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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 –OCTOBER 14, 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.** Chairman McKeague called the meeting to order at about 10:10 a.m.

II. **A Pule was** offered by Hinaleimoana Falemei.

III. **ROLL CALL /INTRODUCTION.** Quorum was established with 6 commissioners in attendance.
Newly appointed commissioner Steve Hoag was introduced and gave a brief recap of himself. Hoag is the new landowner-developer representative on the OIBC. He replaces former commissioner Jace McQuivey on the OIBC.

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

OIBC Attendance:	Kehau Abad	Leimaile Quiteves	Shad Kane	Aaron Mahi
	Kawika McKeague	Hinaleimoana Falemei		Steve Hoag
OIBC Late:	Aaron Mahi arrived at 10:48 a.m.			
OIBC Excused:	Cy Bridges	Alice Greenwood	Andy Keliikoa	Kehau Kruse
SHPD Staff:	Phyllis Coochie Cayan, History & Culture Branch Chief			
Deputy AG:	Linda Chow, Deputy AG			

Guests Signed In:	Hal Hammett	Faith Miyamoto	Lawrence Spugeon
	Amelia Gora	Kaanohi Kaleikini	Jean Rason
	Kaleo Patterson	Thomas Shirai	Haaheo Guanson

V. **OPENING REMARKS.** Chairman McKeague reviewed the OIBC role, the protocol for testifying before the council, and normal standard of conduct to gather information/comments from the public on the agenda items.

approved

VI. APPROVAL OF MEETING MINUTES

Motion by Kehau Abad, seconded by Leimaile Quiteves to move the Approval of Meeting Minutes to the end of the agenda.
VOTE: The motion to move the Approval of Meeting Minutes to the end of the agenda passed by unanimous vote.

[Note: Amelia Gora had documents regarding her descendancy to Nuuanu which were previously filed at the Bureau of Conveyance in 2001. McKeague asked her to wait till the relevant agenda item to do so.]

VII. UPDATES AND INFORMATION

A. 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 recap of the ad hoc Transit task force by first asking the council if anyone had concerns on the OIBC's legal kuleana for that project. Discussion on legal kuleana would be in executive session.

Motion by Leimaile Quiteves for the OIBC to go into executive session to discuss its legal kuleana.
Motion seconded by Hinaleimoana Falemei.
Motion passed unanimously to go into executive session for the OIBC to discuss its legal kuleana.

10:25 a.m. the OIBC went into executive session as pursuant to sections 92-4, 92-5(a) (4) (8), and 6E-43.5, Hawaii Revised Statutes (HRS), and upon compliance with the procedures set forth in section 92-4, HRS, the council may go into a closed meeting to consult with its attorneys on questions and issues pertaining to the Council's powers, duties, privileges, immunities and/or liabilities.

Motion by Kehau Abad to come out of executive session.
Motion seconded by Aaron Mahi.
Motion passed unanimously to come out of executive session.
11:10 a.m. the OIBC came out of executive session and resumed its regular meeting.

The City's Transit Team represented by Faith Miyamoto and Lawrence Spurgeon updated and discussed with the OIBC on the project concerns as follows:

- The Section 106 consultation process is almost over after many hours of consultation. On October 3, 2009 they sent the latest draft of the Programmatic Agreement (PA) for comments. Also, there will be a final meeting on the Draft PA on Wednesday, October 21, 2009 at 8:30 a.m. for comments. Some comments have been received. There will not be another draft version until right before the 10/21/09 meeting.

