

O'ahu Island Burial Council Meeting
December 8, 2010
DLNR Boardroom, 1151 Punchbowl Street, Room 132
Honolulu, HI 96813

D: Recognition of Michael Kumukauoha Lee as a Cultural Descendant to Unidentified Native Hawaiian burials in the ahupua'a of Honouliuli, 'Ewa District, Island of O'ahu. TMK: (1) 9-1-011:001 thru 007, 9-1-012:008, 009, 011, 012, 013, 016, 017. Information/Discussion/Recommendation/Decision

McKeague: Moving onto Recognition of Michael Kumukauoha Lee as a Cultural Descendant to Unidentified Native Hawaiian burials in the ahupua'a of Honouliuli, 'Ewa District, Island of O'ahu.

My understanding is, I'm going to actually open it to, I'm going to open it up to Coochie, as Branch Chief for culture as I understand, some of this discussion might be procedural element that we can address first, until we have to take it back to the mat...

Cayan: At this time, the SHPD is not prepared to issue a letter, or memo, of recognition to Mr. Michael Lee, on those TMK's that were, that are listed on your agenda. There were no burials found on these TMK's which were subsequently changed due to the development by the private landowner. One burial was found outside of the Haseko property, and we recommend that Mr. Lee be recognized for that burial which he spoke of, that Office of Hawaiian Affairs is in custody of that burial. So if he will submit for that burial, then we would be ready to issue a letter of recognition for that...

McKeague: Just for clarification, does the cited TMKs of interest, as posted on the agenda, do not contain any known burials according to SHPD...

Cayan: Well, according to Haseko's (heirs?), there were no burials found in those TMKs...

McKeague: Trying to figure how to mitigate through this, because I'm not sure...You may have a contrary opinion, or new source of information, and because its burial location, would we vote into closed session,

Lee: We would have to...

McKeague: So I guess, before I pose that question to ask, is there information you do have available, specific, to tie in, the potentiality of locations relative to these TMKs listed?

Lee: We are working with OHA and SHPD. We have registered all of the seven sites, that we brought to you before, specifically who is buried there, what their genealogy is. We GPS'd it with OHA, we're now looking to get archaeologists on board, hired by OHA, and bone sniffing dogs, and a method, of when we do find the thing in place, and how to secure it and everything. So we are already in the process of doing that. And we are working with Kai Markell, and we already talked to the archaeologist. We also are going to be putting in for funding. We met with Mike Vitousek and Pua Aiu, with OHA. They...like I said, we specifically registered the burials and the names of who is buried in the sites that you approved of in Executive Session. So, and we brought historical documents to that, we brought a whole thick thing to Pua Aiu, which you haven't seen yet, so that is all in process right now. Moving to specifically find, which we haven't found it in place yet, but Mikaela Kekauonohi, the Queen of the islands, who was married to Liholiho, her husband, from Kaua'i, the Prince of Kaua'i, is buried there. I put in information there, historical documents of him being buried out there, which nobody knew. Those documents have been brought to SHPD's attention, as part of the...State stuff...

McKeague: If I can interject, I know you have been here from the beginning and I appreciate your patience. I guess for me, trying to Chair this item. If it's a procedural element right now. If I'm hearing Coochie correct, the TMK's cited no longer exist, because there was either consolidation of land, or reorganization, or joint development agreements or whatever. There is a procedural element that this is potentially misagendized, or...

Cayan: The Department request, that appeared on your agenda in April, we would like to continue to keep the same heading because if you are going to look down the line, oh, what happened to this item? You know...in your minutes...

McKeague: Whether this would be something like where you folks are going to help us rectify, because we...

Cayan: Yeah, yeah....

McKeague: ...because we just don't have the information as to old TMKs...new TMKs...

Cayan: Right...

McKeague: Really, the 'aina is the 'aina, so that doesn't change in terms of recognizing Mr....Mr. Lee's recognition discussion...

Cayan: That development has completely changed all the TMKs...it is part of the marina there....

