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Attorneys for
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BEFORE THE BOARD OF LAND & NATURAL RESOURCES
AND THE STATE HISTORIC PRESERVATION DIVISION
STATE OF HAWAI'I

In re the Petition of:)
MĀLAMA KAKANILUA, HO'OPONOPONO) PETITION FOR RULEMAKING;
O MĀKENA, and PELE DEFENSE FUND,) DECLARATION OF CLARE APANA;
) DECLARATION OF CAROL
For adoption, amendment, and repeal of rules set) KAMEKONA; DECLARATON OF
forth in Hawai'i Administrative Rules chapters 13-) PALIKAPU DEDMAN; APPENDIX "A"
275; 13-276; 13-277; 13-278; 13-279; 13-280; 13-)
281; 13-282; 13-283; 13-284; and 13-300.)

PETITION FOR RULEMAKING

Petitioners MĀLAMA KAKANILUA and PELE DEFENSE FUND, each Hawai'i nonprofit corporations, submit this Petition for Rulemaking pursuant to Hawai'i Revised Statutes ("HRS") §§ 91-1, 91-3, and 91-6, and Hawai'i Administrative Rules ("HAR") §§ 13-1-12, -21, -26, and 13-300-11.

Petitioners are interested persons. Their missions centralize Kānaka Maoli traditional and customary rights to protect burial sites (iwi kupuna) and historic properties. Proposed rule changes will better ensure protection of iwi kupuna in an orderly and transparent way for administrators,

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STATE OF HAWAII

Kānaka Maoli practitioners, landowners, and the general public.

I. PETITIONERS

Petitioner MĀLAMA KAKANILUA's president is located at 260 Halenani Drive, Wailuku, Hawai'i 96793. Declaration of Clare Apana ("Apana Decl.") ¶¶2-3. It was founded in 2006, is a nonprofit organization based on Maui and comprised of Kānaka Maoli traditional and customary practitioners, Maui residents, and lineal and cultural descendants of lands in across Maui. Mālama Kakanilua advocates for the identification, recognition, preservation and protection of historical and indigenous cultural sites and features as well as indigenous cultural properties on Maui and across the pae 'āina. Mālama Kakanilua takes its name from the famous historical battle of Kakanilua, which began in Mākena area of South Maui and ended in Kalua, Wailuku moku. This battle resulted in ancestral burial grounds in sand dunes across Central Maui, which have been greatly disturbed by development. Apana Decl. ¶6.

Mālama Kakanilua officers and supporters have long advocated to improve public processes to protect historic properties, especially iwi kupuna. In 2017, Mālama Kakanilua sought to stop desecration of iwi kupuna in Central Maui sandhills and testified in favor of a sand mining moratorium before the Maui County Council. In the same year, they successfully obtained an injunction against Maui Lani Partners, which had violated HRS chapter 6E while excavating Phase 9 of their construction project in the Maui sandhills. Apana Decl. ¶12.

In 2018, Mālama Kakanilua challenged grading permits issued by the Maui Department of Public Works for lands also in the Maui sandhills in order to protect burials there from improper disturbance. The Hawai'i supreme court recently accepted Mālama Kakanilua's application for writ of certiorari on this issue in Case No. SCWC-19-0000107 on March 12, 2026.

Also in 2018, Mālama Kakanilua and others petitioned the Board for declaratory orders against issuance of the archaeological services permit held by Archaeological Services Hawai'i, LLC, and subsequently engaged a contested case against the same. The Intermediate Court of Appeals upheld their challenges in *Mālama Kakanilua v. BLNR*, 155 Hawai'i 512, 567 P.3d 217 (App. 2025).

In 2019, Mālama Kakanilua, with co-petitioners Pele Defense Fund and Ho'oponopono o Mākena, intervened against Blackstone Real Estate's special management area permit to expand the Grand Wailea Resort over the largest known burial ground in South Maui. This case remains before the Maui Planning Commission.

Petitioner PELE DEFENSE FUND's address is P.O. Box 4969, Hilo, Hawai'i 96720. It was formed in 1985 by religious practitioners and lineal descendants of Pelehonuamea to protect her life force and realm, as well as the rights of Kanaka 'Ōiwi in the Wao Kele O Puna. It operates across Hawai'i and has a longstanding record of protecting Kānaka Maoli cultural and spiritual traditions, with particular concern for the protection of burial sites. Declaration of Palikapu Dedman ("Dedman Decl.") ¶¶2-3. Pele Defense Fund has advocated for protection of iwi kupuna, Hawaiian burial sites, across the pae 'āina. *Id.* ¶9.

