

MAUI LĀNA‘I ISLANDS BURIAL COUNCIL MEETING

DRAFT MEETING MINUTES

DATE: Wednesday, September 29, 2021

TIME: 9:00 AM

PLACE: Online via Zoom

I. CALL TO ORDER

9:01 AM

II. ROLL CALL

MLIBC members:

Kyle Nakanelua
Scott Fisher
Iris Pe‘elua
Kaheleonolani Dukelow
Everett Dowling
Johanna Kamaunu

SHPD:

Cindy Young, Deputy AG
Ku‘upua Kiyuna SHPD Post JD Legal Fellow
Ikaika Nakahashi, Cultural Historian
Kealana Phillips, Maui Burial Sites Specialist
Lesley Iaukea, O‘ahu Burial Sites Specialist
Tamara Luthy, Ethnographer
Kaahiki Solis, Cultural Historian
Andrew McCallister, Maui Lead Archaeologist
Iolani Kauhane, Maui Archaeologist

Guests:

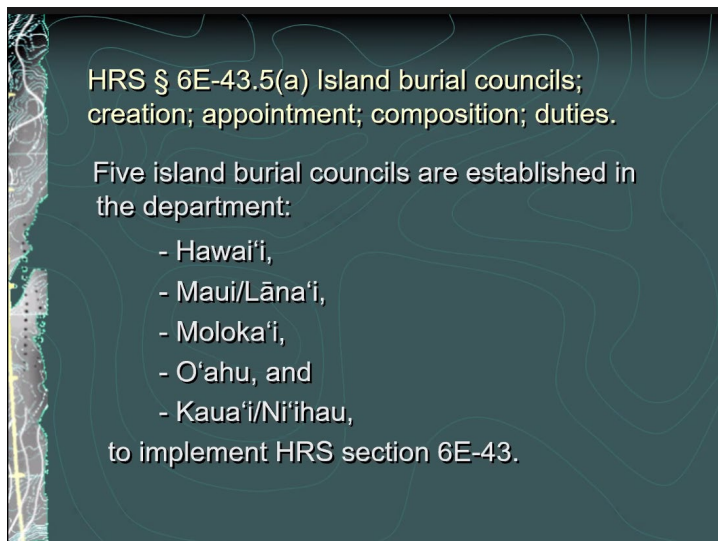
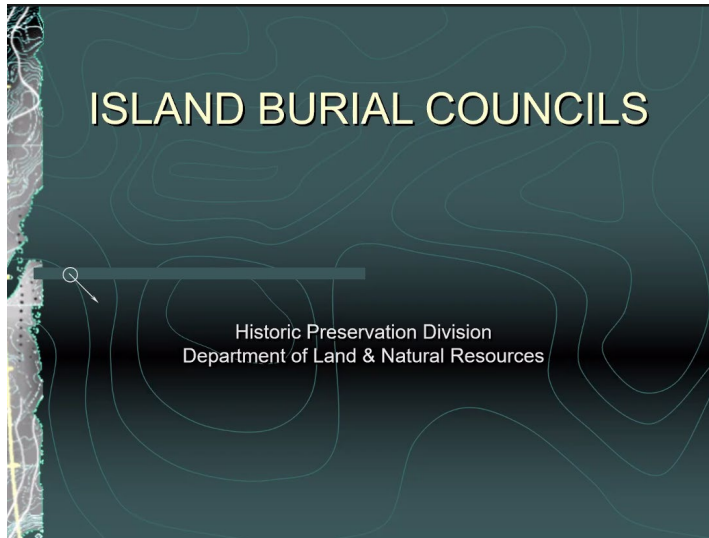
Kawehi Soares
Angela Neller
Lei
KHlrata
Keomailani Hanapi
Pualani Basbas
Noe Paresa
Fay McFarlane
Kaniloa Kamaunu

III. BUSINESS

A. Training Regarding the Composition and Responsibilities of the Burial Council (Hawai'i Revised Statutes §6E-43, 43.5, 43.6 and Hawai'i Administrative Rules §13-300). Information/Discussion: Discussion on the above item. Presentation by Ku'upua Kiyuna.

9:04 AM

9:04 Ku'upua Shares Screen



HRS § 6E-43.5(a) Island burial councils; creation; appointment; composition; duties.

Each council shall consist of

- no more than 3 representatives of development & large landowner interests,*
- and
- the remaining council members shall represent identified geographic regions
- Moloka'i council to have no more than 1 such representative

See also HAR § 13-300-22.

HRS § 6E-43.5(a) Island burial councils; creation; appointment; composition; duties (HAR § 13-300-22).

Each council shall include at least one representative for each geographic region as follows:

Hawai'i	Kohala, Kona, Ka'ū, Puna, Hilo, and Hāmākua
Maui /Lāna'i	Honua'ula, Lāhainā, Wailuku, Makawao, Hāna, and Lāna'i
Moloka'i	West, Central, & East Moloka'i, and Kalawao
O'ahu	Wai'ānae, 'Ewa, Kona, Ko'olaupoko, Ko'olauloa, and Waialua
Kaua'i /Ni'ihau	Waimea/Na Pali, Kōloa, Līhu'e, Kawaihau, Hanalei, and Ni'ihau

HRS § 6E-43.5(a) Island burial councils; creation; appointment; composition; duties.

