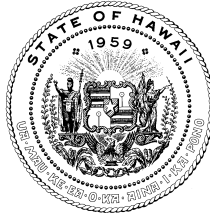


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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
MAUI/LANAI ISLANDS BURIAL COUNCIL MEETING

DATE: Wednesday, April 25, 2012
TIME: 9:00am
PLACE: County of Maui Planning Department
Kalana Pakui Building, 1st Floor
250 South High Street
Wailuku, Hawaii 96793

ATTENDANCE:

Members:	Keeaumoku Kapu, Chair Scott Fisher, Vice-Chair Leiane Paci Ed Kaahui James Ballao	
Staff:	Hinano Rodrigues, Cultural Historian Kawika Farm, Clerk Jenny Pickett, Archaeologist	
Absent:	John Naeole Kalani Ho-Nikaido Pua Paoa Wilson Kanakaole	Unexcused Excused Excused Unexcused
Guest:	Claire Apana Mike Dega Uilani Kapu Lisa Rotunno-Hazuka Dana Naone Hall	Tanya Lee-Greig Ian Bassford Thelma Shimaoka Jeffrey Dack Jocelyn Costa

I. OPENING REMARKS

The Maui Lanai Islands Burial Council (MLIBC) chair, Keeaumoku Kapu called the meeting to order at 9:05am.

II. ROLL CALL/PULE

Roll call was taken and commissioners; Ed Kaahui, Leiane Paci, James Ballao, Scott Fisher and Kapu introduced themselves. Ballao gave the *pule wehe*.

III. APPROVAL OF MINUTES

February 29, 2012

Fisher requested spelling corrections on pages 1 and 3 and clarification on pages 5 and 6.

Fisher moved and Ballao seconded to approve the minutes of February 29, 2012.

VOTE: Motion carried.

IV. BUSINESS

A. Mokuhinia/Mokuula Ecosystem Restoration Project, Wainee Ahupuaa, Lahaina Moku, Island of Maui, TMK: (2) 4-6-07: 002.

Information/Recommendation: Discussion on the U.S. Army Corps of Engineers status update and Section 106 Consultation.

Hinano Rodrigues of the State Historic Preservation Division (SHPD) said the subject agenda item needs to be withdrawn and will be placed on a future MLIBC meeting.

B. Palauea Beach, Makena, Palauea Ahupuaa, Makawao District, Island of Maui, TMK: (2) 2-1-001: 018 and 019.

Information/Recommendation: Discussion on the inventory survey of the above two lots and the previous discovery of human skeletal remains.

Mike Dega of Scientific Consultant Services (SCS) archaeology introduced himself and Ian Bassford the field archaeologist. Dega gave a brief history of the project and said SCS was hired by the County of Maui in 2010 to conduct an archaeological inventory survey (AIS) in the summer of 2011. The AIS report was accepted by the SHPD on October 6, 2011. SCS did not identify any cultural materials or skeletal remains during the AIS. SCS was before the MLIBC because SCS was aware of an AIS by Xamanek Researches conducted in 1999. The 1999 AIS identified numerous skeletal remains and resulted with a State site number 50-50-14-4757. The 1999 AIS was never published because the developer at the time cancelled the project. SCS could not find any documentation at the SHPD's offices regarding what happened to the human remains identified in 1999. Dega was not sure why SCS could not relocate any of the skeletal remains from 1999 AIS and was before the council requesting any information which may shed light on what happened to the *iwi* from 1999. Dega hypothesized the skeletal remains may have been recovered or removed from the earth or the skeletal remains may have been lost due to geomorphology such as water erosion, sand accretion or deflation and wind activities.

Rodrigues suggested the MLIBC request the individuals involved during the project in 1999 attend a future MLIBC meeting to help answer questions.

Dega wanted to know where the remains were and if the remains were reinterred, why SCS was unable to locate any skeletal remains. Dega said Bassford excavated test units in the general area where the remains were originally identified in 1999 and was unable to locate any skeletal

remains. Dega said the depths of Bassford's test units exceeded the depth of the test trenches from 1999 and still no skeletal remains were encountered.

Kapu wanted to know if the County had any plans to develop the property. Dega said SCS was not aware of any development plans for the property.

Fisher wanted to know if Xamanek Researches may still be storing some of the *iwi* from the 1999 AIS. Rodrigues thought it was best if the council requested a representative of Xamanek Researches come before the council to answer questions. Dega said SCS just wanted to find out what happened to the *iwi*.

