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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: **TUESDAY, NOVEMBER 10, 2009**

TIME: **10:00 A.M. To 2:00 P.M.**

PLACE: **HAWAII STATE CAPITOL, CONFERENCE ROOM #423**
415 SOUTH BERETANIA STREET, HONOLULU, HAWAII 96813

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

OPENING PULE. A Pule was offered by Aunty Alice Greenwood.

II. **ROLL CALL.** Quorum was established with 6 commissioners in attendance.

Commissioner Shad Kane arrived at 10:23 a.m. bringing the total attendance to 7 commissioners.

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

OIBC Attendance:	Kehau Abad	Alice Greenwood	Shad Kane	Aaron Mahi
	Kehau Kruse	Hinaleimoana Falemei	Steve Hoag	
OIBC Excused:	Cy Bridges	Andy Keliikoa		
	Kawika McKeague	Leimaile Quiteves		

SHPD Staff: Pua Aiu, Ph.D., SHPD Administrator
Nancy McMahon, Deputy SHPO/State Archaeologist
Phyllis Coochie Cayan, History & Culture Branch Chief

Guests Signed In:	Hal Hammett	Faith Miyamoto	Lawrence Spurgeon
Jean Rason	M. Joseph	David W. Shidler	Lani Ma'a Lapalio

IV. **OPENING REMARKS.** Acting Chairman Falemei welcomed everyone and reviewed the process for testimony before the OIBC and a 3 minute-limit with some exceptions should there be more questions from the council.

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V. APPROVAL OF MEETING MINUTES.

A. Motion by Aaron Mahi, seconded by Kehau Kruse to accept the OIBC minutes of May 13, 2009 as submitted. Discussion and inquiry by Abad why weren't these done then and Cayan's reply that these minutes were not available in June due to a former staffer non-preparation of the minutes and subsequent search for the tape of the meeting to produce the minutes.
Vote: All ayes. No nays and no kanalua. The motion to accept the May 13, 2009 minutes as submitted passed by unanimous vote.

B. Motion by Aaron Mahi, seconded by Shad Kane to accept the OIBC minutes of June 20, 2009 as submitted. Discussion and for the record, Cayan noted there were technical difficulties with the recorder and the minutes relied heavily on notes taken at the meeting.
VOTE: All ayes. No nays and no kanalua. The motion to accept the OIBC minutes of June 20, 2009 as submitted passed by unanimous vote.

C. Motion by Kehau Abad, seconded by Shad Kane to accept the OIBC minutes of July 8, 2009 as amended. Discussion included the following amendments:

- Page 8, Motion at top of page. Insert the phrase "over which the OIBC may have jurisdiction" at the end of the statement. Delete the phrase in the motion "...including but not limited to the situation..."

  The motion will read as follows: 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.

- Correction to guest name from "Blite" to "Vliet."

VOTE: All ayes, no nays, no kanalua votes. The motion to accept the OIBC minutes of July 8, 2009 passed as amended.

Discussion that the above motion had to be corrected in the August meeting as former commissioner Church Ehrhorn had seconded the motion when his term had expired and he was misinformed on his tenure by the state Office on Commissions and Boards.

The OIBC also discussed with SHPD staff to clarify the process is to finalize the minutes. Cayan explained she will make the amendments to a final copy and distribute to the OIBC again. Also, this final version will be sent to the department's IT who will post the final copy to the website.

Abad asked SHPD Administrator Pua Aiu for 'verbatim minutes' to which Aiu denied the request due to lack of staff and the time. Greenwood expressed her satisfaction with the minutes as summarized and did not feel verbatim minutes were necessary. Abad stated that the minutes do not include all the items that were discussed in a presentation by KSBE and felt it should all be included to give a complete overview of that presentation. Greenwood added that doing verbatim minutes will have to be done for all and not just this one presentation. Greenwood said the minutes reflect the information as a summary. Abad disagreed and said it is not accurate when some information is missing and does not give the whole picture. Staff invited Abad to submit any amendments for the KSBE presentation.

D. Discussion on the OIBC minutes of **September 9, 2009** included the following:

- Correction of typos throughout from Section X. (F) to read Section 4F.
- Page 5, as a bullet item after the last bullet, to insert the complete name of the report from KSBE.
- Amend fourth paragraph from bottom of page 5, the following sentences will read "...This is a federal

undertaking and need to address 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..."

NOTE: Acting chairman Falemei advised all commissioner s that any additional edits should be emailed to staff to be included in the second draft of the September minutes. The second draft of the September minutes will be mailed out again for review if any amendments are submitted by the OIBC members. As of 12-08-09, no amendments were received by staff. The OIBC September 9, 2009 minutes remains to be reviewed and approved.

E. Motion by Abad, seconded by Mahi to accept the OIBC Minutes of October 14, 2009 as amended.

Discussion on the minutes included the following amendments:

- Page 5, on the fourth bullet to insert the word "during" and delete the word "now" to read -- ..."any way to salvage during planning?"

