



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

AGENDA

OAHU ISLAND BURIAL COUNCIL MEETING
1151 Punchbowl Street, Honolulu 96813

DATE: Wednesday, November 9, 2011

TIME: The Meeting was called to order at 10:32 by Acting Chair Hinaleimoana Kalu

I. Call to Order/Roll Call/Opening Pule

The following members were in attendance:

Hinaleimoana Kalu (Acting chair)
Elton "Poki'i" Magallenes
Jonathan Scheuer
Aaron Mahi
Cy Bridges
Chuck Earhorn
Steve Hoag (arrived at 10:45)
Kehau Abad (arrived at 11:05)
Excused: Shad Kane

SHPD Staff
Pua Aiu

Public
Dawn Chang
Don Caindec
Shirley Kawamura
David Shideler
Kepa Maly
Onaona Maly
Muffet Jourdane
Matt McDermott
Hal Hammatt

Michael Lee
Lani Lapilio
Jr. Keonekapu
Mapuana Lukele
Kaonohi Kaleikini
Faith Miyamoto
Amelia Gora
Haaheo Guanson

Pule was said by Cy Bridges

II. Opening remarks by OIBC chairperson

The chair thanked everyone for coming. She reiterated that their responsibility is to malama the iwi, and there is also a large responsibility to abide by state laws. Please refer to the SHPD website for the laws and rules under which the council abides. The council will hold on discussing the minutes until Kehau Abad arrives.

III. New Business

A. International Market Place Proposed Redevelopment Project, Waikiki Ahupua'a, Kona District, O'ahu Island, TMK: [1]2-6-022:036,037,038,039 & 043. Informational presentation by Cultural Surveys Hawai'i and Aukahi on the archaeological inventory survey plan (AISP).

Aukahi (**Lani Maa Lapilio**) gave the presentation. She thanked the council for their service and introduced Les Goya of Queen Emma Development (QED). Taubman Co. is the developer, but were unable to attend the meeting. This is an update for the council. QED has met with tenants, interested groups and consultation is an on-going process. The developer is going through due diligence to see if this is a feasible project.

David Shideler of CSH noted that this project had been on the agenda in January and March. He likes the mission of the Queen Emma Trust and is honored to be doing this work for them. There are 60 test locations in the Archaeological Inventory Survey (AIS), which has been approved by SHPD. They will start testing in mid-January and should be done

by mid-March. Shideler noted that the chair and descendents had requested further testing. There will be further consultation on the request. There was a draft Cultural Impact Assessment done in which 18 individuals were interviewed.

OIBC comments and questions

Earhorn asked if the 60 test trenches includes the area where the chair and descendents requested more testing.

Shideler replied that the 60 does not include the expanded area, but the request is under consideration. **Kalu** explained that she had asked for additional testing because that area seemed bare. She noted that the archaeologist thought this area may have been disturbed. **Kalu** also stated that she had asked for this presentation so that the council would be aware of it early on, not because there are any concerns or issues associated with this project.

IV. Old Business

A. Kawaiaha'o Church Multi-Purpose Building Renovation Project Update, Honolulu Ahupua'a, Kona District, Island of O'ahu. TMK (1) 2-1-032:017

Dawn Chang and **Don Caindec** presented on behalf of the church. They noted that they had not attended meetings in the past because of on-going ho'oponopono. They gave a brief history of the development:

January: request for an injunction that was denied. The church then proceeded under its Department of Health permit to disinter the burials. So far, all burials found have been consistent with Christian burials. The church has contacted and consulted with families as best they could, and there is on-going consultation.

Bridges noted that usually when ho'oponopono is pau then things are somewhat pono. Is there an update on the ho'oponopono? **Chang** responded that there was no update.

Scheuer asked if there was a sense of how much longer excavation will take? Is there a timeframe for both construction and reinterment? **Chang** responded that there is a komike developing protocols for reinterment. She is not sure what the status is, and they are not present to represent themselves. She noted that excavation for the building is nearly complete. The church is still working on utilities and most of the foundation excavation is done.

Kalu noted that she has been the recipient of many e-mails from Ohana, the media and others. This project has been a challenge. The OIBC kuleana puts them on the sidelines. However, she feels that the OIBC should have had a greater voice. Also, when claimants ask for help, it is difficult to say anything because they are confined by the law. This is an example of a divergence between Hawaiian Culture and Western Law. She is not saying that expansion shouldn't be explored, but it has caused much 'eha, so she will open the floor today for people to say what they need to say.