Kaahui thought someone from the County should attend a future MLIBC meeting to discuss the future potential use of the property.

Rodrigues read an excerpt of minutes from an MLIBC meeting in 1999 onto record.

Bassford said the beach is heavily used by locals and tourist alike.

Uilani Kapu supported having everyone involved during the 1999 AIS attend a future MLIBC meeting to help clarify the situation.

Dana Naone Hall said the site was visited in 1999 by the MLIBC chair and vice-chair, the SHPD, Rob Hart and Robert Rectman of PHRI archaeology. No archaeological testing was conducted by PHRI. PHRI only did a surface walk through. Xamanek Researches conducted the archaeological work in 1999 and Hall recalled observing human skeletal remains within the test trenches. Hall recalled observing at least a minimum of two individuals and a bunch of fragmented remains. Hall said all remains were kept in place.

Fisher wanted to know if any of the skeletal remains were removed from the site to which Hall said absolutely not.

Paci wanted to know what happened to all the fragments. Hall said the *iwi* was observed within the test trenches and then backfilled. Hall thought the *iwi* she observed was near the shoreline. Hall said any proposed project for the subject property should be as close to the road as possible. Hall did not think any development should occur on the half of the property closest to the ocean. Hall recalled the remains being pretty deep and not near the surface.

Kapu was not sure how the MLIBC could protect *iwi* found at the subject property if the council had no idea where the *iwi* is. Kapu wanted to know if the SHPD was ever given a report regarding the discovery of the burials from the 1999 AIS by Xamanek Researches. Hall did not think a written report was ever drafted and submitted to the SHPD because Xamanek Researches was let go from the project prior to completing the AIS.

Dega was still troubled by a letter from Xamanek Researches in which the letter stated, "we recovered hundreds of skeletal fragments." Hall said all the remains she observed in 1999 went back into the test units. Hall said she and other council members went out to the site to make sure the *iwi* went back into the test units.

Ballao questioned what was meant by using the word recovered. Ballao said minutes from a 1999 MLIBC meeting read onto record by Rodrigues stated Hawaiian artifacts were found. Ballao wanted to know why nothing was found by SCS.

Dega explained that students are taught in their first year of archaeological classes that recovered means to take something out or remove. Dega was not sure how to proceed.

Rodrigues thought the best course of action was to invite Erik Fredericksen of Xamanek Researches to attend a future MLIBC meeting regarding the subject agenda item.

Kaahui thought the subject property should be closed off to the public until the whereabouts of the *iwi* in question is resolved. Kaahui thought a representative from the County should also attend the next MLIBC meeting.

Rodrigues said Kaahui's concern was exactly the reason why SCS was before the council, to obtain whether the council had any additional information to share and to assess the feelings of the council regarding the subject matter. Rodrigues said the County initiated an AIS by Xamanek Researches in 1999 and conducted a second AIS by contracting SCS.

Kapu thought the County should provide adequate buffers once the *iwi* is located which would also address Kaahui's concern.

V. OTHER/INADVERTENT DISCOVERIES

A. Inadvertent Discovery of Human Skeletal Remains at the Maui Lani Commercial Project Site (Safeway), Wailuku Ahupuaa, Wailuku District, Island of Maui, TMK: (2) 3-8-07: 121 Pors.

Information/Recommendation: Discussion on the discovery of human skeletal remains on March 16 and March 29, 2012.

Lisa Rotunna-Hazuka of Archaeological Services Hawaii (ASH) introduced herself and said ASH has been monitoring the grading activities for the Maui Lani commercial project site, also known as Safeway. Rotunno-Hazuka explained her handouts and identified the burials which already had a preservation plan. ASH initially conducted 63 test trenches of the project area prior to grading activities and did not identify a single burial. ASH encountered several inadvertent discoveries as a result of monitoring the current grading activities. Grading activities revealed an old landfill which was not previously known. Rotunno-Hazuka said the boundaries of the landfill covered the entire footprint for Safeway and extended towards the entrance of Maui Lani Parkway. ASH said all the inadvertent burials are within the footprint for Safeway.

Kapu wanted to know how ASH determined the discovery was a landfill. Rotunno-Hazuka said all the trash observed so far seemed to indicate the area was a landfill.

