

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
State Parks Division
Honolulu, Hawai'i 96813

September 25, 2020

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

O'ahu

AUTHORIZE THE CHAIRPERSON TO APPROVE CONSTRUCTION OF A NATIVE HAWAIIAN BURIAL MEMORIAL AT NU'UANU PALI STATE WAYSIDE; ISSUANCE OF A RIGHT-OF-ENTRY TO THE OFFICE OF HAWAIIAN AFFAIRS FOR CONSTRUCTION RELATED PURPOSES, HONOLULU, KONA MOKU, O'AHU; TMK (1) 2-2-054:001 POR.

APPLICANT:

Office of Hawaiian Affairs

LEGAL REFERENCE:

Section 171-6, Hawai'i Revised Statutes, as amended.

Section 171-55, Hawai'i Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Nu'uuanu Pali State Wayside, identified by Tax Map Key TMK (1) 2-2-054:001 por., as shown on attached map labeled Exhibit A.

AREA:

450 square feet, more or less.

ZONING:

State Land Use District: P-1, Restricted Preservation (Conservation) District

TRUST LAND STATUS

Section 5(b) lands of Hawai'i Admission Act

DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution: No

CURRENT USE STATUS:

State Wayside with scenic lookout, existing interpretative signage regarding the changing landscape of Windward O'ahu.

CHARACTER OF USE:

Native Hawaiian Burial Memorial

TERMS OF RIGHT-OF-ENTRY:

1 year. Construction is anticipated to take place sometime in mid to late Fiscal 2021.

CONSIDERATION:

No fee proposed for use.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT

In accordance with Hawai'i Administrative Rules (HAR) Section 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources (DLNR) reviewed and concurred upon by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 3, Part 1, Item 5, which states, "re-burial of previously identified or inadvertently discovered remains over fifty (50) years old, with Department and landowner approval and according to guidelines provided in HAR Chapter 13-300". See Exhibit B.

DCCA Verification

Not applicable.

APPLICANT REQUIREMENTS

1. Obtain Right-of-Entry permit from Department of Land and Natural Resources, Division of State Parks signed by Chairperson;
2. Obtain a Permit from the State of Hawai'i Department of Transportation when ready to start work; and,
3. Develop a Memorandum of Agreement with the DLNR State Parks Division to manage memorial in perpetuity.

BACKGROUND:

Twenty-one iwi po'o (human skulls) of ancestral Hawaiians were repatriated to the Office of Hawaiian Affairs (OHA) from the University of Cambridge (Cambridge), Duckworth Laboratory, in England, UK, on March 1, 2020. This was a momentous achievement and the result of over 10 years of persistent advocacy and research for the return of these iwi kūpuna. Please see the attached document (Exhibit C) from Cambridge acknowledging that the repatriation of twenty-one iwi kūpuna to OHA took place on February 29, 2020.

Of the twenty-one iwi po'o, provenance records indicate that twelve originated from the base of Nu'uaniu Pali. These twelve are believed to have been participants in the famed Battle of Nu'uaniu of 1795 in which the military forces of Kamehameha overcome the forces of Kalanikūpule. Additionally, an iwi po'o repatriated to OHA in 2018 from a private family in Pennsylvania is also believed to be from the Nu'uaniu Pali area. For these iwi kūpuna, OHA hopes a small area can be permanently set aside in the Nu'uaniu Pali Wayside Park area as a memorial for their ceremonial reburial after having been removed from Hawai'i over a century ago.

OHA formally wrote a letter to the State Parks Division and the Hawai'i Department of Transportation (HDOT) on June 29, 2020, requesting to open discussions for the authorization and establishment of a permanent reburial site for the repatriated iwi from Cambridge at a portion of

the Nu‘uanu Pali State Wayside Park (see Exhibit D)¹. The land is currently encumbered by Executive Order to HDOT, but is managed by State Parks via a Use & Occupancy (U&O) agreement. As follow up to this letter, a site visit to the Nu‘uanu Pali State Wayside Park was conducted on July 22, 2020, with representatives from OHA, HDOT, and Division of State Parks. At the site visit, a possible location was selected at a small grassy portion of land to the east of the main walk-way to the lookout area. See Exhibit A for approximate location on map. State Parks staff believes that installation of the memorial at this location would be minimally impactful to the existing park and may help deter visitors from accessing prohibited trails.