Petitioner HO'OPONOPONO O MĀKENA's representative's address is 567 Kaulana Street, Kahului, Hawai'i 96732. Ho'oponopono o Mākena exists to preserve and protect cultural and historic sites, including burial sites, across Mākena in South Maui. Its mission is to "make things right" in Mākena and Honua'ula moku. Declaration of Carol Kamekona ("Kamekona Decl.") ¶5.

Petitioners' officers and members include cultural and lineal descendants of iwi disturbed by development and who have gone through SHPD and burial council processes to obtain recognition as descendants. Kamekona Decl. ¶¶3, 10. They also include iwi protection advocates, whose myriad experiences with historic preservation procedures, have learned ways such procedures can be improved to better facilitate collaboration with practitioners and preserve Hawai'i's heritage.

II. REASONS FOR SUBMITTING PETITION

Through their advocacy and exercise of Kānaka Maoli traditional and customary rights, Petitioners have repeatedly engaged historic review and burial council procedures that impact their rights and interests. Petitioners have advocated for improved historic properties review of multiple projects that are subject to HAR chapters 13-275; 13-276; 13-277; 13-278; 13-279; 13-280; 13-281; 13-282; 13-283; 13-284; and 13-300. Apana Decl. ¶¶8-16.

Petitioners present this petition to improve procedures for historic review, burial sites protection, and to ensure these procedures comply with applicable statutes and the Hawai'i constitution.

III. PROCEDURAL MATTERS

This petition seeks adoption, amendment, and repeal of rules set forth in HAR chapters 13-275, 13-276, 13-277, 13-278, 13-279, 13-280, 13-281, 13-282, 13-283, and 13-284 by the Board; as well as HAR chapter 13-300, which is decided by State Historic Preservation Division

("SHPD"). Although there are two decision-makers, the material is intertwined. Therefore, a single petition covering rules proposed to both decision-makers is submitted concurrently.

The Board is required to decide this petition within thirty days. HAR § 13-1-26(c). Although SHPD is afforded 180 days to consult "with the councils, Office of Hawaiian Affairs, representatives of development and large landowner interests, Hui Malama I Na Kupuna 'O Hawai'i Nei, and other appropriate Hawaiian organizations" (HAR § 13-300-11), HRS § 91-6 is the controlling statute and provides in relevant part: "Upon submission of the petition, the agency shall within thirty days either deny the petition in writing, stating its reasons for the denial or initiate proceedings in accordance with section 91-3."

Further, the Board must decide the petition at an open meeting subject to HRS chapter 92, Hawai'i's Sunshine Law. *See also* HAR § 13-1-21 ("When the board proposes to adopt, amend, or repeal a rule, whether acting upon a petition or its own motion, a public hearing shall be held as provided by law"). The Sunshine Law mandates, "[e]very meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5[.]" HRS § 92-3.

II. RELIEF REQUESTED

For the foregoing reasons and those in set forth in the attached Appendix "A," Petitioners pray the Board and SHPD notice a public hearing and move forward with proposed rulemaking.

DATED: Makawao, Hawai'i

March 25, 2026

/s/ Lance D. Collins
LAW OFFICE OF LANCE D. COLLINS
LANCE D. COLLINS

DATED: Honolulu, Hawai'i

March 25, 2026

/s/ Bianca Isaki
LAW OFFICE OF BIANCA ISAKI
BIANCA ISAKI

/s/ Rvan D. Hurley
LAW OFFICE OF RYAN D. HURLEY
RYAN D. HURLEY
Attorneys for Intervenors MĀLAMA
KAKANILUA, PELE DEFENSE FUND, &
HO'OPONOPONO O MĀKENA

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BEFORE THE BOARD OF LAND & NATURAL RESOURCES
AND THE STATE HISTORIC PRESERVATION DIVISION
STATE OF HAWAII

In re the Petition of:)
MĀLAMA KAKANILUA, HO‘OPONOPONO) DECLARATION OF CLARE APANA
O MĀKENA, and PELE DEFENSE FUND,)
For adoption, amendment, and repeal of rules set)
forth in Hawai‘i Administrative Rules, chapters)
13-275; 13-276; 13-277; 13-278; 13-279; 13-280;)
13-281; 13-282; 13-283; 13-284; and 13-300.)

DECLARATION OF CLARE APANA

I, CLARE APANA, declare under penalty of law the following is true and correct.

