

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MINUTES
OAHU ISLAND BURIAL COUNCIL MEETING

DATE: Wednesday, May 8, 2013
TIME: 10:00am
PLACE: Department of Land and Natural Resources
Kalanimoku Building-Board Room
1151 Punchbowl Street
Honolulu, Hawaii 96813

ATTENDANCE:

Members: Hinaleimoana Wong-Kalu, Chair
Pokii Magallanes
Chuck Ehrhorn
Shad Kane
Kali Fermantez
Aaron Mahi

Staff: Kawika Farm, Burial Sites Specialist
Susan Lebo, Archaeologist

Absent: Danna Holck Excused
Steve Hoag Excused
Jonathan Scheuer Excused

Guest: Mana Caceres Sheila Valdez
Kaanohi Kaleikini JR Keonekapu Williams
Kalani Asam Amelia Kelly
Lenneth Lorenzo Umi Sexton
Mapuana Lukela Keawe Kapu
Kalehua Caceres JW Williams
Josh Rivera Duane Medeiros
Kaleo Patterson Gary Omori
Nicki Pakelo Natasha Baldauf
Lani Maa Lapilio Deldrene Herron
Hal Hammatt Ray Iwamoto

Haaheo Guanson
Donna Makaiwi
J Aipa-Germano
Jean Rasor
Calvin Lui
George Williams
Mapuana de Silva
Alani Apio

Kanaloa Koko
Bryan Nakamura
Matt McDermott
Deborah Lui Anderson
Glen Kila
Kihei de Siliva
Kahu Manu
Lopaka Asam

I. CALL TO ORDER

The Oahu Island Burial Council (OIBC) chair, Hialeimoana Wong-Kalu called the meeting to order at 10:15am.

II. ROLL CALL/PULE

Pokii Magallanes gave the *pule wehe*. OIBC members Wong-Kalu, Kali Fermantez, Chuck Ehrhorn, Shad Kane, Aaron Mahi, and Magallanes introduced themselves. From the State Historic Preservation Division (SHPD) Kawika Farm and Susan Lebo introduced themselves.

III. APPROVAL OF MINUTES

September 12, 2012

Wong-Kalu informed the audience that September's minutes were notes and not actually minutes as the OIBC did not have quorum on that day. The OIBC would not be approving the notes of September.

November 14, 2012

Mahi moved and Kane seconded to accept the minutes of November 14, 2012.

VOTE: ALL IN FAVOR. Motion carried unanimously.

October 10, 2012

Magallanes asked that the spelling of his name be corrected.

Kane moved Mahi seconded to accept the minutes of October 10, 2012.

VOTE: ALL IN FAVOR. Motion carried unanimously.

April 10, 2013

Kane moved and Ehrhorn seconded to accept the minutes of April 10, 2013.

VOTE: ALL IN FAVOR. Motion carried unanimously.

IV. BUSINESS

A. Guidance from Attorney General Regarding Questions from the Oahu Island Burial Council's April Meeting.

Information/Discussion/Recommendation(s): Guidance on time period claimants must establish genealogical connections to when seeking recognition as descendants and legal implications regarding Honolulu Authority for Rapid Transportation's (HART) hiring of a genealogist.

Linda Chow of the attorney general's (AG) office said she was asked to answer two questions. The first involved the AG's opinion on whether there were any legal implications to HART hiring its own genealogist. Chow was of the understanding the genealogist hired by HART was available to assist any claimant seeking recognition as a cultural descendant through the process completely independent and outside of the review conducted by SHPD. Chow did not see any conflict so long as claimants working with HART's genealogist did so voluntarily. Chow said the claimant could always choose to go through the normal review process with SHPD.

Ehrhorn was of a different understanding at the last OIBC meeting and was concerned HART's genealogist was doing the work of SHPD. Chow said HART's hiring of a genealogist was no different from HART hiring any other consultant. Chow did not see any conflict as long as SHPD retained its own independent review process and drafted the formal recommendation for the OIBC.

Fermantez wanted to know what prompted HART to hire its own genealogist. Farm said SHPD had a backlog of applications filed by claimants and discussed the option of HART contracting its own consultant to assist potential claimants with organizing their information so SHPD would have an easier time conducting its review.

Kaanohi Kaleikini wanted to know if HART's genealogist made any recommendations.