At all times at least 2 regional representatives of each council shall have been appointed from a list of nominees submitted to the Governor by the Office of Hawaiian Affairs (OHA). Appointments of members to the councils shall be made by the Governor in accordance with HRS section 26-34 from lists for each council submitted by the department and OHA.

HRS § 6E-43.5(a) Island burial councils;
creation; appointment; composition; duties.

Regional representatives shall be selected from the Hawaiian community on the basis of their **understanding of the culture**, history, burial beliefs, customs, and practices of native Hawaiians in the region they each represent.

HRS § 6E-43.5 (d) Island burial councils;
creation; appointment; composition; duties.

(d) The department, in consultation with the councils, OHA, representatives of development and large landowner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, shall adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section.

HRS § 6E-43.5 (d) Island burial councils;
creation; appointment; composition; duties.

The council members shall serve without compensation, but shall be reimbursed for necessary expenses incurred during the performance of their duties.* The councils shall be a part of the department for administrative purposes.

* including air and ground transportation and parking expenses. HAR § 13-300-22

HRS § 6E-43.5 (d) Island burial councils;
creation; appointment; composition; duties.

Council members shall not be allowed to
simultaneously serve on another state board
or commission.

HRS § 78-4; HAR § 13-300-22

HRS § 6E-43.5 (e) Island burial councils;
creation; appointment; composition; duties.

The councils shall hold meetings and acquire
information as they deem necessary and shall
communicate their findings and
recommendations to the department.

Quorum: a majority of all members to which
each council is entitled shall constitute a
quorum to do business.

Concurrence of a majority of the members
present at a meeting shall be necessary to
make any action of a council valid.

HRS § 6E-43.5 (e) Island burial councils;
creation; appointment; composition; duties.

Quorum: a majority of all members to which
each council is entitled shall constitute a
quorum to do business.

For the HIBC, OIBC, MLIBC, and KNIBC,
quorum requires 5 members. For Molokai IBC,
quorum requires 3 members.

HAR § 13-300-22 (e) Composition.

(e) Development and large property owner representatives shall meet the following criteria:

- (1) Currently be employed by or associated with either a developer who conducts large scale land development activities, or a large property owner who owns or leases at least one hundred acres of land on the respective island;
- (2) Represent the interests of development or large property owners or both; and
- (3) Not simultaneously serve on another state board or commission.

HAR § 13-300-22 Composition.

(f) The department shall request developers and large property owners to submit the names of candidates for consideration, along with statements demonstrating that the candidate meets the criteria stated in subsection (e).

HAR § 13-300-23 Term, removal, and reappointment.

Each member shall serve the length of term assigned by the Governor, subject to the advice and consent of the Senate upon nomination, and any removal or suspension per HRS § 26-34. A full term is 4 years, commencing July 1 and expiring June 30.

No person shall be appointed consecutively to more than 2 terms as a member of the same council; provided that membership shall not exceed 8 consecutive years.

[9:11] Dane Maxwell — request to Hinano about terms for IBC members, also dependent on the term of the seat not just the person in that seat.

[9:12] Ku'upua – requests clarification on terms also

[9:12] Dane had to reapply four or five times for his position on the council, why did he have to reapply more than twice? Some people may miss the chance to re-apply

[9:12] Ku'upua – were each of you notified of length of term assigned or was it assumed to be full four years? Some others were told they were one year appointments

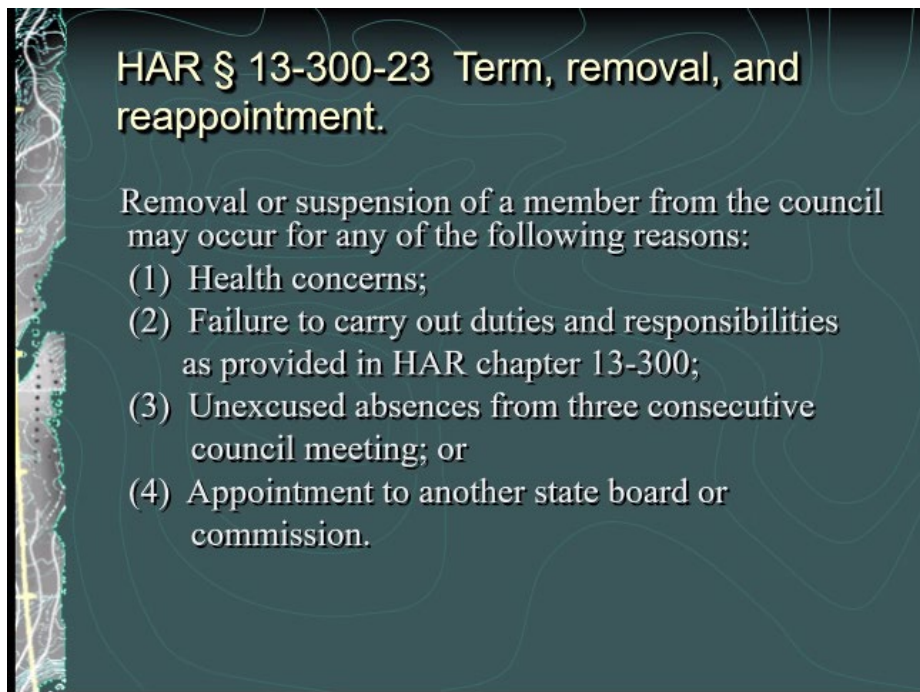
[9:13] Dane – when assuming his most recent term he had to sign an oath of office, previously didn't have to sign; other people may have termed out unknowingly. Is there a notification system for council members?