1. I make this declaration based upon my personal knowledge, information and belief.
2. I am the president of Petitioner MĀLAMA KAKANILUA, a nonprofit corporation, in the above-captioned proceeding. I live at located at 260 Halenani Drive, Wailuku, Hawai‘i 96793.
3. Mālama Kakanilua, founded in 2006, is a nonprofit organization based on Maui and comprised of Kānaka Maoli traditional and customary practitioners, Maui residents, and lineal and cultural descendants of lands in across Maui.
4. Mālama Kakanilua’s officers and supporters include Kānaka Maoli traditional and customary practitioners, descended from those who inhabited the Hawaiian island prior to 1778. Mālama Kakanilua’s mission centralizes Kānaka Maoli traditional and customary rights to protect burial sites (iwi kupuna) and historic properties.
5. Kānaka Maoli, including Mālama Kakanilua members and officers, have a long tradition of learning from the past, which requires access to and connection to the ‘āina, being able to connect with the sites that remain from earlier times, and protecting iwi kūpuna. These physical reminders tie us to our past and enable us to learn in our present day.
6. Mālama Kakanilua advocates for the identification, recognition, preservation and protection of historical and indigenous cultural sites and features as well as indigenous cultural properties on Maui and across the pae ‘āina. Mālama Kakanilua takes its name from the famous historical battle of Kakanilua, which began in Mākena area of South Maui and ended in Kalua,

Wailuku moku. This battle resulted in ancestral burial grounds in sand dunes across Central Maui, which have been greatly disturbed by development. Mālama Kakanilua advocates for the preservation and protection of historical and cultural sites and especially burial sites.

7. Mālama Kakanilua and co-petitioners PELE DEFENSE FUND and HO‘OPONOPONO O MĀKENA, filed this petition for rulemaking to propose rules that will better ensure protection of iwi kupuna in an orderly and transparent way for administrators, Kānaka Maoli practitioners, landowners, and the general public. Attached as Appendix “A” is a true and correct copy of the rule changes, with rationale for the changes, we are proposing the Land Board and SHPD submit to rulemaking procedures.

8. Mālama Kakanilua, as an organization and through its officers and supporters, have long advocated to improve public processes to protect historic properties, especially iwi kupuna. We have worked with other kupuna iwi advocacy groups to host an annual Iwi Conference, which has attendees from all islands, for the past four years.

9. In 2013, Mālama Kakanilua officers worked with archaeologist Dr. Pam Crabtree to review excavation at the Maui Lani Safeway commercial center project site. I saw a big sandy excavation pit and exposed bones on the ground, including a calcaneus. Leaving bones out risks that they may be damaged by people or dogs and is disrespectful to our iwi kupuna. The consultant on that project was Archaeological Services Hawai‘i, LLC (“ASH”), whose “archaeologist” did not have any qualifications and was operating under the archaeological services permit of Jeffrey Pantaleo – who does not live on Maui, has a separate archaeological firm, and worked a separate full time job on O‘ahu.

10. I was involved with the of iwi kupuna disturbed by the Maui Lani Safeway project. I understood eight iwi kupuna had been disturbed and removed from the Maui Lani Safeway project. State Historic Preservation Division’s (“SHPD”) Hinano Rodrigues asked me to assist with reinterment of the burials. I asked him how much kapa and baskets I should prepare and he also stated he believed eight iwi kupuna needed to be reinterred. However, ASH brought twenty-three (23) iwi kupuna for reinternment. We did not want to raise a disturbance during the reinterment ceremony so we did not confront ASH or SHPD at the time.

11. Later, I went back through the reports and only could find at most the possibility of 18 iwi kupuna disturbed and removed from Maui Lani Safeway. I remained disturbed by the additional five sets of iwi kupuna but no one responded to my inquiries about their origin.

12. In 2017, Mālama Kakanilua sought to stop desecration of iwi kupuna in Central Maui sandhills and testified in favor of a sand mining moratorium before the Maui County Council. In the same year, they successfully obtained an injunction against Maui Lani Partners, which had violated IIRS chapter 6E while excavating Phase 9 of their construction project in the Maui sandhills.

13. In 2018, Mālama Kakanilua challenged grading permits issued by the Maui Department of Public Works for lands also in the Maui sandhills in order to protect burials there from improper disturbance. The Hawai'i supreme court recently accepted Mālama Kakanilua's application for writ of certiorari on this issue in Case No. SCWC-19-0000107 on March 12, 2026.

14. Also in 2018, Mālama Kakanilua and others petitioned the Board for declaratory orders against issuance of the archaeological services permit held by Archaeological Services Hawai'i, LLC, and subsequently engaged a contested case against the same. The Intermediate Court of Appeals upheld their challenges in *Mālama Kakanilua v. BLNR*, 155 Hawai'i 512, 567 P.3d 217 (App. 2025).

