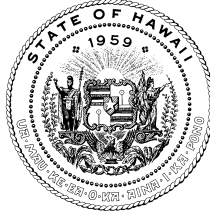


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

STATE HISTORIC PRESERVATION DIVISION
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**MINUTES
HAWAII ISLAND BURIAL COUNCIL MEETING**

DATE: Thursday, April 19, 2012
TIME: 9:00am
PLACE: Natural Energy Laboratory of Hawaii Authority (NELHA)
73-4460 Queen Kaahumanu Highway, #101
Kailua-Kona, Hawaii 96740

ATTENDANCE:

Members:	Kimo Lee, Chair Charlie Young, Vice-Chair Bucky Leslie Maxine Kahualelio Keith Unger Ku Kahakalau	
Staff:	Mike Vitousek, Archaeologist Kawika Farm, Burial Specialist	
Absent:	Leningrad Elarionoff Ed Miranda Dutchie Saffery	Excused Excused Excused
Guest:	David Deluz Jr. Aulii Mitchell Britt Craven Robert Krueger	Eugene Nishimara Tom Dye Ruby McDonald

I. CALL TO ORDER

The Hawaii Island Burial Council (HIBC) chair, Kimo Lee called the meeting to order at 9:29am.

II. ROLL CALL/PULE

Council members Keith Unger, Ku Kahakalau, Charles Young, Lee, Bucky Leslie and Maxine Kahakalau introduced themselves. From the State Historic Preservation Division (SHPD), Kawika Farm and Mike Vitousek introduced themselves.

III. APPROVAL OF MINUTES

February 16, 2012.

Young moved and Leslie seconded, “move for approval.”

Kahakalau asked that the second sentence of the last paragraph on page 3 be clarified.

Motion carried unanimously.

IV. OLD BUSINESS

A. Update on Burials Found at Kukaiau Ranch. TMK:4-2-008:008 & 021 and 4-4-015:001

Information/Recommendation: Discussion on hire of archaeological firm and proposed development of a burial treatment plan.

David Deluz went over an access agreement prepared for descendants and informed the council that Cultural Surveys Hawaii (CSH) has been contracted as the firm responsible for the development of the archaeological inventory survey (AIS) and the burial treatment plan (BTP). Deluz informed the council that Aulii Mitchell of CSH was present at the meeting and available for questions. Deluz apologized to the HIBC for not having a timeline on when the AIS and BTP would be completed. Deluz proposed to develop the BTP while work for the AIS was also conducted. Deluz said his parents put Kukaiau Ranch on the market for sale. Deluz remained committed to finishing the AIS and BTP regardless if the ranch was sold. Deluz committed to having a timeline for the council at the next HIBC meeting and planned a site visit with CSH and some of the descendants for Sunday, April 22. Deluz said the April 22 site visit would be the first time CSH will have seen the subject area. Deluz hoped the site visit would provide CSH with better guidance of the boundaries of the proposed AIS should encompass.

Kahakalau felt the ranch clearly violated the law by bulldozing a burial mound and not restoring any of the damage caused. Kahakalau reminded Deluz of the ranch’s obligation to fully disclose all related issues to any potential buyers and that selling the ranch would not make the problem go away. Kahakalau clarified statements from the HIBC’s February 16 minutes Deluz had made regarding his intentions to preserve in place the burials impacted. Kahakalau said the burials were already disturbed, displaced and in some situations pulverized. Kahakalau said the situation could never be made right, only better and questioned whether Deluz fully understood the *kuleana* involved with mending the situation. Kahakalau cautioned Deluz and CSH to not downplay or minimize what happened at Kukaiau Ranch. Kahakalau said the facts of what happened needed to be stated and made clear and the proposed action on how what happened would be made better also needed to be stated and made clear.

Deluz did not intend to avoid any issues regarding what happened and admitted he unknowingly was incorrect regarding his misinterpretation of preservation in place. Deluz clarified the landowner’s intention is to preserve in place any future burial(s) that may be encountered. Deluz thought the BTP would be completed first and more guidance from the SHPD needed to occur on how the AIS would be conducted and developed. Deluz said the ranch was not being sold because of what happened.

Lee wanted to know what the timeframe was regarding the development of the AIS. Deluz thought the biggest obstacle was getting the appropriate federal agency to work with them to avoid likely redundancy. Deluz said development of the AIS would proceed regardless if any assistance was received by the federal agency. Mitchell estimated the AIS plan would take approximately four months to develop before the actual AIS could start. Mitchell thought the BTP would take longer to complete due to consultation requirements.