[9:13] Ku'upua – this is helpful for rules revisions

[9:14] Cindy Young – in response to question, terms are set for four year term for the full length but if for whatever reason the full term isn't fulfilled if someone resigns and the seat becomes available, the person filling the seat is filling a partial term since part of the term lapsed. Maybe part of the confusion. Not sure of notification. When member gets confirmed at state senate, a resolution confirming the member. Other notification. Hinano would know more. Depending if person is filling a full term or if previous member resigned or left so you are filling a partial term, then different.

[9:16] Dane no quorum for close to two years so makes sense. Nothing covered this would be good as part of on boarding

[9:16] Ku'upua -



HAR § 13-300-23 Term, removal, and reappointment.

Removal or suspension of a member from the council may occur for any of the following reasons:

- (1) Health concerns;
- (2) Failure to carry out duties and responsibilities as provided in HAR chapter 13-300;
- (3) Unexcused absences from three consecutive council meetings; or
- (4) Appointment to another state board or commission.



[9:17 starts new slide show]

Your Duties as a Council Member

- Consult with and make recommendations to SHPD regarding the appropriate management, treatment, and protection of Native Hawaiian burial sites, and on any other matters relating to Native Hawaiian burial sites;
- Determine whether previously identified Native Hawaiian burial sites that appear to be over 50 years old should be preserved in place or relocated;
- Decide whether or not to recognize a claimant to Native Hawaiian burials as a cultural or lineal descendant.
- Assist SHPD with the inventory and identification of Native Hawaiian burial sites;



Your Duty as a Council Member

- Elect a chairperson and a vice-chairperson; and
- Maintain a list of appropriate Hawaiian organizations, agencies, and offices to notify regarding the discovery of Native Hawaiian burial sites.

Hawaii Revised Statutes (HRS) § 6E-43.5;
Hawaii Administrative Rules (HAR) § 13-300-24

Appropriate Hawaiian Organizations, Agencies, and Offices

- Administrative rules define an “appropriate Hawaiian organization” as “[a] group recognized by the council that is comprised of a majority of Hawaiians and has a general understanding of Hawaiian culture, in particular, beliefs, customs, and practices relating to the care of ancestral Native Hawaiian skeletal remains, burial goods, and burial sites.”
- There presently is NO mechanism in law for the process of recognizing appropriate Hawaiian organizations.

HRS § 6E-43.5(g) and HAR § 13-300-2

Council Meetings

- All meetings are open to the public and must be conducted under Sunshine Law (HRS chapter 92).
- Quorum is required to conduct a council meeting. (A majority of the members to which each council is entitled constitutes a quorum).
- The number of votes needed for a council to make a decision at a council meeting is the majority of members present at the meeting.
- A council can close its meeting to the public in order to discuss the location and description of Native Hawaiian burial sites by a concurrence of a majority of the members present at the meeting.



HRS § 6E-43.5, HAR §§ 13-300-25(a) & (b), 13-300-26

What is a Previously Identified Native Hawaiian Burial Site?

- A burial site containing human skeletal remains and any burial goods identified during an archaeological inventory survey and data recovery of possible burial sites that appear to be over 50 years old; or
- A burial site known through oral or written testimony to be that of a Native Hawaiian.

HAR §§13-300-2, 13-300-31(a) and (b)

[9:20] Ku'upua –

[9:20] Dane Maxwell – works with AISs, data recovery comes by less often. Summarize what data recovery is for council and general public. What si data recovery?

[9:22] Kyle Nakanelua – regarding recognition

[9:23] Ku'upua – there is no formal process for applying to be recognized by council

[9:23] Kyle Nakanelua– so an informal would be appropriate. Agendized, voted, acknowledged that this is a supporting Hawaiian organization

[9:28] Johanna Kamaunu– recognition

[9:29] Johanna Kamaunu– function of the NHO should be considered

[9:30] Dane Maxwell – how does SHPD use this notification list

[9:31] Dane Maxwell– burials grounds never registered even if recommended several times

[9:33] Johanna Kamaunu– when to register site, who gets to register, who does it impact site

Native Hawaiian Burial Site Identification

Native Hawaiian burial sites may be identified by oral or written testimony in the following manner:

- Council shall evaluate the oral and written testimony presented;
 - Witnesses shall provide information including the location and description of burial site; and
- Council shall recommend to SHPD whether to accept the testimony presented.