Abad: Who we rely on...according to the Attorney General's office, that really we are looking at cultural descendancy on an ahupua'a by ahupua'a basis. Recognize that, it seems to be, he's already been acknowledged by this council as a cultural descendant, for iwi kupuna, of the...

Cayan: There are no burials here. Haseko's TMKs, that was prior to the marina. Their EIS shows no burials. Those TMKs no longer exist.

Abad: Well maybe...let me get my understanding clearer. For the previous meeting, when you were present. Did we recognize you as a cultural descendant...

McKeague: Cultural descendant...

Abad: ...for known burials in....

Cayan: You made the recommendation to the department. The department has not issued the memo that finalizes that recommendation that you made in April.

McKeague: Okay.

Abad: The determination to make that recognition, by the burial council, as opposed, then you folks formalize it administratively...

Cayan: Yeah, so we had to do research, we were notified by the landowner that those TMKs no longer exist. There were no burials found during the AIS. Now the Department has to figure out what to do. So in that time, OHA has been assisting Michael Lee. Pua and Michael Vitousek have been in that discussion and went out to look at the development area. We are recommending that Michael Lee make a claim to the ali'i wahine burial that was found on State land adjacent to Haseko, rather than the Haseko one, that has no burials.

Abad: I guess what I am trying to convey is that, because cultural descendancy isn't on a per burial basis, but per ahupua'a basis, then since we already acknowledged Mr. Lee as a cultural descendant of burials associated with...

Cayan: You need to be associated with a burial to be afforded cultural or lineal...

Abad: He's done that...

McKeague: Cultural

Cayan: Cultural. You need to be associated with a burial. What are we associating Mr. Lee's claim to?

McKeague: I think that...

Abad: The burials that have already been afforded...

Cayan: Where is the...that isn't the TMK that...

McKeague: If I can interject here, slightly. Previously identified burials, just for the sake of clarification here, are those found during inventory survey, data recovery, or known through oral or written testimony. As I understood the presentation given by Mr. Lee in Executive Session, he provided sufficient evidence, of, through oral and written testimony, that there is existing wahi kanu, in place, at One'ula, and as such, this Council had given recognition to that...so, it doesn't mean that it has to have a site number. It hasn't been documented in an archaeological report, but to that end, I believe, the definition I provided as to previously identified, as well as the recognition claims for cultural descendancy have been achieved.

Chow: May I interject here?

McKeague: Sure...

Cayan: Join the discussion....

Chow: The...I'm Attorney General...Deputy Attorney General Linda Chow. In HAR 13-300-35, under the rule for recognition of lineal and cultural descendants, it says...in order to establish lineal or cultural descent to human skeletal remains, a person shall submit a claim. Okay. So its not a question of it being previously identified. It's a question of it being human skeletal remains, which is defined in 13-300-2, as a body or any part of a deceased human being. So...I think our interpretation of that, you have to have a burial. You have to find a burial to be recognized as a cultural or lineal descendant. Okay. And I think what the Department is trying to say, there has been a burial found in the ahupua'a, on an adjacent property, for which they believe Michael Lee qualifies as a cultural descendant...which would then qualify him as a cultural descendant for all subsequent burials found in the ahupua'a. So I think, what they are asking is that this council hold off on this decision, or even rescind this decision, to give them the opportunity to come back, to recognize Mr. Lee to the known burial that was found, and that would then give him cultural descendancy status to all subsequent burials found.

Lee: I put in for lineal. I mean I was recognized by this body for cultural but I also put in for lineal and I registered that iwi with the other seven iwi over two months ago, with Pua and Mike Vitousek. I have the papers and everything...

Chow: But the other seven iwi have not been found yet...

Lee: Yeah, but one of the seven was my family that I brought here...so I have met your paperwork as of two months ago, when I brought it to Mike Vitousek and to Pua Aiu, naming her as one of the seven who have been found and is in smack dab in the entrance channel

where the State ceded that land over to the entrance channel for the easement for the 'Ewa Marina, where she found..

