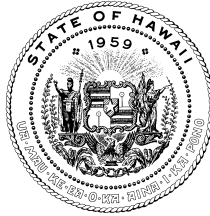


NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Kaua'i Ni'ihau Island Burial Council**  
**Meeting Minutes**

**DATE:** Wednesday, April 16, 2014  
**TIME:** 10:13 am To 12:06 pm  
**PLACE:** Lihue State Office Building  
3060 Eiwa Street  
Lihue, Hawaii 96766

**KNIBC MEMBERS:** Keith Yap, Landowner/Developer Representative  
Mauna Kea, Landowner/Developer Representative  
Janet Kao Bradford, Lihue Representative  
Kunane Aipoalani, Napali Representative  
Debra Ruiz, Waimea Representative  
Nathan Kalama, Kawaihau Representative  
Barbara Say, Hanalei Representative  
Leiana Robinson, Ni'ihau Representative

**ABSENT/EXCUSED:** None

**SHPD STAFF:** Kauanoë Hoomanawanui, Kauai Island Burial Sites Specialist  
Susan Lebo, Acting Kauai Island Lead Archeologist  
Hinano Rodrigues, Acting History & Culture Branch Chief

**GUESTS:** Gerald Ida, CSH  
Milton Ching, SCS  
Jim Powell, SCS  
Kaliko Santos, OHA Kauai  
Wayne Palala Harada, Napali Representative  
Missy Kamai, CSH  
Wanda Kau-Shibata, Governor's Office  
Mike Dega, SCS

**I. OPEN REMARKS:**

Keith Yap, KNIBC Chair called meeting to order at 10:13am.

**II. ROLL CALL/ PULE:**

Kawaihau Representative Nathan Kalama gave pule.

Chairman Yap, KNIBC members and the SHPD staff introduced themselves.

### III. APPROVAL OF MINUTES

A. None

### IV. BUSINESS

#### **A. Introduction of State Historic Preservation Division (SHPD) Kaua'i Staff and Newly Appointed Kaua'i Ni'ihau Island Burial Council (KNIBC) Members.**

**Introduction:** Introduction of KNIBC members Leiana Robinson, Wayne Palala Harada, Janet Kaeo Bradford and SHPD Staff Kauanoë Hoomanawanui, Hinano Rodrigues, and Susan Lebo.

Hinano Rodrigues introduced himself as Acting History & Culture Branch Chief with all IBC's under his jurisdiction. Kauanoë Hoomanawanui presented herself as the Kauai Island Burial Site Specialist. Susan Lebo stated she is the Acting Lead Kauai Island Archaeologist.

Aloha Mai Kakou, Wayne Palala Harada presented himself coming from the Ahupua'a of Wainiha. My family comes from the Wainiha, Napali as well as the Hana area on Maui. Mahalo to the kupuna who laid the foundation for us and Mahalo Nui for giving me the opportunity to care for them till my time end here.

Kaeo Bradford announced herself keiki o ka aina, representing the Lihue District with a background in anthropology, archaeology, a kahu as well as an academic currently working for the County of Kauai in Economic Development.

#### **B. Department of Transportation Section 106 Consultation for Nawiliwili Road Resurfacing, Waapa Road to Kanani Street, Nawiliwili Ahupua'a, Puna District.**

**Information/Discussion/Recommendation:** Discussion on the above.

Chair Yap indicated the summary from the Department of Transportation explains that at this time there are no historic properties to be affected and no known burials to be effected in this project area.

**Chair Yap opens the floor for discussion.**

Vice Chair Trask asks if any representative from Department from Transportation present. Yap answers no, there is no one here today and explains this is a resurfacing and generally they have already paved the area. We will respond to them with no further comments at this time.

