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IMAGE: CAREN DIAMOND

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## This week

### Hawaii: Behind-the-Scenes

The question of whether or not to expand tax credits for Hawaii's film industry has generated quite the debate. While supporters of the bill say that the return on the investment proves to be tenfold and that it will create local jobs, people who oppose it say that the credits will only make the rich richer, taking away funding from important social services.

### Safe For Whom?


Local farmers met with Governor Abercrombie at his office last week to talk about food safety and the future of small farms. While recent federal reform of food safety regulations has made exceptions for some farmers, many here in Hawaii say that a bill passed out of the Hawaii legislature last month—HB 667—advantages big agribusiness over small farms and will put some families out of business.


### Hawaiian Punch-Out!!

July 5: Rest and relaxation may have been on many people's post Fourth of July agenda, but Waipahu's own Brian Vilorio was up at 4:30 in the morning ready to

## Recent Comments

The last comments for **Collateral Damage**

 **PISSED**  
You think if you keep repeating 'majority of the Laie community', Most people are against...  
» 15 minutes ago

 **PISSEDOFF**  
I'm totally pissed off by Kupunas who testified for the hotel and say they didn't mind being...  
» 19 minutes ago

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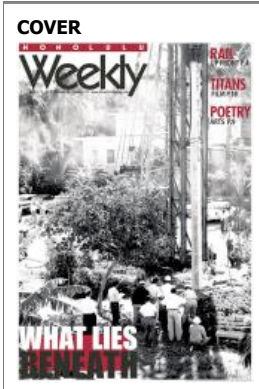


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# Cut to the bones

The state's handling of burial sites comes under fire

BY JOAN CONROW | APR 7, 2010



Standing atop seven ancient Hawaiian burials, on a lot with at least 24 more, the house that Joe Brescia is building at Naue, on Kauai's North Shore, has been the focus of protests and prayers, emotional meetings, a stand-off with police, sacred rituals, a months-long vigil and lawsuits — some of them still ongoing.



The house, now nearing completion, has become a powerful symbol of the bitter battle between development and cultural preservation in Hawaii. It's also exposed serious shortcomings in the State Historic Preservation Division (SHPD) and come to represent what some see as a deliberate attempt by Gov. Linda Lingle and her administration to undermine and circumvent the Island Burial Councils in order to facilitate development.

These issues came to the forefront on March 8, when SHPD Administrator Pua Aiu overruled a unanimous vote of the Kauai-Niihau Island Burial Council and approved a Burial Treatment Plan for the iwi on Brescia's lot.

In making the Feb. 11 motion to reject the plan, Council Vice Chairman Keith Yap said that the concrete caps placed over seven of the burials "are not appropriate, and we're still very much against any kind of building over the graves."

The Council also expressed reservations about the concept of "vertical buffers," which references the amount of space between Brescia's house and the iwi beneath it, and requested details about how his septic system, leachfield and landscaping could impact other burials on the site. Additionally, the Council asked Brescia to disclose his plans for providing access to the iwi by lineal descendants.

When asked why she had approved the Burial Treatment Plan after the Council specifically asked for more information and changes, Aiu replied, "It didn't need any more revisions."

Native Hawaiians and members of the preservation community were outraged.

"What SHPD has done is undercut the authority of the Council to protect the burials when they've made a decision to preserve in place," said Dana Naone Hall, former chairwoman of the Maui-Lanai Island Burial Council.

Aiu's approval marks the first time SHPD has overridden a Burial Council and permitted construction on a previously identified burial site, said Alan Murakami of Native Hawaiian Legal Corp., which is litigating the Brescia case: "They just absolutely caved in response to development pressure. What is the point of having a Burial Council if they can only determine how high or how wide the buffers can be? That's a huge constriction on the power the Burial Councils previously had."

Aiu defended her decision, saying that since SHPD is "not allowed to do a taking" of private property, the agency had "very little wiggle room" in attempting to site the house Brescia wanted on a relatively small lot widely dispersed with numerous iwi.

Murakami disputed that contention, saying the state statute does include provisions for acquiring such properties. "It's an option that nobody wants to explore," he said.

partake in a 7-mile jog. Following a workout and spar session, in preparation for his title fight against WBO Flyweight Champion, Julio Cesar Miranda, the "Hawaiian Punch" spoke with the Weekly from Los Angeles about why he doesn't talk trash before a fight, what it's like to play the underdog role and what it will take for the two-time world champion to get title number three.

### Permission to Pyro

Nationally, the Fourth of July marks our country's day of independence. Locally, last week's observance marks the first fireworks-filled holiday since the newly passed fireworks ban in early January.

### Collateral Damage

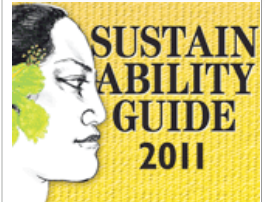
In the mid-1960s, the Laniloa Lodge courtyard-style hotel on Kamehameha Highway in Laie was a popular lodging spot near the shoreline for faculty, friends and family members of students from Brigham Young University (BYU), as well as visitors seeking to escape the crowds of Waikiki. Over the years, the 49-room, two-floor hotel—owned by the Mormon Church—had fallen into disrepair.