HAR §13-300-31(a)

Native Hawaiian Burial Site Identification

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 - Witnesses shall provide information including the location and description of burial site; and
- Council shall recommend to SHPD whether to accept the testimony presented.

HAR §13-300-31(a)

§13-275-8(3)(d)Discusses mitigation, including data recovery,

[9:36] Johanna Kamaunu– different way of recognizing these issues. Law needs to be more specific. Janet Six’s sensitive map layer? Terminology for burial grounds? No statutes for this

Recognition of Lineal and Cultural Descendants

Admin rules define cultural and lineal descendants as follows:

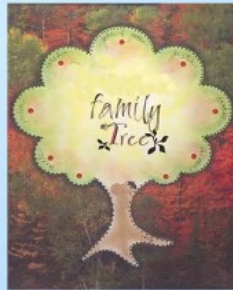
1. “Lineal descendant” means with respect to Native Hawaiian remains skeletal remains, “a claimant who has established to the satisfaction of the council, direct or collateral genealogical connections to certain Native Hawaiian skeletal remains.”
2. “Cultural descendant” means with respect to Native Hawaiian skeletal remains, “a claimant recognized by the council after establishing genealogical connections to Native Hawaiian ancestors who once resided or are buried or both, in the same ahupua’a or district in which *certain* Native Hawaiian skeletal remains are located or originated from.”

HAR § 13-300-2

Determining the Validity of a Cultural/Lineal Claim to Native Hawaiian Burials

Individuals wishing to establish lineal or cultural descent to human skeletal remains must submit a written claim to the department with any of the following:

- Name of the deceased individual;
- Family genealogy;
- Birth certificates;
- Death certificates;
- Obituaries;
- Marriage certificates;
- Probate records;
- Church records;
- Census records;
- Tax records;
- Land conveyance documents including but not limited to deeds and land commission awards;
- Oral family history;
- And any other applicable information.



HAR § 13-300-35

Basis for Council's Recognition of a Lineal Claim

- SHPD's written assessment of the information submitted by the claimant; and
- SHPD's recommendation that the claimant be recognized as a lineal descendant.

HAR § 13-300-35(f)

Basis for Council's Recognition of Cultural Descendants

- Information submitted by the claimant fails to establish lineal descent but establishes genealogical connections between the claimant and Native Hawaiian ancestors who once resided or are buried, or both, in the same ahupua'a or district in which the Native Hawaiian skeletal remains and any burial goods are located or originated from.
- SHPD recommends to the council that the claimant be recognized as a cultural descendant.

HAR § 13-300-35(h)

Determining the Preservation or Relocation of Previously Identified Native Hawaiian Burials

When determining appropriate treatment for previously identified Native Hawaiian burials, the council must consider:

- All provisions of the burial treatment plan;
- Other written and oral evidence and assess the credibility of witnesses;
- Cultural appropriateness of the proposal to preserve in place or relocate;
- Possible harm if the burials are left in place;
- The request of known lineal or cultural descendants to relocate;
- Any reason presented by the applicant to relocate; and
- Preservation criteria established in state law and other relevant factors concerning appropriate treatment.

HRS § 6E-43; HAR §§ 13-300-36(a) and (b), 13-300-38

Priority in Determining the Preservation or Relocation of Previously Identified Native Hawaiian Burials

Councils must give greater consideration for preservation in place for burial sites in areas containing any of the following :

- A concentration of skeletal remains;
- Prehistoric or historic burials associated with important individuals and events;
- A context of historic properties;
- Lineal descendants request preservation in place; or
- Landowner agrees

HRS § 6E-43; HAR § 13-300-36(a)

No definition in the rules for what a concentration of burials is. Any location where multiple human skeletons are present. No number quantifying what a concentration is

Burial Treatment Plan Process for Previously Identified Native Hawaiian Burials

- The applicant shall consult with SHPD in the development of the burial treatment plan (BTP). Once the BTP is approved by SHPD, it is given to the council and placed on the agenda for a determination of burial site treatment.
- The Council may request and attend a site visit
- Applicant may, prior to referral to the council for determination, give an informational presentation to the council.
- Applicant may revise or withdraw the BTP prior to determination by the council.

HAR § 13-300-33

Burial Treatment Plan Requirements

- Applicants must submit a request to preserve in place or relocate native Hawaiian burials to SHPD in the form of a burial treatment plan ("BTP").
- The BTP must include:
 - A statement of preservation in place or relocation for all burial sites;
 - Evidence of a good faith search for lineal and cultural descendants;
 - Names and the respective positions regarding the burial site treatment of any known lineal or cultural descendants recommended by SHPD and recognized by the council;
 - Description of proposed treatment of all burial sites including a statement of preservation in place or relocation;

HAR § 13-300-33

Burial Treatment Plan Requirements (cont.)

- Maps clearly indicating the location of all identified Native Hawaiian burial sites on property, including where applicable, the scale map of spatial relationship between Native Hawaiian burial sites and any proposed construction activities;
- Applicant's name and mailing address (landowner's name and mailing address if different from applicant);
- The property's TMK, ahupua'a, district, island;
- Present condition description of all previously identified Native Hawaiian burial sites at property;

HAR § 13-300-33

[9:48] Breschia case for single family home, 30 skeletal remains,

Burial Treatment Plan Requirements (cont.)