#### **C. Department of Transportation Section 106 Consultation for Kuhio Highway Resurfacing, Kapule Highway to North Leho Drive, Hanamaulu Ahupua'a, Puna District.**

**Information/Discussion/Recommendation:** Discussion on the above.

Vice Chair Trask stated one comment for the record, in looking at the agenda item and the research materials I have. I would like to note that Samuel Kamakau, in Ka Poe Kahiko in 1870, on page 48 states the main thing was to hide the bones they were buried under new houses, in road ways, in banks of taro patches. Given what has been said, this is resurfacing, there shouldn't be any subsurface disturbance. In the unlikely event there is anything there, it wouldn't be culturally inappropriate to pursue.

**Chair Yap opens the floor for discussion.**

Missy Kamai of CSH explains previous archaeology of Leho Drive at Lydgate and on Kuhio Highway has found burials along Wailua Golf Course. If they resurface, they may possibly hit areas that may not

have been impacted earlier. The standard of resurfacing varies as some are 18 inches and some may be deeper. Chair Yap answers Mahalo as your comments will be dually noted. Vice Chair Trask clarifies the burials here would be inadvertently discovered and not previously identified. SHPD Archaeologist Susan Lebo adds we sent out a letter requesting Archeological Monitoring for the project due to the area having previously identified burials.

**D. Ace Environmental Section 106 Consultation for Proposed Cell Tower Structure at 4191 Koloa Road, Koloa Ahupua'a, Kona District.**

**Information/Discussion/Recommendation:** Discussion on the above.

Mike Dega of SCS presented himself as completing the field inspection for the project. This area is a pasture and no known burials are present. Dega asked what the general policy is with the burial council and Chair Yap answers, we respond appropriately. Although the area is currently a pasture and an old sugar cane field and heavily cultivated. We don't anticipate any issues in this area. Dega explained there are a few historic period archeological sites such as old irrigation ditches. You don't mind if we send you more cell tower consultations? Yap answers we don't mind however we may have a delay in response as our meeting are held only once a month. We use to have a few representatives from our council in attendance for the consultation meetings. I would like to make sure our board is well versed in what is going on out there. We may have a lot more consultations in the future and we would like to make sure that our concerns are heard. We want to be able to respond.

**Chair Yap opens the floor for discussion.**

Joseph Kamai introduced himself and explained a battle was fought in the year 1260 in that area and this place is actually sacred ground. When the plantation was out there the sand dunes are where they pushed all the bones. When Nancy was involved I was managing the ranch and we found skulls, jaw bones all right there. Vice Chair Trask explains this is the Koloa Road, the bypass headed towards Lawai. There are no sand dunes in the area. Kamai states when the clean the land, they moved the bones. Kamai continues by right that area is sacred grounds and previously disturbed from the plantation. Chair responds dually noted for the record and will respond with your comments.

For the record James Alalem introduced himself and describes there are two cell towers atop Makaleha Mountains. I'm unsure how they got up there and whom permitted that.

**E. Kaua'i Island Iwi Kupuna SHPD Inventory.**

**Information/Discussion/Recommendation:** Discussion on the above.

Chair Yap explains the SHPD Inventory have been in storage for years. We would like to put it back in the Ahupua'a it belongs to. My question to SHPD is how we can proceed with this. We would like to begin with the Koloa District. Once we identify the bones we would like to put them back. Other than access what else is required by you. SHPD Burials Specialist, Kauanoë Hoomanawanui asked if the inventory is itemized as to what belongs to Koloa. Yap answers the inventory has been presented to them at some point.

Vice Chair Trask explains following the response from the department regarding the letter we submitted to them. I would like to see the response from the letter that was approved by our KNIBC in December. We would like to follow up with these district families that we consulted with. In looking further the ideas we would like to pursue as some areas that the bones have come from as the places are developed. If we need a right of entry to find some space to hide the bones in the mountain. I would like to hear what the department has to say in our efforts to do that. Following up with outreach to each district and that is the best we can hope for.

Councilmember Say suggests that we begin in West and end in the North. Former Chair Aipoalani of the Westside will be leaving us soon. Councilmember Aipoalani has no objections to that.