### Charity Handouts

About 275,000 nonprofit organizations lost their tax-exempt status nationwide last year, according to the IRS. Of those, more than 1,528 are Hawaii organizations, including the Adult Foster Homecare Association, the Association for Education and Rehabilitation of the Blind and the Big Brothers Big Sisters organizations on

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Aiu said Brescia's oceanfront parcel was too pricey. "If the state was to spend \$2.2 million on that lot, what do we give up? ... Other people talked about purchasing the land and weren't able to find the money."

Aiu says financial constraints during a period of economic downturn will likely continue to affect the way sites like Brescia's are handled.

"I unfortunately think this might be a harbinger of things to come because of more pressure on the land, especially to build along the shoreline," said Aiu. "We will find more burials. There's a strong sense in the Hawaiian community not to move iwi, but if we can't prevent construction, that doesn't leave us with a lot of options."

### "Serious deficiencies"

Iwi advocates agree that pressure is mounting. "We've got developers who want the view, the ocean, but they have no respect for the culture and now they even want to disregard the burials," said Charlie Maxwell, chairman of the Maui-Lanai Burial Council.

But what is the purpose of preservation laws, advocates ask, if the state is unwilling or unable to stop construction on lands with high concentrations of iwi, and the governor's appointee can overrule the Burial Councils in favor of developers?

"It's very frustrating to be involved with the burials this long and to have fought for the law and these problems are still continuing," said Maxwell, who lobbied for state burial protection legislation after some 1,000 iwi were unearthed in 1989 to make way for the Ritz-Carlton resort at Honokahua, Maui.

"After Honokahua, people certainly believed the law that was put in place would actually prevent the kind of thing that is happening now on Kauai, which is essentially building a house on top of a burial ground," said William Aila, a member of Hui Malama I Na Kupuna 'O Hawaii Nei, which formed after the Honokahua incident.

Native Hawaiians and members of the historic preservation community say the current troubles are rooted not so much in the law, but in how it's implemented by SHPD.

That assessment was affirmed by a devastating new report from the National Park Service, which assigned SHPD a "high risk" status that could jeopardize the federal aid that provides half of its funding.

"This action is not taken lightly, and comes only after multiple attempts to help the SHPD correct serious deficiencies identified in audits going back as far as 2002," wrote National Park Service Director Jonathan Jarvis in a March 19 letter to Laura Thielen, director of the state Division of Land and Natural Resources, which oversees SHPD.

While the report addressed SHPD's performance under the federal historic preservation law, it also highlighted systemic failings and a number of "major problems" identified during a July 2009 visit to SHPD offices, including inadequate, untimely and inaccurate reviews of development plans that often confused State and federal historic preservation regulations and indicated "a lack of quality control and management oversight."

Kauai and Molokai.

### Climate senses

According to a June 2 to June 6 poll by IBOPE Zogby, participants gave these causes for global warming: • Out of 2,376 US adults, 63 percent dismissed this spring's severe weather as the result of harsh conditions produced by weather cycles. • Only 26 percent believed global climate change—a critical environmental threat accepted by most scientists—as the actual cause.

### Rail concerns, questions

The question of rail [July 6: "Rail Done Right?"] concerns South Oahu. (Would that be around Makapuu point toward Waimanalo?) Right now, rail is designed to alleviate traffic on the west side of Oahu—it just doesn't go far enough to be of benefit to the 40,000-plus residents of the Waianae district.

### Sensible rail

It was first promoted as a traffic mitigation plan at \$3 billion [July 6: "Rail Done Right?"]. Then it grew to a Transit Oriented Development plan for an extra \$2 billion and became a jobs program for some additional, yet unknown, amount.

### Into the blue

[June 29: "Around the World in One Canoe"] imua no pokii imua, e kulia i ka nuu, aloha pauole. "Ke Kahua Paa"Via H

### Lunatics and letter writers

Hahahahahahaha. Oh man, I needed a good laugh today.

### Collecting

The report found that SHPD's inventory of surveyed archaeological sites is incomplete, outdated and disorganized, which "could lead to decisions being based on partial information, with detrimental effects to Hawaii's cultural resources."

The report further noted that a project to digitize files in order to improve their organization and accessibility "has not been supported by SHPD management and numerous efforts to train current HI SHPD staff have been postponed."

SHPD also was ordered to develop better procedural standards for conducting surveys of archaeological and historic sites. SHPD critics said this could help stymie agency actions apparently aimed at minimizing the likelihood of finding burials prior to construction, such as directing archaeologists not to dig too deeply and either failing to require archaeological surveys or restricting their scope.

## A failure of the state

As a result of taking such a narrow approach, the full extent of burials on a site is often unknown, such as on Brescia's lot, or discovered after construction begins, as was the case with the General Growth/Whole Foods and Kawaiahao Church projects on Oahu. Under state law, when burials are found "inadvertently," Burial Council review is not required. Instead, SHPD determines what to do with the iwi, and the Councils have no power to challenge the decisions.

"Appropriate survey and inventory affects mitigation," Hall said. "Everything is dependent on the backbone of inventory and survey."