Rotunno-Hazuka went over the minimum number of individuals (MNI) represented at each test site (TS). Rotunno-Hazuka said the MNI for TS4 was 3. The MNI for TS5 consisted of one adult. The MNI for TS6 consisted of the skeletal remains of two children. The MNI for TS7 consisted of the skeletal remains of an intact burial of a child. Rotunno-Hazuka said the burial at TS7 was below the fill and in original material. Rotunno-Hazuka said all the material from the landfill needed to be removed in order to properly compact the area which changed the original grading plans. Rotunno-Hazuka said TS5, TS6 and TS7 were encountered as a result of removing all the trash from the landfill.

Fisher wanted to know if there was a possibility the area that contained all the trash may have been a random dump site used by individuals in the past. Rotunno-Hazuka did not think the area was a random dump site given the amount of trash at the site.

Kapu wanted to know the range of depth of the landfill. Rotunno-Hazuka said the landfill was approximately 10-12 feet thick.

Fisher wanted to know what the total number of inadvertent burials were. Rotunno-Hazuka said six burials were previously disturbed and one burial was intact. Rotunno-Hazuka said ASH has been screening landfill material in the areas of TS5 and TS6 to determine if there are any in situ portions of for those burials.

Kapu wanted to know what would happen to the inadvertent burials. Rotunno-Hazuka said the council was being informed of the burials to obtain feedback. Rotunno-Hazuka wanted to know what the council's feelings were regarding the burials at TS4, specifically if the council felt the burials should be preserved in place a deeper depth beneath the concrete slab for Safeway or relocated to an existing preservation area.

Fisher wanted to know if Rotunno-Hazuka was essentially asking the council if they thought all the burials should be relocated or preserved beneath the concrete slab of Safeway to which Rotunno-Hazuka answered yes. Fisher said he was aware of burials which were preserved in place beneath roadways.

Ballao requested that the determination to preserve in place or relocate be deferred until further testing is completed and the council has more information to make more informed comments. Fisher agreed with Ballao's suggestions, especially since there was a strong possibility more burials may be encountered.

Kapu wanted to know if all the fill material would be removed. Rotunno-Hazuka said all the fill material was currently being removed in a controlled manner and ASH was also conducting additional testing to determine if more intact burials are present.

Fisher wanted to know what percentage of grading activities has been completed for the Safeway site. Rotunno-Hazuka thought approximately 70% of grading activities had been completed for the entire Maui Lani commercial site.

Kapu requested to visit the site. Ballao also requested to visit the site. Rotunno-Hazuka said they could visit the site after the meeting.

Paci asked Rotunno-Hazuka to check and make sure utilities would not be placed above the burial of TS7 should the burial be preserved in place. Rotunno-Hazuka said no major utilities would be over the burial but she needed to check on the plans for electric and plumbing.

Fisher wanted to know if removal of the trash was being screened. Rotunno-Hazuka said ASH is monitoring trash removal in the areas where the burials are located.

Kapu wanted to know what would happen to the excavated sand. Rotunno-Hazuka said some of the sand would remain on site to fill areas that were excavated beyond the original grading plans due to the removal of the landfill. Rotunno-Hazuka said some areas originally proposed grading of only two feet but now needed to be graded to depths of 22 feet to remove the trash layer. Rotunno-Hazuka said sand would be used to fill those areas.

Jocelyn Costa requested the MLIBC defer any decision on the subject agenda item until more information on the project is revealed. Costa wanted to know if the project had a coroner and police report and if the Office of Hawaiian Affairs (OHA) had commented on the current inadvertent discoveries. Costa felt the burials discovered by ASH should not be considered an inadvertent discovery because almost everyone expected to find more burials at the Maui Lani commercial project. Costa said the definition of inadvertent meant the unanticipated discovery of burials. Costa thought everyone anticipated finding more burials at the Maui Lani commercial site if more excavation commenced. Costa also wanted to know the approximate amount of sand which had been removed from the subject project. Costa did not approve of ASH calling the trash deposit a landfill until further evidence corroborated ASH's assessment. Costa felt ASH was rewriting history and cautioned everyone about the use of proper terminology.

Claire Apana identified herself as a cultural practitioner and said she practices her culture by protecting the *iwi kupuna*. Apana said she warned the MLIBC, the developer, the planning commission and numerous other agencies the area is a burial ground. Apana wanted to know why she was not notified about the burials and did not have a council packet. Apana said she is the one that cares for the *iwi* at Maui Lani.