- The Advisory Council on Historic Preservation (ACHP) will comment by 10/19/09.
- The draft PA today has been circulated over the months and reflects all concerns.
- The OIBC's concerns in the draft PA pertain to historic buildings which is in #3 Protection of Archaeology and Burials Sites. Sub stipulation B outlines intent to continue working with the OIBC throughout the project.
- List of specific utilities in section 3B (1).
- There is concern raised for the guide rail lines and relocation in the draft PA.
- Any finds of burials in the project will go through the state process.
- Changes include moving up the timeline for the Archaeological Inventory Survey (AIS) for Middle Street to Ala Moana earlier to have the information now then work on where exactly the project will be. The AIS will be done and may go back later for retest if necessary. Transit team feels it is better to do that earlier than

approved

later. Approximate date to comply with the AIS is in 2010 before the final design. Note: refer to draft PA, page 4, section 3B (2).

- City reiterates it is very open to continue working with the OIBC process and the ad hoc task force.
- Item 4 refers to the AIS which the City will consult with the OIBC and any descendants or persons with interest of that area to develop a plan for any burials.

- There is a dispute resolution and process throughout the plan to work together should there be any difference of opinions.
- Phase I is 80% done at 1-2 sites for testing this week. There were few sites and no resources identified at this point. In 2-3 weeks all the sampling work should be done.
- Phase 4 would be construction and that has been moved up two years. Phase I for AIS is almost done with a focus on a December ground breaking event for the project. Phase 2 is the next construction with the AIS next year. Any burials found may require a design change after the AIS.

- High risk area of concern is Nuuanu to Ala Moana which will have two years of earlier study before any construction in those areas. That would be the time for any redesign and see options for those areas from Middle Street to Waiakamilo to Ala Moana.
- A contingency fund is not a line item. There's a $1 billion for 30% of all construction cost in contingency. Any issues have ability for financial changes are impacted.

- Abad asked would a redesign by the City include a different route. How many finds would trigger that redesign? If it is a National Register site, do you change the pillar or trigger a move? Spurgeon said there is a high threshold for alternatives come up and consult process with the OIBC and any descendants that may come forward. Transit team will go through every design option to avoid any "find" for example, a possible realignment for utilities. A last resort would be to change the alignment – changing the route is not off the table as a last resort.

- Spurgeon acknowledged some of the questions are hard to deal with as its hypothetical, and engineering it's a problem and need to solve by calling in every option. Any time a design is done and considered (for example, shifting columns) it would take in all options for design...have an ability to change the design depending on the soil types at each site.

- McKeague expressed concerns that every engineering option is explored rather than compromise the OIBC. Spurgeon stated they have worked with the OIBC long enough and respect each other, should something be identified, we will ask your advice on what approach to do.

- McKeague asked how down the road beyond the current OIBC members – how would that be institutionalized. Spurgeon noted that detail is in Section 3b(4) regarding change of design...first month of project work is to formalize a process to consult with the OBIC and put that in writing as work agreements...team not want to lose all the work with the OIBC, however it is hard to speculate on what might be found.

- Timeline: 2016 for construction, 2017 full operation. Now to 2011 for all AIS to be completed. Part of the process is acquisition along the route. Evaluation all areas to avoid if anything especially in Kakaako at Queen, Halekauwila and Pohukaina.

- Abad note that the process today is an important meeting for the OIBC to decide to sign as a concurring party to the PA. The city team note there won't be big changes to the PA and that they are waiting on the ACHP comments. They note that all the major issues have been voiced, not expecting anything new and neither are they forcing a decision today if the OIBC will sign or not. The draft PA has 30 days for OIBC to

decide to sign or not in November.

- Abad wants to put the OIBC's final comments on the record with cc: to ACHP, NPS and other signatories. She notes the OIBC has been a year in consultation/discussions with the City team. Abad notes that the critical concern is when the Alternative Study by the Rail Team report in 2006 that the OIBC was not a part of that study and that is why we are here today with concerns. The first City presentation revealed that no AIS was done and that there were no plans to so prior to construction. The analysis that was done to choose the route selected did not include information from an AIS. The OIBC would have raised concerns on that corridor then but it was not part of the discussion for Alternatives Study.