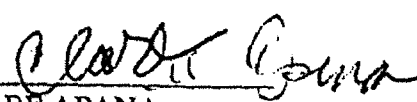
15. In 2019, Mālama Kakanilua, with co-petitioners Pele Defense Fund and Ho'oponopono o Mākena, intervened against Blackstone Real Estate's special management area permit to expand the Grand Wailea Resort over the largest known burial ground in South Maui. This case remains before the Maui Planning Commission.

16. In 2022, Mālama Kakanilua, with other groups, sued for improved environmental review, especially historic properties review, of H2R, LLC's luxury residential project in South Maui. I, and others from Ho'oponopono o Mākena have participated in the H2R, LLC's ongoing development of a historic resources preservation plan for the project, through providing input and attending multiple site visits with their cultural and archaeological consultants.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Wailuku, Hawai'i

March 18, 2026


CLARE APANA
DECLARANT

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In re the Petition of:)
MĀLAMA KAKANILUA, HO‘OPONOPONO) DECLARATION OF CAROL
O MĀKENA, and PELE DEFENSE FUND,) KAMEKONA
For adoption, amendment, and repeal of rules set)
forth in Hawai‘i Administrative Rules, chapters)
13-275; 13-276; 13-277; 13-278; 13-279; 13-280;)
13-281; 13-282; 13-283; 13-284; and 13-300.)

DECLARATION OF CAROL KAMEKONA

I, CAROL KAMEKONA, declare under penalty of law the following is true and correct.

1. I am a resident of Hawai‘i and make this declaration based upon my personal knowledge, information and belief.
2. I am an officer of Petitioner HO‘OPONOPONO O MAKENA, a nonprofit corporation, in the above-captioned proceeding. My address is 567 Kaulana Street, Kahului, Hawai‘i 96732.
3. I am a lineal descendant of the ahupua‘a of Paeahu and the moku of Honua‘ula through Kauholanuimahu. Kauholanuimahu was a chief of Moku o Keawe who married a Chiefess named Neula whose family was from Honua‘ula. To Kauholanuimahu is attributed the building of the loko i‘a fishponds of Keone'o'io, ‘Apuakehau Point, Paniaka and on Oneuli Beach. Kauholanuimahu is also credited with building two heiau in Honua‘ula - Oneuli and Onipa'a where an expansive grove of coconut trees grew.
4. I am recognized by the Maui Lāna‘i Islands Burial Council as a cultural descendant of iwi kupuna in the ahupua‘a of Paeahu in the moku of Honua‘ula on Maui.
5. Ho‘oponopono o Mākena exists to preserve and protect cultural and historic sites, including burial sites, across Mākena in South Maui. Its mission is to “make things right” in Mākena and Honua‘ula moku.
6. Ho‘oponopono o Mākena’s mission includes advocating for Kānaka Maoli traditional and customary rights to protect burial sites (iwi kupuna) and historic properties.
7. Ho‘oponopono o Mākena, and co-petitioners Mālama Kakanilua and Pele Defense Fund, filed this petition for rulemaking to propose rules that will better ensure protection of iwi kupuna in an orderly and transparent way for administrators, Kānaka Maoli practitioners,

landowners, and the general public.

8. In 2019, Pele Defense Fund, and co-petitioners Mālama Kakanilua and Pele Defense Fund, intervened against Blackstone Real Estate's special management area permit to expand the Grand Wailea Resort over the largest known burial ground in South Maui. This case remains before the Maui Planning Commission.

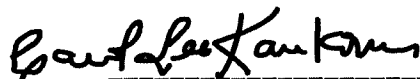
9. Through our advocacy and exercise of Kānaka Maoli traditional and customary rights, I and others in Ho'oponopono o Mākena have repeatedly engaged historic review and burial council procedures that impact our rights and interests.

10. Ho'oponopono o Mākena's officers and members include cultural and lineal descendants of iwi disturbed by development and who have gone through SHPD and burial council processes to obtain recognition as descendants. They also include iwi protection advocates, whose myriad experiences with historic preservation procedures, have learned ways such procedures can be improved to better facilitate collaboration with practitioners and preserve Hawai'i's heritage.

