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LAND
STATE PARKS

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION

O'AHU ISLAND BURIAL COUNCIL MEETING MINUTES OF:

DATE: **WEDNESDAY -- JULY 8, 2009**

TIME: **10:00 A.M. TO 12:00 P.M.**

PLACE: **DEPARTMENT OF LAND AND NATURAL RESOURCES**
1151 PUNCHBOWL STREET, ROOM 132, HONOLULU, HAWAI'I 96813

I. **CALL TO ORDER.** Chairman McKeague called the meeting to order at 10:15 a.m.

II. **ROLL CALL.** Quorum was established with 7 commissioners in attendance.

III. **An Opening Pule** was offered by Aaron Mahi.

IV. **INTRODUCTION OF COUNCIL MEMBERS, SHPD STAFF AND DEPUTY AG.**

OIBC Attendance:	Kehau Abad	Chuck Ehrhorn		Alice Greenwood
Andy Keliikoa	Kehaulani Kruse	Aaron Mahi		Kawika McKeague
OIBC Excused:	Cy Bridges	Leimaile Quiteves	Shad Kane	Hinaleimoana Falemei
SHPD Staff:	Nancy McMahon, Deputy SHPO/State Archaeologist			
	Phyllis Coochie Cayan, History & Culture Branch Chief			
Deputy AG:	Pam Matsukawa			
Guests Signed In:	Dana Naone Hall	Greg Johnson		David W. Shidler
Manuel M. Kuloloio	Rachel Shaak	Ty Fukumitsu		Andy Uliet
Lani Maa Lapalio	Moses Haia	Jean Rasor		Mahealani Cypher

V. **OPENING REMARKS.** Chairman McKeague informed the public on the council's rules of conduct to receive testimony on the agenda items and other related matters on the OIBC's process per HRS 6E.

VI. **APPROVAL OF MEETING MINUTES**
Minutes of May 13, 2009 and Minutes of June 10, 2009 are not available. The department apologized for the inconvenience and is working to have these completed for the next OIBC meeting.

Approved

VII. UPDATES AND INFORMATION

A. Update on 'holdover appointments' to the O'ahu Island Burial Council.

The department summarized the various efforts by the OIBC chairman and others, the Office of Hawaiian Affairs (OHA) with the SHPD regarding 'holdover appointments' for Alice Greenwood, Waianae District Representative and Andrew Keliikoa, Landowner/Developer Representative. SHPD thanks both commissioners for their volunteerism and commitment to the program. SHPD also noted that there is an applicant for the Landowner/Developer vacancy referred by Jace McQuivey. The department continues to recruit interested persons to apply for future vacancies statewide.

B. NAGPRA notice of human remains from Hawai'i at the Warren Anatomical Museum, Harvard University, Boston MA.

McKeague briefed the OBIC on the notice that was sent on the seven sets of na iwi kupuna at the Warren Anatomical Museum and that one specifically described it was taken from a volcanic mountain on O'ahu. On June 13, 2009, the OIBC filed a letter for joint repatriation with the Office of Hawaiian Affairs (OHA) and Hui Malama I Na Kupuna O Hawaii Nei (HMNK).

Comments included:

- Jean Rasor did some archival research on the information available from the Federal Register. He notes it is not clear where in East O'ahu the find was taken from and it's a positive is that the lands do belong to Bishop Estate.
- Abad noted there have been other sites in East O'ahu used in the past that may be appropriate. She notes that the repatriation process takes time.
- Cayan shared in her experience with past repatriation the kanu occurred soon after na iwi kupuna journeyed home to their respective island or ahupua'a.

[Note: Commissioner Alice Greenwood arrived at 10:50 a.m.]

C. Update on the Honolulu Rail Transit Project for the areas of Honouliuli, Ho'ae'ae, Waikele, Waipi'o, Waiawa, Manana, Waimano, Waiau, Waimalu, Kalauao, 'Aiea, Halawa, Moanalua, Kahauiki, Kapalama, Nu'uanu, Pauoa, Makiki, Manoa and Waikiki Ahupua'a, 'Ewa and Kona Districts. TMK: Various.

