

LINDA LINGLE  
GOVERNOR OF HAWAII



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

STATE HISTORIC PRESEERVATION DIVISION  
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KAPOLEI, HAWAII 96707

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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**MINUTES  
OAHU ISLAND BURIAL COUNCIL MEETING**

**DATE: WEDNESDAY, SEPTEMBER 10, 2008**  
**TIME: 10:30 A.M.**  
**PLACE: DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**1151 PUNCHBOWL STREET, ROOM 132**  
**HONOLULU, HAWAII 96813**

**ATTENDANCE:**

**Members:** Kehau Abad Leimaile Quiteves  
Charles Erhorn Alice Greenwood  
Shad Kane Kehau Kruse  
Jace McQuivey Kawika McKeague

**Absent:** Cy Bridges (excused)  
Andrew Keliikoa (excused)  
Aaron Mahi (excused)  
Hina Wong (excused)

**Staff:** Linda Kaleo Paik, Cultural Specialist  
Vince Kanemoto, Attorney General  
Pua Aiu, Administrator  
Phyllis "Coochie" Cayan, History & Culture Branch Chief

**Guests:** Nalani Dahl, HHCTCP  
Elysa Yadao, RTD  
Susan Roberts, RTD  
Faith Miyamoto, DTS  
Larewnce Spurgeon, Parsons/Brinkerhoff  
Hal Hammatt, Cultural Surveys Hawaii, Inc.  
David Shideler, Cultural surveys Hawaii, Inc.  
Lani Maa-Lapilio, Kuiwalu  
Victor Kimura, Kyo-ya

Keola Lindsey, OHA  
Jason Jeremiah, OHA  
Anthony Benzon  
Bernadette Olivera  
Josephine Rabago  
Calvin Santos  
Kekuwa Kikiloi, KS, Land Division

## **CALL TO ORDER**

Quorum was established and Chair McQuivey called the meeting to order at 10:40 a.m. Kane offered the pule.

### **I. INTRODUCTION OF COUNCIL MEMBERS AND SHPD STAFF & ROLL CALL**

As the council members introduced themselves, Kaleo Paik recorded those members present. SHPD staff also introduced themselves.

### **III. OPENING REMARKS**

Chair McQuivey explained to the public the purpose of the meeting and the council's ground rules.

### **IV. APPROVAL OF MEETING MINUTES**

Approval of minutes was moved to the end of the meeting.  
Vote: unanimous

### **V. COUNCIL ACTIONS**

#### **A. Informational Update on the Honolulu Rapid Transit Honouliuli, Ho‘ae‘ae, Waikele, Waipio, Waiawa, Manana, Waimano, Waiiau, Waimalu, Kalauao, Aiea, Halawa, Moanalua, Kahauiki, Kapalama, Nuuanu, Pauoa, Makiki, Manoa, and Waikiki Ahupua‘a, ‘Ewa and Kona Districts, Island of Oahu [TMK: Various]**

**Information/Discussion/Recommendation:** Council discussion and recommendations on the project.

Miyamoto from DTS and Lawrence Spurgeon, PB America gave a brief presentation focusing on how best to work with the OIBC on this matter. Hand outs were given to the Council 1) a flow chart laying out the responsibilities for the 106 and 6E process as well as responsibilities to the NEPA and AIS process and 2) the overall project schedule. The draft environmental statement is expected to be completed in late October 2008. Presently, coordination is being done with all 106 partners regarding the archaeological, cultural and historical resources on the project and how the project will affect these resources. Miyamoto continued by stating that the MOA is being drafted to address these concerns and to be signed by DTS and SHPD who are the legal binding parties. There is an opportunity for other organizations such as OIBC to participate in this process as concurring parties. The phases were

explained. Until a high level design it may not be appropriate to begin the archaeological work such as the AIS or monitoring plan. The column locations have not been determined especially for the town area. The proposal presented would be to have the archaeological and design work in parallel in later phases of the project. This would eliminate disturbances in areas that would not need to be disturbed.