Kalu also noted that she was not a part of the ho'oponopono. She noted that while ho'oponopono is a Hawaiian process, in this case, everything around it is not Hawaiian. She has had a very hard time explaining the whole project to her students.

Public Comments:

Amelia Gora noted that the description of the Hawaiian government has been documented in 1863. There were three parts to the Hawaiian government:

- a) The Sovereign, which is permanent and heirs still exist.
- b) The house of nobles, which is permanent and heirs still exist
- c) The house of representatives –this is the function the state took over

She noted that the Hawaiian government is still in place (Rex v Booth) and therefore the state is illegal. There is an on-going case in court to support this position and when it is decided there will be ramifications that include Kawaiaha'o. She is an heir to the Kawaiaha'o lands through Ka'aha who was married to Kalola. Kalola is her ancestor.

Kaonohi Kaleikini remarked on the ho'oponopono that she took part in. She is glad to hear that it is pau because she hasn't been able to contact the church over several months. She noticed there is no report on the latest desecration. She doesn't know if reports are required or not, but thinks that reports should be required. She also resents the fact that Dawn Chang said all of the kupuna there are Christians because she has kupuna there who were never members of the church. They were given

plots by royalty and that is why they are there. Not because they are members of the church. She noted that the Ho'oponopono participants were not notified that it was pau and that the Church continues to desecrate iwi.

Michael Lee had an akaku with his ancestors and relative William Charles Lunalilo who said he is saddened because he can no longer protect the iwi kupuna. Evil and greed have taken over. He wanted to take them with him. Lee believes Lunalilo should have a voice at this proceeding.

Kalu reiterated that this is an open forum on Kawaiaha'o, because the one thing she can do is create an opportunity for people to be heard.

Kamuela Kala'i note that she has been involved in the protection of iwi since December 25 of last year (2010). She wants the Church to know that she is opposed to this project. To her knowledge there are at least 75 iwi kupuna who have paid the price even though they have pleaded and begged to stop the desecration.

She strongly disagrees with the state's position that the burial council has no jurisdiction in this matter. This is a burial matter at an alii church. If iwi kupuna are not safe there, then they are not safe anywhere. This is a matter that will never be pono. She stated that Kawaiaha'o has a kuleana to make sure loved ones are okay for eternity, regardless of whether or not they are Christians. Many are not Christians. They are not okay with this and she is not okay with this. This about what is right and wrong, not about permits. She is also concerned that the iwi are exposed, allowing someone to go in and burn some of them.

Kala'i noted that she was involved in the ho'oponopono for four months but Kawaiaha'o broke every agreement so she walked out. She is running out to patience, breath and energy. She wants everyone to understand that what Kawaiaha'o is doing is wrong. The burial council has kuleana. She asked SHPd for reports. Wants to know who got dug up. There is no burial plan. If you want to honor the kupuna, put them in the sanctuary where they can enjoy the music with everyone else. Put them back in the ground.

She reiterated that this was very painful for her and that it is very wrong. She told of a child buried in a glass coffin and noted that the glass top to the coffin had been thrown away. She questioned why artifacts were being thrown away, rather than curated and catalogued? She prays that people change their minds and chose to make things right, because its not too late.

Gora noted that she is the acting liaison for foreign affairs and she has a genocide activities case at the police department. From now on she will be documenting all of the people at Kawaiaha'o who are committing genocide on us. She also noted that she is a member of several royal families. The Hawaiians have treaties with the president and with no one else, so it is not okay to do wrong to the Hawaiian people.

Kaleo Patterson said that he believes there is a need for leadership from the OIBC. He thinks that is the request. One thing to do is to urge the parties back to the table to avoid the escalation of conflict. OIBC could also re-evaluate its role and see if it can take another role. There does seem to be a call for cultural monitoring, which could address some the issues heard. He believes the community needs a good call to prayer where the community can come together around this issue. OIBC could still have a role.

Caindec noted that the project was put on hold in April 2009. There were two (2) litigation actions. One was resolved and one is pending. Even though litigation is pending, Kawaiaha'o has the right to proceed. The church plans to move ahead because this center replaces what was there before, and they don't have that facility any more. The Church will be providing an important service to both its members and the community. The old buiding was there because at the time, the kupuna decided that was best for the church. While he can understand the grief some people are going through, they should also understand the Church's needs.

Chang said this has been a most difficult project. Its been very difficult for the church. She doesn't know what resolution is, or how to resolve descendent concerns, but she wants people to know that this process has also been difficult for the church.

Kala'i noted that this is not about pain for her, or for the church. This is about the kupuna's pain. The pain of having a shovel in your neck. She pointed out that the pain we may feel is nothing to what the kupuna are feeling.