Abad gave a summary of the ad hoc committee's work towards a Programmatic Agreement (PA) and that the Transit team would be here today on the status of the OIBC becoming a signatory. Faith Miyamoto arrived shortly and apologized for being tardy. Discussion on the following points:

- Urgency that a PA include the OIBC to allow timely reviews of plans before it becomes difficult to redesign or allow more consultation on potential finds in the project corridor. Also, that the OIBC should be a signatory as it has its own jurisdiction under the department.

- OIBC is concerned that its kuleana will be circumvented and there needs to be more public venues to convey these concerns. An Op-Ed was suggested as one outreach venue.

- Dana Hall of Maui urged the OIBC do not do AIS with the work in progress as it will make it more difficult for redesign or changes. Hall added that there is precedence for a burial council to sign a PA as in the case of the Maui-Lana'i Island Burial Council signing on to the Kahului Airport PA.

- Dave Shidler of Cultural Surveys Hawaii noted the AIS plan is available and approved. The field work will be discussed in the next meeting and both SHPD and the ad hoc committee will be notified. Shidler read that the Mayor is planning a 2009 ground breaking and that the plans will be accepted.

Approved

- McMahon noted that two years ago the SHPD asked that the PA include everything (i.e., architecture, historic buildings, and historic properties) and also traditional cultural landscapes. Phase I seems not to have much impact on historic properties and the like. Phase II and Phase III are in areas that will impact many national landmarks and historic properties. The last conference call on this with the historic preservation stakeholders was to have more discussion on the PA to include all concerns.

- Miyamoto reported that a draft PA went out this week to the federal agency. The transit team is planning two public meetings on July 28 and August 4 with the PA stakeholders. The FTA in San Francisco acknowledged receiving the OIBC letter with request to be a signatory and is working on their response to the request.

- The transit public meetings will be by invitation to over 26 groups and folks can also conference call in to the meetings on the draft PA. The draft PA will hopefully be ready by end of this week for review. Miyamoto noted that the ad hoc committee saw a draft on historic sites which has been redacted as there are no agreements among the groups (such as Historic Hawaii Foundation, some of the civic clubs, National Parks Service) and she noted that not all are signatories but are consulting parties.

- Ehrhorn commented that the OIBC would not like to be in Phase IV and get blindsided without a PA that defines the OIBC responsibilities if there are burials found which will delay the project too.
- Abad will have the ad hoc committee call in a/or participate in the upcoming meeting(s) to include the OIBC kuleana concerns.

D. Proposed Alapai Transit Center and Joint Traffic Management center located at 710 and 720 South King Street, Honolulu Ahupua'a, Kona District, Island of O'ahu. TMK: (1) 2-1-042:004,013.

Chairman McKeague recused himself from this discussion as his employer is one of the consultants. Vice-chairman Ehrhorn assumed the chairmanship at this point to facilitate the meeting. Presenters for this item included Sharon Tom of the City & County Department of Transportation and David Shidler for Cultural Surveys Hawaii.

- Tom distributed maps for the council to follow in discussion. She noted this project came before the OIBC two years ago and since then there have been changes to the project land use and design. The redesign shows less use of the property, more flexibility to redesign should there be further burial finds (there were 3 coffin burials from the east makai side which were preserved in place).

- The plans were downsized considerably. There will be more testing in the project area rather than do random testing on the entire property. The archaeological survey will be where the project area is and will help modify the design if necessary.

- Discussion on use of GPR, number of trenches for project area only, and that use of this project will be for county emergency units, the police and other emergency agencies.

There were no comments from the public on this item.

E. Kawaiaha'o Church Multi-purpose Building Renovation Project, Honolulu Ahupua'a, Kona District, Island of Oahu. [TMK: (1) 2-1-032:017]

McMahon updated the OIBC on the following items:

- SHPD's letter dated June 11, 2009 signed by Chairman Thielen raised SHPD's concerns to consult further with all claimants and clarified the inventory of na iwi finds to date.