- McKeague reviewed the timeline for the Transit project as follows:
  December, 2006.....City presented information
  October, 2007 .....City provided updates on the project
  December 5, 2007....OIBC received letter to consult
  August 2008 .....Transit project is on the agenda for consultation with the OIBC till present
  March 31, 2009 .....Letter to the OIBC to be a consulting party regarding the December 2006 letter from Transit team.

  McKeague commented it was eight months before the City began to consult with the OIBC. That process has established good faith, the OIBC went on a tour of the route, and the Environmental Impact Study (EIS) has come out – and noted that the OIBC not consulted on some of the EIS.

  Spurgeon agreed with the broad timeline, but did not remember early 2008 as during that time they were gathering information on Section 106, the potential impacts estimated came out after the formal consultation with some correspondence and interviews on the information gathered.

- McKeague noted that from October 2007 the evaluation study was conducted. A letter from Transit indicated that Native Hawaiian burials were considered in the Analysis study. Abad stated for the record that folks understand how that came to be. She said this is a core worry about the degree of integrity of the City who knowing there are burials in that corridor should have talked to the OIBC but did not and that is why the OIBC was not part of the Analysis Study.

  [Note: Hina Falemei left the room at 11:57 a.m. and returned at 12:05 p.m. Quorum was maintained throughout her absence.]

- Spurgeon stated that the Federal Transit Authority (FTA) considered the Analysis prior to the EIS to look for fatal flaws. All the environmental research/analyses (including archaeology, air testing, land) on the available data and studies. The Alternative Report summarized all the analysis. The Alternative survey was a broad study available in October/November 2006 with various corridors, information, studies, quarterly ranking of resources that may be impacted by the project (Downtown = High, Mauka of Beretania & King = little lower risk). All of the corridors marked High Risk where previous finds noted in those corridors. It was not quantative. Kakaako corridor is to be aligned on several streets (options) and the information available for Halekauwila was less risk with more space for design. It is one of many factors. The City Council ranked the items. We agree low risk at Beretania & King however there are fewer riders in that area. Service is in more demand mauka. All were considered and the Halekauwila route was chosen.

- Abad stated that the Halekauwila route was chosen based on an absence of information. The City concluded that the lack of archaeological studies along Halekauwila was equivalent to an absence of iwi there. However, Halekauwila not go through the urban renewal that would hae created a record of studies that the City could have appropriately extrapolated from. This is a fatal flaw in the City evaluation.

- Spurgeon responded that all concerns are on record with the project. We are uncomfortable that no inventory before construction. It is important to document it all. The transit team recommended from the first time to do an AIS and do things right. It's a small corridor and will take much to switch. Alternatives and if there's a flaw how do we move forward if the foundation is shaky...address that with help from OIBC to move forward...it is a valid point that you note the decision was made in the absence of information.

- Abad recounted the numbers of burials found in that area since 1986 to present as totaling 516 burials at various projects. She repeated that the makai area is filled with a sandy deposit where iwi is usually found as compared to the mauka area that is less risky. Abad repeated it is extremely worrisome that the OIBC was not included in the Alignment study in those areas that are high risk, a high concentration of burials. Her concern included the fact that the OIBC will be under pressure to move or not move these burials...there will be many. How wiould we feel about a process if it had been done differently from the beginning and resulted in another alternative? Further, Abad stated that the OIBC did not have an option to discuss that. If we choose to leave the kupuna in place, that will leade to delays, cost. The public will point to us, the entire Hawaiian community and say that we are increasing the cost...we will be blamed...nobody asked us. We would tell you immediately to look at another alignment...The 2010 decisions are impacted by the 2006 ones which did not include OIBC.

- Kane added that there are ways to make our voice heard with upcoming elections.
- Mahi stated that all the concerns were addressed in discussions for this process making decision on the corridor and you know the OIBC position, the OIBC kuleana...the City made that decision based on businesses affected, least impacts on acquisition and so on...go up King and run into Kawaiahao...it is difficult, we all be affected...our voice still be heard and what [OIBC] stand for...follow our ad hoc committee mana'o and note our concern.

