the lava tube and requesting the landowners to contact the Department to begin discussions on voluntarily agreeing to a preservation plan for the lava tube. The Department has received on response from a landowner who wanted to know where the lava tube is beneath his property.

Elarionoff said he is unhappy with the letter. The Department emphasizes in the letter that it is a voluntary action to establish preservation measures for the site and states that the Department does not agree with the HIBC that the whole lava tube is a burial site.

Elarionoff said if he was a landowner that received this letter, he would go out and bust the lava tube because the State said it is ok. It is repeated seven times in the letter.

Young said the Department may be putting a disclaimer in there that it is voluntary, but to repeat it over and over may be an issue.

Lindsey said the Department cannot imply things are required when they are not.

*A motion was made to close agenda item IV.A. (Helbush/Kahakalau)*

**Vote: All in Favor**

##### **B. HOKUKANO AND KAALAIKI AHUPUA'A KA'U DISTRICT, HAWAI'I ISLAND**

**TMK (3) 9-5-016:036**

**Information/Recommendation:** Discussion of community concerns regarding burial sites on the TMK parcel and possible impacts to the burial sites by the construction of a home on the property. Discussion of the advice and or opinions the Department has received from the Department of the Attorney General regarding this matter.

Hanoa said the Attorney General's letter says that there is no proof that burials were disturbed. Hanoa referred to a map that shows a cemetery in the area. There is also a description of at least nineteen burials in the area. This is right where the house was built.

Young said the Attorney General may not have had the map when they wrote their letter. Hanoa said it is all in the file with OCCL.

Kahakalau said there is a SHPD memorandum dated 4-25-05 which recommends the matter be forwarded to the Attorney General's office for a full review. Kahakalau asked if that full review ever happened and if it did not, it should.

Young said he can work on another letter with the map attached.

*A motion was made to close agenda item IV.B. (Hanoa/Kahakalau)*

**Vote: All in Favor**

## **VI. ANNOUNCEMENTS**

## **VII. ADJOURNMENT**

**A motion was made to adjourn the HIBC meeting (Hanoa/Kahakalau)**

**Vote: All in Favor**

**The HIBC meeting was adjourned at 4:04 p.m.**