- Any project plans requested by the council including construction and grading plans.
- A copy of the archaeological inventory survey report where requested by the council.
- Also where applicable:
 - Proof that archaeological inventory survey report has been accepted by DLNR.
 - Any additional archaeological inventory level testing reports recommended by the council, reviewed and approved by SHPD.
- Any other information the council deems necessary to make a fully informed determination (all council requests for additional information shall be done in a timely manner)

HAR § 13-300-33

Where Applicant Proposes Preservation in Place

The BTP must contain statements describing:

- Short term measures to immediately protect all burial sites including fencing, buffers, and site restoration; and
- Long term measures to manage & protect all burial sites including buffers, landscaping, and access by known lineal/cultural descendants

HAR § 13-300-33(b)

Where Applicant Proposes Relocation

The BTP must contain statements describing:

- Reasons for relocation;
- Methods used to conduct disinterment;
- If no immediate reburial after disinterment, the location and curation of *iwi* and any burial goods;
- Proposed reburial site as agreed by landowner and any recognized lineal descendant;

HAR § 13-300-33(b)

Where Applicant Proposes Relocation

The BTP must contain statements describing:

- Reasons for relocation;
- Methods used to conduct disinterment;
- If no immediate reburial after disinterment, the location and curation of *iwi* and any burial goods;
- Proposed reburial site as agreed by landowner and any recognized lineal descendant;
- Manner of preparation of the reburial site;
- Short term immediate protection of reburial site, including fencing and buffers; and
- Long term measures to manage and protect the reburial site including buffers, landscaping, access by known lineal/cultural descendants

HAR § 13-300-33(b)

Timeline for Making a Determination for Preservation In Place or Relocation

Decisions for preservation or relocation must be rendered within 45 days of referral by the department unless otherwise extended by agreement between the landowner and the department.

Referral means the first date the council officially convenes following:

- The department's acceptance of a complete or revised burial plan;
- The department's receipt of a written request to be placed on the council agenda for determination of burial site treatment;
- Placement of the matter on the council agenda; and
- Posting of a notice of council meeting agenda with the Lieutenant Governor's Office.



HAR § 13-300-33(f)

After a Council Makes a Determination to Preserve in Place

- Applicant must develop the burial site component of the preservation plan, to include:
 - Description of short term measures to protect burial sites
 - Description of long term measures to protect, manage, and provide access to burial sites
 - Appropriate treatment of burials

HAR §13-300-38(e)

After a Council Makes a Determination to Preserve in Place

- Applicant must develop the burial site component of the preservation plan, to include:
 - Description of short term measures to protect burial sites
 - Description of long term measures to protect, manage, and provide access to burial sites
 - Appropriate treatment of burials
- SHPD approves the preservation plan following consultation with the applicant, lineal descendants, council, and any appropriate Native Hawaiian organizations, within 90 days of council determination.

HAR §13-300-38(e)

After a Council Makes a Determination to Relocate

- The applicant shall develop the burial site component of the archaeological data recovery plan, to include:
 - Reasons for relocation
 - Methods to be used in disinterment
 - Location where remains will be curated
 - Proposed reburial site location
 - Manner in which the reburial site will be prepared
 - Short term measures to protect the reburial site
 - Long term measures to protect, manage, and provide access to burial sites

HAR §13-300-38(f)

After a Council Makes a Determination to Relocate

- The applicant shall develop the burial site component of the archaeological data recovery plan, to include:
 - Reasons for relocation
 - Methods to be used in disinterment
 - Location where remains will be curated
 - Proposed reburial site location
 - Manner in which the reburial site will be prepared
 - Short term measures to protect the reburial site
 - Long term measures to protect, manage, and provide access to burial sites
- SHPD approves the archaeological data recovery plan following consultation with the applicant, any known lineal descendants, council, and any appropriate Native Hawaiian organizations, within 90 days of council determination.

HAR §13-300-38(f)

Council Decisions May Be Appealed

- Department notifies Applicant within 10 business days of council's determination
- Applicant may request reconsideration, by writing, within 10 business days following receipt of written notice of the council determination from the department. A request for reconsideration shall be granted only on the basis of newly discovered information not available at the time the council determined burial site treatment

HRS §6E-43(c); HAR §§13-300-2, -38(c), -51, -55, -57(a) & (b)

[9:57] Dane Maxwell – SHPD kuleana – kuleana to iwi that is not triggered by the need for a permit. Iwi discovered or left open from an abandoned AIS. What is SHPD's kuleana?

[9:58] Ku'upua – big gap in the rules. Focus on triggers. That does not trigger anything for review process formalized in the rules. Don't know correct protocol.

[9:58] Dane Maxwell – request for appeal goes to what body

[9:59] Cindy Young – she thinks if not mistaken that appeals. This is a gap in the rules. Instance where

[10:33] Ku'upa preservation plan agreed to by SHPD and current landowner and AIS with arch firm.