- Steve Hoag asked if there is any change that could be proposed to the language and timeline of the PA to address the concerns of the OIBC. It will be difficult for all of us (City administration, City Council, OIBC, the Native Hawaiian community, the public, etc.) when this comes to a head years from now.

- Miyamoto commented that one issue is that they will be respectful when find any iwi. During the AIS where structures be located, elevator system and we know where the columns be – then we will sample there. We discussed that as a good plan...do the AIS earlier and reduce the ground disturbance as to where the columns will be located. Also we are expanding the testing area, can make changes. As a last resort change alignment with enough time. The PA proposed to do the AIS one year earlier to allow time to make adjustments.

- Abad agreed there is some benefit to do that...be able test where putting something and 100% testing there (footings). Now the utilities – moving these will be a huge undertaking and have significant below ground impacts (i.e., sewer), and these are greater areas of concern. The Section 4F of the Department of Transportation is a strong law which requires agencies to look at alternatives, avoid impacts to resources eligible for the National Register (i.e., iwi on Halekauwila). Those two things are siginificant for us. We want to make clear our concern regardless of our participation. We have grave concerns regarding how this project will proceed.

- Quiteves inquired on the recommendations of the OIBC ad hoc Transit committee if anything can be done regarding the Analysis study and if the OIBC can exercise Act 4F.
- Falemei said there's nothing to trigger Act 4F right now. She noted that there were many discussions on the OIBC concerns, the route decision did not include the OIBC mana'o, and we were not asked to be an Invited Signatory since the OIBC is part of the SHPD who will sign the PA. We live by a different law – OIBC and what our culture tells us. We are in a big conflict with no leverage under the state and federal laws...It is a matter of integrity—make things easier for the community...any bones in any corridor is already trodden upon. This is a matter of integrity to put our name to it...

- Abad said it comes to avoidance or mitigation...sign our name ...and the mitigation is acceptable...the sanctity of iwi buried there in the sandy deposit we're aware of...we're not all invited signatory is another issue.
- Mahi urged that the letter be written to say 'thank you' but we will not sign and list our concerns – disrespectful not include in decision about the corridors, lack of AIS and the 4F process. And tell SHPD too. Respond to the letter "thanks but no thanks' and move on.

[12:45 p.m. Deputy AG Linda Chow leaves the meeting.]

Public comment with some of the OIBC responses include but not limited to the following:

- Jean Rasor says this is like 'déjà vu' similar to the Hawaii Island Burials Council who voted a'ole on Alii Highway, $20 million federal funds lost, they said use another corridor because of burials. That project is still ongoing. Rasor urged the OIBC to make a similar strong statement.
- Falemei commented that either way the project will go through, do we sign or not sign. They will have to consult OIBC on na iwi kupuna. Later if we sign and there's a large number that stops the project till mitigated...they will look at OBIC and hold us, that we allowed it to happen....No sign and we have integrity and knew what is coming down...either way we catch it and the Native Hawaiian community looks bad...
- Abad added that the OIBC issue is a matter to fulfill our kuleana to malama na iwi...there's a difference between avoidance and mitigation...especially down Halekauwila, it will be ugly...the kupuna should be handled in a respectful way...Our concerns have to give...our culture...make it clear that's not for sale.
- McKeague stated that 95% of burials found in that area (Kakaako) were relocated from projects like Wal-Mart, Koolani, Smith Street Parking, Alapai bus parking lot, and at GGP/Ward.
- Amelia Gora stated her opposition to the rail transit project, to government not supportive of the people, and the rail project should use the existing roads. She is putting the government on notice.
- Aaron Mahi wanted to make a motion at this time to respond to the Mayor's letter and have Abad organize a response from the OIBC and acknowledged OIBC appreciates Mayor's invitation but that is not OIBC position and note the reasons in the letter as discussed here.