Earhorn wanted to know how the remains in the basement of the church are being curated? What are the plans for reinterment? He believes there has been a failure to communicate. It may be good to bring people back to the table. He is disappointed that Kehau is not here. She had requested that a letter be sent to SHPD, but he doesn't know the status of that letter.

Hoag would like to echo Earhorn's statements.

Chang stated that the iwi are wrapped in lauhala and held in the church basement. Regarding the coffins, the remains are not actually in coffins, but there may be evidence that a coffin existed. None of the burials found were in a flexed position. While she doesn't know if any of the iwi kupuna were Christian, all of the burials were consistent with a Christian burial. She will take back the message to re-establish ho'oponopono.

Kalu officially requested that if ho'oponopono is re-established she would like the OIBC to be included at the table. She would prefer to be there rather than get second hand reports. She will take a stronger role, per Kaleo's suggestion. She believe this is an issue where they may be commonalities, but right now it seems as though the rights and wrongs of one side are prevailing over the rights and wrongs of the other side. This is an issue of pono and pono 'ole.

Kalu noted that she allowed this discussion because it's the only forum she could create to allow people to be heard. Personally, if those were her kupuna, she would not allow for it, but they are in a bigger arena than personal opinion. She also noted that is this were an independent Hawaii, this would be a non-issue.

Scheuer supported the acting chair as the other Kona rep. He noted that he has never been asked to participate, but it is within the church's purview to invite the council to the table. He also wants to impress upon the church that the council members can be helpful in situations such as these.

Kalu asked if it is possible to obtain records of what has been done. She has the opportunity to serve as an educator, regardless of what role the OIBC is to take.

Kala'i noted that she was a participant. Ho'oponopono didn't break down. She stepped out and it continued after she left. They are waiting to pane. When they call everyone together, then they will pane. She also noted that she will bring the iwi logs that notes caskets were found. Finally, she believes SHPD should make the reports public. The concerned public should be allowed to see what is happening to their kupuna. The 69 iwi found were not handled by "na iwi" committee. She has it all in the logs. There is no "na iwi" committee and there is no burial log. She wants to know what happened to the kupuna that go dug up. They wouldn't reveal that at Ho'oponopono.

Gora noted that there are stories about what happens to people when they remove iwi kupuna. She is waiting for these things to happen. Leave it up to the kupuna.

Kalu hoped that the open forum allowed the council to be brought abreast of what is going on. She heard the comments and sentiments and has made the following requests

- a. The records from the finds be made available to the candidates
- b. that Kawaiaha'o invite the OIBC to Ho'oponopono
- c. that everyone look at what they are learning from this.

The acting chair then thanked everyone for their time. She looked forward to a different level of resolve. She also wanted to know if there were other options, such as using the Word of Life facilities.

V. Approval of OIBC Meeting Minutes

- a. OIBC Draft Minutes of November 10, 2010
- b. OIBC Draft minutes of December 8, 2010
- c. OIBC Draft minutes of March 9, 2011
- d. OIBC Draft minutes of May 11, 2011
- e. OIBC Draft minutes of June 8, 2011
- f. Addendum to minutes of December 8, 2010 (Mike Lee Request)

Note: There were no OIBC meetings on January 2011, February 2011, April 2011 and October 2011.

Regarding the December 8 minutes, **Shirley Kawamura**, an attorney for Kawaiaha'o noted that there was an extended and closed executive session during that meeting. After the executive session, Kawika McKeague re-opened the meeting and summarized OIBC's role in the Kawaiaha'o project. He noted that **"OIBC has been advised by the AG that they do not have jurisdiction over Kawaiaha'o."** The church would like that language included in the minutes.

Mahi noted that he was there and remembers that statement being reiterated by the AG.

Abad recalls a lengthy discussion in which OIBC members reiterated their on-going conclusion that a more realistic and holistic view of the law is needed for this issue. The AG provides a twisted view of the law that disenfranchises Native Hawaiians. That is the OIBC's opinion.

Kawamura reiterated that she is just making a procedural request to ensure that what was said is included in the minutes.

Kalu noted that the council doesn't agree with the AG's advice. However, it is the advice of the AG that we don't have jurisdiction.

Bridges noted that he was not at the December meeting, but it was discussed earlier. The council doesn't know who the people (buried) are. Kawaiaha'o has provided what they need to provide. He believes the issues are between the council and the state. He is not sure the church will respond to Kalu's request to participate in Ho'oponopono.

Kalu noted that she made the request, so now its up to the church to respond.

