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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 – SEPTEMBER 9, 2009**

TIME: **10:00 A.M. TO 1:00 P.M.**

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

I. **CALL TO ORDER.** Acting Chairman Hinaleimoana Falemei called the meeting to order at 10:18 a.m.

II. **An Oli to open the meeting** was offered by Kehaulani Kruse.

III. **ROLL CALL /INTRODUCTION.** Quorum was established with 7 commissioners in attendance. Ex-commissioner Chuck Ehrhorn was present to bid aloha and mahalo to the OIBC and staff for his almost 20 years of volunteerism that stemmed from his interest in preservation from the 80s. The OIBC offered a Mahalo mele to Ehrhorn for his years of service and aloha to malama na iwi kupuna.

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

OIBC Attendance:	Kehau Abad	Alice Greenwood		Andy Keliikoa
	Kehaulani Kruse	Aaron Mahi		Hinaleimoana Falemei
OIBC Late:	Jace McQuivey	Shad Kane	Cy Bridges	Kawika McKeague
OIBC Excused:	Leimaile Quiteves			
SHPD Staff:	Nancy McMahon, Deputy SHPO/State Archaeologist			
	Phyllis Coochie Cayan, History & Culture Branch Chief			
Deputy AG:	None in attendance.			
Guests Signed In:	Nalani Dahl	Faith Miyamoto		Hal Hammett
Matt McDermott	Jean Rason	Don Caindec		Spencer Leinweber
Lawrence Spurgeon	Lani Maa Lapalilo	Ty Fukumitsu		Sharon Ann Thom
Andy Vliet	Scott Wilson	Keola Lindsey		Jason Jeremiah

approved

V. **OPENING REMARKS.** Acting Chairman Falemei informed the OIBC that Chairman McKeague would be late and she would be facilitating the meeting today. Falemei welcomed all and included the parameters for public input to the council for consideration. Falemei further included mana'o that the Hawaiian language is an official state language and it will be a part of today's meeting to incorporate the cultural aspects in language and thought.

VI. **APPROVAL OF MEETING MINUTES**

Motion by Kehau Abad to move the Approval of Meeting Minutes to the end of the agenda.
Seconded by Shad Kane.
Vote was unanimous.
The motion passed unanimously to move the Approval of Meeting Minutes to the end of the agenda.

VII. **UPDATES AND INFORMATION**

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

McKeague emailed Acting Chairman Falemei his mana'o on this item:

- There is a legal joint agreement between the OIBC, Office of Hawaiian Affairs (OHA), and Hui Malama I Na Kupuna O Hawaii Nei (HMNK) to do this repatriation.
- HMNK will be doing the physical transfer of the remains from Boston.
- OIBC will await its kuleana to kokua with the repatriation work.

Public Comments:

- Jean Rason mana'o his research shows Chief Kuihelani of the Maunalua lands after Kamehameha if these bones prior to 1847 could have come from East O'ahu during that historical time. (Note that these bones are only documented as coming from East O'ahu from a volcanic cave.)

[Note: Commissioner Cy Bridges arrived at 10:40 a.m.]

B. Proposed Alapai Transit Center and Joint Traffice 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.

Matt McDermott of Cultural Surveys Hawaii distributed map handouts of the project area to:

- Review the design change from the original proposal due to trenching and burial finds.
- Additional 15+ trenches were done
- 2007 Archaeological Inventory Survey identified three trash pits and three burials.
- The three burials in the Burial Treatment Plan were left 'in situ' and the new design is away from their location.
- Historically the Atherton house was once there and the current bus depot has been there since 1930s.
- The AIS report is to be written and the Section 106 process will reopen for this project.

Comments included:

- Type of soil (coral below cinder, alluvial above about 1' to 1.5' thick layer.
- Cinder is sterile. Volcanic from slopes of Puuowaina.
- Appreciation for the second AIS that incorporates a design change away from the burials.

approved

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

Falemei recapped McKeague's email on this item that Deputy AG Linda Chow reviewed the OIBC's request but had not seen the OIBC's letter or the DLNR's letter. Chow will review these items but it was not going to be available for today's meeting.

Also, Falemei noted that both Don Caindec and Dawn Chang of the Kawaiaha'o Project were in attendance. Chang stated there were no new updates at this time and no changes in the status of the project.