Proposed construction would include: 1) a subsurface burial vault with an open bottom, capped by a 15 ft x 20 ft cement stone platform; 2) eight cement stanchions resembling Hawaiian spears connected with a powder coated chain surrounding the stone platform; 3) a small (3 ft. x 5 ft.) traditional Hawaiian ahu for ho‘okopu; and, 4) a small commemorative plaque. Excavation for the burial vault is not expected to exceed 12 inches. See Exhibit E for renderings of the proposed reburial memorial. OHA would be responsible for all construction costs and obtaining any required permits. OHA has already allocated funds for this project in their Fiscal 2021 budget and would like to complete the project in this fiscal year.

As part of the follow up to the site visit, HDOT advised that the Division of State Parks’ current U&O with HDOT does allow for the proposed reburial memorial and no amendments are needed. However, OHA would still need to obtain a permit from HDOT when ready to start work. OHA has committed to obtaining this permit from HDOT when needed.

State Parks further expressed concern about follow up maintenance and costs associated with any necessary repairs. OHA staff was certainly amiable to engaging in further discussion regarding these concerns and developing a Memorandum of Agreement (MOA) to address maintenance and repairs. OHA is expected to absorb any maintenance and repair costs. State Parks staff will continue to work with OHA on the MOA and recommends that this MOA be in place prior to construction. When completed, the MOA will be provided to the BLNR Chair for approval.

State Parks believed that a Site Plan Approval from the Office of Conservation and Coastal Lands (OCCL) may be needed as the project area is within a conservation district. Initially it was believed that the proposed use may be considered an accessory use to the existing historic wayside as it will add a tangible historic link to the 1795 Battle of Nu‘uanu. Pursuant to HAR 13-5-22(b), land use P-9, construction of accessory structures is permitted in the protective subzone of a conservation district. As such, State Parks did reach out to OCCL in early August of this year. In response, OCCL provided a formal letter indicating that a Site Plan Approval would not be required as they are considering the action as land use P-8, which pertains to minor work to existing structures. The August 27, 2020, OCCL letter is attached as Exhibit F for reference.²

CONSULTATION:

Over the years it took to get these iwi back, OHA has been working closely with Native Hawaiian beneficiary Edward Halealoha Ayau. OHA still maintains communication with Mr. Ayau

¹ While the June 29, 2020, OHA letter to HDOT and State Parks notes that there were 17 iwi po‘o that came from the Nu‘uanu Pali, this was an error and should have read 12 iwi po‘o. The letter further did not mention the single iwi po‘o that was repatriated from a private family in Pennsylvania.

² The OCCL letter notes the purpose of the memorial is to reinter iwi repatriated from Cambridge. While the letter details there are 21 iwi that were repatriated from Cambridge, it does not indicate that only 12 of these iwi were from Nu‘uanu.

regarding this matter. OHA did bring the topic to the O'ahu Island Burial Council (OIBC) for discussion on February 12, 2020. OIBC was supportive of the idea to reinter the iwi from Cambridge at the Nu'uanu Pali State Wayside since they were originally taken from the base of the Nu'uanu Pali. An effort was subsequently made to reach out to any known descendants. An outreach notice was published in the April 2020 edition of OHA's *Ka Wai Ola* newspaper. The notice ran until June 30, 2020. OHA is currently working with interested parties to obtain descendant recognition from SHPD and the OIBC. Consultation will continue with OIBC.

RECOMMENDATION: That the Board,

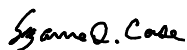
1. Authorize the Chairperson to approve that the Office of Hawaiian Affairs construct a Native Hawaiian burial memorial at a portion of the Nu'uanu Pali State Wayside, identified at TMK (1) 2-2-054:001 por., currently encumbered by Executive Order to the State of Hawai'i Department of Transportation, but managed by the DLNR Division of State Parks.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Authorize the issuance of a Right-of-Entry permit to the Office of Hawaiian Affairs covering the subject area for construction of a Native Hawaiian burial memorial under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time, and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



Curt A. Cottrell
State Parks Administrator

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

Exhibit A – Site Map of Proposed Re-burial Memorial at Nu'uanu Pali
Exhibit B – HRS 343 Exemption Notification
Exhibit C – Letter from University of Cambridge Acknowledging Repatriation of 21 Iwi to OHA
Exhibit D – July 7, 2020 Letter from OHA to State Parks and HDOT
Exhibit E – Renderings of Proposed Re-Burial Vault Memorial
Exhibit F – OCCL August 27, 2020 Letter Re: Burial Memorial at Nu'uanu Pali State Wayside

EXHIBIT A : Map of Proposed Re-Burial Memorial Area @ Nu'uanu Pali
TMK (1) 2-2-054:001 por.