Quiteves voiced her concern that the same information is being presented and that no new information has been provided to address the Council's concerns. The phasing of the project would leave very little room for amendment of the design should remains be discovered. For instance if the AIS found no remains on phases 1-2 but hit remains in phase 3, the design has already been set and the only room for realignment would be side to side within a set footage. If the AIS was done prior to the design being completed, a redesign could possibly be done to avoid an area of high concentration altogether.

Spurgeon explained that the locations of the columns have not been set and as the design is completed for an area, the AIS would sample only those exact locations for the columns.

Abad also noted that the plan being presented is identical to the one presented by McDermott of CSH two months ago. She expected new information to be presented that reflected ways to address these concerns voiced in earlier meetings.

McQuivey explained that the concern was in regards to the phasing and that the AIS would not be done prior to construction.

Spurgeon explained that he wanted to bring more information and to explain the City's commitment to keep the OIBC involved throughout the project. All of the general impacts and the nature of those impacts will be known but some of the specific individual impacts may not be completely detailed. The MOA would bind the City's commitment and what the behavior will be as the project moves forward.

Quiteves asked if the difference in this presentation was the inclusion of the OIBC in the MOA and what would be the role of the OIBC and when would the OIBC be involved.

Spurgeon explained that the AIS would be more of an overlap process. If for example if the phase 1 is under construction the later phases would not preclude the participation of the OIBC or descendants to the later phases. These parties would still be participatory through out the project. Flexibility would be available as construction in the later phases would be 1-2 years out. Should remains be discovered in these later phases, possible redesign of certain columns and testing in the near vicinity for repositioning of columns would be feasible.

Abad reiterated that the plan as being presented does not give new options. Concurring party to the MOA is a concern to her as it does not have as strong a standing as a signatory party which the OIBC is seeking to obtain.

McKeague stated that an invited signatory has equal rights to the initial signatories and that the OIBC has advocated in the last two months to be named as a signatory party.

Abad stated that the OIBC has a statutory kuleana or right given to the Council to make certain decisions and this proposal that is being presented may well circumvent this and may limit the Council to fulfill their responsibility to the best of their ability. If we agree to this process then the Council is foregoing some of the ability to act appropriately as a Council to fulfill our statutory duty then there needs to be assurances that the MOA that is drafted and accepted be crafted in such a way that will allow the Council to fulfill their responsibility.

Spurgeon is confident that the MOA will be drafted in such a way that the Council will not be compromised in the fulfillment of their duties.

Abad stated that the 106 process allows for an investigation to take place to see what impacts this proposed project may have. The outcome of the 106 investigation is to allow planners the opportunity to evaluate whether the project should occur in the intended manner or maybe not in the intended manner or maybe not in the project area. That is the goal of the 106 process to allow planners the full view. The proposal leaves a much smaller window of opportunity to correct or change the project course. The route has already been established and therefore the MOA is the only tool to have 106 measures to take effect. If the Council is not involved in the MOA process it places a limitation on the ability to fulfill their responsibility. Moving a column 30 feet in either direction is not equivalent to changing the course by moving the alignment mauka or makai to avoid an area of concern. If the Council has to forego the ability to change the alignment, there has to be assurances that what the Council is agreeing to is something that still follows the spirit and letter of the law.

Spurgeon explained that his company did complete an alternative analysis that looked at other corridors and multiple options.

Abad interjected that in looking at those alternatives, the information from a 106 process that should have been there in making the choice of the corridor. The information did not have the variables affecting burials and that is the core of the Council's main concern.

Spurgeon agreed that detailed information was not available but his company looked at an archaeological study and that information was used in the decision making process. The OIBC was not consulted in regards to a detailed multiple discussion consultation process.

McQuivey framed the discussion to lay aside issues that the OIBC may not have input such as the corridor alignment and phasing but focus the discussion on how OIBC can work together with the parties involved to address issues such as the

details of the MOA and the AIS timing. Make a framework of what the MOA would look like and list these details.