[10:34] Dane Maxwell– investigations into violations have been requested by our council but rare to see a penalty. Want to understand process Kuupua agrees to come if it is agendized properly with sunshine laws.

[10:35] Kyle Nakanelua– procedures so he can work with SHPD staff and move the violations effort forward for known violations. Asks Kuupua for procedures

[10:36] Kahele Dukelow– for revisions, they struggle with counties in permitting process, and they have a way of working with SHPD and DLNR. Keep being told SHPD requests county for stop work and process happening but that effects what they can do dramatically.

[10:37] Ku'upua navigating overlap of county with SHPD roles, and all counties work differently

[10:38] Dane BTP – once it is completed what is process after that

[10:38] Ku'upua –BTP doesn't necessitate bureau of conveyance. Lineal and cultural requires bureau of conveyance for verifying applicant.

[10:40] Dane Maxwell– how to preserve in perpetuity after his lifetime? How long do BTPs last? What happens when land transferred to next land owner. Who is part of the rules revisions process? Will burial council be involved? How do they participate?

[10:43] Ku'upua Can we speak of this Cindy? The rules revisions?

[10:43] Cindy Young- since this is training better if agenda'd at the future meeting. Many things should be agenda'd for further discussion at a future meeting and also allow Kuupua better preparation

[10:44] Dane Maxwell- does DLNR make the final approval? Is meaningful consultation and who makes a final say

[10:44] Cindy Young- the final say for rule amendments the final passage of the rule is with the board of land and natural resources

[10:45] Dane Maxwell - doesn't want words to fall on deaf ears. Allow to speak for themselves

[10:45] Kahele Dukelow– how AIS are developed used approved. Work based on AIS very old. Stricter timelines for these? Do they need to be updated?

[10:48] Everett Dowling - developer try to hire best archaeologists available often. Must be respectful to the iwi, but also make sure that our community have homes. Most archaeologists in the state are professionals and take pride in their work. Developers hiring consultants shouldn't necessarily cast doubt on their reports but there are new processes. A lot of larger projects take many decades to develop

[10:51] Chair Maxwell asks a question about certified genealogists

[10:53] Ku'upua – no hierarchy of what must be included for determination of descendency. Can recommend a genealogist for our staff but burial sites specialists have

[10:57] Dane wants to be able to be confident in the SHPD's recommendation. Hawaiian genealogies can be contentious and limited to oral history. Want best data possible

[10:58] Cindy Young– if and when the burial council does something other than SHPD's recommendation, it should set out what it is based on so that there is a record of what additional things looking at and how IBC came to decision. If you adopt recommendation the assumption is that you agreed with what was submitted

[11:00] Ku'upua - if she applied, she would give basic info submitted to SHPD and would wait before

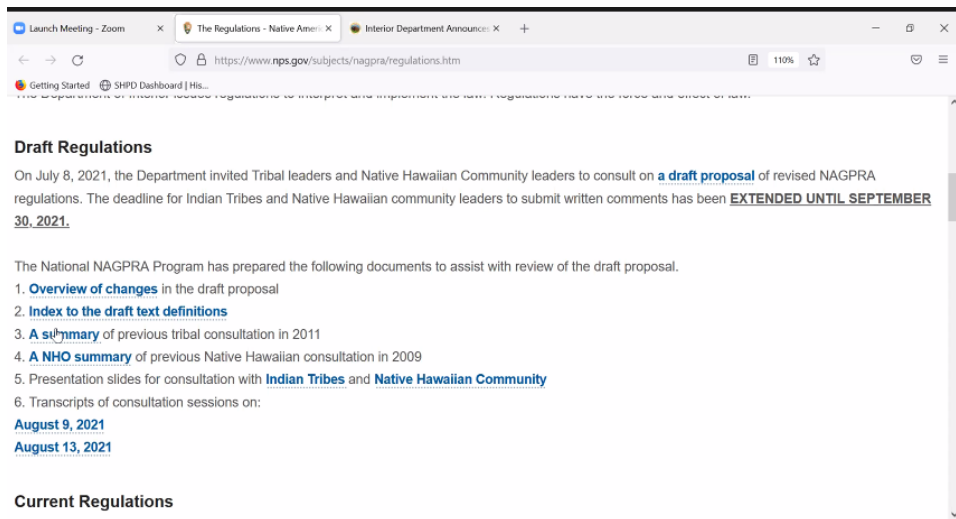
[11:02] Dane Maxwell - can you have more than one rep for a moku –

[11:04] Cindy Young– defers to SHPD. If two in Lahaina, then seven remainign seats but if must fulfill three landowner or developers interests plus other five that is 8, so have less seats than requirements ot be filled. So would require two requirements filled by same person

[11:07] Dane Maxwell - asks Andrew burial registration

[11:08] Kahele - any information on proposed NAGPRA ammendments

[11:08] Kuupua NAGPRA proposed reivisions currently being considered



[11:12] Ku'upua

[11:13] Andrew McCallister– discrete burials sites, can they be evaluated as significant under 13-275-6

Or 284, for evaluation of signficiance criteria. If you have collection of burial sites significant under criterion e if collectivley they can be seen as a burial complex and collectively significant

If collectively significant, if additional skeletal remains found in group are those previously identified or inadvertent discoveries

275 government and 284 is general/private projects triggered by permits or agency approval

[11:15] Cindy Young- varying outside training as this is burial council duties under 13-300

[11:15] Dane Maxwell- agendize at future meeting

[11:16] break

[11:26] return

[11:29] Kahele opens public testimony; opens up the person recording at [11:28] and public recording at [11:29]

[11:29] Noelani Paresa asks for clarity on the time limits for the process. Time limit on receipt of descendancy claim by SHPD? Time limit for how long they can take? Enealogy a difficult subject to research but must confirm receipt of the identification birth certificates. If they have that is there a time limit for process?