Hoomanawanui explains SHPD will evaluate both the lists and the physical inventory of Kauai Island. Following that we begin the NAGPRA notification process. Chair Yap asks if the Westside has an existing reinternment site. Councilmember Aipoalani answers we have two existing sites. Hoomanawanui asks if KNIBC has a committee or lead council members that would aid in the NAGPRA process. Chair Yap suggests the consultation may be done through our regular meetings or we can go out in the community to outreach. Vice Chair Trask would prefer to be at these meetings in follow up to the outreach. Chair Yap suggests a target date for May agendaing. Councilmember Aipoalani asks if participation in the inventory is allowable by council members. Hoomanawanui answers yes it is possible to have members assist in the inventory.

Acting History and Culture Branch Chief, Hinano Rodrigues suggest although Kunane is leaving there are no provisions in the law prohibiting him from participating. He is invited to volunteer and participate, whenever and however it takes to reinter these iwi kupuna. Councilmember Kunane Aipoalani states it has been a privilege to serve the burial council.

## **V. SHPD INADVERTENT DISCOVERY REPORT**

### **A. Inadvertent Discovery of Unidentified Human Skeletal Remains at the Kauai Sands Hotel, Kapa'a Ahupua'a, Puna District, Island of Kauai, TMK: (4) 4-3-02:12 on April 1, 2014.** **Information/Discussion:** Discussion on the above find.

Jim Powell of SCS introduced himself and explains they began a response as contractors from SHPD. We got there and discovered human skeletal remains and stopped the immediate construction. We advised the landowner of the situation and curated the remains. In addition we monitored the duration of the trenching and discovered additional burials. The point of interest that came up during the process was the construction of the swimming pool. Burials discovered during the initial constructing in the 60's. We reinterred those burials in a timely manner. Most recently we were monitoring and encountered another 3 sets of human skeletal remains in which we were able to preserve in place. The gas line was moved and a buffer was established.

Chair Yap explains in consideration to the current space of the reinternment site additional space may be required for future inadvertent discoveries although KNIBC is in favor of preservation in place. Lebo clarifies these inadvertent finds because they were not part of AIS and they were encountered during the construction of a project we did not comment on. To be previously identified we would have to know they exist and where the limits of that site are and that these were then within that site. The department had no information on that site. Vice Chair Trask explains the natures of the burials are to be hidden and it's impossible for the Department to previously identify any individual Native Hawaiian burial. However it is generally known where the general area lays. I believe that can be determined. In the future to best carry our kuleana the Department would be well served to identify what a burial site is, if it's a four foot area or a general area. The point of our outreach is to aid in identifying. In this case there was trenching done and you found the small child and then you removed and continued trenching. My understanding under 6E 43.6 in the event human skeletal remains was discovered any activities in the immediate area that could damage remains or potential historic sites shall cease till requirements have been met. It doesn't seem the trenching ceased. Furthermore when you went to the second trench you found bird bones than a vertebrae bone. You continued to the next trench and that is not ceasing. I am just making sure the hotel doesn't get misdemeanor. Why didn't it cease. Powell answered it had ceased in that location. We normally move away from that location. After we inform everyone we continue the construction work. Trasks suggest I'm not sure that's how the law states it. This is my concern, how I read it is that all trenching should stop. Also if you look at 6E 43.6 (g), if human skeletal remains are

discovered in the course of land development, all activities shall cease and shall be allowed only in compliance with 6 E 43. In moving forward the community is very Akamai to this issue and they will only get more sophisticated. Construction and burials aren't necessarily opposed to each other. If people get the feeling the construction is insulting to burials we are going to have a problem. Powell clarifies we take our lead from SHPD. Chair Yap includes the intent of this law is related to the Maui case as they kept on going and burials were continually being discovered. Kauai Sands has been very accommodating to the requests of the KNIBC. Trask asks if it's true that the Department allowed for the continuing of the trenching. Powell explains they would have called SHPD and told them the plan and continues monitoring and construction to continue and if something is found stop work and move to another area.