Faith Miyamoto of HART did not think HART's genealogist made any recommendations on whether claimants should be recognized as cultural descendants. Farm said HART's genealogist made its own independent recommendation on whether a claimant met the standards to be recognized as a cultural descendant. Farm said HART's genealogist's independent recommendation had no impact on SHPD's review and formal recommendation. Farm said HART's genealogist's recommendation was no different from an archaeological consultant recommending preservation or data recovery for a historic site because SHPD maintains the authority to concur or not concur with a proposed recommendation. Chow did not see a legal conflict because SHPD was in no way bound to the recommendation of HART's genealogist.

Lopoka Asam wanted to know who owned the land in question and what gave the AG her authority. Chow said she represented the government. Asam wanted to know what government Chow represented. Wong-Kalu interjected and redirected the discussion as she did not think the OIBC was the proper forum to discuss sovereignty issue.

Fermantez also asked the meeting be refocused.

Kalani Asam (K Asam) echoed everything his brother said.

Mana Caceres felt SHPD should hire their own genealogist and did not think it was HART's *kuleana* to contract with a genealogist. Caceres felt it was each claimant's responsibility to

know their own genealogy and felt like certain staff of HART were actively seeking out individuals and pushing them forward as cultural descendants.

Wong-Kalu wanted to know what could be done for those individuals concerned with working with HART's genealogist. Chow said there was nothing that obligated a claimant to work with HART's genealogist and said concerned individuals could always work directly with SHPD.

Didi Herron felt the project had the right under the law to spend money on cultural monitors and/or a genealogist.

A member of the audience (unknown) had a problem with HART hiring a genealogist if the genealogist was actively soliciting claimants with the intentions of having them become cultural descendants.

HART's genealogist, Lenneth Lorenzo said all claimants that he works with come directly from SHPD and that he does not seek anyone out. Lorenzo said he meets with the claimant and submits his findings to SHPD for the division to conduct its own review. Lorenzo made it clear that he does not seek out individuals to be cultural descendants.

Farm said claimants are only forwarded to HART's genealogist with the claimant's consent.

Chow thought the second question involved how far back in time a claimant needed to trace their connection in an *ahupuaa* to be recognized as a cultural descendant. Chow said the process originally starts with a claim seeking lineal recognition to a burial which meant a claimant would need to establish genealogical ties to the time period of the subject burial in order to obtain lineal recognition. In situations where a claimant fails to establish a lineal connection to the subject burial, the claimant by default then becomes eligible for recognition as a cultural descendant. Chow said cultural recognition would also need to establish genealogical ties to at least the same time period as the subject burial.

Fermantez wanted to know who determined the time period to which Chow understood was the archaeologist.

Kane wanted to know if a claimant was recognized as a lineal descendant to a burial in a particular area, if that claimant would be recognized as a lineal descendant to all burials in that area to which Chow answered no. Kane wanted to know if a claimant is recognized as a cultural descendant to a particular lineage in a particular time period, whether that claimant's recognition is for that time period only or for all time periods. Chow thought the claimant's recognition would be to the specific time period only and asked Farm to weigh in on the question. Farm suggested the matter be discussed in executive session.

Ehrhorn moved and Fermantez seconded to move into executive session at 11:05am.

VOTE: ALL IN FAVOR. Motion carried.

Mahi moved ad Fermantez seconded to move out of executive session at 11:37am

VOTE: ALL IN FAVOR. Motion carried.

Chow expanded on her earlier interpretation of how far back a claimant needed to establish genealogical ties. Chow said if a burial dated back to 1800 or 1825, then a claimant needed to

establish genealogical ties to 1800 or 1825. Chow said claimants that could only establish genealogical ties to 1900 would not meet the standards for cultural recognition.

Alani Apio felt the rules or guidance was problematic because he was not sure how the specific time period of a burial could be ascertained if SHPD did not allow DNA testing on human skeletal remains. Apio said not all finds of human skeletal remains had enough contexts to accurately determine the time period those remains may have existed. Farm thought there were other ways to help ascertain probable time period and asked SHPD's archaeology branch to weigh in. Lebo said context could be dated by stratigraphic layers especially if a layer contained any cultural content or artifacts. Lebo said radio carbon dating could be obtained from faunal remains or wood. Lebo said examination of radio carbon dating or types of artifacts could help identify a potential time period.

Kaleikini said SHPD had authorized osteological testing of *iwi* in the past. Kaleikini said two burials along the rail route were found in flex position which meant the burial could be from the 1600 or 1700.

Kaleo Patterson felt some claimants may not have the financial resources to obtain the genealogical assistance necessary to meet the standard of a cultural descendant. Patterson wanted the audience to be aware that sometimes genealogical research involved cost which not all claimants can afford.