Earhorn noted that they have every right to invite who they want, and to deny access to who they don't want.

Bridges said there is no such thing as jurisdiction for the kupuna. That came later and is what the council has to deal with.

Kawamura said she will convey the request to participate in ho'oponopono to the Church.

Regarding the December 8th minutes, Abad wanted it noted that if there is a question of which notes take precedence, then the addendum takes precedence, since it is verbatim.

- A. **Motion (Mahi/Abad (with Kanalua): Accept the OIBC draft minutes of December 8th with the addendum to replace the section it pertains to (V.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 thru 007, 9-1-012:008, 009, 011, 012,013, 016, 017).**

In addition, include the following corrections:

- **Add Kawika's statement regarding the AG's opinion on OIBC's jurisdiction in Kawaiaha'o.**
- **Include the Board's position that they disagree with the AG's advice.**

Aye: Kalu, Bridges, Magallenes, Mahi, Abad (with Kanalua). Abstain, Earhorn, Scheuer, Hoag.

Motion passed 5/0 with 3 abstentions.

Kalu noted that some of the things Mr. Lee has presented has the potential to change history. While she will refrain from commenting on anyone else's genealogy, she will not subject the council to being a catalyst for changing history without more than adequate documentation. She hopes that accepting the addendum suffices to address Mr. Lee's concerns.

Abad wanted it noted that she is concerned that the minutes are missing much information, since the verbatim minutes have so much more information. However, she would like to move on, so she is voting Kanalua, which to her means "yes, with reservations."

Mahi/Bridges moved to pass November and March minutes.

November 10, and March 9, 2010	Aye (all with kanalua): Mahi, Magallenes, Abad, Kalu, Bridges	A‘ole—None	Abstain: Earhorn, Scheuer, Hoag
March 9, 2010	Aye (all with kanalua): Mahi, Magallenes, Abad, Kalu, Bridges	A‘ole—None	Abstain: Earhorn, Scheuer, Hoag

The motion passed 5/0 with three abstentions.

Earhorn/Mahi made a motion to combine the approval of the minutes of May and June. The motion passed unanimously.

Earhorn/Mahi then made a motion to approve the minutes of May and June. All members voted yes, with 3 Kanalua (Abad, Bridges, Kalu)

Bridges asked that SHPD not put the council in this position again and that the minutes be done in a timely manner. There was some discussion as to whether the minutes should only include the motions, to address concerns that the minutes seemed skewed toward certain viewpoints.

Scheuer asked about the status of the August and September minutes and urged SHPD to preserve the audio files. Anyone reading the minutes should go and look at the audio tapes if they want the entire thing. He is concerned about avoiding potential deficiencies in record keeping by SHPD if we are to rely on the audiotapes to clarify the understanding of what went on at a meeting, beyond what is contained in the official adopted minutes.

Kalu concurred that streamlined minutes may ensure the council receives them in a timely manner.

Abad noted that they could record all of the action items. State that anyone who wants further info should research the audio tapes. Scheuer noted that it could be put in the announcement section that the minutes are abridged and anyone wanted more complete minutes should research the audio tapes.

IV Old Business, Continued

- C. Update from Hawaii Rapid Transit Authority regarding the Honolulu Rapid Transit Corridor Project for the areas of Honouliuli, Ho‘ae‘ae, Waialeale, Waipi‘o, Waiawa, Manana, Waimano, Waiiau, Waimalu, Kalauao, ‘Aiea, Hālawā, Moanalua, Kahuiki, Kapālama, Nu‘uanu, Pauoa, Makiki, and Waikīkī Ahupua‘a.**

Faith Miyamoto, Kaleo Patterson and Matt McDermott gave the presentation. Patterson passed out materials. Miyamoto noted that the burial consultation protocol has been finalized and submitted for approval. McDermott provided copies of a document sent to FTA that was prepared with the OIBC and Native Hawaiian organizations. He noted that the appendices are not included in the copies he is passing out, so he will send them later.

Regarding other items, several meetings were required by the Programmatic Agreement (PA). He noted that Acting Chair Kalu has attended. One such was the quarterly update held on November 1. He provided copies of the notes. Also the AIS Plan for the City Center Phase IV has been approved. There are four (4) trenches. Archaeologist will be working at two (2) ends but cannot work on the streets during APEC. The airport section is still under review. There will be cultural sensitivity training for contractors in late September or early October.