- Kaleo Patterson commented on Abad's point that clarifies the council's moral kuleana as kanaka maoli and as the OIBC and that it is your position to reject the PA as the OIBC. Patterson noted it is awkward to work in the system, however, it is better to be clear what role the OIBC will play in the PA or to structure it to be there.
- McKeague noted the PA is binding. Mahi noted that the OIBC opposed Section 3 and that was not deleted from the PA. However the OIBC will still be consulted under HRS6E.
- Spurgeon responded to question on what impact if the OIBC does not sign will depend on the OIBC comments. For example, if your role is struck but the PA won't delete that section – this is a FTA document...the City will work with all, the OIBC is recognized in state law for burials and the City will work with the OIBC.
- Various comments by OIBC members on (a) why not put in a whereas clause why the OIBC is not signing; and (b) the OIBC is part of the state and its kuleana is to all na iwi kupuna. Abad noted that those points can be expressed in the OIBC letter to the Mayor as it would be difficult to have it inserted in the PA [Abad reads various 'whereas'...].
- Faith Miyamoto commented that their team did draft the clause that the OIBC wanted; however the FTA came up with the current clause that is not as strong.
- Abad stated that they (FTA) know and the OIBC warned them. Falemei added that the PA is not appropriate in prevention and it sanitized all the points the OIBC requested. Mahi also added that the AIS should be done. Abad will include that in the OIBC letter to Mayor to do the AIS, the reasons the OIBC cannot sign the PA and that no 4F action relies on the AIS as a trigger.

[Note: Commissioner Steve Hoag departed at 1:15 p.m]

- Abad reiterated that the PA is a 'plan to plan' and the OIBC will respond that there is no discussion of an AIS which is important to answer what degree of sampling will be done, before a 100% investigation how much subsurface work...this may require tremendous investigation. Mahi advised Abad to put all those concerns in the letter to the Mayor and send it.

MOTION by Aaron Mahi, seconded by Leimaile Quiteves that the OIBC shall send a letter to the mayor and the FTA that shall include the following points:

a. An AIS should be done before the acceptance of the FEIS
b. The OIBC should be consulted before the acceptance of the FEIS
c. The lack of an AIS negates and minimizes the protection of 4F
d. The OIBC should have been consulted for the Analysis Evaluation Study to inform and recommend an alternative study/route.
e. Ask for 100% subsurface study.

DISCUSSION on the above points by the council for the letter to include:

- This letter should be cc-ed to ACHP, SHPD, FTA, city council, and congressional delegation and all the signatories.
- Abad as the Transit Task Force (ad hoc) will draft the letter and expressly include the OIBC is upholding its kuleana.
- Send two letters – one to the mayor and one to FTA why the OIBC will not sign and for the reasons discussed.
- Draft of the letter to be finalized by McKeague, Falemei and Abad.

VOTE: Unanimous ayes by the OIBC that a letter shall be sent to the Mayor and to the FTA on the reasons the OIBC will not sign the PA. The motion passed by unanimous vote of the OIBC.

B. Update on Section 106/NAGPRA Correspondence.

Ad hoc committee member, Aaron Mahi had no updates. Discussion on how letters are forwarded to the chair and/or SHPD and its timely assessment. Much of the DOD letters go directly to the council member rather than to SHPD for distribution.

No comments from the public.

C. Update on the Kaena Point Advisory Committee.

Ad hoc committee member, Leimaile Quiteves was unable to attend recent meetings due to illness. Quiteves will be meeting with the chairman of the Kaena Point Advisory Committee for updates.

Discussion as follows:

- Falemei urged the OIBC to support Shirai's effort to list the Leina Ka Uhane as a separate site on the Hawaii Register of Historic Properties by signing this petition today as OIBC members.