D. Update on the Honolulu Rail Transit (HRT) Project for the areas of Honouliuli, Ho'ae'ae, Waikele, Waipi'o, Waiawa, Manana, Waimanao, 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:

- There has been detailed communications with the HRT team for at least two meetings discussing the Draft Programmatic Agreement (PA). The PA is a broad scope of the project work.
- Team is looking at technical alternatives, the process on how it could be approved with the 4f law. More discussion is needed on that 4f process.
- Questions remain on whether the OIBC will be an invited signatory.
- Handout on the Section 4. (F) distributed.
- Discussion to include in the PA (1) to develop a process for communication and when and with whom; (2) process identifies lineal and/or cultural claimants early; and (3) a work process upon any discovery of burials. Should a plan be developed to avoid relocation of burials and redesign? Move the pillar? What are the impacts for reburials and/or relocation?

Discussion included the following points:

- What is the 4F process and alternatives when burials are encountered in the project?
- Will there be another stipulation for inadvertent? Abad feels it would be a parallel to Section 4 (F) process and the OBIC will be an advisory party. Section 11 deals with inadvertent. Miyamoto will provide language to be included.
- All consultants on the HRT project will be meeting this Friday. Falemei noted she will be at the meeting and continue to advocate for the OIBC be a signatory. Earlier request was denied

The HRT project team added the following points:

- Miyamoto introduced a new team member, Art Force, a civil design engineer. Art spoke about the alternatives of light rail and its impacts. He discussed 'at grade' and its requiring excavation near surface, the size of area necessary for such a system. Some handouts of photos illustrating the transit in Seattle similar to Honolulu if the rail is 'at grade.'
- Discussion on light rail as an elevated system, raised on pillars, drilling for each column as currently proposed and impacts on surface and subsurface.

- Discussion on impacts of either system on utilities and that consideration. As well, parallel impacts to burials and which design is used and how to mitigate these concerns.

- Discussion on soil, how much area would be used for either system, which would be less destructive and less costly. Maintenance is another concern for either system.

- Commissioner Alice Greenwood stated her concern that the OIBC is not a signatory. Falemei restated they are advocating to be signatory on the PA and further OHA supports the OIBC to be a signatory.

- Miyamoto acknowledged that the FTA has not given a final decision on the signatory request. In the last PA meeting, the FTA wanted to consult with the SHPD and the ACHP on that matter first.

- McMahon stated she thinks the SHPD does support your request. Usually the federal agency is aware that any signatory can 'close' a project down as the PA may indicate. Also entities may be invited to sign as a 'concurring party' on the PA rather than a signatory. It is really up to the FTA.

- Falemei reiterated that the OIBC purpose and voice should be heard as it is too often the native Hawaiian voice is stifled, ignored or not a significant impact. Falemei will continue to advocate for the OIBC to be an invited signatory. She noted that if only SHPD signs then any impacts may leave the OIBC out. Abad supported Falemei's mana'o and stated that the City has long supported the OIBC be an 'invited signatory.' Abad added that OHA supports that and now she is hearing from McMahon that the SHPD is supportive too. Abad restated that the FTA will make the decision. Further, Abad feels that the 4f process involves entities and impacts on historic properties which directly involve the OIBC.

- McMahon noted that the transit is a huge project and that the OIBC represents all the native Hawaiian issues i.e., sites, landscapes, burials, buildings, landmarks – all are in this project which will need everyone's involvement such as OHA, the National Parks Service. The OIBC will need to help with that perspective. Falemei notes we cannot be divisive and look to SHPD to align with OIBC kuleana.

- Miyamoto will email the DOT Act, Title 49 which refers to the 4f process. McMahon notes it is federal funds which trigger the Section 106 and the 4f processes.

- Andy Keliikoa raised his concern (not to demean anyone) and discomfort by asking "Are we projecting in excess of our kuleana? Are we overstepping the responsibility of the SHPD?"

- Abad said she will keep to the focus of amending the PA to keep separate the issues of previously identified burials versus inadvertent finds. Also, the OIBC should make recommendation on the treatment of burial sites on the HRT project. Abad notes that the PA meetings focus on burial sites and OIBC defer the idea of traditional cultural landscapes. She acknowledged it is a good reminder to stay in our bounds.

- Falemei acknowledged taking an aggressive stance for the native Hawaiian voice and she will always speak up in those areas where the native Hawaiian voice has not been heard. She apologized to the OIBC if they do not share the same sentiments. Falemei note that the table is open to all who serve with the same kuleana and there is no intent to bring down the project.