Kahakalau thought there was *iwi* currently exposed at Kukaiau Ranch and reiterated her displeasure with the ranch's alleged violations of the law. Kahakalau felt the ranch should be fined. Kahakalau wanted immediate action taken to rectify the situation and protect the *iwi* while the long-term preservation measures and archaeological work is being developed. Kahakalau informed the council she visited the site in October 2010 and could not understand why there has been such an excessive delay with rectifying the situation at Kukaiau Ranch.

Unger wanted to know if anything could be done immediately on an interim basis to address the issue of exposed human skeletal remains currently at the site. Unger thought all the necessary parties (the SHPD, the HIBC, the landowner representative and the contracted archaeological firm) to properly address the situation were present and wanted to know if something could be worked out.

Farm wanted to know if there were human skeletal remains currently exposed to the elements at the site to which Leslie answered yes. Leslie said the SHPD knows of a very large back pile which contains skeletal remains. Vitousek did not think there was anything which prevented the contracted archaeological firm from going up to the site and collecting any exposed remains as an immediate interim protective measure.

Lee wanted to know what classification the burials at Kukaiau Ranch were given. Mitchell said the burials at the ranch were classified as previously identified. Lee thought the council needed a BTP before the HIBC could take any action and did not want any part of the process circumvented. Kahakalau thought the council was dealing with a different situation in which the *iwi* has already been disturbed and immediate action needed to occur. Kahakalau felt the SHPD is supposed to initially address all burials regardless if the burial is inadvertent or previously identified. Kahakalau felt the SHPD has not done enough to *malama* the *iwi* at Kukaiau Ranch.

Vitousek wanted to know if the SHPD had previously provided any guidance on the issue. Mitchell handed a letter to Vitousek from the SHPD archaeologist, Theresa Donham.

Deluz was not sure why permits were not obtained for the construction project which resulted with the current situation. Deluz admitted he did not fully understand the severity of the situation and acknowledged he should have done more and immediately hire an archaeological firm. Deluz admitted the issue probably would have been addressed much sooner if the ranch was in violation and fines had been administered.

Kahakalau thought the reason a permit was not obtained was because the project was supposed to do repairs to an existing reservoir in which construction activities exceeded the proposed scope of work. Kahakalau felt information for the project was misrepresented to the county. Kahakalau said the HIBC was never informed on the steps required to start the process of fining landowners that violated the law. Kahakalau said council members have repeatedly asked for an explanation of the penal process.

Deluz understood where Kahakalau was coming from and felt he should have hired an archaeological firm sooner. Deluz said he now clearly understood what the situation is and where the situation needed to go.

Unger wanted to know what guidance Donham had provided in the letter given to Vitousek by Mitchell. Vitousek thought the reason why there was no immediate 6E violation of Hawaii Revised Statutes was due to the project being reviewed under the Natural Resources Conservation Service guidelines which circumvented the normal process which afforded the SHPD the opportunity to provide comments. Vitousek said the letter by Donham written in March of 2011 recommended that an archaeological firm be contracted to develop a BTP. Vitousek said the landowner did hire an archaeological firm and was hopeful the firm could develop the BTP relatively quickly.

Young wanted to know what prevented the archaeological firm and descendants from visiting the site tomorrow to take care of the *iwi*. Vitousek thought a BTP needed to be prepared first because the burials were previously identified. Vitousek thought the situation would have been easier to deal with if the *iwi* were inadvertent.

Kahakalau said her primary concern was the proper treatment and protection of the *iwi*. Kahakalau wanted to know why no action has been taken to investigate the alleged violation and did not want any precedence set which may cause other developers to think they could do whatever they want.

Young did not think a BTP needed to be prepared in order to immediately protect the *iwi*.

Lee asked the archaeological firm to update the council at the next HIBC meeting. Lee also asked the SHPD to provide a chronological timeline of events which occurred at Kukaiau Ranch at the next HIBC meeting. Lee thought the two main factors that caused the unfortunate event at Kukaiau Ranch was the project not going through the normal review process and the landowner's lack of knowledge/research that burials are present in the subject area.

Kahaulelio said the ranch should have known the area was once populated by historic villages. Kahaulelio speculated the ranch may have been put up for sale because of fines which may still occur. Kahaulelio suggested the landowner give the land that contains the burials to the descendants to care for.