Councilmember Barbara Say describes she was notified and made a site visit as required. Vice Chair asks if they stopped construction until you came, Say answers yes. Hoomanawanui states the definition of vicinity may be a concern, if you are going to stop construction in one particular area and other places in the same project area can continue construction. Yap answers it may be a case by case call and it's difficult to state rules and everybody stop everything only finding a fragment. Also in one case they stopped construction for one week after finding only a cow bone. Trask is not accusing Kauai Sands of anything or yourselves. I think its past practice and we at the county work with the issues. Past practice is not enough to satisfy the community. I believe that is why we are all here, again I would like to emphasize if there is going to be a project, maybe a specific project that people may not like. They are eventually going to be here. We will be here to deal with that. If they find things, past practice isn't going to work with the community. I want to insure we do our job and it's positive to protect the bones. We are not here as a sounding board to be anti-development.

Branch Chief Rodrigues asks if the October inadvertent discovery did the contractor have a permit from the county of Kauai to conduct the trenching. Powell answers it was the hotels contract. Did the hotel contractor have a permit to conduct the trenching? Kauai Sands representative, Hemi answers we did not need a permit because they were not digging deep enough. That is a situation where 6E 43.6, where a non-permitted project hits human skeletal remains, SHPD has the right to stop the entire project. In a normal situation we only have the right to stop work in the immediate vicinity. When the laws were first being created and developed in the legislation, all burials were within the jurisdiction of the burial councils, it failed in the legislature. It failed because the council only meets once a month. We have construction going on and due to the meeting date all construction was stopped. The compromise was to call these things inadvertent. With the tone of the law with burial council jurisdiction i.e. previously identified and the law of inadvertent the tone of jurisdiction and authority of IBC it happens way ahead of time. In the inadvertent discovery process it happens during construction and that's why the laws differ between the two. With respect to your letter, it's my inclination to have our AG respond to the letter. The reason for that is if I was to make a decision was right now I would disagree with the letter and let's have someone above me make the decision. It's not necessarily a burial site that is found or the burial site the subject matter, it's the iwi. In order to decide what we are going to do with something which in this case is the iwi we need to see it to make better decisions. It would be difficult to decide this is a burial site and everything is previously known. We cannot as we have to see the iwi. The laws go back and forth with burial site, burial area, and human skeletal remains. If we focus on human skeletal remains than the decisions are easier to make. Yap agrees however we don't want to lose site to a sensitive area. We require in certain consultations we require changing of equipment to address the problems in sensitive areas.

Susan Lebo adds in following Mauna Kea's comment on the individual cell tower or the bypass and so forth and asking for input. The letter you did in December helps in the same manner. For example the Kuhio Highway, the community knows there are burials in the Wailua Golf Course area; we know there is one in the right of way. By coming together and sharing the information without locating the area of previously identified areas. We can still identify culturally sensitive areas and draw upon that knowledge to make a better determination and more sensitive to the issues of the area. Vice Chair Trask looks

forward to a response from the AG and would like him or her to cite where in the law it says that. In HAR 13-300-2, defining previously identified as burial sites containing any human skeletal remains and any burial goods identified in the AIS, it's not just bones identified in the AIS or data recovery, or known through oral testimony. Development is not against the law and would like to engage more in the process, like an EIS, you can pollute the world but have to describe the process as how you are doing that. Our duties and responsibilities authorize us to take any other appropriate actions in furtherance to this chapter and nothing in this section limit the council as to manage provided in 6E. I want to reinforce our kuleana and the authority we have to do. Chair Yap comments the law is not crystal clear and that is the challenge we face and most of the times they come in guidelines.

Joseph Kamai asks if there is equipment to radar the area before any land disturbance. Rodrigues answers you may be referring to GPR, ground penetrating radar, it identifies things however not exactly what the item is. Within the last few years, we should have collected enough data to come close to where it probably is. Chair Yap adds the Wailua bridge job used the GPR and in areas where it was suspect they changed their plans to accommodate the items found under the GPR.