The report frequently referenced problems stemming from insufficient and unqualified staff. While it did not identify Aiu—a former analyst with the Office of Hawaiian Affairs and public relations consultant—by name, critics say that both she and her successor, Melanie Chinen, a former policy adviser to Lingle, lack the professional qualifications to lead SHPD.

The report also underscored deficiencies in the areas of public outreach and consultations, agency shortcomings that figured prominently in the Brescia controversy. Following the Burial Council's April 2008 decision to preserve in place all the iwi on Brescia's lot, Nancy McMahon, then the state archaeologist on Kauai, approved a treatment plan that sanctioned the use of concrete jackets on seven burials and house construction atop them. The Native Hawaiian Legal Corp. sued, and in a September 2008, Kauai Circuit Court Judge Kathleen Watanabe found that McMahon had failed to properly consult with the Council and other interested parties prior to approving "preservation measures" for the project.

"The heart of this case is the failure of the state to follow procedures put in place to protect cultural practitioners, the general public and the rights of landowners," Watanabe said in ordering McMahon to conduct the required consultations and return to the Council with a revised Burial Treatment Plan. On Oct. 2 and Nov. 6, 2008, McMahon returned to the Council with essentially the same plan she'd approved earlier. The Council rejected it.

Meanwhile, Brescia's archaeological team, Scientific Consultant Services, had already placed concrete caps on the seven burials, without SHPD's permission, and the house was being built over them. Watanabe refused to stop the project, but warned Brescia that he was proceeding at his own risk because the Council could approve any number of actions that might affect construction, including removing the concrete burial coverings.

## comments

[June 29: "Take, Leave... Whatevas"] These HI-5 baskets on the sides or our public trash cans are great. The reason they're empty so often is that the collectors see them from a long ways off and rush to clean them out.

## New blood, new books

[June 29: "A 21st Century Library"] One problem is it is part of the Department of Education and controlled by old thinking. For example, ever notice how the libraries are closed after a state holiday?

## I'll cry if I want to

Tea Party members use fear and smear tactics to demonize patriotic public representation with the intent of handing power over to less than patriotic big business interests hellbent on polluting the world for profit. Governments don't seek outrageous profits.

Months went by, McMahon made minor revisions, and on June 4, 2009, draft 11 of the Burial Treatment Plan went to the Council, which deadlocked on a vote to reject it. Shortly thereafter, the Burial Council lost its quorum, and many more months elapsed before Gov. Lingle appointed two new members. All the while, work on the house continued.

At each of the Burial Council meetings, numerous members of the public denounced the BTP and complained that McMahon still had not engaged in the proper consultations. The public similarly opposed the 16th draft that the Council most recently rejected.

In her letter approving that plan, Aiu noted that McMahon had conducted the judge's required consultations by meeting with three individuals, listening to testimony at Burial Council hearings and reviewing written public comments on the plan.

Hall disagreed that McMahon had gone far enough.

"When you have every individual and organization writing in against it, how can you turn around and approve it? We all know it was political."

### **A change in philosophy?**

In response to Aiu's approval of the Burial Treatment Plan, Murakami said he plans to amend one of the claims—that SHPD failed to properly carry out the laws—that has been before Judge Watanabe since the start of litigation two years ago. "The approval could be reversed, but without any practical effect on the building of the house," he said. "We need to have a ruling. Otherwise I'm sure a developer will make sure it happens again. They will point to Brescia and say, 'Why can't you do that for me?' That's the danger that I think all the Burial Councils now fear."

Maxwell concurred. "Whatever happens on Kauai affects us throughout the Islands," he said, which is why the Maui-Lanai Burial Council voted unanimously last week to write a letter of protest to the governor stating it had "no confidence" in the ability of SHPD, Aiu and McMahon, who is now Aiu's deputy, "to preserve and protect the cultural heritage of Hawaii, especially the iwi." Other Councils around the state are expected to take similar stances.

Presley Wann, who served two, four-year terms on the Kauai Burial Council, said he emerged from his tenure convinced that state laws need to be radically altered. The Burial Councils, he said, should be consulted at the beginning of the development review process, rather than the end, "when everybody's all frustrated. That's why we took a lot of the heat. We need to be involved way ahead of time. As Hawaiians, we know where our burials are."

Laws governing real estate transactions in the Islands also need to be revamped to include the caveat that "nobody's guaranteeing you the right to build," Wann said. Some places, like Brescia's lot, simply aren't suited to development.

Aiu said SHPD "would like to be more proactive and do [archaeological] inventories up front in the planning process. But that will take money, time and changes in philosophy."

Preservation advocates are hopeful that federal pressure on SHPD, and Lingle's departure from the governor's office, will usher in positive changes. In the meantime, Hall and Maxwell said it's important to remember that progress has

been made in the 20 years since the state adopted legislation governing the treatment of Hawaiian burials.

“We were happy with the law because before that, in the ’50s, developers would just plow them under, crushing them and take it to the dump,” Maxwell said. “It’s very painful. I’ve cried many times at burial sites, especially when the bones are all crushed. If only people would take care.”

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## Comments

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