Farm asked for clarification on what the chair was asking of the SHPD. Lee reiterated his request and Farm suggested the council draft a letter with their specific inquiries to the SHPD and send a copy of the letter to the attorney general's (AG) office. Farm did not see any reason which prevented the contracted archaeological firm from going up to the site and recovering any *iwi* which may be exposed. Farm was of the understanding the SHPD did go up to the site previously to recover exposed *iwi* and is temporarily storing those *iwi* on site. Farm informed the council that if they chose to visit the site as the HIBC, that the site visit would need to be open to the public. Young thought the site visit could be closed because the council would be visiting and discussing the specific location of burials which should remain confidential. Farm thought the issue had been discussed in detail numerous times over the years which exposed the location of the burials and voided any confidentiality issue. Young requested an opinion from the AG's office on the matter.

Leslie felt the issue has been ongoing and unresolved for too long and wanted the HIBC to force a resolution. Kahakalau felt the council has been told the same thing over and over with no

resolution. Kahakalau felt the site needed to be visited in order to fully grasp the magnitude of what was being discussed.

Deluz understood the task of making things better is the landowner's responsibility.

Kahaulelio felt Deluz was on notice the area is highly significant as a result of the current situation and wanted Deluz or any other potential developer to do their due diligence and research the area to see what may be present in order to prevent the current situation from repeating itself.

Deluz realized the situation is very unfortunate and mistakes were made. Deluz also wanted to find out what and where things went wrong and hoped the situation could be a learning experience that would not repeat itself. Deluz admitted the ranch was at fault, but wanted to focus on the process in place and the areas on how that process could be improved. Deluz also wanted to focus on what the ranch is proposing to do currently and admitted while the situation would never be fully corrected; the ranch is committed to making the situation the best it could.

Unger suggested the council help prioritize some of the task for the ranch and recommended CSH strictly focus efforts on the BTP to care for *iwi* which may be exposed now and work on the AIS after. Kahakalau also supported Unger's suggestion about prioritizing tasks. Lee also supported prioritizing what should be done.

Young wanted to know what the state's position on possibly having two BTPs was. Vitousek did not think it would be a problem. Vitousek suggested the council make a motion recommending the implementation of short-term protective measure and that CSH immediately collect any exposed human skeletal remains prior to the completion of the BTP. The council agreed with Vitousek's suggestion and also wanted staff from the SHPD to assist with the effort. Vitousek thought short-term protective measures could be implemented by the contracted archaeologist. Vitousek was not sure if he would be able to make Sunday's site visit. Farm said he would not be able to make Sunday's site visit. Deluz said Sunday was chosen as the day to visit the site because it was the most convenient for the descendants. Deluz appreciated the guidance being provided. Leslie wanted an invitation to visit the site extended to the council as well. Deluz had no problem with council members visiting the site as a whole or in pairs as long as it was within what the AG's office decides.

Kahakalau moved and Leslie seconded, "for SHPD staff to participate in the upcoming visit on Sunday and to implement short-term protection measures and collect any exposed remains."

VOTE: ALL IN FAVOR. Motion carried unanimously.

Kahakalau moved and Leslie seconded, "to prioritize the burial treatment plan for the four acres in question with a supplemental plan encompassing the entire area in question to follow."

VOTE: ALL IN FAVOR. Motion carried unanimously.

Gale Perez felt the landowner should have known better to allow the current situation from happening. Perez wanted to prevent the situation from ever repeating itself. Perez thought precedence should be set and felt the landowner should be fined.

The HIBC chair called a brief recess at 10:55am and reconvened the meeting at 11:06am.

V. INADVERTENT UPDATES/INFORMATION

A. Long-Term Preservation Plan for Site 50-10-28-13531, Keopu Ahupuaa, North Kona District, Hawaii Island, TMK: (3) 7-5-004:006

Information: Discussion of above inadvertent burial.

Eugene Nishimara a representative of the landowner introduced himself and Tom Dye, the contracted archaeologist of T.S. Dye & Colleagues, Archaeologist, Inc (TSDCAI) that drafted the subject preservation plan. Nishimara said the preservation plan was prepared in consultation with the Kanuha *ohana*, primarily Dru Kanuha who are recognized descendants to the area.

Farm said the subject item was placed on the council's agenda because he was unaware if the council had ever been informed of the discovery and wanted to know if the council had any comments about the proposed plan.