For the record, I am James Alalem, Waipouli born and raised and went to Kauai Sands and my friend got attacked from uhane's over there. The Kauai Sands is going to be like Waipouli Beach Resort and they desecrate the bones. I fought with LaFrance on that one and when the spirit guides I am going to do it. If they keep messing around it's going to be just like that. I was appointed by the Hawaiian Kingdom to the burial council. I sit on the burial council for the Hawaiian Kingdom. Regardless if the County of Kauai or State of Hawaii recognizes me. Have you seen the reinternment site at the Wailua Golf Course? Have you seen the red t-leaf, it was never in Hawaii at that time and only brought in for decoration. The burials where I got arrested are overgrown and defecation. If you say you're going to remove and return than put a big wall so no one messes with it. Kauai Sands should be fined, Title 18, damaging sites related to religious practicing. The law is the law, and no excuses for making your own laws. The laws are right there why we are not following it. I am a national to this country. Only time you folk's use the common law is to get out of something. I am common law under the Hawaiian Kingdom.

Kaliko Santos of OHA introduces herself and explains hearing from both the archaeologist and SHPD which is great however as Mauna Kea was suggesting we will be having controversial projects coming up. The idea if we are following the process clear cut. If a community member will call SHPD were you notified or bother the field people what did you folks do as a protection. Everybody is after are you following the process. I would love the Department to have a very clear answer as that will stop the attacks from community members. Past practices vs best practices are better. To have those things in place as today has a lot more social media. Chair Yap agrees we have a better process today and at least now we know although there is always room from improvement. Our KNIBC is one of the better councils in notification.

Councilmember Say states this council is rather unique as we all communicate well. We call each other and make aware of different happenings. A chain sometimes does occur when we all communicate and take care as we are committed to what we do. We do the best as we can as a council. Vice Chair Trask doesn't think anyone should be making threats. We have to balance and protect the iwi; it's a fact that ancient Hawaiians would hide the bones underneath the development. With a concrete slab, no desecration would occur.

Councilmember Nathan Kalama would like to speak in defense for Kauai Sands as myself and Barbara went down personally and observed what they were doing. As far as the internment for those iwi are concerned I beg to differ as we tried to do everything in a pono way. I believe Mr. Helmi did everything he thought was right according to the law. As burial council members we did everything pono. I worked and lived there in the 60s and yes there are uhane their as I also have been attacked.

Rodrigues suggests the information passed on to me from the previous Branch Chief, although there was no quorum the KNIBC stepped up to the plate in addressing the iwi. It is my personal opinion among the 240 boards commission the burial council is the upmost honorable.

Missy Kamai of CSH comments as a Hawaiian, an archeologist, from the Puna District and Waimea District. Previously identified and inadvertent, as a Hawaiian we are told there are burials and you don't need to know where it is. As an archeologist by law during the AIS in essence it is important we do find them and they become known and the community gets involved. However with an inadvertent it's SHPD and they may or may not work with the council. It's important to know where the burials are as it becomes previously identified and the community can be involved.

Mr. Helmi of Kauai Sands would like to extend a Mahalo to everybody for working with us.

## **VI. ANNOUNCEMENTS**

### **A. Next meeting date is scheduled for Wednesday, May 21, 2014 at 10 am.**

Rodrigues announces we are bringing in the AG for training going over the statutes and the burial laws. It will either be on May 21 or the meeting in June. We are looking for office space for our SHPD staff and if anyone has any leads please let us know. We are looking for a suite to hold 2 or 3 employees. As of June 1<sup>st</sup>, you will have Kauanoe and an archeologist along with a clerk. Missy Kamai suggests the building at the rear of the Kauai Community College.

## **VII. ADJOURNMENT**

**Nathan Kalama made a motion to adjourn the meeting and Barbara Say seconded.**

**Motion approved unanimously.**

**Chairperson Yap adjourned the meeting at 12:06 pm.**

Respectfully Submitted,

Kauanoe Hoomanawanui