VOTE on the motion was unanimous ayes. No nays, no kanalua votes. The motion to accept the OIBC minutes of October 14, 2009 as amended passed barring any edits sent to staff to be included. Note: no edits were received by 12-08-09 except for the one included above.

VI. 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.

Updates and discussion from the OIBC Task Force/OIBC included but not limited to the following:

- The OIBC letter was sent to L. Rogers of the US-DOT and copied to all the Programmatic Agreement (PA) signatories. A copy of the letter was distributed to all members.

- Abad requested updates from the County of Honolulu on the transit project.

- Correspondence copied to the OIBC from the National Trust on Historic Preservation was forwarded to all OIBC commissioners.

- Falemei requested the OIBC Task Force to keep the OIBC informed on the outcome of the PA at the City Council level. Falemei noted that there is misconstrued perceptions at the City Council, the media and others that the OIBC is blocking development or economic stimuli efforts. Falemei emphasized that the OIBC is focused on its kuleana and that the task force took a stand on that position.

- Abad noted that the OIBC is on record that it started consultation in 2005 on the transit project but the OIBC was never consulted by the City Council nor was any OIBC leadership receiving notices on the project. Abad pointed out the City Council erroneously blamed the OIBC for not consulting when the Council did not include the OIBC on its agenda for consultation.

- Falemei added that Councilman Garcia asked why the OIBC showed up now and did not come to see him. Mahi note that the OIBC does not lobby. Falemei stated that the Council should have approached the OIBC on the transit project earlier rather than later. For the record, Falemei noted that the OIBC was taken to task publicly by the Council and for the record have been consulting with the City's Transit team. Falemei added that the OIBC has a narrow kuleana and did not sign the City's palapala for a clear reason.

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- Abad added that the OIBC Task Force was established in 2008 under former Chairman McQuivey who questioned why the City Transit Project had not updated the OIBC since 2005.

- Discussion on the issue of the Archaeological Inventory Survey (AIS) finalized and that the OIBC is not involved until burials are found. It was noted there should have been a courtesy presentation of the AIS wand that was absent of any consultation until 2008 by the City's Transit Team.

  The City's Transit Team represented by Faith Miyamoto and Lawrence Spurgeon updated the OIBC on the project concerns include but not limited to the following:

  - The preparations for the PA included being able to respond to all comments from October and waited for the ACHP comments before distribution of the PA.
  - All consulting parties were emailed the PA with a matrix of the comments (changes and stipulations). The transit team tried to address all concerns by the consulting parties.
  - On Friday, November 13, 2009 at 8:30 a.m. there will be a final PA meeting to present and finalize all comments by the signatories. That final PA will be used to go forward.
  - The FTA rejected the language for 100% sampling clause and offered an alternate clause (the City did not put it in).
  - Throughout Phase 4, there will be sampling and there will be 100% sampling in columns, utilities, and station areas included is wording on the shoreline at Chinatown to do archaeology below the waterline.
  - The monitoring plan awaits approval under state law (FTA and City cannot grant that). City will have to consult with OIBC upon the monitoring plan approval.
  - More discussion on sampling – 100% should be done in non-filled areas, it's okay not to do 100% in the filled areas, and the field work includes subsurface testing as one possible way to analyze ground disturbances.
  - Abad notes that SHPD has not submitted their comments which the OIBC is waiting to review. Miyamoto stated the AIS has to be approved by SHPD including the methodology. Abad noted that SHPD has to consult also. Pua Aiu stated that the SHPD always comments especially as a signatory. Aiu added that the SHPD has been in consultation and commenting throughout the process.
  - Spurgeon noted the feedback on process and that the OIBC is not comfortable with the process. He wants to keep a good working relationship with the OIBC and noted that there are some details on process that may be stylistic; that there are neither new commitments nor any substantial additions to the PA. Spurgeon further noted that the SHPD has been committed to minimizing impacts to burials.
  - Falemei asked that the Transit Team make the implicit more explicit, that the plan-to-plan is explicitly clear of the work for all to understand what will be done. Spurgeon will follow up on that as he does not have the November version before him. Abad added that there was a comment from the Advisory Council on Historic Preservation (ACHP) that was deleted ["...in immediate vicinity of TCP..."] and she felt was significant prior to any construction commencing. Abad wants consultation regarding the TCP (traditional cultural properties) study; burials are TCP and how does it play into the process. Spurgeon said they did consult with Bulletin 41 but was not sure on the TCP. Abad recommended they see Bulletin 38 for examples of burials; all TCP and the elaboration on page six in the OIBC letter sent to the Mayor.
  - Falemei noted that the City Council's address to the OIBC that this is Honolulu's biggest project to benefit the community; the OIBC recognizes that it's for the economy too. Falemei thanked Miyamoto and Spurgeon for their continued good faith working with the OIBC.
  - Spurgeon noted that they overall accepted the ACHP comments.
  - Aiu stated that the SHPD is not ready with its comments yet. However, the SHPD is open to

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recommendations from the OIBC. The chairman has made it clear what your lens is for this project. SHPD has to look at not only burials, resources...but also to balance as a state and that's the difference we will run into. The OIBC can convey its comments to SHPD to have more clarity under the Initial Planning section and more clarity on Mitigation. For example, it's not clear on burials yet it's very clear on architecture. Miyamoto said a historic preservation fund is established for architecture; whereas for burials they want to minimize and/or mitigate at any cost. Aiu noted that for offsite mitigation there's resources for architecture however burials should not be an afterthought.