DECLARANT FURTHER SAYETH NAUGHT

DATED: Kahului, Hawai'i

March 14, 2026



CAROL KAMEKONA
DECLARANT

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In re the Petition of:)
MĀLAMA KAKANILUA, HO‘OPONOPONO) DECLARATION OF PALIKAPU
O MĀKENA, and PELE DEFENSE FUND,) DEDMAN
For adoption, amendment, and repeal of rules set)
forth in Hawai‘i Administrative Rules, chapters)
13-275; 13-276; 13-277; 13-278; 13-279; 13-280;)
13-281; 13-282; 13-283; 13-284; and 13-300.)

DECLARATION OF PALIKAPU DEDMAN

I, PALIKAPU DEDMAN, declare under penalty of law the following is true and correct.

1. I am a resident of Hawai‘i and make this declaration based upon my personal knowledge, information and belief.
2. I am the president of Petitioner PELE DEFENSE FUND, a nonprofit corporation, in the above-captioned proceeding. Pele Defense Fund’s address is P.O. Box 4969, Hilo, Hawai‘i 96720.
3. Pele Defense Fund was formed in 1985 by religious practitioners and lineal descendants of Pelehonuamea to protect her life force and realm, as well as the rights of Kanaka ‘Ōiwi in the Wao Kele O Puna. It operates across Hawai‘i and has a longstanding record of protecting Kānaka Maoli cultural and spiritual traditions, with particular concern for the protection of burial sites.
4. Since that time, Pele Defense Fund and myself as its representative, have advocated for protection of iwi kupuna, Hawaiian burial sites, across the pae ‘āina.
5. For instance, Pele Defense Fund has opposed the Hawai‘i Geothermal Project, for reasons including the proposal would disturb traditional cave burials of kūpuna iwi.
6. In the late 1980s, I worked with other Hawaiians to protect around 2,000 iwi kupuna at Honokahua, Maui.
7. Pele Defense Fund’s mission includes advocating for Kānaka Maoli traditional and customary rights to protect burial sites (iwi kupuna) and historic properties.
8. Pele Defense Fund, and co-petitioners Mālama Kakanilua and Ho‘oponopono o Mākena, filed this petition for rulemaking to propose rules that will better ensure protection of iwi kupuna in an orderly and transparent way for administrators, Kānaka Maoli practitioners,

landowners, and the general public.

9. Pele Defense Fund worked with other kupuna iwi advocates to host an annual Iwi Conference in Kona, Hawai'i in 2025.

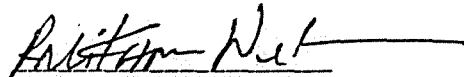
10. In 2019, Pele Defense Fund, and co-petitioners Mālama Kakanilua and Ho'oponopono o Mākena, intervened against Blackstone Real Estate's special management area permit to expand the Grand Wailea Resort over the largest known burial ground in South Maui. This case remains before the Maui Planning Commission.

11. Pele Defense Fund's officers and members include cultural and lineal descendants of iwi disturbed by development and who have gone through SHPD and burial council processes to obtain recognition as descendants. They also include iwi protection advocates, whose myriad experiences with historic preservation procedures, have learned ways such procedures can be improved to better facilitate collaboration with practitioners and preserve Hawai'i's heritage

DECLARANT FURTHER SAYETH NAUGHT

DATED: Hilo, Hawai'i

March 18, 2026


PALIKAPU DEDMAN
DECLARANT

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Current rule	Proposed rule revision
<p>HAR § 13-275-2 Definitions. HAR § 13-276-2 Definitions. HAR § 13-277-2 Definitions. HAR § 13-278-2 Definitions. HAR § 13-279-2 Definitions. HAR § 13-280-2 Definitions. HAR § 13-281-2 Definitions. HAR § 13-284-2 Definitions. HAR § 13-300-2 Definitions. (to be added)</p> <p>“Consultation process” means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their view in a good faith and appropriate manner during the review process.</p>	<p>HAR § 13-275-2 Definitions. HAR § 13-276-2 Definitions. HAR § 13-277-2 Definitions. HAR § 13-278-2 Definitions. HAR § 13-279-2 Definitions. HAR § 13-280-2 Definitions. HAR § 13-281-2 Definitions. HAR § 13-284-2 Definitions. HAR § 13-300-2 Definitions.</p> <p>“Consultation process” means notifying interested organizations and individuals that a project could affect historic properties of interest to them, <u>including in what ways they could be affected and on when those effects may occur</u>; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; <u>disclosing how the organization’s or individual’s consultation may be used by the department or other consulting party, including in documentation supportive of the project</u>; and considering their view in a good faith and appropriate manner during the review process. <u>All consulted organizations and persons must be presented with a written record of the consultation and an opportunity to prevent their name and information from inclusion in project documentation prior to the project review process.</u></p>

Rationale: Petitioners and other community members have participated in “consultation” without fully understanding how their participation engages with the historic review process, and thus without their informed consent to so participate. Proposed amendments require properly informing consulted persons and provide a procedure whereby these persons may decline to participate in the review process. Revisions will better ensure Petitioners and other Kānaka Maoli cultural practitioners obtain meaningful engagement on projects that may affect their rights and interests, as opposed to their participation merely serving to legitimate projects for they may not fully understand the extent of impacts.

