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

STATE HISTORIC PRESERVATION DIVISION  
601 KAMOKILA BOULEVARD, ROOM 555  
KAPOLEI, HAWAII 96707

**HAWAI'I ISLAND BURIAL COUNCIL  
MEETING MINUTES**

**DATE: THURSDAY, APRIL 17, 2008**  
**TIME: 9:00 A.M.**  
**PLACE: DLNR HUNTER EDUCATION PROGRAM FACILITIES**  
**16-1220D LALAMILO ROAD**  
**KAMUELA, HAWAI'I 96743**

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

**Absent / Excused:** Ululani Keliikoa-Sherlock, Vice-Chair  
Dutchie Saffrey

**SHPD Staff:** Morgan Davis, Hawai'i Assistant Archaeologist  
Wendy Machado, Cultural Historian  
William Wynhoff, Deputy Attorney General

**Guests:** Dean Kaiawe, Descendant, Kaohe-5<sup>th</sup>, South Kona  
Mike Matsukawa, Dean Kaiawe's Attorney  
Grace E. De Aguiar, Descendant, Kaohe-5<sup>th</sup>, South Kona  
Micah A. De Aguiar, Descendant, Kaohe-5<sup>th</sup>, South Kona  
Herbert F. De Aguiar, Descendant, Kaohe-5<sup>th</sup>, South Kona  
Earlene Kaiawe, Descendant, Kaohe-5<sup>th</sup>, South Kona  
John Kaiawe, Descendant, Kaohe-5<sup>th</sup>, South Kona  
Albert P. Jr., Descendant, Kaohe-5<sup>th</sup>, South Kona  
Jeff Nichols, NELHA  
Sharon Nichols, 'Ohana  
Clarence A. Medeiros Jr., Descendant, Ki'ilae Farms Subdivision  
Nellie J. Medeiros, 'Ohana  
Jim Medeiros Sr., Protect Keopuka 'Ohana, Nauana Council

Guests: Ruby McDonald, The Office of Hawaiian Affairs (OHA)  
Bob Rechtman, Ph.D., Rechtman Consulting, LLC  
Mike Vitouseli, Rechtman Consulting, LLC  
Mary Anne Maigret, DLNR - State Parks

## **I. OPENING REMARKS**

HIBC Chair Charles Young (Young) called the meeting to order.

Pele Hanoa (Hanoa) gave the pule wehe.

The HIBC members, and the SHPD staff introduced themselves.

## **II. APPROVAL OF THE FEBRUARY 21, 2008 HIBC MEETING MINUTES.**

Hanoa said that issues are not resolved with Hokukano, Kau. Hanoa referenced Colin Lau's (Lau) recommendation on page 10 of the February 21, 2008 minutes.

Leningrad Elarionoff (Elarionoff) said that it is an Ocean Conservation and Coastal Lands (OCCL) issue.

Ku Kahakalau (Kahakalau) asked if the State Historic Preservation Division (SHPD) staff would follow up with OCCL and then discuss options at the next Hawaii Island Burial Council (HIBC) meeting.

Wendy Machado (Machado) agreed.

Kahakalau said to take out the word "whatever" on page 3.

Elarionoff said that the motion was missing on page 7.

Elarionoff said that "dirt to dirt, cave to cave, sand to sand" on page 7 needs to be clearer.

Kaleo Kualii (Kualii) suggested verbatim or close to verbatim minutes.

Young suggested that minutes be completed and distributed a week after the meeting. Young said that the HIBC and the SHPD staff will work together on the minutes.

Hanoa said that the SHPD needs to get a secretary.

Kualii said that the vacant SHPD staff position, supported by Hokuli`a funds, needs to be on next months agenda.

**A motion was made to approve the February 21, 2008 HIBC minutes as amended.  
(Kahakalau / Elarionoff)**

**VOTE: ALL IN FAVOR**

### III. BUSINESS

#### A. FAMILY BURIALS IN KAOHE - 5 TH, SOUTH KONA DISTRICT, ISLAND OF HAWAII, TMK: (3) 8-7-09: 14.

**Discussion:** Presentation by Dean Kaiawe, Lineal Descendant.

Dean Kaiawe (Kaiawe) said that he has been consulting with Ruby McDonald (McDonald) about how to proceed with his family cemetery concerns. McDonald explained what the landowner needed to do and mentioned Young and Machado.