Nu'uanu Pali Lookout

Nu'uanu Pali

Nu'uanu Pali
Clifftop
lookout
point with
scenic views

Nu'uanu Pali
State Wayside
Sweeping views from a...

Proposed location
of Reburial Vault

Parking for Nu'uanu
Pali Lookout Trail head

Google

EXHIBIT B**HRS 343 EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title:	New Construction of a Re-Burial Vault Memorial on State Lands at the Nu‘uanu Pali State Wayside Park
Project/Reference No:	N/A
Project Location:	Honolulu, Kona Moku, Island of O‘ahu, TMK (1) 2-2-054:001 por.
Project Description:	Construction of a subsurface 15 ft x 20 ft concrete (CMU) open-bottom burial vault with an at-grade stone platform cap. Excavation for burial vault to not exceed 12 inches. Installation of 8 above-ground cement stanchions resembling Hawaiian spears connected with a powder coated chain surrounding the stone platform cap. Nearby construction of a small above-ground 3 ft. x 5 ft. traditional Hawaiian ahu and small commemorative plaque.
Chap. 343 Trigger(s):	Use of State funds, State lands, and Conservation District Use
Exemption Class No(s):	DLNR Exemption Class 3 “Construction and location of single new, small facilities or structures”, Part 1, Item 5: “Re-burial of previously identified or inadvertently discovered remains over fifty (50) years old, with Department and landowner approval and according to guidelines provided in HAR Chapter 13-300.”
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No. There are no planned successive actions to be undertaken at the same location.
Action May have Significant Impact on Particularly Sensitive Environment?	No. While the greater area is zoned P-1 and within a protective subzone of a conservation district, this portion of the protective sub-zone is heavily modified due to the creation of the wayside park and the Old Pali Road. The proposed location of the burial vault and ahu is adjacent to the walkway leading to the Pali lookout on a flat, grassy area that is currently landscaped and maintained by staff from the Division of State Parks. This area does not contain any “sensitive environment” as it is not located in an area with known endangered species or critical habitat.
Analysis:	<p>The construction of a re-burial vault is to re-inter iwi that were repatriated to OHA in 2020. These iwi were illicitly removed from the base of the Nu‘uanu Pali in the late 19th century.</p> <p>Construction of the memorial will use CMU and not pose any hazard to the environment. The proposed location of the burial vault and ahu is adjacent to the walkway leading to the Pali lookout on a flat, grassy area that is currently landscaped and maintained by staff from the Division of State Parks. The memorial will add to the</p>

EXHIBIT B

	<p>historic character of the park by providing a tangible link to the 1795 Battle of Nu‘uanu.</p> <p>A determination of no adverse effect to historic properties is anticipated as ground disturbing work is minimal and the proposed project will not adversely affect the historic character of the park. Per the Office of Conservation and Coastal Lands, a Site Plan Approval is not required for this project as the action is considered a minor operation to an existing structure that will have negligible change to or impact to land, or a natural and cultural resource.</p>
Consulted Parties:	O‘ahu Island Burial Council
Declaration:	DLNR and OHA find that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment.



UNIVERSITY OF
CAMBRIDGE

Duckworth Laboratory
Centre for Human Evolutionary Studies
Department of Archaeology



Prof Marta Mirazón Lahr
Director of the Duckworth Laboratory
Dr Trish Biers
Collections Manager

This letter is confirmation that the delegates of the Office of Hawaiian Affairs (OHA) have formally repatriated their Iwi Kūpuna (ancestral remains) from the University of Cambridge. At a repatriation ceremony held at the Department of Archaeology on Saturday, 29 February 2020, the Vice-Chancellor of the University of Cambridge handed over the Iwi Kūpuna (ancestral remains) of 21 native Hawaiian individuals to representatives from the Office of Hawaiian Affairs who are now transporting the iwi by hand to their ancestral homeland of Hawai'i.

