

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 28, 2010

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LAND
STATE PARKS

Chiyoume Fukino, M.D.
Director, Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

Re: Disinterment Permits for Kawaiaha`o Church relating to construction of its
Multi-Purpose Center (Likeke Hall)

Dear Dr. Fukino:

This is to confirm that the Department of Land and Natural Resources (DLNR) has reviewed plans pertaining to Kawaiaha`o Church's construction of a new multi-purpose center which includes excavation on its grounds and which will involve the disinterment of burial remains found within its excavation site. In accordance with letters exchanged between Kawaiaha`o Church and DLNR¹, Kawaiaha`o Church has already completed, with the exception of condition 1, below, which requires ongoing consultation with known descendants, the following conditions (quoted from those letters) to the satisfaction of the DLNR:

Phase I—consultation

1) Kawaiaha`o Church shall consult with any known descendants, in addition to Church members and your Na Iwi Committee for their input on relocation and reinterment. The Church has been conducting consultations with respect to the ongoing trenching and infrastructure work and will need to continue in these efforts with other parties;

Outreach is the most important issue and needs to be dealt with first; this is why the process worked in the Nawiliwili case. In our June 16th meeting we asked you to include the Goras in consultation. Additionally we received a request from Manny Kuloloio to be considered a cultural descendant. His claim will be evaluated for the 69 inadvertent burials, and we request that he be added to your list of people to consult with. Your outreach efforts need to be as broad as possible and cannot be limited to your congregation or to just the families that are known to have burials in the area. You may find additional cultural descendants once your ad has been published and these folks need to be included as well.

¹ See the letter from Laura H. Thielen to Donald Caindec dated June 11, 2009, letter from Don Caindec and Frank Pestana to Laura H. Thielen dated June 19, 2009, letter from Nancy A. McMahon to Don Caindec dated June 29, 2009, attached, and response from Don Caindec to Pua Aiu dated September 13, 2010, attached.

SHPD requests that you provide us with a complete list of everyone consulted as part of your weekly reports.

- 2) Publish a notice in newspapers of general circulation in the State, requesting persons having information concerning the cemetery or persons buried in it to report that information to the State Historic Preservation Division and Kawaiaha'o Church, just to make sure all interested persons have a chance to respond who may not be current members of the Church or are familiar with the cemetery. This can include public meetings with respondents;
- 3) Provide historical documentation research on the project area;
- 4) Turn over to the department all relevant historical records, published notice, responses to notice, Na Iwi Committee Minutes, Church records of previous burials in the area, previous disinterment records, and consultant records. This will be an historical documentation appendix to a final report;

Because the next phase, the "Low Impact" phase, cannot be completed until a disinterment permit is issued as it involves excavation, this letter is to notify the Department of Health that the DLNR has approved Kawaiaha'o's plan for low impact excavation as follows²:

Phase II—Low Impact

5) It is our understanding that the purpose of using the ground penetrating device (GPR) was to detect human burials to ensure they are respectfully disinterred. Kawaiaha'o has decided to excavate the entire proposed construction site to a depth of four feet to ensure that all human burials are removed from the construction site and to ensure that the site is clear of all burial remains. Pursuant to this determination, SHPD and Kawaiaha'o agreed that there was no need for additional GPR on the site. Since there will be no additional GPR conducted on the site, there was no need for a publication of the GPR survey results. However, SHPD feels very strongly that there should be full public disclosure of all burial remains disinterred from the cemetery and believes that regular updates at the publicly held O'ahu Island Burial Council (OIBC) meetings should provide public disclosure, as well as an opportunity for the public, including family members, to ask questions.

6) CSH [Cultural Surveys Hawaii] shall mark all potential anomalies. After outreach the next most important issue is how the burials are handled by the archaeologist. If there is a possibility of finding something there, the archaeologist needs to work carefully around this area. This is why all potential anomalies will need to be flagged and verified by an independent archaeologist. Kawaiaha'o will report its findings to SHPD prior to any excavation.

² See the letter from Don Caindec and Frank Pestana to Laura H. Thielen dated June 19, 2009.

7) Kawaiaha`o had agreed that excavation would occur in sections with a width of no greater than ten (10) feet. All excavation will be done by CSH and will be done by hand. SHPD will be included in a pre-construction meeting prior to the commencement of any excavation.

It is the understanding of the DLNR that given the DLNR's approval of Kawaiaha`o's plan for excavation, the DOH is prepared to issue a blanket disinterment permit to Kawaiaha`o Church upon its application and payment of a deposit of fees to be applied toward disinterment of any other remains found in the future at the project. The remains covered by the blanket permit are to be re-interred in the same place and at the same time as the sixty-nine inadvertently discovered remains previously identified at the project which have been administered as set forth in our prior approvals dated January 27, 2009, February 23, 2009, March 13, 2009, and May 22, 2009.

As each of our agencies is aware, there is a pending lawsuit³ against Kawaiaha`o Church, the State, and its agencies relating to the disinterment of the remains at the site. As of this date, neither the State of Hawaii, the Department of Land and Natural Resources, nor the Department of Health have been enjoined from issuing any permits or approvals allowing for ground disturbing activities on the Kawaiaha`o Church property. While we understand that the lawsuit seeks to stop further disturbance of human remains at the site, the present status of the case does not prevent the State or its agencies from issuing permits.

Given the foregoing, and should you concur with the procedures set forth in this letter, it is requested that upon the completion of your review process, and subsequent issuance of any permit, notice that such permit has been issued be transmitted to Kawaiaha`o Church and the Plaintiff in the litigation, through her counsel so that she may take any action she deems appropriate.

Very truly yours,



Laura H. Thielen,
Chairperson

Enc.: a/s

³ The pending lawsuit is Hall v. DLNR, et al, Civil No. 09-1-1828-08 (KKS). It is our understanding that the other lawsuit, Kawanakoa v. Laura H. Thielen, et al, Civil No. 09-1-1633-07 (KKS), has settled and we are waiting for the Stipulation for Dismissal to be filed.