*Kaiawe passed out handouts of Kaohe 5, South Kona District.* In 1857 to 1870, Kaiawe's great, great grand father, Ohua held a Royal Patent Grant for the property. In 1870 to 1883, Ohua's son owned the land. In 1883 to 1915, Ohua's granddaughter, Mikala owned the land. In 1911 to 1915, she deeded land to the church, and cemetery. The rest of the land she deeded to her children. In 1915, Mikala conveyed the land to the church who accepted, kept and used until the early 1980's. Mikala's stated on page 5 of the handout, "*for cemetery purposes only, forever*". The church deeded the property over to another church. In 2003, with out notifying the descendants, the church sold the  $\frac{3}{4}$  acre property for \$50, 000 to an individual who opened up a bed and breakfast without a special use permit. It was eventually approved by the Planning Commission. This is currently a lawsuit.

Kaiawe presented paperwork from SHPD that HIBC and SHPD should have been involved prior to any building. Kaiawe said that MaryAnne Maigret (Maigret) and Keola Lindsey (Lindsey) did a site visit after the house was built. Lindsey informed the landowner that they need to do a BTP. The homeowners never did a BTP.

Mike Matsukawa (Matsukawa) said that the land owner applied for a building permit without informing the County of the cemetery on his property. The County gave the building permit six weeks after SHPD's visit telling the landowner to contact the HIBC.

Kaiawe said that the Planning Department found out about the cemetery after the house was built, when the land owner applied for a Special Use Permit for a Bed and Breakfast business. Kaiawe informed the County of the cemetery. The County did not know that the cemetery existed. Kaiawe said that Maigret wrote a letter saying that no historic sites affected by the Bed and Breakfast.

Kahakalau asked Maigret about the letter. Maigret said that the only piece she could review and comment on was the bed and breakfast.

Young asked for the County's position.

Matsukawa said that they are not a party to the lawsuit. Officially, the County does not have a position.

Kaiawe said that his family wants to visit and clean the graves but they are having access issues with the landowner. The landowner filed a restraining order against Kaiawe. The landowner and descendants have been in mediation for eighteen months to explore solutions. If agreements are not met, they will go to court.

Kimo Lee (Lee) asked the distance from the swimming pool to the graves.

Kaiawe said that the swimming pool is six feet from the cemetery and six to eight feet high.

Young said that he wants the Attorney General's (AG) opinion which may take one to two more appearances.

Ronald Dela Cruz (Dela Cruz) said that the Kaiawe family may still be the legal owners since the original deed is from the Mahele.

Bob Rechtman (Rechtman) suggested that the Council agendize formal recognition of lineal descendant status.

Kualii asked if the burials are registered. Maigret said that in 2003 it was still an active cemetery.

Clarence Medeiros Jr. (C. Medeiros) said that he is also a lineal descendant and in full support of Kaiawe.

Kaiawe said that the land has been in the family for many years and he is concerned about unmarked graves.

Matsukawa said that the real problem is that 6E-42 assumes the County has the information. Under the law, cemeteries have to be registered with the Department of Health. It does not show up on the TMK maps.

Elarionoff said that the church was negligent and the landowner deceitful and negligent.

Matsukawa said that mediator suggested for Kaiawe to go to the HIBC.

McDonald said that she was involved from the beginning with Lindsey and Maigret and referred Kaiawe to SHPD. The number one issue is access and it should not be complicated.

Jimmy Medeiros Sr. (J. Medeiros) said to go and get arrested, that Kaiawe needs to establish his rights.

Kahakalau **recommended** that William Wynchhoff (Wynchhoff) investigate what happens when an individual does not file a BTP. Penalties for specific violations for building in a known cemetery without a BTP? SHPD to order owner to file a BTP? Present a BTP within two months or he will be in further violation? Present findings to the HIBC as soon as possible. The house and the pool have to go. He has violated the law.

Wynchhoff said that from the Sunshine Law point of view, not to act on it especially since the owner was not given notice.

Wynchhoff said that Vince Kanemoto (Kanemoto) will be doing the follow up.

Kahakalau **recommended** to agendize official action item of specific violations and penalties.

Wynhoff said that it depends on what Kanemoto says. Maybe not the place for the HIBC.

Kahakalau said that they need penalties. What are the penalties? Where does the money go? HIBC can go to the Legislature and do something, this is not acceptable.

Roy Helbush (Helbush) said that he would like the AG's opinion in the HIBC packets.