Thank you,

Trish Biers, PhD
Collections Manager, The Duckworth Laboratory
Centre for Human Evolutionary Studies
The Henry Wellcome Building, Fitzwilliam Street
University of Cambridge
Cambridge CB2 1QH

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STATE OF HAWAII
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560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817

July 7, 2020

Curt Cottrell
Administrator
Department of Land and Natural Resources, State Parks Division
1151 Punchbowl Street, Kalanimoku Bldg
Honolulu, HI. 96813

Ed Sniffen
Deputy Director
Hawaii Department of Transportation, State Highways Division
869 Punchbowl Street, Ali'i'aimoku Bldg.
Honolulu, HI. 96813

Re: Request to Establish Permanent Reburial Site for Ancestral Hawaiian Skeletal Remains at Nuʻuanu Pali State Wayside Park, Honolulu, Oʻahu

Aloha nō kākou,

The Office of Hawaiian Affairs (OHA) respectfully requests to begin formal discussions with the State of Hawaiʻi Department of Transportation (HDOT) and Department of Land and Natural Resources (DLNR), State Parks Division, for the authorization and establishment of a permanent reburial site for repatriated iwi kūpuna (ancestral Hawaiian skeletal remains) at a portion of the Nuʻuanu Pali State Wayside Park, TMK (1) 2-2-054:001. It is OHA's understanding that HDOT currently owns this parcel of land, but the DLNR State Parks Division manages it.

Edward Halealoha Ayau, an advisor to OHA on repatriation claims, initiated discussions with Alan Carpenter, Assistant Administrator of the State Parks Division, regarding the possibility of constructing a reburial vault for repatriated iwi kūpuna returning from the University of Cambridge, United Kingdom (UK), on State lands at Nuʻuanu Pali in early 2020. While possible site locations have been discussed between the two, Mr. Carpenter advised OHA to submit a formal letter to DLNR State Parks Division and HDOT requesting utilization of a portion of the parcel for a reburial vault. He further instructed OHA to include the size of the platform and proposed location.

Curt Cottrell (DLNR) and Ed Sniffen (HDOT)
Nu‘uanu Pali Wayside Park Reburial Site
July 7, 2020
Page 2

Purpose of Reburial Vault

Twenty-one iwi po‘o (human skulls) of ancestral Hawaiians were repatriated from the University of Cambridge, Duckworth Laboratory, in England, UK, on March 1, 2020 by OHA. This was a momentous achievement and the result of over 10 years of persistent advocacy and research for the return of these iwi kūpuna. Please see the attached document (Enclosure 1) from the University of Cambridge acknowledging that the repatriation of twenty-one iwi kūpuna to OHA that took place on February 29, 2020.

Of the twenty-one skulls, seventeen originated from the base of Nu‘uanu Pali. These seventeen are believed to have been participants in the famed Battle of Nu‘uanu of 1795 in which the military forces of Kamehameha overcame the forces of Kalanikūpule. For these iwi kūpuna, we hope an area can be permanently set aside in the Nu‘uanu Pali Wayside Park area for their ceremonial reburial after having been illicitly removed from Hawai‘i over a century ago.

Proposed Location and Size

The exact location of the reburial vault would be agreed upon between OHA, HDOT, and DLNR State Parks Division. However, initial thoughts on the location have been discussed between Mr. Ayau and Mr. Carpenter. Please see Enclosure 2 for a map with the approximate area of the proposed reburial vault.

OHA’s construction proposal will include a subsurface vault with a stone platform (cemented) cap on the surface measuring 15’ x 20’, eight cement stanchions resembling Hawaiian spears connected with a powder-coated chain surrounding the stone platform, and an ahu. Enclosure 3 provides the renderings of this design at different locations in the selected area. Enclosure 4 provides a plan view and dimensions for the ahu. In addition to this, we propose installation of a brass plaque nearby to honor the fallen dead and to educate the public on this significant site.

Funding, Construction, and Outreach

Upon approval of this endeavor, OHA will complete the required procurement process for this project. OHA intends to fully fund this project and has already set aside the necessary funds in OHA’s Fiscal 2021 budget. All applicable permits would be obtained by either OHA or OHA’s selected contractor. Ideally, we would like to complete the project in Fiscal 2021.

OHA is also currently working with the O‘ahu Island Burial Council to identify possible lineal and/or cultural descendants to these iwi kūpuna. We anticipate finishing up with this outreach process in the next two to three months. As these iwi kūpuna came from the Nu‘uanu Pali area, we do not anticipate any disagreement on the proposed location.