Dye gave a brief background of the project and said TSDCAI became involved when contacted by a prospective buyer of the subject property. Through TSDCAI's research it was concluded that human skeletal remains were removed from the property. TSDCAI was able to locate those remains and the plan proposes to relocate the remains back into the lava tube from which the remains are believed to have originated. TSDCAI said the Kanuha *ohana* would conduct the burial protocols and the entrance of the cave would be sealed by a metal grate. The metal grate would then be covered with material consistent in the area to camouflage the entrance. The current landowner proposed to attach a restrictive covenant to the deed of the property which would carry over when the property is sold and require the new landowner to establish and maintain the preservation area.

Leslie was confused because he thought the subject property was originally part of the larger Lanihau project and felt the issue should have been addressed then.

Lee wanted to know the size of the proposed buffers for the site to which Dye answered was approximately six feet from the edge of lava tube. Lee questioned whether the buffer was sufficient because the council usually recommended 20 foot buffers. Dye said the buffer encompassed the entire lava tube and provided a preservation area approximately 20 feet wide by 60 feet long. Dye was not sure exactly where the Kanuha *ohana* would place the remains within the lava tube, but felt the overall size of the preservation area was sufficient. Young said the council has always recommended 20 foot buffers primarily to mitigate against potential impacts from heavy equipment during construction activities.

Ruby McDonald from the Office of Hawaiian Affairs (OHA) wanted to know how the Kanuha *ohana* became involved with preparation of the plan and why other families were not consulted. Kahakalau was also concerned there may be other families from the area which should be consulted. Kahakalau also thought the plan overstated the qualifications and expertise of Dru Kanuha regarding the treatment of native Hawaiian remains. Kahakalau cautioned the use of language within the plan and did not want general statements to be misinterpreted as facts in the future. Kahakalau thought other families needed to weigh in on the plan's proposal to not have any signage for the site.

Young wanted to know how other potential descendants would be informed about the subject matter. Farm said part of the reason why the matter was placed on the council's agenda was to

provide the opportunity for any interested persons to come forward and voice their concerns. Farm thought that in the absence of anyone coming forward then the burial council would have the opportunity to provide comments.

Perez thought a lot of people used to come to the HIBC meetings in the past but felt people no longer came because they were ignored.

Lee wanted to know why the buffer was only six feet. Dye thought the buffer was only six feet because a larger buffer would render the property undevelopable. Unger wanted to know what the total square feet of the buffer area was to which Dye thought was approximately 5000 square feet. Unger thought it was very unusual that a 5000 square foot preservation area would render the four acre project site undevelopable. Dye thought the project may become financially undevelopable if a larger preservation area was created.

Leslie wanted the buffer area increased to 30 feet. Vitousek suggested the possibility of establishing a larger construction buffer and having a smaller permanent buffer.

Young moved and Kahakalau seconded, “a permanent buffer of 20 feet be established from the edge of the lava tube where it would intersect with the surface and an additional 50 foot construction buffer be applied during construction.”

VOTE: ALL IN FAVOR. Motioned carried unanimously.

Kahakalau moved and Young seconded, “that there will be signage identifying the site as a sacred place and [applicable language regarding] violations.”

VOTE: ALL IN FAVOR. Motioned carried unanimously.

B. Inadvertent Burial Encountered During County of Hawaii-Department of Water Supply Job. Kealakehe Ahupuaa, North Kona District, Island of Hawaii, TMK: (3) 7-4-009:072

Information: Discussion of above inadvertent burial.

Farm said the Department of Water Supply (DWS) was constructing a new access road and a burial was exposed by erosion caused by heavy rain. The SHPD was contacted and the site was initially visited by Vitousek who confirmed the burial was over 50 years old and native Hawaiian giving the SHPD jurisdiction. Farm and Vitousek had met with Larry Beck of DWS at the site in February to discuss treatment of the burial. As a result of the February meeting, DWS contracted Rechtman Consulting, LLC to prepare a BTP. Farm said the burial would be preserved in place.

VI. ANNOUNCEMENTS

Lee announced the confirmation of Kahaulelio and Unger to the HIBC by the senate.

Lee wanted to know if any council member’s term on the HIBC would be expiring in June. Farm said Kahakalau and Saffery both needed to be replaced. Farm requested the council forward him the contact information of any potential council members.

Lee said he and Young attended a meeting hosted by OHA in February regarding a bill which proposed the consolidation of all island burial councils into one council. Young said the meeting

was attended by the chairs and vice-chairs of all burial councils and that every council member unanimously rejected the proposed bill.

VII. ADJOURNMENT

Meeting adjourned at 12:07pm.

Respectfully Submitted,

Kawika Farm