Kalu thanked the team for their update. Unless there are immediate question, she would like to provide an update from her attendance at meetings. She reiterated that originally the council wanted signatory status. However, when they did not prevail in that request, they continued to participate. Kalu noted that she has made sure she is a voice for Hawaiian history and ensuring that there is a Hawaiian voice in the process. She also hopes that the process builds trust, so that rail advocates and other developers seek the guidance of the council in the future. She encouraged other members of the council to participate so that there are more voices for the iwi kupuna.

Kalu asked SHPD to agendize the status/composition of all committees for the next meeting. **Scheuer** also wanted the election of the chair and vice-chair to be included. However, they will wait to reform the rail committee until Kane returns from Aotearoa.

Abad noted that Kamehameha will be switching her out. Hopefully KS will send another representative. She expects the change will be complete within a month or two. **Mahi** then suggested that the committees remain as they are until they know where Abad will be and then solve the problem all at once.

Earhorn said he is willing to volunteer to be on the rail committee and attend meetings as long as the chair does not change. **Patterson** noted that the OIBC's presence has been consistent and consistently helpful with regard to both burials and other items in the PA.

Hoag and Bridges left at 1:10. Quorum maintained.

Lee noted that he is a recognized cultural descendent to Honouliuli. He also has family burials in Chinatown (through Kinopu). He believes his family has a claim to much of Chinatown, however SHPD will not recognize his standing as a cultural descendent until there is a body. He has contacted the city, and he has also give McDermott maps of where the Honouliuli caves are located so the rail can avoid them.

Earhorn asked what the City is proposing to do? **Lee** responded that his kupuna is buried where the Chinatown station is proposed to be located. He has requested that this kupuna be left in place, because when he had earlier agreed to move it, he became very sick. This kupuna does not want to be moved.

Kala'i expressed concern about the cultural sensitivity training provided by Cultural Surveys. **McDermott** said it is being provided by Auli'i Mitchell and goes over burial law and the Native Hawaiian view of iwi kupuna, particularly the circle of life and that iwi should be left where they are interred. It's geared toward construction workers and surveyors. **Kala'i** shared her concerns about Auli'i Mitchell providing the training because he had provided the training to the workers at Kawaiaha'o Church. She believes they could get a more balanced person.

Gora wanted to re-affirm that she is an heir of Mattaio Kekuanaoa. They will work out the claims with Kinopu (Lee).

Kepa and Onaona Maly came up to introduce themselves to the council. They are working on the Traditional Cultural Property (TCP) Studies. They have taken a places and place name approach. So far they have 386 place names from Honouliuli to Moanalua. 151 of these places are specifically crossed by the corridor. They believe that at least 46 places are eligible as TCP's, vs. the one (Chinatown) called out in the EIS. While they would like to take this further, they are currently on a stop work order while other parties get their work done. Also noted that they are working with Cultural Surveys to create place name maps. These will be very useful to help illustrate the stories of place, even if much of the integrity of the place is lost.

Kalu thanked the Malys.

Abad wanted to know how their research informs the archaeologists? **Miyamoto** noted that once they get the report then a decision will be made on whether or not a TCP is being affected. If they are, then adjustments will have to be made.

Scheuer asked about kuleana lots that were applied for but denied? His hope is that they get as much info as possible before building to guide the alignments.

Lee noted that Kualii's chant mentions specific places. He asked how are we supposed to have knowledge of place if we don't look to our own stories in the chants and mele.

Kalu said she looks forward to continuing the conversation because if we don't participate then the iwi kupuna get the bad end of the stick. She also participates so that later, when she says "don't move the iwi" she is heard.

Lee wanted to discuss the inadvertent at Haseko.

Aiu provided the report on the inadvertent at Haseko, Whole Foods, and Kualoa.

Haseko—please see report, which includes TMK.

Whole Foods –Kailua Ohana (DeSilva's) will take lead and reinter in designated mound. A fragment was found. It was removed and stored in a facility curated by the 'ohana.

Kualoa—a fragment was exposed due to wave erosion. It is stored at the park. Ohana will rebury (done 11/14/11)

Mahi left at 1:40 pm Quorum maintained.

SHPD passed out correspondence packet to those who didn't have it. If there are concerns, please let the chair know.

Earhorn asked how the iwi at Whole Foods was found. **Hal Hammatt** responded that it was found during monitoring for electric conduits, inside the building

Scheuer would like an update on status of staff. **Aiu** said that the two Burial specialists positions were being advertised and the Branch Chief position was not yet vacant.

Earhorn asked for clarification on the OHA request for a meeting at Haseko. OHA clarified that the meeting is set for December 12, 2011 at 10:00. Magallenes will attend. Perhaps also Kane, if he is back.

Earhorn/Scheuer moved to adjourn. Unanimous. (1:40 pm)