Wynhoff said that in packets, you will waive the privilege.

**A motion was made to close agenda item III A.**

**(Kahakalau / Kualii)**

**VOTE: ALL IN FAVOR**

**Break: 11:25 a.m. - 11:55 a.m. (due to loss of quorum)**

**B. REPORT BY TASK FORCE ON KUKUIOPA'E AHUPUA'A, SOUTH KONA DISTRICT, ISLAND OF HAWAII, TMK: (3) 8-7-10: 09.**

**Discussion:** Discussion by HIBC Task Force Members: Cynthia Nazara, Charles Young Roy Helbush, Leningrad Elarionoff.

Cynthia Nazara (Nazara) said that the visit was disheartening. She didn't know where sites were except for two burials. Some of the platforms were run over. The walls were down. It was a complete mess.

Elarionoff said that in the BTP on page 10, features were cleared during inventory survey. When we were there, features were heavily overgrown. Reading the BTP, Section 5, the proposed preservation methods, interim and long term, were not followed. Machines already went into the area right beside grave sites and materials were burned. Stones were knocked down and rebuilt, with the moss on the wrong side of the "Stone Shrine" for preservation.

Young said that the BTP never went to the HIBC. The BTP called for buffers and monitors. The landowner graded with a grinder without a permit. The County has denied water variance, subdivision approval. The owner said that their plan is to plant 50 acres of coffee. Walls were flattened and destroyed. There may have been more burials.

Morgan Davis (Davis) said that they were shut down by the County because they grubbed and graded with a grinder. The County has not given them any permits.

Rechtman said that chippers used to have rubber tires which was ok. The new chippers are on tractor treads.

Young said that the HIBC needs Kanemoto's advice on what to do when there is no pending permit action.

Maigret said that it needs to be tied to a pending permit. 6E-11 applies if knowingly and intentionally, a burial site is destroyed.

Young asked if staff would look into this.

Davis agreed.

Wynhoff suggested to go to the Board of Penalties and ask to investigate. Ask SHPD to investigate.

Kahakalau said that violations and penalties are not being imposed by law, we should have an official letter. What is the process to deal with violations, fines, a process we all can follow. Specific laws.

Kahakalau **recommended** a letter to Pua Aiu (Aiu), the State is not complying with the law.

Young said that he will write a letter.

Maigret said that the County ordinances should be included to protect historic sites. The ordinance only protects the soil, sedimentation, not sites. With out this, the Chippers are allowed to continue.

Rechtman said that Young may want to include in the letter, how many 6E prosecutions since the start of legislation. Two or three, not many.

C. Medeiros said that he wants to be involved because he has Kaiawe blood.

McDonald said that the landowner went to the Board of Appeals, filed a variance instead of subdivision. In 1989, the landowner acquired title by foreclosure. He wants to make large lots.

Young said that he will work with staff and AG and Aiu.

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

**VOTE: ALL IN FAVOR**

**C. NATURAL ENERGY LAB HAWAI'I AUTHORITY (NELHA), HO'ONA  
ARCHAEOLOGICAL PRESERVE.**

**Discussion:** Consultation and Discussion with the HIBC by Robert Rechtman, Ph.D.

*Rechtman distributed* a map and photos of Ho'ona preservation area.

Rechtman said that 15 to 18 years ago, boundries were established for the Archaeological Preserve. Ross Cordy worked on, but never finalized, a preservation plan/BTP. Rechtman says that they are considering the entire preserve as a burial preserve and would like to make an inclusive preservation and BTP.

Some concerns Rechtman raised include:

- a) It may be insulting to treat other sites as burials, to descendants who definitely do have known burials.
- b) Access for area, permits for camping.
- c) There needs to be guidelines for use of rock within the area.
- d) There are disagreements on the timeline of when things were created. Some people say it was newly built or missed. Others say, they remember it always being there.

Rechman said that there is no need to pull anything apart or dig. It is a preserve area, it will be preserved. Protect all features.

Dela Cruz asked about the modern sites within the preserve.

Rechtman said that elders say that those are new sites, the younger people say that the sites were there, under the brush. To document what they are would be full of conflicting information. Cultural practitioners may build but need to inform landowner.

Kualii asked about camping.

Jeff Nichols (Nichols) explained the permit process for camping.

Kahakalau said that all cultural and lineal descendants should be exempt from permit requirements. They should be on a list. Options should be available to close access to the public during religious practices.

