Summary of Public Comments on the Advisory Council on Historic Preservation's Draft "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects"

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Participants: Chairman John L. Nau, III (ACHP); Valerie Hauser (ACHP); Javier Marques (ACHP); Laurie Luciano (USAG); Jeffrey Dodge (USN); Danielle Beirne (Ko'olaulou HCC/Friends of Kahana); Alice U. Greenwood (OIBC); Lisa C. Oshiro (Council for Native Hawaiian Advancement); Kaiini Kaloi (DOI); Apolei Kaha'i Bargamento (Hawaiian Civic Club of Honolulu); Wilma Keawe (Koamana); Jace McQuiney (Oahu Island Burial Council);Kehau Kruse (Oahu Island Burial Council); Pop Fujishiro (Aha Keekanuloleo Ike Hia); Tom Lenchanko; Manu Mook; Kai Markell (OHA); Lance Foster (OHA); Alan T. Murakami (Native Hawaiian Legal Corp.); Dexter K. Kaiawa (attorney and Hale Mua); Maria "Kaimipono" Orr (Kahunana; Ike Aina; Haini Civic Club Wakai; KLMA); Kelila Jaffe (Waimea Valley Audubon); Hinano Rodrigues (HI-SHPO); Melanie Chinen (HI-SHPO); Piilani Chang (HI-SHPO); Kaiwi Nui (Native Hawaiian Advisory Council – OHA); June Noelani Cleghorn (Marine Corps Base Hawaii); Nalani Olds (Olds 'Ohana); Van Diamond (Diamond 'Ohana); Sabine Deiringer (Kalei Maile HCC); Bobi Olmos Arnold ('Iolani Palace); Keehau Abad; Fred Cachola (NAAG / Ike Aina)

Comments:

Principle 1:

- (Alice Greenwood): What does "unless absolutely necessary" mean in this principle? The standard should be some kind of imminent danger. Otherwise, things are left too much up to the judgment of an agency, giving that agency an avenue to get out of responsibility (for example, "the road is coming through and has to come through here (no option), so we'll go ahead"). Please change to "imminent danger."

- (Tom Lenchanko): Regarding the statement that "… Federal agency has fully considered avoidance and/or preservation in place": why should the agency be the one to unilaterally determine what to do? It should be the relevant o'hana (family). Need substantive consultation with the descendants. What gives the Federal agency the authority to determine what is done with my family's remains?

- (?): Regarding "avoidance," there are issues regarding indirect impacts from such things as contamination, even though a site is not directly impacted.

- (?): No confidence in people not related to the remains (agencies) making decisions on what is "absolutely necessary" or what is encompassed by "full consideration."

- (?): Take the high ground and strike the words "knowingly" and "unless absolutely necessary" out of principle 1. When burial sites are impacted, whether negligently, knowingly or otherwise, it still has the same impact. This is a non-binding policy anyhow, so why not take the high moral ground? Also, exceptions, clarifications and guidance could come later. But make this the principle that sets the tone.

- (?): Figure out a way to tie principles 1 and 3, since they are closely related and the importance of what is said in principle 3 is such that it should be stated upfront.

Principle 2:

Principle 3:

- (Tom Lenchanko): Consultation is never done up front. It should. Also, the families that were consulted are never listed. They should be. However, the problem is that there is no consultation. Need to respect what the relevant families want.

- (?): Notice about a project is not consultation. Don't come with alignments already decided.

- (? and Alice Greenwood): There's a need for cultural monitors, so that relevant people know about things before they happen and not after the fact. Cultural monitors should disseminate and share information in writing so everyone can get timely information.

Principle 4:

Principle 5:

Principle 6:

- (?): Add specific requirement of a thorough and early identification effort.

- (?): Suggest Federal agencies to voluntarily follow State law, even where it does not apply, when the State law is stronger in protecting burial sites.

Principle 7:

- (Tom Lenchanko): Problem is that for the military, if a site is not marked ahead of time, it's like it was never there. Bombing/shooting practice then takes place disregarding the sites that may be out there. Moreover, there is then unexploded ordnance out there.

Principle 8:

Goals:

Scope/Applicability:

- (Fred Cachola and others): Why does the document use "should" so much as opposed to shall? People want things that are binding. There is the thinking that if it something is discretionary, it won't be followed.

NAGPRA & other laws:

- (?): When exactly would Hawaii State law not take over (and therefore the policy would actually affect matters)?