For instance, Petitioners oppose Blackstone Real Estate (“BRE”)’s special management area (“SMA”) permit application to expand the luxury Grand Wailea resort before the Maui Planning Commission. BRE asserted they had consulted Petitioners in revising project

APPENDIX "A"

plans, when in truth they had merely sat in a room with Petitioners and then thrust papers in Petitioners' hands as they were leaving the room. It was only later that Petitioners learned those papers contained revised plans.

Current rule	Proposed rule revision
<p>HAR § 13-275-1. Purpose, applicability, and participants. [. . .] (c)Participants in the historic preservation review process. (1)The primary participants in the process are DLNR, represented by the SHPD, and the agency with jurisdiction over the project. The agency has responsibility for complying with these historic preservation review process. The agency may have others prepare the review process items. [. . . .]</p>	<p>HAR § 13-275-1. Purpose, applicability, and participants. [. . .] (c)Participants in the historic preservation review process. (1)The primary participants in the process are DLNR, represented by the SHPD, and the agency with jurisdiction over the project, <u>and where burial sites may be affected, lineal and cultural descendants.</u> The agency has responsibility for complying with the historic preservation review process. The agency may have others prepare the review process items. [. . . .]</p>

Rationale: Proposed amendments ensures lineal and cultural descendants are primary participants in the historic preservation review process where burial sites may be affected. Petitioners' members and officers include cultural descendants. The historic preservation process is made more efficient and responsive where lineal and cultural descendants are treated as primary participants at every stage of the process, rather than merely being updated after plans have been made.

<p>HAR § 13-275-3 Obtaining a determination letter generally. (a) For the department to provide a letter of determination, an agency proposing a project which may have an effect upon historic properties shall notify the department of the proposed project and request a letter of determination. Upon the request of the department, the agency shall provide the department with information as to the number of historic properties within a proposed project area, their significance, the impact of the proposed project on the historic properties. Upon receipt of adequate information the department will provide a determination letter within ninety days, Any agency involved in</p>	<p>HAR § 13-275-3 Obtaining a determination letter generally. (a) For the department to provide a letter of determination, an agency proposing a project which may have an effect upon historic properties shall notify the department of the proposed project and request a letter of determination. Upon the request of the department, the agency shall provide the department with information as to the number of historic properties within a proposed project area, their significance, the impact of the proposed project on the historic properties, <u>recommendations and information from consulted cultural and lineal descendants, where Native Hawaiian burial sites may be affected,</u> and any proposed mitigation measures. Upon receipt of adequate information the</p>
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the historic preservation review process shall consult and obtain the written approval of the SHPD at each step of the review. Once concurrence is received, the agency may begin the project. In cases where interim protection plans are adequately in place or data recovery fieldwork has been adequately completed, a determination letter may be issued.

(b) The review steps, to be described in greater detail in the following sections, are as follows;

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments, committing to acceptable forms of mitigation in order to properly handle or minimize impacts' to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.

(c) Documents for review steps one through four shall be submitted concurrently.

(d) A receipt date will be stamped on all review documents received by the SHPD.

(e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this chapter, or by a mutually agreed upon date. Copies of SHPD written comments will also be sent to any interested persons who have expressed concerns with the project by that point in the process. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to concur with the agency's submittal.

department will provide a determination letter within ninety days, Any agency involved in the historic preservation review process shall consult and obtain the written approval of the SHPD at each step of the review. Once concurrence is received, the agency may begin the project. In cases where interim protection plans are adequately in place or data recovery fieldwork has been adequately completed and reviewed by SHPD, a determination letter may be issued.

(b) The review steps, to be described in greater detail in the following sections, must include documented evidence of consultation with lineal or cultural descendants, or if none can be identified, with a kupuna iwi organization, where Native Hawaiian burial sites may be affected. The review steps are as follows;

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments, committing to acceptable forms of mitigation in order to properly handle or minimize impacts' to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.

(c) Documents for review steps one through four shall be submitted concurrently.

(d) A receipt date will be stamped on all review documents received by the SHPD.