Curt Cottrell (DLNR) and Ed Sniffen (HDOT)
Nu‘uanu Pali Wayside Park Reburial Site
July 7, 2020
Page 3

Closing Remarks

OHA looks forward to working with HDOT and DLNR State Parks Division on this important matter. In the discussions with Mr. Ayau, Mr. Carpenter further expressed that he was unsure if a Right of Entry (ROE) and approval from the Board of Land and Natural Resources would be necessary. OHA thus further requests that the DLNR State Parks Division advise OHA on next appropriate steps for this process.

Should you have any questions, please contact Mr. Kamakana C. Ferreira, OHA Lead Compliance Specialist, at (808) 594-0227, or by email at kamakanaf@oha.org.

‘O wau iho nō me ka ‘oia i‘o,



Sylvia M. Hussey, Ed.D.
Ka Pouhana, Chief Executive Officer

SH:kf

- Enclosures –
1. Formal letter from the University of Cambridge acknowledging repatriation of 21 iwi kūpuna to the Office of Hawaiian Affairs occurred on February 29, 2020
 2. Map of proposed reburial vault area at Nu‘uanu Pali Wayside Park
 3. Renderings of proposed reburial vault design at 3 different locations
 4. Plan view and dimensions of ahu

1

Burial Location A

conceptual

june 2020



Nu'uanu Pali Lookout • Oahu



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2

Burial Location B

conceptual

june 2020



Nu'uanu Pali Lookout • Oahu



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3

Burial Location C

conceptual

june 2020



Nu'uanu Pali Lookout • Oahu



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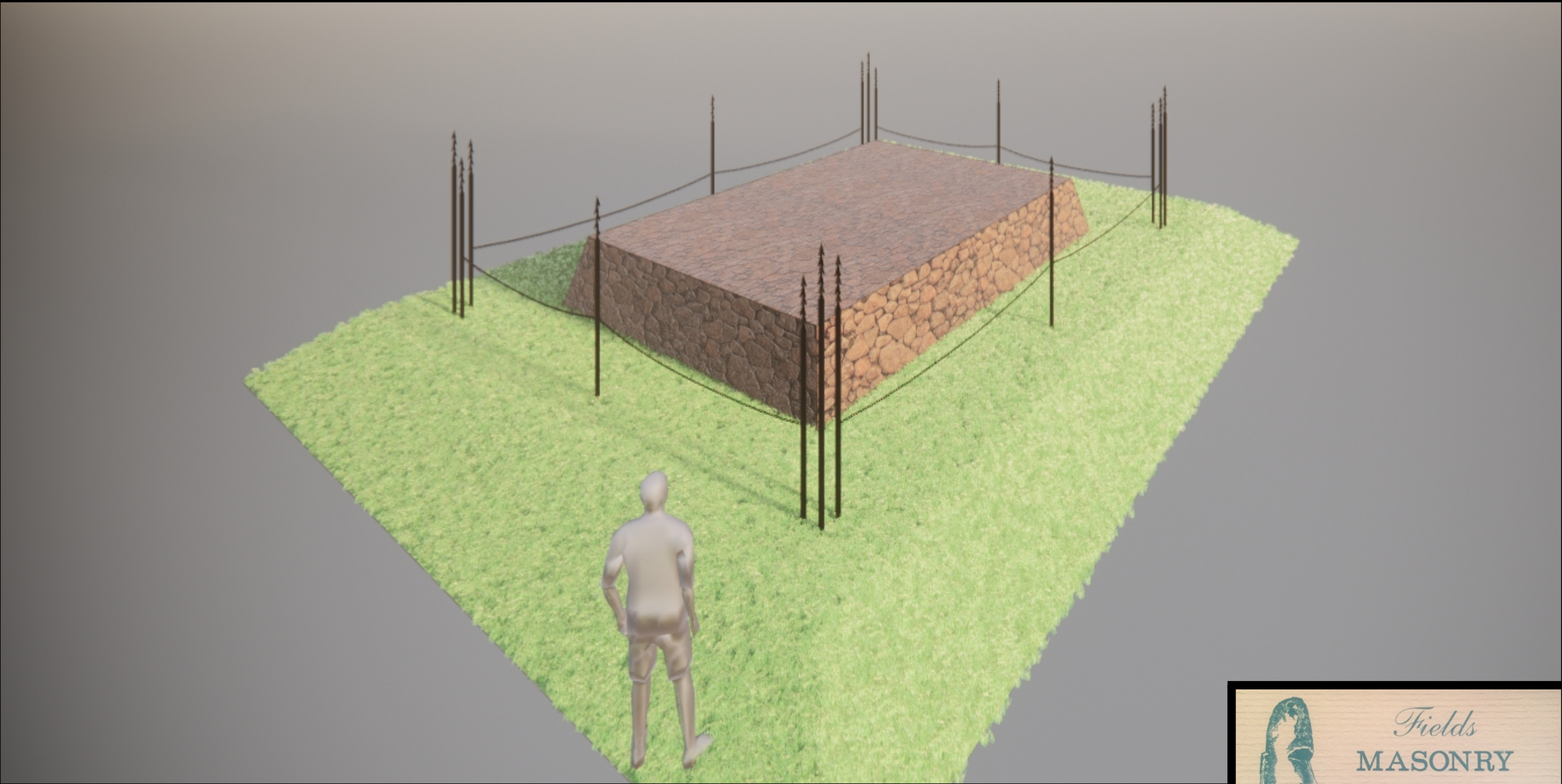
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4