Approved

- This letter was not available for the OIBC at its June 10, 2009 meeting as the letter came from the Chair's office and was still in draft form then. Abad had concerns that the OIBC is advisory to the department and a review of the draft letter should have been made available. McMahon stated the letter was not at the division's level for disclosure upon legal advice from the AG office.

The Kawaiaha'o project team (Don Caindec, Dawn Chang, and Lani Lapalio) updated the following:

- The church received SHPD's letter on June 11 stating that the project is a cemetery and any burials therein is the church's kuleana as per 6E.41 which addresses the disinterment permit from the Department of Health (DOH). SHPD also added some conditions in the letter.

- The church wrote back for clarification on the conditions (letter dated June 19, 2009) and to schedule a meeting.

- SHPD letter dated June 29, 2009 included two clarifications and recommendations to consult further with Amelia Gora and Manny Kuloloio who put in descendancy claims. The letter also urged the church to consult more within the community.

- There is no change in status of construction. The church is waiting for a disinterment permit from the DOH. There are no additional conditions from the DOH.

- Consultation was publicized in the Ka Wai Ola and for three days in the Honolulu Advertiser.

- Lapalio is the lead consultant meeting with the many 'ohana. There have been eight meetings to update all the known 'ohana in their database. Since 2006 the Na Iwi Committee developed the protocol for any finds and the care of na iwi kupuna. The committee has worked with families to temporarily curate all na iwi in the church's sanctuary until all can be reburied.

- Lapalio added she followed up and consulted with Gora and Kuloloio and will continue to reach out for more 'ohana. They are waiting for the DOH permit and to comply with any conditions. Lapalio also apologized that none of the 'ohana was able to attend today's OBIC meeting.

- Lapalio assured the OIBC that consulting with the families is a high priority with the church. There are approximately 150 families who have come forward to discuss this kuleana. The next meeting is scheduled for July 20 at the church from 5:00 p.m. to 7:00 p.m.

- There are 17 plots affected by the project with an additional seven (7) plots with 'ohana participating actively in consultation. Families of Moanikaule and Backus have come forth too.

- Chang distributed maps of the project area to review with the OIBC the footprint of Likeke Hall showing that makai is the cemetery proper and that mauka was not used for burials. The third map shows the underground utility line out to Mission Lane where most of the inadvertent burials were exposed. Chang reviewed the larger map showing the 1920 plots with a circle or square which designated burials or individual plots belonging to church members. She reviewed the design of the proposed hall and how the design changed to meet historic preservation laws.

- Chang noted on that a dark rectangle was the 1940 Boys Club which was demolished to build the former Likeke Hall. The original construction removed 117 burials which were relocated by the church. A list of names is published in the archaeology plan. Lapalio added that all 'ohana was contacted and seven (Metcalf, Kuhea, Naau..., Kamaka, Kanuha, Backus) are actively involved with the Na Iwi Committee.

Approved

- The Kapiolani plot elicited several 'ohana including Kekau Kawananakoa in consultation.

- Caindec pointed out that the utilities infrastructure has only the sewer in compliance right now. The water line will go to King Street.

There was further discussion on the SHPD letter of June 11, 2009 as follows:

- Abad is concerned that the letter wants the ultimate determination be under HRS 6E.41 when there are some areas that the OIBC has jurisdiction. Also, the examples in the letter regarding other cemeteries being decommissioned are not appropriate (i.e. Nawiliwili). Abad pointed out that 6E.41 refers to 'known' cemeteries that are active. The Nawiliwili cemetery allowed disinterment of unknown burials which is different from Kawaiahao which has families who know or could possibly identify burial plots. Abad opined that this letter is setting precedence with areas that were cemeteries. This should not have automatically been a 6E.41; it should have been under the island burial council jurisdiction. Abad added that this letter is another constant negation of the OIBC role in the process – the OIBC is a voice for those who cannot speak up or unable to speak in the church's arena. Further, the OIBC concerns were to be allayed that the Church would also address those families who did not want any disinterment or removals.