- Falemei asked the OIBC to bring their concerns to the next meeting on burials mitigation for the transit project. She added that the OIBC needs to keep to its task.

B. SHPD Administrator's Information on The State Plan.

This is a plan to be done under a federal grant every five years for historic preservation statewide. This is not SHPD's work plan. The last version was done in 2001. SHPD must consult with the public although no budget was set to do this community outreach. One outreach recently was at the Association of Hawaiian Civic Clubs (AHCC) convention before the Political Affairs committee. SHPD recommended that the AHCC form a historic preservation committee that can be consulted with on such documents.

SHPD Administrator Pua Aiu distributed draft copies of the statewide State Historic Preservation 2010-2014 for information and comments to the OIBC. It is a plan for the Hawaii government agencies to promote historic preservation on all levels of government throughout the islands and communities. This draft plan is also available for comments online at DLNR's website http://hawaii.gov/dlnr/hpd/ Falemei asked all OIBC members to review this document for possible discussion at the next meeting.

Aiu also mentioned that there is a draft bill in the legislature that the OIBC should monitor as it requires all archaeologists to be state certified to do business in Hawaii. There is some opposition to the draft bill as this was also mentioned at the state archaeologist's convention a few months ago.

C. SHPD Administrator's Report on the Implications of Brown v. State.

SHPD Administrator Pua Aiu reported on a lawsuit that stated the SHPD was not following the federal NAGPRA law as a 'museum' with an inventory of human remains. The SHPD for years followed 6E and did not believe NAGPRA was applicable until a recent change in 2007 amended the definition of 'museum' to include states. SHPD is complying with NAGPRA and as of April, 2009 is six months late.

The SHPD has started consultation on the O'ahu Inventory for Na Iwi Kupuna and stopped all reinterments until consultation is done with native Hawaiian organizations such as Office of Hawaiian Affairs (OHA), Hui Malama I Na Kupuna O Hawaii Nei (HMNKHN), the OIBC and others. Consultation will follow on the rest of the islands.

The location of burials will remain private. The OIBC should review the inventory and make comments if any. The department recommends the OIBC create an ad hoc committee to review the O'ahu inventory.

Discussion on what defines a Native Hawaiian Organization (NHO) under NAGPRA and that it does not even have to Hawaiian. Shad Kane shared how the Kapolei Civic Club as a NHO consulted and kokua with reinterment in the past.

MOTION by Abad, seconded by Greenwood that Falemei and Abad will write a letter quickly to the court that the OIBC prefers the 6E HRS process rather than NAGPRA's process as 6E is more culturally appropriate and to include that David Brown does not represent Hawaiians in his lawsuit. VOTE was unanimous, no nays, no kanalua.
Falemei and Abad will write the letter and express the OIBC's concerns as mentioned in the motion.

D. **Update on Section 106/NAGPRA Correspondence.**
Subcommittee chairman Alice Greenwood received a letter from the Army regarding the Pililaau Range to build a wall. Greenwood called the Army for clarification and did not get a reply. There are time limits on all the 106 correspondence which is difficult to meet as the OIBC only meets monthly.

E. **Update** on the Kaena Point Advisory Committee.
Commissioner Quiteves was not present to give an update. SHPD History and Culture Branch Chief Cayan have been attending the meetings on behalf of the department. Cayan noted that the two big issues is defining the road and keeping out vehicles that damage the 'aina (i.e., mud bogging). Once the road is defined then DOCARE can enforce the rules for the area. There are other issues being worked with the fisher folks, the environmentalists and cultural practitioners as well as the general community.

F. **Update on Inadvertent for October, 2009.**

- 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. Update on inadvertent finds on October 1 and October 2, 2009. Reinterment will occur once all ground work is completed at this project.

- Na iwi (mandible) found 20 years ago on O'ahu by a visitor. Returned by the Sonoma County Sheriff's Office, Santa Rosa, California. Information only on returned mandible with unknown location for O'ahu Island. Na iwi will be reinterred at a later date.

G. **Announcements.** The State Ethics Commission bulletin entitled The High Road; October 2009 was distributed to all OIBC members.

H. **ADJOURNMENT.**
The OIBC meeting adjourned by unanimous consensus at 12:50 p.m. The next OIBC meeting is scheduled for December 9, 2009, Wednesday at the DLNR Board room.

Minutes submitted by Phyllis Coochie Cayan, HC Branch Chief.....Dated: December 8, 2009#

approved