Public comment included the following:

- AIA consultants had some issue with the HRT engineer's description of the depth of excavation for at-grade system. They feel there are other systems and alternatives for Honolulu. Scott Wilson noted that this is a heavy rail system with no drivers, fully automated. The city streets should be 'at grade' as it has been impacted over the years. AIA has no issue for the rail from Leeward Community College to Middle Street. It is the city areas that should be at grade with a minimal 19" to 12" depth for the city streets. The light rail can be split, put on curbs down King Street, Beretania and Hotel Streets to Middle Street. The trenches will be approximately 8' width to 19" depth. Obviously some utilities will have to be relocated for any system. Light rail can be changed and added to, it is the least expensive (i.e., half million dollars for a light rail stop). Possible to have a two-car train to handle 9,000 persons per hour.

The Phoenix system would meet Honolulu's need as an example and is less costly.

[Note: Commissioner Alice Greenwood left at 12:15 p.m. and returned at 12:20 p.m. Quorum maintained.]

[Note: Commissioner Kehau Abad recused herself at 12:20 p.m. as the next speakers are from KSBE. Acting Chairman Falemei asked "recused" Commissioner Abad to remain at the table.]

- Mike Dang, Director of Planning and Development of KSBE distributed a memo to the OIBC with their comments and concerns regarding the proposed HRT project. KSBE's concerns include impacts to their lands for four of the proposed stations. Dang noted they did a study that would cut the cost of the proposed project to minimize takings of land use, at grade versus elevated systems, and comparing existing systems that are at grade. Dang noted that the city can choose to go deep or less depth, there will be costly impacts on utilities which are beneath all of Honolulu's roads, and that every house and building has utilities – it will be costly. Even designing around the pillars will be expensive; it seems the cost is about $260 million per mile now. KSBE has no position like the AIA. KSBE will ask the City to go 'at grade' for half the project which could cut the cost to $70 million per mile. They also feel that the average depth for 'at grade' would be from 17" to 2' and not as large as the City expressed.

Discussion included the following points:

- Not clear if KSBE is the largest landowner impacted by the proposed HRT project.
- Dang said he supports rail, questions what type and feels it should be a mix balance for Honolulu. Dang noted they had submitted a 25-page paper with the economic and social concerns to the City. They are asking to meet with the mayor on their concerns.
- Miyamoto could not comment as she has not seen that 25-page paper yet.
- Cy Bridges appreciated the information that will help with the OIBC kuleana to address any burials disturbance from the project.
- The KSBE team distributed a memo dated August 31, 2009 from David Chow of the IBI Group with subject titled "At-Grade and Elevated Fixed-Guideway Sub-grade Intrusion."

[Note: Commissioner Abad came out of 'recuse status' at 12:35 p.m.]

Abad commented that the 4f process is important for the OIBC to understand that it is a separate process from the Section 106 process. The 4F process is a federal Department of Transportation (DOT) process from Act 1966 (4f) which is used by the FHWA. This is a federal undertaking and need to address alternatives to minimize such impacts, how to minimize impacts (to burials) and what nature those alternatives would be. The OIBC has jurisdiction over burials. What form will the proposed HRT project have for minimizing impacts on burials? OIBC is the advocate for those burials. Abad asked the HRT team if there is such a document and if not will it be prepared.

Miyamoto stated the DEIS is a combination with the 4F evaluation. Chapter 5 is the 4F evaluation. The deadline for comments was 45 days which has ended. Spurgeon added that your jurisdiction is "previously identified burials" and none were identified at this time. The 4F process does not replace Section 106 process but rather 4F feeds into the Section 106 process. The PA will comply with all mitigations.

Abad replied that this is why one year ago it was asked if the Section 106 will be done in the normal way so the OIBC can evaluate /comment on the 106 and 4F process. The OIBC cannot assert the 4F role due to the Section 106 being held up. That's backward. Spurgeon will clarify the processes with the FTA.

Abad continued that it is shocking there is another piece which acknowledges our role and it's there for us to pursue. The PA de-limits us. The 4F process allows the OIBC kuleana i.e., the OIBC is in position to choose "harm" to these burials or others. The OIBC wants to minimize, find good solutions. This new layer will continue to discuss future.

Miyamoto will go back and look/confer with the FTA and see what can be done and better our knowledge forward with the 4F process. Falemei thanked the HRT team and formally requested an update on the 4F process.

[NOTE: 12:50- 12:55 p.m. Break. The OIBC reconvened at 1:03 p.m.]