- Aaron Mahi supported Abad's mana'o. He added that this historic cemetery is still active with several jurisdiction levels. He recalled that in 2006 the church made an informational presentation to the OIBC which led him to think that the OIBC would make decisions on any historic burials although it is a project under the DOH. This is confusing and it seems the OIBC was being asked to respond in a certain way. Mahi notes that the OIBC does support all the voices for kokua and have acted in good faith to the information given. He felt somehow there should be more definition in that SHPD letter to the church to include the OIBC and what the role of the OIBC should be.

- Alice Greenwood recalled the first information presented by the Church. She is putting her trust in the Church and its Na Iwi committee and that everything is being done properly with the families. Greenwood said someone called her to complain about the Church and its committee. However, Greenwood reiterated she is putting her trust with the Church and the committee.

- Chairman McKeague concurs with the sentiments expressed thus far especially that the department's letter dismissed the OIBC role in the legal way. This is a known burial ground of a church and that the OIBC should be legally and culturally included herein. Also, he added that Kawaiahao Church is a registered historic site in a historic district and subject to environmental review too. McKeague asked if there was an environmental assessment exemption for this project since the county and state permits were approved. He felt that the OIBC could have contributed with the cultural points on burials.

- Dana Hall Naone wrote a letter with her comments on the Kawaiahao Church project that also points out the following: the OIBC should be on the list of addresses for consultation, the Nawiliwili cemetery is not an appropriate example as it was done in 1989 prior to the burials law in 1990 [at that time you get a permit and just disinter], cites her page 14 on the departments roles and that the DOH permit is for known burials meaning the DOH wants the names of each individual which the Church could not provide and thus this should have been under SHPD's jurisdiction.

- Naone further expounded some points from her letter that: the unidentified burials can be under DLNR care as burial sites and not go back to pre-1990 burials law days, there are procedures to allow the island burials council to state how to care for na iwi kupuna (see HRS6#Eand HAR 13-300), the rules for inadvertent (same for previously identified burials) should be applied in the context of historic preservation. She stated that the OIBC needs all information available to make wise decisions and the June11the letter circumvented the OIBC's role to protect the burials.

- Dawn Chang acknowledged the work done by Dana Naone Hall and all the Maui folks who worked to protect the burials at Honokahua which led eventually to the state burials law. Chang reiterated that Kawaiahao is a church and is a cemetery. In 13-300-3 jurisdiction exempts cemetery as there are people who will malama the burials. 6E41 recognizes cemetery can disinter with a DOH permit. 6E43 addresses preserve in place or relocate burials. We applied the criteria to determine preservation or relocation. Cemeteries are excluded when (a) there are folks to care for the burials and (b) a disinterment permit from the DOH will be relocation of the burials.

- Chang added that when SHPD responded to the unmarked inadvertent the DOH said the precontact burials follow 6E43. The Church has a cemetery (6E41) which SHPD concurs. The first presentation in 2006 with the OIBC having extreme trust that the Na Iwi Committee would be responsible to their kuleana and protocol to malama the burials. We have always considered it a cemetery. We did not think there would be this many inadvertent which most of the finds (all post-contact cluster burials) were in the sewer line trench. We continued to operate under the monitoring plan approved by SHPD to handle any inadvertent finds. The SHPD is the only agency who stepped up. The Church has not abused your trust in its care for all burials. There is no evidence of any pre-contact burials to date.

- Chang further added that the Church believed it had removed all 117 burials (and relocated) when the original Likeke Hall was built and thus did not expect there was any more burials there. There is a fine line to consider that the entire TMK is a cemetery which is an 'active cemetery' and difficult to distinguish which part is cemetery and which is a road. The Church believes it is a cemetery. There is no easy answer to when a footpath became a road and is it still part of the cemetery. Kawaiahao is taking care of all burials. This is where cultural and western religious practices differ.