[11:31] Ku'upua – no timeline. It could take a year a month

[11:31] Noelani Paresa – second question. Descendants have to have a btp prior to moving iwi. Is that correct.

[11:31] Ku'upua yes

[11:32] Noelani do archaeologists also have the same requirement

[11:32] Ku'upua no

[11:32] is it policy that

[11:34] Noelani timeline for burial sites component. Waiko temporarily stopped. Projects trying to move forward with acceptance of burial sites component. If shpd later says buffers not acceptable it is too late

Does shpd do temporary measures. Trenching for sewer line this Friday. 13-300-31 second part is oral or written testimony and rules state they make a recommendation to accept or deny testimony and there was never written response from shpd recognizing the question. Asked AG for opinion but didn't ask opinion directly.

[11:37] Johanna has a question for Noe. Training today for successful way to monitor when things go wrong requires coordination with the community. Are you willing to be part of reporting community process and how do you see that working.

[11:38] Noelani – maui has strong active community. Generally very little response from DOCARE SHPD etc. Happy to help. Really need more political pressure on departments to respond to complaints. Enforcement is where we need pressure and way for accountability.

[11:40] Kahele opens closes public testimony

[11:40] Dane asks Ku'upua to provide training to DOCARE also for training on 13-300

[11:41] Kahele review of genealogy. Different ways review is done. It is more than submission of particular documents but evidence of relation to particular person. Lots of choices of documents. Connecting genealogies. Marriage birth certificate etc. Evidence for as many generations as you are claiming. It is not arbitrary. It is still upon them to also do that. She has never disagreed with recommendation that came down when they were provided with the evidence.

[11:43] Dane Maxwell – inconsistency in how that takes place.

[11:44] Johanna Kamaunu – responses needed. Not happening. Does this require legislation or is this agency policy? Violations or non compliance is what she means.

[11:45] Dane what is shpds role – administrative support – what does that mean?

[11:45] Cindy Young– writing agendas, preparing drafting minutes. Others in rules like providing recommendations on descendency applications,

[11:46] Dane Maxwell– motions don't always go to intended destination. Where they need to step up and handle these things? Management of list of NHOs, preserve relocate determinations,

[11:47] Johanna clarification needed. Is legislation needed?

[11:48] Cindy Young– enforcement falls on DLNR. They could better explain or provide their process and procedures. In terms of rules for statute they don't set out a role for the burial council specifically. What

would the role be? Maybe something to chat with people about for a rule amendment. Right now it is DLNR that enforces 6E and burial council rules.

[11:49] Dane Maxwell– council member and spd member need to work in tandem for violations and investigations but that is not what happens in this case.

[11:50] Kyle Nakanelua- question for AG. If he is a developer and there is no approved bscpp. No approved plan no buffers and he wants to move forward how does he do that.

[11:51] Cindy Young- depends on where you are in the process. Fatc specific. Do you have permits? Must go through process andrew talks about. It depends. Not all projects must go through the whole project. Not every project requires an AIS. If one is required then must go through that. Defers to Andrew. Delving into 13-275 not 13-300 so maybe we can provide a better discussion at a future meeting where it is agendaized.

[11:52] Dane Maxwell - Ethics training?

[11:53] Cindy Young- still working on the schedule. Must work with Ethics office. Ethics director just resigned. Will work to get that scheduled

[11:53] Andrew McCallister- can the burial council identify or register a burial site without verification of human skeletal remains?

[11:54] Cindy Young– 13-300 defines a burial site as any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred and it's immediate surrounding archy context, including any associated surface and subsurface features, deemed a unique class of historic property, and not otherwise include in section 6E-41, HRS

[11:55] Andrew McCallister - Can be defined for oral histories

[11:55] Cindy Young - can be located through oral history but has to be a specific location. That is the difficult part – where the burial and goods are located.

[11:56] Andrew that is up to burial council to determine if sufficient or is it up to SHPD?

[11:56] Cindy Young–in what context

[11:56] Andrew McCallister – if he has archaeologist doing an AIS and they go to burial council, and someone identifies a specific location is that sufficient for the archaeologist to say this is a burial site?

[11:57] Cindy Young– hard to answer in the abstract. Depends on the facts. Don't want a blanket answer. Definition of burial site is specific. These don't come to burial council at the AIS stage.