Kane wanted to know if there are less costly options available.

Wong-Kalu asked Hal Hammatt of Cultural Surveys Hawaii archaeology to weigh in on the discussion. Hammatt said examination of stratigraphy is relatively inexpensive but very inaccurate as any time period obtained would be accompanied with a plus/minus of two hundred years. Hammatt said archaeological techniques are far from perfect.

Wong-Kalu said establishing a connection to any *iwi* is not an issue to be taken lightly or something to play with. Ideally a claimant should be able to take their genealogy as far back as they are able to. Wong-Kalu said every claimant coming before the council for recognition better know their *kuleana*. Wong-Kalu acknowledge there are other issues regarding sovereignty or personal fighting amongst particular groups or individuals, but reminded the audience the burial council's meeting was not the place for those concerns. Wong-Kalu wanted claimants seeking recognition to fully understand the responsibility that comes with being recognized as a descendant.

Kaleikini said any recognition the council affords does not necessarily end at the burial council's meeting and that a contested case could always be raised. Kaleikini said contested cases have been raised in the past.

Mahi showed the audience his copy of the Kumulipo and said there are many books at libraries that are free for public use. Mahi encouraged the audience to spend the time to research their genealogy.

K Asam said the Kumulipo is the Hawaiian's baibala and thanked Mahi for sharing his book.

Wong-Kalu said agenda items B through N are all items up for recognition and read the disclosure onto record informing claimants of their right to go into executive session to discuss sensitive information.

B. Department's Recommendation to Recognize Bruce Yoshio Keaulani as a Cultural Descendant to Unidentified Human Skeletal Remains Found in Phase IV City Center for Honolulu Authority for Rapid Transportation Project, Honolulu Ahupuaa, Kona District, Island of Oahu, TMK: 1-7-002:026, 2-1-051, 2-1-050:067 & 2-3-002:001.

Discussion/Determination: Discussion and determination to recognize above individual as a cultural descendant to unidentified human skeletal remains at above project.

Wong-Kalu read SHPD's recommendation onto record. SHPD recommended the above claimant be recognized as a cultural descendant.

Bryan Nakamura said he represented Bruce Keaulani who was attending to an emergency.

Ehrhorn felt the matter should be deferred until the council could have direct discussion with the claimant.

Wong-Kalu acknowledged SHPD's recommendation that the above claimant be recognized as a cultural descendant but agreed the claimant should be present for discussion with the council.

Patterson said Keaulani was on his way to the meeting.

Wong-Kalu said the council would move on and revisit the matter if Keaulani attended the meeting.

C. Department's Recommendation to Recognize Euel Ray Kaleihau Kamauu as a Cultural Descendant to Unidentified Human Skeletal Remains Found in Phase IV City Center for Honolulu Authority for Rapid Transportation Project, Honolulu Ahupuaa, Kona District, Island of Oahu, TMK: 1-7-002:026, 2-1-051, 2-1-050:067 & 2-3-002:001.

Discussion/Determination: Discussion and determination to recognize above individual as a cultural descendant to unidentified human skeletal remains at above project.

Wong-Kalu read SHPD's recommendation onto record. SHPD recommended the above claimant be recognized as a cultural descendant. Wong-Kalu wanted to know if Euel Ray Kaleihau Kamauu was present to which he was not. Wong-Kalu said the council would move on and revisit the matter if Kamauu is able to appear before the council.

Fermantez moved Mahi seconded to defer the matter until the next OIBC meeting.

VOTE: ALL IN FAVOR. Motion carried.

D. Department's Recommendation to Recognize Baldo Alfred Kaleo Patterson, Jordan Patterson and Josiah Patterson as Cultural Descendants to Unidentified Human Skeletal Remains Found in Phase IV City Center for Honolulu Authority for Rapid Transportation Project, Honolulu Ahupuaa, Kona District, Island of Oahu, TMK: 1-7-002:026, 2-1-051, 2-1-050:067 & 2-3-002:001.

Discussion/Determination: Discussion and determination to recognize above individuals as cultural descendants to unidentified human skeletal remains at above project.

Wong-Kalu read SHPD's recommendation onto record. SHPD recommended the above claimants be recognized as cultural descendants.

Kane wanted to know if the council would be consistent and defer the matter since not all the claimants were present. Wong-Kalu said the primary claimant was present and felt the council could hear the matter.