- Chuck Ehrhorn concurred that the OIBC has a kuleana to the families who cannot come forward because it is 'unknown burials.' We can agree it is a cemetery and that there are some unknown burials too.

- McMahon added that she was not here in 2005-2006 for the initial consultation and came in knowing there was a monitoring plan for the project. There was no archaeological inventory survey. In meetings with the Church and DOH, the SHPD takes jurisdiction outside the church property and all matters inside the walls is DOH's kuleana. SHPD has no jurisdiction with active cemeteries. In the meetings at the governor's level, jurisdiction was discussed. The DOH use to give blanket permits and not follow up if all burials were relocated. The Nawiliwili cemetery was the former Kanoa estate and sold to a developer. There were many unmarked graves of many ethnic groups and a small portion was maintained as a cemetery. The Nawiliwili case had a SMA permit which ruled it under the cemetery law not 6E42. That was the example used as Nawiliwili is still an active cemetery.
- Jean Rasor shared his questions to the OIBC on whether it's a designated cemetery or a historic property. It is still a burial ground that the church built. If a pre-contact burial is found, is it no longer a cemetery? How do you make determinations in a high risk area?

- Moses Haia of the Native Hawaiian Legal Corporation (NHLC) added that the question is – is it a cemetery or not. What I heard is the Church removed the burials under Likeke Hall. The intent and belief was that all burials were removed and the use was different than that of a cemetery. We should ask was it still a cemetery and was it still used as a cemetery. Likeke Hall part was used differently by the property owners and that part is not a cemetery. The OIBC role was usurped of

its authority by the State and thus the OIBC needs independent counsel not the state's counsel.

- Ehrhorn stated he did not believe there was any usurpation here. He feels the matter should move forward with more dialogue among the stakeholders. He asked Chang if there were any pre-contact burials found. Chang verified there were no pre-contact burial of the 69 inadvertent to date.

- Hall shared information and her findings as follows: There were probably pre-contact burials on the Kawaiahao lands perhaps at the time of the fourth church built there and it was surrounded by a burial ground; the fifth church added a basement with probably some disinterment done there. In 1916, the Church removed 39 burials at its Waikiki church. In 1940s, the 117 burials disinterred and relocated for Likeke Hall. In 1968, the Kaaumualii land was sold and 406 burials disinterred. The 117 previously removed were in a common grave and then cremated and returned to the church's care. Hall notes she has 'ohana buried along the Punchbowl side of the cemetery and feels the Church set precedence in its care of cremating the 117 burials. In the 1920s, there was county land with approximately 95% coffins and had at least one pre-contact with artifacts (i.e. coins from 1700-1800) and some traditional artifacts were found (i.e., niho palaoa). In 2004, the SHPD required AIS for work on Queen Street. In 2006, there is a report by CHS on its archaeological subsurface inventory. The OIBC had kuleana during the archaeological inventory survey (AIS) period even if no burials were removed.

- Chang reiterated the project team is working with the SHPD on all the work it does. The parking lot was not required in the AIS by SHPD and the Church did the subsurface testing on its own. Each find was called in to SHPD who responded promptly over a four-day period on-site. We all proceeded that this is a cemetery and worked to comply with SHPD. The Church has a history of relocation and those are done with the concurrence of its congregation. In 2003, the members agreed to this project.

- Hall disagreed and said the Church has no right to move burials they don't know (unidentified).

- Abad questioned how Item 8 in the SHPD letter is going to be met and what is meant by 'appropriate relocation?" Abad wanted clarity on if the cemetery is one single area or only portions meet the use of a cemetery. She wanted to hear what the family's mana'o is and would feel better if they tell us 'no worry' and we would back off as it is their kuleana. We are hearing one 'ohana who feels differently. We feel the OIBC should help protect those families who have not been heard as it is our jurisdiction.