Kapu said all information presented to the council is public records that anyone could view at the SHPD's office. Apana felt the developer should be giving her the same information the council receives. Apana did not think the burial discoveries were unanticipated and requested the agenda item reflect the discovery as not being inadvertent. Apana wanted the item placed on the agenda as a find.

Fisher said all burials will always be a find and the only difference is whether the burial is placed on the council's agenda as a previously identified burial or an inadvertent burial.

Apana asked for the legal definition of inadvertent discovery.

Rodrigues asked Hall to give an interpretation of what is an inadvertent discovery. Hall said a person would need to identify a specific area as having a burial or else all burials found during monitoring would be an inadvertent discovery. Hall said the council is obligated to work within the framework of the law. Hall said regardless if a burial is inadvertent or previously identified; all human skeletal remains deserved to be treated in a respectful manner.

Fisher said the law is very clear on what the burial council can and can not do. Fisher said there was nothing which prevented Apana from working directly with the developer to address her concerns.

Rodrigues wanted to know what Apana was requesting. Apana requested the burials be classified as a previously identified discovery as opposed to an inadvertent discovery. Rodrigues thought the law is really clear that Apana's request could not be granted. Apana felt she has been ignored by everyone. Rodrigues said the council could not permit Apana's request because Apana's request was beyond the laws the council was bound to. Rodrigues said the laws needed to be changed if people did not like the way the laws are. Rodrigues said the council would lose respect and merit if they started making decisions outside of their capacity.

Apana asked the council again to reclassify the inadvertent burials as previously identified. Kapu told Apana that the exact location of burials needed to be made known in order for a burial

to be classified as previously identified. Kapu also recalled saying more burials would be found at previous MLIBC meetings but he did not know exactly where those burials were which is why the current burials are considered inadvertent. Kapu said people needed to be more specific when disclosing the location of burials and not make general statements.

Apana said the council should not have to be put in a position to decide whether the burials should be relocated. Apana felt the footprint for Safeway should be relocated and a more detailed AIS be conducted. Apana hoped the council will make the right decision.

The MLIBC chair called a brief recess at 10:50am and reconvened the meeting at 10:59am.

Rotunno-Hazuka said ASH believed an inadvertent burial is just as important as a burial that is previously identified. Rotunno-Hazuka said a burial does not lose any sensitivity or diminish in significance because it is classified as an inadvertent discovery. Rotunno-Hazuka said she could have requested the burials be relocated from the SHPD weeks ago, but didn't because she wanted to work with the SHPD and the MLIBC and get a clearer picture on whether additional burials had an in situ component. Rotunno-Hazuka said she would meet with council members after the meeting for a site visit and update the entire council at a future MLIBC meeting.

Rodrigues wanted to know why the fill layer at the commercial site was being removed. Rotunno-Hazuka said the footprint for the entire commercial site was lowered because residents wanted to reduce the amount of noise that would be generated from the commercial site. Rodrigues asked if the current situation was the result of mitigating another situation to which Rotunno-Hazuka said absolutely.

B. Burial Council Issues

Information/Recommendations: General discussion on issues facing the Maui Lanai Islands Burial Council

Fisher thought the council should address tightening the language regarding inadvertent discovery versus previously identified at a future meeting with OHA. Fisher was not sure if or when the next meeting with OHA and all the other chairs and vice-chairs of the burial councils would be.

Kapu said there would be a meeting regarding the drafting of a new preservation plan for the SHPD. Rodrigues explained that every State had a preservation plan that supposed to be updated every five years. Hall said there should be a draft version of the plan but none was available. Hall suggested everyone review the old State plan to familiarize themselves. Hall said the consultant responsible for drafting the plan is not a cultural or historical preservation organization. Rodrigues said the old State plan is on SHPD's webpage.

VI. ANNOUNCEMENTS

Fisher said there was a site visit scheduled for Saturday (April 28) to assess the condition of a rare species of *naupaka*. Fisher said the site visit was part of the plant prevention extinction program and wanted to know if any council members felt the site visit should be postponed because he was unable to attend or if any council members wanted to go on the site visit themselves.

Kapu announced the next meeting date was Wednesday, May 30, 2012.

Rodrigues announced that Kalani Ho-Nikaido had a nine pound, four ounce baby boy.

VII. ADJOURNMENT

The meeting was adjourned at 11:17am.

Respectfully Submitted,

Kawika Farm