Vitousek: I would just like to add, that we haven't been told the location of these burials also, as of yet, and, so we are unable to say whether or not they in the Haseko property or the strip of land makai of that...

Lee: Mr. Chair, the archaeological report of the ali'i iwi wahine was smack in the middle of, if I had known this was going to come up, lets keep the conversation on the iwi was found with the niho palaoa, which you approved me of, which has, I followed all the paperwork in following through with this, and they keep on diverting to these other finds which have not been identified. That's why we are getting an archaeological study to do it through OHA, but lets dig through my family relative.

McKeague: I apologize if I am puzzled right now, so I guess, so, what do you need, what would you like to have this council help with...

Lee: Lineal recognition...

McKeague: Lineal recognition...

Lee: The lineal recognition...because I've met...I've gone through all the hoops and brought humongous documents to prove who was found, where it was found. That land is stuck with Haseko because the State is allowing it to be plowed through for the entrance channel and they are putting me in limbo by saying, but the State land has nothing to do with Haseko. It has everything to do with Haseko because we are asking for the significant ali'i to be buried, reburied back in place. They had no right pulling her out without our permission. It was done by the archaeologist on site making the determination that the high tide that would destroy the bones and whatever was in place, so they took it upon themselves, without the burial council's approval, to move my grandmother from her chosen burial site and to put her in a box for seven years.

Chow: Where she was, where she was, that's underneath the Haseko property...

Lee: Its on State property but its the easement that goes directly, goes into the channel they have...

McKeague: I believe it is within the area that we have proscribed your cultural recognition...

Lee: Exactly...

McKeague: ...and I'm trying to think about our process...

Chow: Yes...

McKeague: ..and again, the definition of lineal descendant, and it says, with respect to native Hawaiian skeletal remains, a claimant who has established to the satisfaction of the council...direct or collateral genealogical connection to certain native Hawaiian skeletal remains and with respect to...and so forth. So really...has he met that threshold, to the satisfaction of this council, with all the documentation presented so far...to have a conversation on the cultural to lineal transition, I guess, is the question...I think I understand what your asking. Are we prepared to do that? Do we have enough information to suffice our...

Lee: I can help you out here, we can move it to another meeting for that one, and I can bring in more information because there's been enough stuff that you need to look at. Information that I have submitted since the April 14. I'll be happy to move it, to table it to another agenda item at a different time so that you can have a look see...

McKeague: I appreciate your patience here, and I probably, might suggest that...and as one of the two 'Ewa Moku reps, I would love to sit down with you, and I wonder if that is okay...

Lee: I would like to...

McKeague: Also, as the Chair, so that I can better qualify this discussion...

Lee: So we can table it for another meeting...

Abad: I think that everybody want to try and work this out...to achieve...everybody seems to...

Lee: It's a process thing...

Abad: ... what can we do and how can we do what we...are able to do...

McKeague: Are you fine with that?

Lee: So my original request, the last time, was to recognize my family, on this TMK, which was for the River Street property, for the rail...

McKeague: Which is not agendized...

Lee: Which is not agendized...which I know process..it has to be...so that will have to be reagendized again for another meeting...also my cultural recognition of my grandfather who resided at Kawaiaha'o Church..is the other agenda that I ask for...but what's on this...is has to be agendized, all has to be re-agendized...

McKeague: I apologize for that oversight, because we were in sort of a rush to...get this together...

Lee: I understand...

McKeague: I will deal myself a time...and sufficient to her schedule...

Lee: And I would like to give you documents, so you can look at it way before, so any questions that you have, been formulated on documents that you have in your possession...

Abad: And since we have the Deputy Attorney General here, I am wondering if we can get clarifications to this...I'm curious in what you said...that there are really two different kinds of processes that are at play here. There is one process that has to do with identifying and putting on the books in a reliable and verifiable way that this is a burial so that when it comes time for an inventory survey, there is already a written record that a burial exists here. I think, I think, what, if I am hearing right, that what you are hoping for is that you can get certain burials documented in such a way that they are known previously identified burials...