(e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this chapter, or by a mutually agreed upon date. Copies of SHPD written comments will also be sent to any interested persons who have expressed concerns with the project by that point in the process. ~~If the SHPD fails to send written comments within the set~~

(f) The SHPD shall consider interested persons' comments on any submittals' acceptability in accordance with this chapter and chapters 13-276 through 13-283. Comments must be submitted in writing to the SHPD within thirty days of the SHPD's posting a notice of "no historic properties affected" determination or posting a notice of SHPD receipt of information. The SHPD shall post notice every Friday of receipt of relevant documents and of issuance of SHPD "no historic properties affected" or receipt of information. The notice shall be posted at the SHPD office and on the SHPD's website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons shall contact the SHPD to obtain copies of this notice, or to find locations of documents, should they wish to review them.

(g) If the agency or interested persons disagree with the accuracy of the SHPD's determination and if disagreements cannot be resolved through meetings with the SHPD, an appeal may be made to the Hawai'i historic places review board within thirty days of the SHPD's determination letter. An appeal is initiated by a written request to the Hawai'i historic places review board to appeal a SHPD determination.

~~time, or by a mutually agreed upon date, then the SHPD is presumed to concur with the agency's submittal.~~

(f) The SHPD shall consider interested persons' comments on any submittals' acceptability in accordance with this chapter and chapters 13-276 through 13-283. Comments must be submitted in writing to the SHPD within thirty days of the SHPD's posting a notice of "no historic properties affected" determination or posting a notice of SHPD receipt of information. The SHPD shall post notice every Friday of receipt of relevant documents and of issuance of SHPD "no historic properties affected" or receipt of information. The notice shall be posted at the SHPD office and on the SHPD's website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons shall contact the SHPD to obtain copies of this notice, or to find locations of documents, should they wish to review them.

(g) If the agency, cultural or lineal descendants of burial sites that may be affected, or interested persons disagree with the accuracy of the SHPD's determination and if disagreements cannot be resolved through meetings with the SHPD, an appeal may be made to the Hawai'i historic places review board within thirty days of the SHPD's determination letter. An appeal is initiated by a written request to the Hawai'i historic places review board to appeal a SHPD determination.

Rationale: Proposed amendments ensures lineal and cultural descendants are consulted during the historic preservation review process where burial sites may be affected, for instance under subsection (g). Amendment to subsection(a) require that SHPD has actually reviewed the established interim protection plans or completed data recovery prior to SHPD determination letter issuance. Subsection (b) requires consultation with Native Hawaiian descendants or cultural practitioners where Native Hawaiian burial sites may be affected. Petitioners have been challenged to obtain information and updates from SHPD and other agencies on plans, decisions, and new findings. Provisions anticipating consultation with cultural and lineal descendants will better protect Petitioners' ability to advocate for iwi protection.

<p>HAR § 13-275-5 Identification and inventory of historic properties. (a) The agency shall be responsible for determining whether historic properties are present in the project area and, if so, to properly identify and inventory the properties. [. . .]</p>	<p>HAR § 13-275-5 Identification and inventory of historic properties. (a) The agency shall be responsible for determining whether historic properties are present in the project area and, if so, to properly identify and inventory the properties. <u>In areas where there are sand deposits, lava tubes, or other indicia that Native Hawaiian burial sites may be affected, the agency's determination must include documented consultation with lineal and cultural descendants, or if none can be identified, with kupuna iwi organizations, in determining whether Native Hawaiian burial sites may be affected in the area of any proposed project area. Documentation must demonstrate native Hawaiian traditions and customs are protected and preserved.</u></p>
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Rationale: Amendments require agencies to themselves consult with lineal and cultural descendants or, if none can be identified, kupuna iwi organizations, in areas where Native Hawaiian burial sites may exist, as part of the process of determining whether historic properties are present. Petitioners have been challenged to require consultation and protection for their traditions and customs especially in areas that likely contain burial sites, but are not treated that way – often on the basis that previous, sometimes poorly-executed archaeological inventory surveys did not ascertain the presence of iwi kupuna. This provision will limit the ability of unscrupulous archaeological consultants or developer clients to disturb historic properties, especially iwi kupuna, in sensitive areas.