Ehrhorn voiced his concern for the phasing being done one after the other. He would like to see at a minimal, two phases of AIS be done before construction begins to give more flexibility in case realignment is deemed necessary. The fear is that if the phases are one after the other, if construction has begun in phase one and there is a problem in phase two, it may be too late to redesign phase one then the pressure comes to the OIBC to accommodate the construction schedule. In the past, the OIBC was placed on the hot seat as because of the construction schedule and remains are found.

Spurgeon said that his company could expand the initial investigation partway into the second phase or to overlap the investigation and complete the investigation before construction begins.

McQuivey suggested the discussion fall into two separate topics. One in which the MOA is discussed understanding that the assumption would be the acceptance of the corridor and the phasing. Two, have the AIS done completely before construction begins which may change the corridor alignment. To sign off on the MOA at this point would preclude the discussion of the AIS happening prior to construction.

Quiteves explained that within the MOA is a plan of action that is agreed upon by all parties. If the design cannot be changed then the OIBC must be a part of the MOA to make sure the plan is carried out as described. She agreed with McQuivey in that it may be more beneficial to the Council to have the discussion of the AIS prior to the MOA. She inquired whether the option of having the AIS done prior is still on the table for discussion, Miyamoto and Spurgeon agreed that it is.

Ehrhorn reiterated that he would prefer the AIS be done prior to the design taking place. Leave the door open for moving of the columns and possible realignment.

Spurgeon said the geotechnical investigations are not being completed down in the town area as the preliminary feel for where the columns would be. The timeline for the undertaking of the geotechnical testing would be the same time as the archaeological investigation in the same location. The information that comes out from the testing still gives time for feedback to amend the column locations.

Kane asked if archaeological sites that are encountered during construction will there be provisions for data recovery and more investigative work for the area and Spurgeon affirmed that the construction would stop and SHPD consulted for archaeological finds as well as remains.

Quiteves asked if cultural monitoring would be considered and Miyamoto answered that it would be under consideration.

McKeague said that phase one may not be part of the MOA as the project would have started already. How would this exclusion be handled in the MOA?

Spurgeon answered that the reason for the non inclusion of phase one for the MOA would be because the AIS would have been completed for that portion and the information would be available for the design so there would be no need to be mitigated through the MOA. The intent presently is to complete the inventory plan for phase one and to submit to SHPD for review by year end and then next year to begin the actual AIS.

Abad would like to see the AIS divided into two parts. First, to have a light touch investigation done prior to design to give the designers information to mimic the AIS as it should be conducted by 106 consultation and know the parameter and hot spots prior to the design. Second, follow the path as is proposed and to do an archaeological investigation on the exact locations.

Miyamoto and Spurgeon agreed with Abad that there are places in the project where this approach would be beneficial.

Kane stated that the Ewa plains still have cultural layers that have not been disturbed due to the soil run off burying the layer over time. The mindset of the project should be that the cultural aspects of this project should be given equal standing as archaeology. Possible training of all involved with the project in regards to the history and culture of the areas impacted. Do not neglect Ewa and assume from past documentation that there are no significant sites.

Miyamoto and Spurgeon agreed with Kane and through the MOA these concerns could be addressed, such as through education that a heightened sensitivity be made an integral part of the project.

Ehrhorn pointed out that one aspect of the project that has been overlooked are the stations for the rail. There needs to be a survey done in these areas as this would greatly affect where the stations can be and would this impact the route.

McKeague wanted to reiterate Kane's sentiment that Ewa has significant sites and history that cannot be overlooked because of the more recent use of the land mainly sugarcane. He would like to see the same high standard afforded to other areas such as Kakaako be given to Ewa.

McQuivey wanted the Council to focus once again on the purpose of this meeting and how can OIBC move in this process, one being a signatory party and not just a concurring party.

Abad requested that every site be sampled and Miyamoto and Spurgeon responded that all sites may not be fully tested but areas of concern may all have to be tested.

McQuivey wanted to address how the OIBC interface with other agencies for the MOA. The result from the Council came in two suggestions. One, a task force be formed to be involved in the MOA discussion and report to the Council. Two, to address the timeline and MOA issues a monthly assessment and presentation be given at the OIBC meeting.