Lee: Exactly.

Abad: ...and then there is a second, different process, for lineal and cultural descendants who need recognition.

Lee: Right.

Abad: So I just want to make sure, that, in your efforts to do both of these, that there...that you, have clear design, from the State, as to what is the process for these two different kinds of things, and who is the deciding factor in these two different things. For lineal and cultural recognition, it is triggered by a memo from the Department but the decision lies with the OIBC for that recognition. As far as the other, I'm less clear exactly what constitutes a previously known burial, in terms of what's good enough oral documentation, what's good enough written documentation, and maybe that kind of...

Cayan: We do....

Abad:what's good enough has to come from...

Cayan: The Department does have a burial registration form, which is also on the website. However, staff, meaning the archaeologist and historian needs to go out with the people making the claim of a burial registration, to verify that it is indeed there...

Abad: And this is what you are already talking about, is happening. We just want to make sure you have clear direction from the State, as to what is there good enough, what is adequate.

Lee: Understand the limbo that I am being put in with a known find of our kupuna being on State land but in that zone where Haseko is not now controlling. That's the problem here with

registering that particular iwi to get lineal recognition. They are saying divorce from Haseko, to make your claim on this and go towards the State. But they are both fused together because that's the easement to get into the ocean, my thing is that's a birthplace also. The two caves there are the ali'i birthplace, not only a burial, that I'm saying it's a burial. Its almost to say Haseko has no connection with this when they are going to plow through this whole thing. There are bodies there...plus it is a burial, a birth site.

Abad: Does it matter who the landowner is? Shouldn't the State level of requirement be in place for any landowner, so I'm not sure whether...whether it is the State or Haseko, whether it should make a difference for what is required of you.

Vitousek: I don't think it does, that's what the individual happened to come up upon in the past. The burial was found on the State land and it doesn't matter who owns the land or what's going to happen to it. It is just that's where it is. And that's just how our land is recorded on those TMKs. So that's where the claim has to be made...on to that particular...

McKeague: Again to reiterate, your understanding is it's a matter of process...

Vitousek: Exactly...

McKeague: How....

Vitousek: Yep...

McKeague: ...the claimant...

Abad: The record is by TMK, whatever that TMK is at this time...

Vitousek: Yep...

Abad: Regardless of who is the owner of that TMK...correct?

Lee: And realize for me to present this...they are plowing through so I have to acknowledge on the form they give me...that future burials that are in there are being jeopardized by that construction. That's what this whole process was set up for. And they are saying no its not because it is on State land, but again, they are going to come plowing through the whole thing. My stance is, that this is not the appropriate place to come plowing through. I'm trying to protect...I'm trying to protect it..it is a royal birthsite, a royal burial site, my ancestor was found there...and they are saying divorce yourself from that project. Concentrate on the State and we'll recognize you. And I'm saying, I can't do that because of the existing facts that are self-evident of what this process is leading up to. So I am being put into a bind, where, the

paperwork bind, but the boots on the ground, they are going to go plowing through this place and there are other burials there. And it is a very significant site for births. So it has placed me, we won't give you lineal recognition unless you do your paperwork, and say, this is the State, it has nothing to do with Haseko. Yet Haseko has absolute control in the future as to what is going to happen to here, in about a year, they got all their permits to come plowing through. And I'm saying its not pono to take these Royal Kings and Queens and just move them somewhere else. You have to change your plans, like you talked about the fence. How important that was. Well this is a birth site of Kings, separate from the stone, and where there's a burial site of Kings. It should be preserved. That's our cultural heritage. This rises to the level because of Kalanikupule, Kalolakumukoa, the daughter Kamahanakapuleimakali'i, Ka'eokulani, Kualii's head is out there. There is a lot of stuff that is major and should not be tampered with. And someone is stepping to the forefront. Someone has put the paperwork and the research and stuff. It should not be dismissed summarily because the process.

McKeague: To allow this easement, or ability to move through, I mean, I'm assuming, that's Office of Conservation and Coastal Lands..all through DLNR, so...do you know where they are at in that...