- Thomas Shirai stated he serves as an alternate to the Cultural component of the Kaena Point Advisory Council. He described recent activities in Waialua that included working with the DLNR staff to educate and bring awareness to students on the importance of caring for the Kaena Natural Area Reserve (NARS), importance of fencing off areas for protection and the land to recover from the abuse and his efforts to file the Leina Ka Uhane Rock as an individual site on the historic register. Shirai notes that the Leina Ka Uhane Rock is a significant part of the Kaena Complex that is already on the register. Shirai would like the OIBC to support that endeavor by signing a petition for that effort.

MOTION by Leimaile Quiteves , seconded by Kehau Abad to support Shirai's effort to list the Leina Ka Uhane Rock individually on the Hawaii Register.

approved

VOTE: The motion passed by unanimous vote.
The OIBC showed its support by signing a petition on the above mana'o circulated by Tom Shirai.
[Commissioner Quiteves departed at approximately 2:00 p.m. Quorum was maintained.]

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

- The current repository lease ends December, 2009. Legal details are being worked on to use a Punaluu facility as a repository.
- Na Iwi Kupuna Inventory has not changed in September – there were no reinterments or transfer of custody for reinterment. However the following projects are working closely with SHPD and some of the recognized claimants for inadvertent finds at the Trump Tower and 280 Beachwalk projects. Both projects have a designated burial location and have the remains stored securely on the project site.
- SHPD continues to work with OHA, the Department of Safety, Hui Malama I Na Kupuna O Hawaii Nei, KSBE (land owner) and other Native Hawaiian groups and/or 'ohana to malama na iwi kupuna to reinter the Waiawa remains.
- SHPD is also working with Hui Malama I Na Kupuna O Hawaii Nei to kanu about three na iwi kupuna fragments with unknown origins. There is approximately less than 15 bundles or boxes in varying sizes in the inventory. Each bundle or box may have several fragments.

E. **Update on Inadvertent for September, 2009.**

- **5674** Kalanianaole Highway, no TMK available. This is a residential lot being developed for a single family home. The inadvertent fragments were found near an old existing sewer line near the property line. State archaeologist, Nancy McMahon did a site visit on September 2nd and worked with the contractor to secure the remains 'in situ' by adding more sand, rocks and native plants to the burial site. The landowner will file a burial site agreement and was glad to kokua. *No public comments.*

- **Trump Tower Off-Site Utility Trenching Project on Saratoga and Beachwalk. Waikiki, O'ahu. TMK (1)2-6-03:031, 032,034,035, 039, and 059.** Trenching work disturbed inadvertent finds (fragments) in fill on September 3 and 21, 2009. McMahon did an initial site visit. Archaeological monitoring is on-going at this project. All na iwi kupuna are securely curated on-site until reinterment at a designated burial site at the project after all trenching work is completed.

- **280 Beachwalk Utility Trench Project. Waikiki, O'ahu. TMK: (1) 2-6-003:026,027,048,049 and 058.** Trenching work disturbed inadvertent finds (fragments) in fill on September 1, 2,4,24, and 26. McMahon did a site visit. Monitoring is on-going at this project. All na iwi kupuna are securely curated on-site until reinterment at a designated burial site at the project after all trenching is completed. Also, SHPD coordinated a blessing request by the project manager and workers (most had never encountered na iwi kupuna on the job). The blessing was officiated by Kahu Kaleo Patterson and Kahu Akau.

F. **Announcements.** There were no announcements.

G. **(Item V) APPROVAL OF MEETING MINUTES** (Item V moved by motion to end of agenda.)

Motion by Aaron Mahi to defer the draft minutes of May 13, 2009; June 10, 2009; July 8, 2009; and September 9, 2009 till next month's meeting, motion seconded by Shad Kane.
The motion passed by unanimous vote to defer the draft minutes of May 13, 2009; June 10, 2009; July 8, 2009; and September 9, 2009 till next month's meeting.

H. **ADJOURNMENT. Motion by Mahi, seconded by Kane to adjourn the meeting. The motion passed unanimously to adjourn the meeting at 2:15 p.m.**

Minutes respectfully submitted by Phyllis Coochie Cayan.....Dated: November 4, 2009 #

approved