- Ehrhorn agreed with the definition of cemetery and that on page 14 the DOH has a right to permit known burials. Here the issue is with the known and unknown burials. Abad repeated the OIBC has a jurisdiction to assert here. Mahi also felt that the unknown burials are the OIBC's jurisdiction in the process of determining their fate. Abad recommended a motion for the OIBC to seek legal counsel to assert its jurisdiction in the Kawaiahao matter.

- Manny Kuloloio shared his genealogy to the Kawaiahao burials with documents and his experience with other projects in Kaka'ako (i.e. Ward Village and Wal-Mart). He came before the OIBC in 2003 for the Wal-Mart case and again in 2006 where he was recognized as a cultural descendant to the burials at the Ward Village project. Kuloloio defers to the Na Iwi Committee at Kawaiahao. He has sent his documents to the SHPD for his claim as a cultural descendant to these burials. Kuloloio shared some of his genealogy from the chiefs and is here to do his part with everyone.

MOTION by Abad that the O'ahu Island Burials Council (OIBC) shall seek legal counsel from the Attorney General's office in order to establish jurisdiction over any and all burials at the Kawaiahao Church property over which the OIBC may have jurisdiction. Motion was seconded by Chuck Ehrhorn.
Vote was unanimous. The motion passed unanimously.
ACTION: Chairman McKeague volunteered to write the letter. Deputy AG Pam Matsukawa advised the OIBC to send the letter to the attention of Attorney General Mark Bennett.

F. Update on Section 106/NAGPRA Correspondence.
Greenwood said there is no report from the ad hoc committee. However, she pointed out that the majority of 106 letters are not burials-related and it takes a lot of time to review. McKeague encouraged Greenwood to distribute some of the letters to other committee members and to focus on burials. McKeague added he will forward the letters he receives to the committee members too.

G. Update on the Kaena Point Advisory Committee. This item was deferred to the next meeting due to Quiteves's absence today.

H. Update on Status of SHPD O'ahu Repository and Na Iwi Inventory.
SHPD's update including the following:

- The repository lease ends July 31, 2009. SHPD has accepted a generous offer from KSBE to use one of their buildings in Punaluu for repository purposes. Terms are being worked out.
- Mahalo to OIBC members (McKeague, Abad, Mahi) who helped SHPD clean the Punaluu hale.
- Na Iwi inventory consists of approximately 60 bundles or boxes ranging from small to medium sizes. Each bundle or box may contain several fragments. Several reinterments and/or transfer of curation to 'ohana groups were done in June 2009. More are scheduled for July 2009. SHPD is striving to reinter all na iwi kupuna by end of year as many have been on the shelves from 1999 or earlier (start of the burials program).

VIII. UPDATE ON INADVERTENTS

A. Kalia Road Trenching at Trump Tower Project, Waikiki Ahupua'a.
McMahon summarized the find as a possible previous reinterment which was disturbed in trenching work in the middle of Kalia Road. A site visit by SHPD staff resulted with landowner agreement for curation of the remains on-site and to arrange for later reinterment on the project.

B. Sheraton Waikiki Renovation Project, Waikiki Ahupua'a.
McMahon reported on June 23, 2009 there was an inadvertent disturbance of a single fragment (phalange) found during lab work examining sediment sample collected in October 2008 from the hotel's renovation project. Cayan reported that reinterment was completed on June 26, 2009 at the hotel's designated reinterment site coordinated with the hotel's project manager.

C. ABC Store No. 12 Project, Waikiki Ahupua'a.
SHPD reported an inadvertent disturbance of a single fragment (tibia) found during archaeological monitoring of a project to install a planter area in front of ABC Store No. 12 at the corner of Ohua and Kalakaua Avenues. SHPD will facilitate the reinterment with the archaeologist, project manager, and landowner prior to the project's planting soil and shrubbery. This should be done within next two weeks.

IX. ADJOURNMENT

A motion by Kehaulani Kruse to adjourn the meeting was seconded by Aaron Mahi. The motion passed unanimously. The meeting ended at 2:30 p.m.

Minutes respectfully submitted by Phyllis Coochie Cayan.....Dated: August 5, 2009

Approved