

DAVID Y. IGE
GOVERNOR OF HAWAII



**HISTORIC PRESERVATION DIVISION
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHO'OLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**APPROVED
Agenda Minutes
O'ahu Island Burial Council**

DATE: Wednesday; September 22, 2021
TIME: 10:00 AM
PLACE: Zoom meeting via zoom technology

MEMBERS: (members present)

Kamana'o Mills, Large Landowner Representative, Chair
Chuck Ehrhorn, Large Landowner Representative, Vice-Chair
Brickwood Galuteria, Ko'olaupoko Representative
Lynette Cruz, Ph.D., Waianae Representative
Mana Caceres, Ewa Representative
Nanea Lo, Kona Representative
Diane Fitzsimmons, Waialua Representative

SHPD: Hinano Rodrigues, SHPD History & Culture Branch Chief
Lesley K. Iaukea, O'ahu Burial Sites Specialist
Lauren Chun, Deputy Attorney General

Council Terms:

Waianae Representative: Lynette Cruz, Ph.D., Term expires June 30, 2024.

Ewa Representative: Norman Mana Caceres. Term expires June 30, 2024.

Kona Representative: Nanea Lo. Term expires June 30, 2024.

Waialua Representative: Diane Fitzsimmons. Term expires June 30, 2024.

Ko'olaupoko Representative: VACANT

Ko'olaupoko Representative: Brickwood Galuteria. Term expires June 30, 2025.

Landowner/Developer Representative: William Kamana'o Mills, Chair. Term expires June 30, 2025.

Landowner/Developer Representative: Chuck Ehrhorn, Vice-Chair. Term expires June 30, 2024.

Landowner/Developer Representative: VACANT

I. CALL TO ORDER

- a. Call to order by Chair Mills.

[Recording 09222021 @ 0:08.00]

II. ROLE CALL/PULE

- a. Role call by Chair Mills.
- b. No pule given.

[Recording 09222021 @ 0:10.00]

III. Training for the O‘ahu Island Burial Council’s Membership, Role, and Responsibilities.

- a. **Training Regarding the Composition of the Burial Council in the Hawaii Revised Statutes (HRS) §6E-43, 43.5, 43.6 & Hawaii Administrative Rules (HAR) §13-300.**

PowerPoint presentation on the O‘ahu Island Burial Council’s composition by Kuupua Kiyuna.

PowerPoint title: Island Burial Councils; Historic Preservation Division, Department of Land & Natural Resources

- HRS §6E-43.5(a) Island Burial Councils; Creation; Appointment; Composition; Duties.
 - Five Island Burial Councils are established in the department: Hawai‘i, Maui/Lāna‘i, Moloka‘i, O‘ahu, and Kaua‘i/Ni‘ihau to implement HRS section 6E-43.
 - Each council shall consist of nine (9) members except Moloka‘i council which shall consist of five (5) members.
 - Current Law: Each council shall include at least one rep of each geographic region of the island & reps of development and large property owner interests. Councils shall have a minimum of 9 and maximum of 15 members – with a ratio of not more than 3:1 and no less than 2:1 in favor of regional representatives.

- 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.

- Each council shall include at least one representative for each geographic region as follows:
 - Hawai‘i: Kohala, Kona, Ka‘u, Puna, Hilo, and Kāmākuā;
 - Maui/Lāna‘i: Honua‘ula, Lahaina, 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, Lihu‘e, Kawaihau, Hanalei, and Ni‘ihau.

- 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.

- 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.
 - 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.
 - 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.
 - 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.
 - For the HIBC, OIBC, MLICH, and KNICHs quorum requires 5 members. For Moloka‘i IBC quorum requires 3 members.

- HAR § 13-300-22(e) Composition.
 - (e) Development and large property owner representatives shall meet the following criteria:
 - 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;
 - Represent the interests of development or large property owners or both; and
 - Not simultaneously serve on another state board or commission.
 - 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.
 - Removal or suspension of a member from the council may occur for any of the following reasons:
 - Health concerns;
 - Failure to carry out duties and responsibilities as provided in HAR chapter 13-300;
 - Unexcused absences from three consecutive council meetings; or
 - Appointment to another state board or commission.