[11:57] Andrew McCallister – area with previously identified burials or sensitive area we ask them to consult

[11:57] Cindy - if previously identified AIS would have been done already

[11:58] Andrew before they do the report they consult. People may identify historical properties through consultation process.

[11:58] Cindy Young- needs to know the moving parts and agenda heading

[11:59] Andrew McCallister -several parties listed as participants and sometimes people proactively reach out to identify historic properties. Can burial councils identify burial sites based off of oral histories.

[11:59] Cindy Young- generally under rules burial site may be identified through testimony. In the manner that the rule provides for

[12:00] Ku'upua - 13-300-31c – statewide inventory consults with burial council of burial sites location and identity of burial or reburial site. No explicit statement that burial council is the appropriate party to make the determination

[12:01] Andrew identifies burial in specific area prior to AIS testing do they need to dig the area and verify skeletal remains or to avoid that Dane adds without above ground features like surface markers

[12:01] Ku'upua - does not have answer right now

[12:01] Cindy says does not have an answer right now

[12:01] Johanna Kamaunu– concerned with Andrew's question – 2 former cemeteries no longer visible but family remembers cemetery there. But no iwi to invite into discussion then this is a way to recognize that site. Cemetery in waikapu identified by a Ineal descendant. Undeveloped but graded.

[12:03] Cindy Young– this is a training so specific ongoing situations should be for a separate agenda item

[12:04] 13-300-31 Dane walk us through how that works. 41:minutes into the recording.

[12:04] Cindy Young– burial site identification council makes recommendation to department, but department determines if it is a burial site

[12:05] Hinano Rodrigues– that section comes in two parts. A and c. He is on the mainland with no manual. A is the part they are discussing whereby burial council makes recommendation to SHPD with respect to identity of burial site but part c is the burial registration. Part c explains part a. Part c requires that if someone say sthere is a burial they take the state archaeologist out there and they use their expertie to determine if there might be a burial and then register a possible burial site and if there is future construction that would be taken into consideraton. careful with burial site or burial area. Burial area does not exist in the rules and it is very specific.

[12:07] Dane Maxwell– how do they assist in identifying

[12:07] Hinano Rodrigues– you would make a recommendation to SHPD that there is a site. They would invesitgate the site. The reason why you invsitateg the site is in all probability this is private property with private prperty rights and that is an encumbrance if they have a burial on their property and that affect stheir rights he likes the idea of relying on family members that tere is a burial site. The more specific they are with respect to where the site is and who is there, greater the chances are that there is a site and that is sufficient testimony to say this is a probable burial site. In waihee there are sites that look like there is nothing there but the famileis are aware of that site.

[12:09] Dane Maxwell- how to take testimony? Via burial council as agendized testimony?

[12:09] Hinano yes

[12:09] Dane has in the past made recommendation for site visit. Maybe through email asking to be registered

[12:10] Andrew McCallister – so himself or iolani go out when someone identifies a possible burial site and without identifiable archaeological features do they take oral testimony?

[12:10] Hinano Rodrigues—archaeologists rely on archaeological expertise and history and culture would rely on ethnographic expertise of informants of who might be there and where they are?

[12:11] Andrew McCallister – nothing on surface defer back to history and culture with ethnographic information?

[12:11] Keomailani Hanapi –quick question for Hinano – timeframe from time someone gets a notice or complaint, or concern of possible disturbance known to have iwi, how long before someone does a site visit

[12:12] Hinano Rodrigues –depends on the circumstances. There is no timeframe. Dependent upon on the facts of the situation. If investigated already initiated how long to do site visit and request services from other agencies and if can't go in time does island burial council have the right to say this is a possible burial and we need someone soon

[12:14] Hinano Rodrigues- no timeframe

[12:14] Dane Maxwell– had consent from some landowners to do his own site visit and sometimes SHPD moves on his opinion as the regional rep.

[12:15] Everett Dowling- this is very helpful, and he needed it more than anybody and he appreciates it

[12:15] Dane motions to adjourn

[12:16] All in favor none opposed motion carries **[12:16]**

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https://files.hawaii.gov/dlnr/shpd/rules/275.pdf

...differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within forty five days of SHPD receipt of the mitigation commitments.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for native Hawaiian burials, following section 6E-43, HRS, and section 13-300-33.

(e) Should either the agency or any interested person disagree with the SHPD's determination letter, the disagreeing party shall within thirty days of the determination letter submit in writing a request for the Hawaii historic places review board to hold a non-judicial appeal hearing in accordance with chapter 91. The intent of the appeal hearing is to provide an informal fact-finding process, characterized by great latitude, in which all parties have ample opportunity to present information to the Hawaii historic places review board for consideration, and answer any questions the review board may have. The request for an appeal hearing shall include:

- (1) A statement indicating which step in the process the appellant believes is in error;
- (2) Information to support the appellant's position; and
- (3) Any other information, including legal memoranda, the appellant may wish the review board to read prior to the hearing.

(f) The review board shall schedule an appeal hearing to be held within thirty days of receipt of the appeal request. The hearing process will proceed in the following manner:

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IV. ANNOUNCEMENTS

A. Next meeting is scheduled for Wednesday, October 20, 2021