E. Update on Section 106/NAGPRA Correspondence.
Greenwood reported two letters regarding projects at the Makaha Bridge and at Mokapu were related to the OIBC's kuleana. McKeague asked for another volunteer for this subcommittee as Ehrhorn has left. Aaron Mahi volunteered to kokua with the subcommittee. The current members of the subcommittee now include Greenwood, Quiteves and Mahi. Greenwood will call a meeting with the subcommittee to discuss an internal process for the letters and the short time allowed responding to the letters.

F. Update on the Kaena Point Advisory Committee. No report due to Quiteves's absence today. Greenwood stated she would like to be an alternative to this advisory committee. Staff (Cayan) will check with the advisory committee if an OIBC alternative will be allowed.

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

- The King Street office lease has been extended to meet DAG's process to move out. Staff continues to work on moving office items.
- The na iwi kupuna remain at the King Street office until the lease for the Punaluu facility is finalized. There are less than 15 bundles or boxes in varying sizes. SHPD is working with OHA, native Hawaiian groups and/or 'ohana to malama na iwi kupuna.
- SHPD is working with former OIBC commissioner Tom Shirai, Kahu Kaleo Patterson and the Department of Public Safety for a burial reinterment in Waiawa. Talks are ongoing.

VIII. UPDATE ON INADVERTENTS

A. Kualoa Beach Park State Site No 50-80-06-528. McMahon informed the OIBC that fragments were discovered by water erosion on August 2, 2009 (Sunday) and on August 29, 2009 (Friday). These are probably from the same eroded area along the beach. A recommendation was made to the County Parks to increase the native naupaka to help contain the erosion. However, the second call resulted in the remains being retrieved and stored at the SHPD repository until OIBC members Mahi and Bridges can kokua to reinter them.

B. Trump Tower Project, Kalia and Beachwalk Avenues, Waikiki, Kona District. McMahon reported that fragments were disturbed during trenching work for utilities at the project area. The fragments were heavily disturbed, removed by the contract archaeologist and are stored safely at the project office on-site. Reinterment will occur after the trenching work is done for the project. SHPD is working with Waikiki claimants to reinter at a designated burial site on the project.

IX. APPROVAL OF MEETING MINUTES (Item moved by motion to end of agenda.)

A. OIBC Minutes of June 10, 2009.

Discussion on the June 10, 2009 minutes included the following points:

- Abad concerns that the minutes reflect Dana Naone Hall's mana'o as Hall is in litigation. Abad wants to defer the June minutes because Hall is suing Kawaiahao Church.
- Cayan informed the OIBC that the taping of the June 2009 meeting failed due to technical. There is nothing taped on the tape recorder.

Motion by Aaron Mahi to defer the June 10, 2009 minutes, seconded by Kehau Abad.
Vote was unanimous to defer the June 10, 2009 minutes.

Request by OIBC to staff to please re-send the June 10, 2009 minutes with the Deputy AG edits.

B. OIBC Minutes of July 8, 2009.

Discussion on the July 8, 2009 minutes focused on the letter from DLNR dated June 11, 2009 that did not get distributed to the OIBC as it came out after the OIBC met.

Motion by Aaron Mahi to defer the Minutes of July 8, 2009, seconded by Cy Bridges.
Vote was unanimous to defer the July 8, 2009 minutes.

Request from Abad to check the tape on the exact wording of her motion as she feels the language is awkward. Cayan stated that was the wording of the motion and reminded the OIBC it took at least three attempts to get the language stated as in the draft minutes.

C. OIBC Minutes of August 12, 2009.

Discussion on the August 12, 2009 minutes included:

- Abad crafted more clear language on the motion to read as follows:

  "MOTION by Kehau Abad that the O'ahu Island Burials Council (OIBC) shall seek legal counsel from the Attorney General's office in order to establish OIBC jurisdiction over any and all burials at the Kawaiahao Church property over which the OIBC has jurisdiction. "

- McKeague note on page 3, second paragraph to insert the phrase "to go forward" in the second sentence between the word "project" and "is" to read: He noted that the project "...<u>to go forward</u> is beyond the OIBC purview..."

Motion by McKeague to accept the August 12, 2009 minutes as amended, seconded by Kehaulani Kruse.
Vote was unanimous to accept the August 12, 2009 minutes as amended.

D. Discussion of OIBC Minutes of May 13, 2009.

Cayan informed the OIBC that the tape of the May 13, 2009 meeting was on the tape recorder used by the DLNR Chair's office. A copy has been sent to SHPD. Staff will work off the tape for the May minutes.

X. 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