Patterson was not sure what the procedure was regarding whether claimants are advised they needed to be present at OIBC meetings. Patterson said the council in the past afforded recognition to lists of people that were not present at the OIBC meeting. Patterson felt there was some ambiguity occurring at the meeting.

Wong-Kalu wanted to know if the claimants were advised to attend the OIBC meeting. Farm said not every single claimant was notified but usually the primary claimants are sent a copy of the agenda. Farm said claimants are not required to come before the council during deliberation of their claim for cultural recognition, but felt the council had a right to cross examine claimants.

Mahi felt the current recognition should be heard and considered by the council. Mahi wanted to know what prompted Patterson to seek cultural recognition.

Patterson said he has been involved with *iwi kupuna* for many years and as a *kahu* has dealt with burials for many years as well. Patterson felt he had a responsibility to be aware of his genealogy as an employee of HART. Patterson felt it was important for him to be recognized as a cultural descendant so he could better assist other families and claimants through the process. Patterson said the project needed to work with the Hawaiian community and better understand some of the concerns of the Hawaiian community. Patterson said part of his *kuleana* involved outreach within Hawaiian communities.

Wong-Kalu wanted to know what HART's position regarding Patterson's claim seeking cultural recognition was. Miyamoto said HART cannot prevent Patterson from seeking recognition as a cultural descendant.

Wong-Kalu said Patterson is an employee of HART, the president of Pacific Justice and Reconciliation (PJRC) and was now seeking recognition as a cultural descendant. Wong-Kalu said Patterson would be wearing three hats if afforded cultural recognition and wanted to know how and who he would be representing at future meetings.

Patterson ideally would like to wear all three hats but said cultural recognition was up to the council.

Wong-Kalu said members with conflicting interest for other projects normally recuse themselves from participating in the subject discussion and wanted to know how Patterson would handle future meetings involving HART's rail project.

Patterson felt it was up to the council to figure out. Patterson said PJRC was an organization he has been the head of for over 25 years. PJRC has three peace centers on the island with one office in Chinatown. PJRC's Chinatown office has its own leadership and program and it was the Chinatown office that engaged the project as a Native Hawaiian consulting party. Patterson said the executive director of PJRC's Chinatown office was present at the meeting. Patterson said he occasionally advised the Chinatown peace center but that the peace center primarily drove consultation efforts on its own. Patterson suggested the council discuss further matters with the Chinatown office executive director. Patterson did not envision himself having an aggressive role as a cultural descendant at consultation meetings. Patterson thought his role

would involve providing support to families, the meetings and the process in general. Currently Patterson is unable to be involved with any of the meetings for recognized descendants.

Wong-Kalu felt there would be a conflict of interest. Wong-Kalu felt Patterson needed to clarify at future meetings whether he is representing himself as a cultural descendant or the rail project as an employee of HART or as a member of PJRC.

Fermantez thought Patterson's situation may become more complicated as he may unnecessarily be taking on too much responsibility. Fermantez said Patterson's recognition as a cultural descendant may end up being to his disadvantage. Fermantez thought simply the appearance of conflicting interest may be to Patterson's disadvantage.

Patterson thought he would become active with the burial treatment process and appreciated the council's help with defining his role. Patterson was willing to participate with the burial treatment process only as a cultural descendant. Patterson said he would work with HART to better define what role he will have as an employee.

Caceres thought affording Patterson recognition as a cultural descendant may have a greater negative impact that would encourage other developers to have their employees of Hawaiian ethnicity seek out recognition as a cultural descendant. Caceres felt developers could sway favorable outcomes if they had numerous recognized cultural descendants on staff. Caceres did not want to see a situation where a bunch of recognized descendants that is employed by a project all advocate for relocation of *iwi kupuna*

Ehrhorn thought Caceres' concerns were already happening and did not think there was anyway to stop developers from doing that.

Kaleikini opposed affording Patterson recognition as a cultural descendant because she felt Patterson advocated for desecration of *iwi* at other projects. Kaleikini wanted the matter deferred. Kaleikini felt that Kuihelani was not from the same time period as the flex *iwi kupuna*.

K Asam did not like the comments made by Kaleikini.

Kanaloa Koko testified to knowing Patterson for over ten years and has never witnessed him desecrate any *iwi*. Koko was unaware of any law that prevented Patterson from wearing multiple hats. Koko strongly supported Patterson's recognition as a cultural descendant.

Kekai Opio wanted to know if the time period Kuihelani resided in Honolulu was during the pre-contact era. Opio said he was told by SHPD he needed to establish genealogical ties to the pre-contact era. Farm said SHPD felt Patterson established genealogical ties to reasonably be related to the subject human skeletal remains.