Nazara asked Rechtman what is he thinking.

Rechtman said that they are seeking a management plan of an Archaeological Preserve that contains burials.

Nazara asked if Rechtman can provide the HIBC with the last archaeology work from the 1980s.

Rechtman said yes.

Elarionoff said that they should consider: no open fires, no moving old rocks, no drinking, and no personal monuments.

Maigret had a question about preserving and honoring everything in there. It should be said, exactly what it is.

Rechtman said that the truth is relative. That there is conflicting stories and different truths for each person.

Maigret said that from a historic perspective, it needs to be defined.

Rechtman said that the signage will say something along the lines of “please leave these things alone.”

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

**VOTE: ALL IN FAVOR**

**D. RECOGNITION OF CULTURAL / LINEAL DESCENDANTS  
BURIALS AT KI'ILAE FARMS SUBDIVISION, KAULEOLI AND KI'ILAE AHUPUA'A,  
SOUTH KONA DISTRICT, ISLAND OF HAWAI'I, SITE NUMBERS: 23152, 23153, 23140,  
23200.**

**Information / Recommendation / Determination:** State Historic Preservation  
Division's recommendation for recognition of lineal descendants to burials at Ki'ilae Farms Subdivision.  
Council discussion and determination. Palapala processed and completed by Linda Kaleo Paik, O'ahu  
Island Cultural Specialist, SHPD. Presentation by Wendy Machado, Hawai'i Island Cultural Historian,  
SHPD.

McDonald asked what palapala was viewed in this case.

Machado said that she did not do any of the paperwork or review. Linda Kaleo Paik (Paik) did  
the review.

C. Medeiros played a video tape of his presentation to the HIBC on August 19, 2004.  
The HIBC recognized C. Medeiros as a lineal descendant to Sites 23152, 23153, 23140, and  
23200 located in the ahupua`a of Ki'ilae and Kauleoli.

Nellie Medeiros (N. Medeiros) said that they are requesting to have their children and  
grandchildren recognized.

Wynhoff said that they need to establish burials.

Young said that in 2004, C. Medeiros provided enough information to prove lineal but, now the  
question is about burials.

Wynhoff said that under the law, there has to be iwi. No iwi, cannot do it.

Kahakalau asked if the sites are recognized.

Wynhoff explained that in order to make a claim, a person needs the name of the deceased and  
skeletal remains. Wynhoff said not to a Site, there has to be iwi before lineal descendancy can  
be granted.

C. Medeiros said that Site 23153 is a known great grandfather. C. Medeiros provided a death  
certificate. Site 23140 has been destroyed.

*C. Medeiros provided the HIBC with handouts that were not shared with SHPD staff.*

Rechtman said that Site 23200 is interpreted as pre-contact in age containing multiple burials.  
Site 23153 is not within Ki'ilae Farms Subdivision, but rather is within the boundaries of the

National Park land. Sites 23152 and 23140 are interpreted as agricultural sites with numerous mounds and no skeletal remains have been found at either of these sites.

Wynhoff said burials were identified as burials at a site number in 2004. Can't be lineal to those Sites. Assumes HIBC's intent was to identify burials, not sites. Wynhoff asked if the applicants lineal descendants to the iwi at the sites.

Kahakalau said that just because the archaeology doesn't find iwi, doesn't matter. C. Medeiros came to us and convinced us. He has no personal gain from this. We should grant same to kids as we did the father.

Rechtman asked if the owner needed to prepare a BTP. Rechtman asked, how can he do a BTP with out iwi.

*C. Medeiros provided the HIBC with more handouts that were not shared with the SHPD staff.*

N. Medeiros said that a letter from Don Hibbard (Hibbard) to Rechtman in 2002 questioned why with 1,200 mounds identified, only six burials were found. N. Medeiros said that correspondence from SHPD, two mounds previously identified as agricultural mounds found iwi.

Kualii asked how do they know no iwi are present.

Rechtman said that they excavated, took apart agricultural mounds and nothing was found. They have been monitoring during grubbing and grading at the site.

Kualii said that C. Medeiros did walk up to a site and identified the burial.

Wynhoff said, yes it is up to you as Council to determine.

Young said that it is important to do the right thing and preserve the record, which was clearly recorded in the minutes. Now perhaps we have made a mistake but I see nothing here saying the Council did make a mistake. Seems pretty conclusive to me.