Quiteves would like to see the discussions be done at the OIBC meetings.

Abad would like the Council to have full and positive participation in the MOA process and to inform the Council at the next scheduled meeting whether the Council has been granted a signatory party status and if not why not.

Miyamoto in closing said she would take all the suggestions and understood the sentiments of the Council.

**B. City and County of Honolulu Council, Resolution 08-168; 08-168CD1 and 08-192**

**Information/Discussion/Recommendation:** Council discussion on proposed Resolutions 08-168; 08-168CD1 and 08-192 that requests the City Administration to report on the implementation of the Comprehensive Historic Preservation Review Policy established by Council Resolution 89-489, FD1

McKeague briefly gave a report on the above mentioned resolutions. Resolution 08-168 and 08-168CD1 have gone into committee reading and will be scheduled for full Council later this month. Resolution 08-192 has been deferred. The subject for discussion will be 08-168CD1. The difference between 08-168 and 08-168CD1 is the modification and clarification of the original 08-168. McKeague read the resolution page 2 in its entirety as follows:

*BE IT FURTHER RESOLVED that the report shall include:*

- 1) A discussion of how significant historic and archaeological properties affected by development projects have been handled by the city since the adoption of Resolution 89-489;*
- 2) A list of the various departmental personnel who are designated to monitor the preservation of historic and archaeological properties, and who are responsible for coordinating the city's process and procedures with the state historic preservation division ("SHPD");*
- 3) A description of any difficulties encountered in implementing the basic intent of the comprehensive historic preservation review policy detailed in Resolution 89-489; and*
- 4) Recommendations, if any, to update the city's comprehensive historic preservation review policy to conform to current state law, administrative rules, or DLNR procedures, and reflect state-of-the-art best practices of historic preservation, including but not limited to:*
  - a) Clarification as to when and under what circumstances the city shall consult with and defer to SHPD regarding the potential impact of development projects;*
  - b) Consideration of advanced surveying of sites or properties with a*

*high probability of archaeological or historical artifacts, particularly Hawaiian burial sites;*

*c) A process and timeframe for the city to become a “Certified Local Government”; and*

*d) Development of an appropriate historic preservation education and public outreach program;*

Motion: communicate in writing, OIBC’s support of Resolution 08-168CD1.  
Abad/Quiteves

Ehrhorn has a concern that the meeting with Director Eng, SHPD and members of the Council discussed many of the issues raised by the Resolution and he felt that the letter in support of this Resolution may seem as though OIBC is not respecting the relationship established with DPP through their meeting.

Cayan gave a brief synopsis of the meeting that took place. One of the outcomes of the meeting was to have the committee meet quarterly. The feeling coming out of the meeting was very positive and a true desire on the part of DPP to work closely with the parties. The next meeting will focus on larger projects and details of how to improve the flow from DPP and SHPD. GIS information could be better accessed to the benefit of both parties and to create a map of Oahu identifying hot areas of concern.

McQuivey voiced that seeing the Council’s letter may damage the relationship established and that is the concern Ehrhorn had.

Greenwood voiced her concern in working with the City over projects in Waianae. She felt that the procedures and implementation of established procedures are not necessarily followed and have caused communities to be in turmoil over the process.

Abad was concerned that having this map or GIS information might give the City a false sense of security in the issuance of permits. Though these tools are useful, the law should still prevail and that SHPD review permits with ground disturbing activities.

Quiteves suggested a two prong approach to resolve this issue. She would still like to see the OIBC support the Resolution and to support the task force to continue their relationship with DPP.

Amendment: to also convey to Eng and DPP appreciation and acknowledgement for positive discussion that have occurred to address issues 4a of the Resolution.

Abad/Quiteves

Vote: unanimous

Ehrhorn suggested that with the approval of the OIBC the task force talk to Eng and convey the sentiments of the Council as part of 92-2.5 B2.

Vote for the Resolution: 7 yes; 1 abstain

Motion: authorized Ehrhorn to convey to Eng the following:

1. appreciation for the relationship that has been established
2. inform Eng of the letter in support of Resolution 08-168CD1
3. looking forward to additional meeting with continued discussions of the GIS and database and to work cooperatively together.