Asam did not like the western process Hawaiians were being subjected to and felt it divided the people.

Kaleikini said the *kuleana* to *malama iwi kupuna* was not for everyone.

K Asam supported the recognition of Patterson as a cultural descendant.

Koko reiterated his support for Patterson's recognition as a cultural descendant.

Ehrhorn moved and Fermantez seconded to approve the recommendation of SHPD.

Ehrhorn did not see how the council could deny Patterson recognition as a cultural descendant but thought the road ahead of Patterson would be very challenging. Fermantez echoed Ehrhorn's comments and felt Patterson was unwise in seeking recognition as a cultural descendant.

VOTE: Magallanes-Aye, Mahi-Aye, Kane-Aye, Fermantez-Aye, Ehrhorn-Aye, Wong-Kalu-Nay. Motion carried.

Wong-Kalu looked forward to seeing Patterson at future meetings advocating for *iwi kupuna* as a cultural descendant. Wong-Kalu said the OIBC recognized Patterson and his sons as cultural descendants.

It was announced that Bruce Keaulani arrived at the meeting.

E. Department's Recommendation to Recognize Dixie Kuulei Afoa Kalamau as a Cultural Descendant to Unidentified Human Skeletal Remains Found in Phase IV City Center for Honolulu Authority for Rapid Transportation Project, Honolulu Ahupuaa, Kona District, Island of Oahu, TMK: 1-7-002:026, 2-1-051, 2-1-050:067 & 2-3-002:001.

Discussion/Determination: Discussion and determination to recognize above individual as a cultural descendant to unidentified human skeletal remains at above project.

Wong-Kalu read SHPD's recommendation onto record. SHPD recommended the above claimant's recognition be deferred pending the submittal of additional information. Wong-Kalu asked if the claimant was present to which no one responded.

Ehrhorn moved and Fermantez seconded to defer the recognition of the subject claimant.

VOTE: ALL IN FAVOR. Motion carried unanimously.

F. Department's Recommendation to Recognize Brandy Kalehua Kamohalii Caceres as a Cultural Descendant to Unidentified Human Skeletal Remains Found in Phase IV City Center for Honolulu Authority for Rapid Transportation Project, Honolulu Ahupuaa, Kona District, Island of Oahu, TMK: 1-7-002:026, 2-1-051, 2-1-050:067 & 2-3-002:001.

Discussion/Determination: Discussion and determination to recognize above individual as a cultural descendant to unidentified human skeletal remains at above project.

Wong-Kalu read SHPD's recommendation onto record. SHPD recommended the above claimant be recognized as a cultural descendant.

Brandy Kalehua Kamohalii Caceres provided testimony supporting her recognition as a cultural descendant.

Fermantez moved and Ehrhorn seconded to recognize the above claimant as a cultural descendant.

VOTE: ALL IN FAVOR. Motion carried unanimously.

G. Department's Recommendation to Recognize Robert "Lopaka" Kala Asam and Norman "Kalani" Asam as Cultural Descendants to Unidentified Human Skeletal Remains

Found in Phase IV City Center for Honolulu Authority for Rapid Transportation Project, Honolulu Ahupuaa, Kona District, Island of Oahu, TMK: 1-7-002:026, 2-1-051, 2-1-050:067 & 2-3-002:001.

Discussion/Determination: Discussion and determination to recognize above individuals as cultural descendants to unidentified human skeletal remains at above project.

Wong-Kalu read SHPD's recommendation onto record. SHPD recommended the above claimants be recognized as cultural descendants. Wong-Kalu said the illegal occupancy issues shared by the Asam brothers should not be brought up at future OIBC meetings if they are both subjecting themselves to the western process of seeking recognition as cultural descendants. Wong-Kalu said the brothers cannot criticize the AG and the process if they want to utilize the process for recognition as cultural descendants.

Asam said he is a kanaka maoli and was present to speak on behalf of the *iwi*. Asam said anyone that did not agree with his position needed to deal with it themselves.

K Asam said he was not from Fuckville and had to study being Fucked by the oppressor in other parts of the world.

Kaleikini said K Asam should be removed from the meeting.

Kane said K Asam was out of order.

Shouting ensued between Asam, K Asam and Kaleikini. Asam said he would not play games with the illegal occupier.

Kane exited the meeting at 12:02pm.

Comments from the public called for the meeting to end. Wong-Kalu adjourned the meeting as it became too disruptive.

Meeting adjourned at 12:05pm.