McDonald said that preponderance of evidence was such that we couldn't refuse him in 2004.

*Young read Paik's Memorandum into the meeting.*

**A motion was made to recognize Kareen K. Medeiros, Lincoln K. Medeiros, Jacob L. Medeiros, Jamison K. Medeiros, Jayla A. Medeiros, Jaimin N.K. Medeiros as lineal descendants to burials at the following Site Numbers 23152, 23153, 23140, and 23200. (Kahakalau / Pele)**

Elarionoff said that because of his background, he requires greater evidence of skeletal remains. Elarionoff said that he does not agree.

**VOTE: 7, 2 NAY**

Rechtman asked the Council for guidance on how to help protect iwi if he does not know where they are.

C. Medeiros said that Marty Quinn (Quinn) would not take him to two sites.

Rechtman said he was present at the meeting with Quinn, and did not agree with C. Medeiros's statement.

C. Medeiros said that Rechtman was not standing near them.

Wynhoff said that recognition of lineal descendants need to protect iwi to the extent that there is iwi.

Rechtman asked, is this necessitating a BTP.

Wynhoff said that the only action today is the HIBC recognition of lineal descendants. No other action, no call for BTP.

N. Medeiros said that they want the developer to communicate.

Kahakalau asked if two of the four are still there.

C. Medeiros said yes.

Kahakalau said that Davis should go, confirm protections are in place.

N. Medeiros said that there have been several permit violations.

Young said that a group trip should be scheduled. Medeiros and Rechtman should go down there.

C. Medeiros asked what are we looking for.

Young said that he wanted to see Rechtman's quandary of needing guidance to protect two sites.

Rechtman said that he still has not received a letter from Jenny Picket (Picket) or Paik.

Davis said that she has been asking for that letter also.

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

**VOTE: ALL IN FAVOR.**

**E. RECOGNITION OF CULTURAL / LINEAL DESCENDANTS  
BURIALS AT THE HOKULI'A PROJECT.**

**Information / Recommendation / Determination:** State Historic Preservation

Division's recommendation for recognition of lineal descendants to burials at the Hokuli'a Project. Council discussion and determination. Palapala processed and completed by Linda Kaleo Paik, O'ahu

Island Cultural Specialist, SHPD. Presentation by Wendy Machado, Hawai'i Island Cultural Historian, SHPD.

*Machado read Paik's Memorandum into the meeting.*

**A motion was made to accept agenda item III. E  
(Kualii / Lee)**

**VOTE: ALL IN FAVOR**

**A motion was made to close agenda item III. E  
(Helbush / Kualii)**

**VOTE: ALL IN FAVOR**

**F. HB 3429 / SB2308**

**Information / Discussion / Recommendation:** Councils discussion of proposed legislation. The bill would define the entire cave / lava tube as the burial chamber.

McDonald said that both bills are dead.

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

**VOTE: ALL IN FAVOR**

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

**A. Kiholo Bay, North Kona District, Island of Hawai'i.**

**B. La'aloa Park, Kona District, Island of Hawai'i.**

**A motion was made for the HIBC to enter into an executive session.  
(Kahakalau / Young)**

**VOTE: ALL IN FAVOR**

**A motion was made to return to open session.  
(Helbush / Dela Cruz)**

**VOTE: ALL IN FAVOR**

#### **V. HAWAI'I ISLAND INADVERTENT DISCOVERIES**

**A. Thomas Smith property at Land of Honokohau 1, District of North Kona,  
Island of Hawai'i, TMK: (3) 7-4-08: 47.  
Information**

Young said that he had concerns of an inadvertent being discovered right after the HIBC approved the BTP.

**B. Lot 238, Hokuli‘a Subdivision, Kanakau Ahupua‘a , Island of Hawai‘i.  
Information**

The HIBC concurred with SHPD’s determination to preserve in place.

**A motion was made to close the agenda item.  
(Kualii / Helbush)**

**VOTE: ALL IN FAVOR**

**VI. DISCUSSION ON CORRESPONDENCE**

**VII. ANNOUNCEMENTS**

**A motion was made to close the agenda items.  
(Helbush / Dela Cruz)**

**VOTE: ALL IN FAVOR**

**VIII. ADJOURNMENT**

**A motion was made to adjourn the meeting.  
(Helbush / Dela Cruz)**

**VOTE: ALL IN FAVOR**