Burial Plan Detail

conceptual

june 2020



Nu'uanu Pali Lookout • Oahu

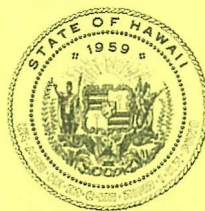


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CULTURAL RESTORATION • RESIDENTIAL • COMMERCIAL

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
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

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M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TF

Correspondence: OA 21-24

MEMORANDUM

AUG 27 2020

TO: Curt Cottrell, Administrator
Division of State Parks

FROM: Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

Sam Lemmo

SUBJECT: Conservation District Use Application for Construction of a Native Hawaiian Burial Memorial at Nu'uanu Pali State Wayside Park.
Located at Honolulu, Kona Moku, O'ahu
Tax Map Key (TMK): (1) 2-2-054:001

The Office of Conservation and Coastal Lands (OCCL) has reviewed the staff submittal to the Board of Land and Natural Resources (Board) regarding the proposed Native Hawaiian Burial Memorial at Nu'uanu Pali State Wayside Park. We appreciate the Division of State Parks and the Office of Hawaiian Affairs collaborative efforts to protect, preserve, and enhance important cultural, historical, and natural resources with the proposed project.

According to the staff submittal, the Division of State Parks and the Office of Hawaiian Affairs along with the Hawai'i Department of Transportation are proposing to construct a Native Hawaiian Burial memorial on the subject parcel for twenty-one (21) iwi po'o (human skulls) of ancestral Hawaiians that were repatriated to the Office of Hawaiian Affairs. The staff submittal states that the proposed construction of the Native Hawaiian Burial memorial will include 1) a subsurface burial vault with an open bottom capped by a 15ft x 20ft cement stone platform; 2) eight cement stanchions resembling Hawaiian spears connected with a powder coated chain surrounding the stone platform; 3) a small (3ft x 5ft) traditional Hawaiian ahu for ho'okopu; and 4) a small commemorative plaque. Excavation for the burial vault is not expected to exceed 12 inches.

Based on the information provided in the staff submittal, it appears that the proposed project area lies within the Protective Subzone of the State Land Use Conservation District on the parcel with the TMK: (1) 2-2-054:001. The proposed construction of the Native Hawaiian Burial memorial appears to be an identified land use in the Protective Subzone of the Conservation District pursuant to Hawai'i Administrative Rules (HAR), §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (A-1) *Minor repair, maintenance, and operation to an existing structure,*

facility, use, land, and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource. This does not appear to require filing for a Conservation District Use Permit or Site Plan Approval.

The OCCL has no objections to the proposed Native Hawaiian Burial Memorial at Nu'uanu Pali State Wayside Park as described provided that the following general conditions are adhered to:

1. That in issuing this letter, the Department has relied on the information and data that has been provided in connection with the letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, enforcement proceedings may be initiated as necessary;
2. Typical Best Management Practices (BMP) shall be implemented while conducting any land use in the Conservation District. Unauthorized land uses such as the disposal of material within the Conservation District shall initiate enforcement proceedings;
3. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary; and
4. If the scope of the project changes or the cumulative natural resource impacts is perceived to be moderate or major, the department may require authorizations or approvals for the proposed land use.

Should you have any further questions, please feel free to contact Trevor Fitzpatrick of our Office at (808) 798-6660 or trevor.j.fitzpatrick@hawaii.gov .