[Recording 09222021 @ 0:06.12]

b. Training Regarding the Responsibilities of the Burial Council in the Hawaii Revised Statutes (HRS) §6E-43, 43.5, 43.6 & Hawaii Administrative Rules (HAR) §13-300.

PowerPoint presentation on the O‘ahu Island Burial Council’s responsibilities by Kuupua Kiyuna.

PowerPoint title: Welcome 2021 Island Burial Council Members

- Your Dutes 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.
 - Decided 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;

- Appropriate Hawaii Organizations, Agencies, and Offices
 - Adminstrative 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(f) 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 appointed to the council constitutes a quorum).
 - The number of votes needs for a council to make a decision at a council meeting is the majority of members preent at the meeting.
 - A council can close its meeting to the public in order to discuss the location and descroption 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 date 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) & (b).

- 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 sites; and
 - Council shall recommend to SHPD whether to accept the testimony presented.
 - HAR § 13-300-31(a).

- Council's Roles Regarding Previously Identified Native Hawaiian Burials
 - Determine lineal descendants;
 - Determine cultural descendants;
 - Determination of preserve in place or relocate.
 - HRS § 6E-43(f)(1); HAR § 13-300-33(a) & (f); 13-300-35(f), 13-300-35(h).

- Recognition of Lineal and Cultural Descendants
 - Administrative Rules define cultural and lineal descendants as follows:
 - 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."
 - 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 established 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) & (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.
- 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 burials 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.

- 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;
 - 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 the 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 § 13-300-22(14)(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.
 - 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.
- SHPD approves the archaeological data recovery plan following consultation with the applicant, 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 notified Applicant within 10 business days of council's determination;
 - Applicant may request reconsideration, by writing, within 10 business days, of the determination in limited circumstances;
 - Appeals are heard as contested cases before a panel composed of three council chairs, three land board members, and a presiding officer who is the chair of BLNR.
 - Members of the appeal panel may examine and cross-examine witnesses.
 - HRS § 6E-43(c); HAR §13-300-2, -38(c), -51, -55, -57(a) & (b).
- Council's Role in Inadvertent Native Hawaiian Burials
 - Consult with SHPD on burial site component of the preservation plan;
 - Consult with SHPD on burial site component of the archaeological data recovery plan.
 - HAR § 13-300-38(e) & (f).
- Privacy in Burial Council Records
 - Department records relating to the location and description of historic sites, including burial sites, if deemed sensitive by a council or the Hawai'i Historic Places Review Board, shall be confidential.
 - HAR § 6E-43.5(f).
- Any questions?

[Recording 09222021 @ 0:45.08]

Pursuant to §92-3 HRS, all interested persons shall be afforded an opportunity to present oral testimony or submit data, views, or arguments, in writing on any agenda item. Additionally, pursuant to a policy adopted by the Oahu Island Burial Council at its July 28, 2021 meeting, oral testimony for items listed on the agenda is limited to five minutes per person, per agenda item. Also adopted, meetings to start at 10am and end no later than 3pm, unless additional time is needed.

Pursuant to sections §92-4, §92-5(a)(8), and §6E-43.5, Hawaii Revised Statutes (HRS), and upon compliance with the procedures set forth in section 92-4, HRS, the council may go into a closed meeting to consider information that involves the location or description of a burial site.

A request to be placed on a burial council meeting agenda must be made with the Burial Sites Program staff at least two weeks preceding the scheduled meeting date. In addition, the request must be accompanied by all related documents. Failure to comply with this procedure will delay the item to the following month's agenda.

Materials related to items on the agenda are available for review at the State Historic Preservation Division in room 555 of the Kakuhihewa Building located at 601 Kamokila Boulevard, Kapolei, Hawaii 96707.

Individuals requiring special assistance or auxiliary aids or services (e.g., sign language interpreter, wheelchair accessibility, or parking designated for the disabled) at the BLNR meeting, please contact staff at least 72-hours prior to the meeting at (808) 587-0404 so that arrangements can be made.