Definitions:

- (?): The key point is: what are Native Hawaiian organizations? Are o'hanas (families) Native Hawaiian organizations? Is a corporate entity required for a Native Hawaiian organization? If o'hanas are not Native Hawaiian organizations, this policy will be fairly meaningless to Native Hawaiians since a lot of them are not organized in a corporate entity. Need to define the term to help Native Hawaiians.

Documentation:

General Positive:

General Negative:

- (?): Why are you helping Hawaiians? This is not your fight. Nervous due to what is done with iwi (remains) by Federal agencies.

New Policy Needed:

Consultation Issues:

Info Access:

Recommendations:

Eligibility:

Miscellaneous:

- (Fred Cachola): Make sure you edit the document (both the policy and the explanatory material) so that the term "Hawaiian" is correctly spelled without an apostrophe (i.e., the correct spelling is "Hawaiians"; the incorrect spelling we used a few times was "Hawai'ian").

- (Fred Cachola): The preamble makes it clear that the policy applies to all burials. However, one size does not fit all. Hawaiians have specific issues and ways to treat their iwi (human remains).

- (?): Need to be sensitive to Native Hawaiian culture. Not one word in the policy reflects such sensitivity. Native Hawaiians need to look after their ancestors. They have experienced desecration. Preamble needs to talk to the uniqueness of the Hawaiian culture. Our core cultural identity is tied to our iwi (human remains). Our culture is tied to the land because there is iwi in it, and it imbues that land with our ancestors, with their mana. Any diminishment of that land and iwi, diminishes us as people. Recognize the special case of Hawaii, where the United States overthrew a government.

- (?): Add a principle 9: "Federal agencies shall consult with Indian tribes and Native Hawaiian organizations to identify possible burial sites at the earliest stage of considering an undertaking to increase the ability of agencies to avoid burials in any undertaking." This tells you how to avoid sites.

Statement by Mayor Michael Belsky (09/11/06)
Segal Estate
405 Sheridan Road

- The City Council has been, and remains concerned about the appropriate use, and the appropriate historic preservation of the Segal Estate property at 405 Sheridan Road.

- I assure you that the City has been, and will continue to be, doing everything legally possible to ensure that our development standards and our historic preservation standards are met.

- The City has codes and ordinances in place that will ensure that the preservation and protection of the property will be fully considered before any demolition or development is allowed to take place on the property:

    - The City has one of the strongest and most progressive Historic Preservation Ordinances of any community in the Chicago area, and perhaps the entire state.

    - The City has very protective ordinances that would require public hearings and City Council review prior to any redevelopment of this property.

- The City Council has been pro-active in its protection of this property. In addition to ensuring that its general codes and ordinances provide the appropriate protections, the City has taken specific action with respect to the Segal Property:

    - More than a year ago (on August 8, 2005) the City Council adopted a resolution initiating the historic landmark designation process with respect to the structures and the Jens Jensen landscaping on the property.

    - When this action was challenged by the Federal Government under the Supremacy Clause in Federal Court, the City worked out a very favorable and protective agreement with the US Attorney:

- The Federal Government agreed that, so long as it owned the property, it would not remove, demolish, or destroy any building or any of the Jens Jensen landscaping on the property

- The Federal Government also agreed that the same prohibition would apply to any purchaser of the property, for a period of 40 days following the sale of the property. *(the purpose of this is to enable the City to initiate the historic preservation process. Under our Code, the initiation of the process causes the property to be a "regulated structure," and that effectively prevents demolition from occurring during the process, which could extend well beyond the 40 days)*

- At this time, there have been NO development plans that have been reviewed by the City Council or the Plan Commission.

    - As is common in any development process, prospective purchasers have met with our staff to discuss our zoning process. *No assurances of any kind have been made to any developer.*

- If ever a development plan is submitted that depicts anything other than the use of the property as a single family dwelling, that plan will require review and approval by the City.

    - The review and approval process will be a public process, as is required by the City's zoning and subdivision codes, and all surrounding property owners will receive notice of the public hearings and meetings.

- Further, if the property is sold, and the City initiates the historic preservation process within the 40 day period after the closing (as we intend to do), the City will make sure that all surrounding property owners receive notice of the meeting of our Historic Preservation Commission.

- If you are not a surrounding property owner, but would like to be on our list to receive notice of a public hearing about this property (if and when the Federal Government sells it), please give your name to our Director of Community Development, and City Staff will make sure you are notified.