Lee: We'll the process is being played out...here and with SHPD...

Quitevis: The determination we already made so far, how come they are not stopping...

Lee: Can I mention this...what hasn't been triggered is this, according to the Memorandum of Agreement with Army Corps of Engineers, Haseko and OHA. At any time new information was found about burials, the certificate could be pulled for the construction. That has not been generated by any of the signatories. This is significant. This is really significant. My question is why aren't they pulling it for another cultural assessment, because Turtle Bay, after 25 years, the impact statement and cultural, historical assessment was no longer good, according to the Supreme Court. So why, when we have Kings, that are now being brought forward, the most important Kings next to Kamehameha. I as a private citizen, am not party to the signatory, so I can't trigger it. It is between OHA, Army Corps of Engineers and Haseko.

Quitevis: My question, the determination that we made, the last time, regarding Uncle's kuleana, what area...wasn't that Honouliuli?

McKeague: That...burial area within...the confines of Honouliuli...

Quitevis: Yeah, that one...so as we take the mana'o, and we know the rules support us. And we look at what our A.G. just told us today...and can you reiterate it, so I don't mumble your words about the ahupua'a...

Chow: About?

Quitevis: About lineal descendants...

McKeague: Cultural descendants...

Quitevis: Cultural descendants...e kala mai ia'u...can you reiterate that please?

Chow: Well, basically, that once you recognize a cultural descendant to an ahupua'a, your recognized to all subsequent burials in the ahupua'a...

Quitevis: Okay. Mahalo. So if we get the decision that we had already made unanimously, and we take the new information, or the support from our A.G. we have today. Why should we have to stop this process or prolong it any longer? He can do whatever he going to have to do when it comes up but really the work has already been done. Right? We're not saying...all we have to focus on is that he is a lineal...a cultural descendant in that ahupua'a. Whatever happens, if something comes up, he will already have been recognized so he can malama that kuleana. I don't think there is any reason why we need to prolong this process...right?

McKeague: Sorry, I'm going to interject...

Quitevis: ...oh, interject, go ahead. I'm just thinking about this process...

McKeague: What I'm hearing is...

Quitevis: I malama kupuna in that area...I know how long she's been where she's not supposed to be...

McKeague: I believe that what has been requested of this council, there's no argument that any other subsequent identification of kupuna in Honouliuli would preclude Mr. Lee from participating as a cultural descendant. What he is coming before, I believe, is a lineal descendancy, and that is a higher order. Because when it comes to the determination effects on management, lineal descendant has an equal weight, or voice, as the landowner themselves...so that's the tier we been requested to help Mr. Lee get to. The question is how do we get...

Quitevis: Yeah, how do we get...

McKeague: ...how to we get to that and with what information. So that's the request, and its one o'clock already and I...

Quitevis: On the board here, its for cultural descendancy...to unidentified..and its for Honolulu Rail, but that's different. You know what I mean? When we look at this, we can not really see

that's pa'a. I know we going change it to lineal, but this one that's on our agenda. We're ready. Let's puka through. We made this decision. The A.G. helped us to recognize...

McKeague: Correct...

Quitevis: How we are looking at the definition of cultural...

Cayan: Okay, so I'll take this back, I will take this back and discuss it with Pua then because there are other things going on as Michael has mentioned...because OHA is part of this investigation. I don't know if they have more information they can share with us about the TMKs.

I'll give you my contact info to see if we can set up a meeting in the next couple of weeks. Maybe Holidays or what..so we can best figure out how to...table...we'll table for today. We can agendize next month and get you to the level of recognition...

Lee: I can hand the documents over and you can tell me what is good to bring....sounds good...

McKeague: That's it...by a matter of process, I open the floor to any public testimony. Seeing none, we'll table this for further discussion, carry over to next month. I appreciate the Attorney General's Office being here. We're moving on.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Markell', written in a cursive style.

Kai Markell

Compliance Manager

Office of Hawaiian Affairs