Vote: unanimous

The letter will be drafted by Cayan and email'd to McQuivey for changes and signature.

### **C. Legislative Task Force**

**Information/Discussion:** Council discussion on possible items for the 2009 legislative packet.

Aiu reported that SHPD will not submit any changes this year. OIBC will not have to coordinate with SHPD to combine legislation in a packet.

McQuivey stated that the pressure is off to combine the packet but if OIBC still wants to submit, the timeline is crucial. Several concerns are brought up in the Council and therefore language could be clarified and strengthened to address these concerns.

1. defining the burial site in 6E
2. the determination of previously identified and inadvertent discovery

The steps to move on these legislation would be to put together a bill and to find a sponsor for the bill.

Kanemoto stated that the definition burial sites the Council may want to wait for the decision on the Kauai case in Naue to see if the concern would be addressed through a ruling instead of by legislation. Kanemoto explained the law as it relates to burial sites and previously identified or inadvertent discoveries.

Abad questioned the terminology of a burial site and who makes the determination as to what constitutes a burial site. Kanemoto explained that the burial site is narrowly defined in the law to give fairness to the landowner as well as the burial sites. In data recovery process the burials that were found in the possible burial site would be previously identified. She would like to see the term "burial site" to be broadened to include an area larger than a single burial when multiple burials are involved.

Cayan suggested the past bills that are still in committee be reviewed to see if those bills have the concerns already addressed and therefore a new bill does not need to be drafted.

Quiteves brought up as an example the Ward project where inadvertent determination was made for the burials past the first 11 found. The definition of previously and inadvertent is referred in 6E but defined in HAR 300. She is

concerned that future projects may have the same outcome and would like to have a clearer definition in which to base decisions that would affect burials.

Kanemoto said that if the court defines the burial site, then this ruling would become law. Abad asked whether a case on Oahu addressed the same matter of the burial site definition. Kanemoto was uncertain whether that matter was raised in the Oahu case in court.

McQuivey will contact other councils to ascertain interests they may have.

**D. Status Update on Section 106/NAGPRA Correspondence**

**Informational/Discussion/Recommendation:** Report from the council's designees established to screen the review of Section 106/NAGPRA Correspondence. Council updates, discussion and recommendations.

No report from the committee. McKeague would like to see any ground disturbance activities on the project referenced in letter dated August 11, 2008 for the Renovation of the Beach Cottages at the MCBH be looked at.

**VI. SHPD INADVERTENT DISCOVERY REPORT**

**A. Kalihi-Nuuanu Sewerline Improvements**

**Kalihi Ahupua'a, Kona District, Island of Oahu**

Informational

Discussed the finding of the inadvertent and that the remains were identified by UH to make the determination of human. It was determined to be that of a child. Remains were fragmented. The remains were brought to SHPD for curation.

**B. Royal Hawaiian Hotel**

**Waikiki Ahupua'a, Kona District, Island of Oahu**

Informational

Cayan gave an update on 2 inadvertent discoveries at this project. One of the inadvertent has already been reinterred. The other is being curated on site until construction activity has been completed in the event that more remains are discovered.

Abad asked that she be notified in the event discoveries were made on KS lands as she is the land owner representative.

**IV. APPROVAL OF MINUTES taken out of sequence.**

Motion: to convene into executive session.

Ehrhorn/Kruse

Vote: unanimous

Council went into executive session at 1:00 pm.

Motion: to end executive session

Ehrhorn/McKeague

Vote: unanimous

For August 13 minutes, the Councils requests that Item VI Section E be transcribed verbatim. Cayan will do the verbatim minutes. Approval has been deferred until the request for the verbatim minutes has been completed.

**VII. OTHER BUSINESS**

- A. Abad will be attending the SHA conference in Hilo
- B. There will be a workshop on 6E concern in which Abad will be a panel presenter.

**VIII. ADJOURNMENT**

Meeting was adjourned at 1:25 pm.

Respectfully submitted by,

Linda Kaleo Paik