<p>HAR §13-275-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this assessment or delegate this assessment, in writing, to the SHPD. This information shall be submitted in the survey report, if historic properties were found through the survey. [. . . .]</p>	<p>HAR §13-275-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this assessment or delegate this assessment, in writing, to the SHPD. <u>In either case, where the historic property is or involves a Native Hawaiian burial site, lineal and cultural descendants shall be consulted, or if unavailable then kupuna iwi organizations shall be consulted, and their recommendations and testimony recorded for submission to SHPD.</u> This information shall be submitted in the survey report, if historic properties were found through the survey.</p>
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Rationale: Amendment would ensure the department or department delegate consults a cultural or lineal descendant or a kupuna iwi organization prior to evaluating the significance of Native Hawaiian burial site. Although such consultation is requisite for burial sites under HAR chapter 13-300, the reiteration of this requirement and allowing for kupuna iwi organizations to provide recorded consultation and recommendations, will better protect iwi kupuna.

HAR §13-275-11 Reconsideration of findings after the process is closed.

(a) The SHPD shall reconsider the findings under sections 13-275-5 (adequate identification and inventory procedures), 13-275-6 (significance evaluations), 13-275-7 (determination of effects), and 13-275-6 (mitigation), when new information is submitted by an interested party with a request for reconsideration. To be considered, the inquiry must address a specific problem in the findings with supportive new evidence presented. The agency conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD will not suspend action on a project, but the agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within ten working days of receipt of the request at the SHPD office, the SHPD shall advise in writing the interested party and the agency undertaking the project of the SHPD conclusions.

(b) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD and the agency undertaking the project shall attempt to reach agreement on how to correct the problem. If agreement cannot be reached within ten working days, the Hawaii historic places review board shall be asked for their advice. The review board shall provide their advice within thirty days after receiving a request.

HAR §13-275-11 Reconsideration of findings after the process is closed.

(a) The SHPD shall reconsider the findings under sections 13-275-5 (adequate identification and inventory procedures), 13-275-6 (significance evaluations), 13-275-7 (determination of effects), and 13-275-6 (mitigation), when new information is submitted by an interested party with a request for reconsideration. To be considered, the inquiry must address a specific problem in the findings with supportive new evidence presented. The agency conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD will not suspend action on a project, but the agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within ten working days of receipt of the request at the SHPD office, the SHPD shall advise in writing the interested party and the agency undertaking the project of the SHPD conclusions.

(b) If the SHPD conclusions identify an inaccurate significance evaluation or scope or significance of project effects, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD and the agency undertaking the project shall attempt to reach agreement on how to correct the problem. If agreement cannot be reached within ten working days, the Hawaii historic places review board shall be asked for their advice. The review board shall provide their advice within thirty days after receiving a request.

Rationale: The amendment requires consideration of inaccuracies in anticipated scope or significance of project effects that were determined under HAR § 13-275-7. Currently, where more and different historic properties are discovered subsequent to an AIS or project initiation, there are no provisions to revise, holistically, the proposed project. This amendment will provide further flexibility in light of new findings and thus ensure a wider range of relief for protection of iwi kupuna.

HAR § 13-276-1 Policy and purpose. This chapter establishes standards for archaeological inventory surveys and reports required for chapter 13-275 and 13-284 for the historic preservation review process.

HAR § 13-276-1 Policy and purpose. This chapter establishes standards for archaeological inventory surveys and reports required for chapter 13-275 and 13-284 for the historic preservation review process. These standards are necessary to ensure the department's decisions and concurrence on projects avoid significant impacts to historic properties, including burial sites, and consequent harms to Hawai'i historical and cultural heritage, and the public trust therein.

Rationale: Amendments clarify the purpose of archaeological survey and report standards is to protect historic and cultural resources by ensuring SHPD is properly informed. Petitioners have been challenged to bring their information to SHPD and other decisionmakers. This amendment enshrines the purpose of high standards for archaeological surveys and reports.

HAR § 13-276-3 Archaeological inventory survey, generally. An archaeological inventory survey shall:
(1) Determine if archaeological historic properties are present in the project area and, if so, identify all such historic properties.
(2) Gather sufficient information to evaluate each historic property's significance in accordance with the significance criteria listed in subsection 13-275-6(b).

HAR § 13-276-3 Archaeological inventory survey, generally. An archaeological inventory survey shall:
(1) Determine if archaeological historic properties are present in the current project area and, if so, identify all such historic properties. An archaeological inventory survey conducted for a project that has been surpassed or changed in ways that affect the location or scope of ground disturbance must be supplemented to account for new or changed projects and cannot constitute accepted historic review of a current project that has so changed or been updated.
(2) Gather sufficient information to evaluate each historic property's significance in accordance with the significance criteria listed in subsection 13-275-6(b).

Rationale: Amendment would prevent proponents of changed projects from relying on archaeological inventory surveys that were not prepared to investigate impacts of a current project. This will advance the purpose of the chapter and better ensure SHPD and others implementing historic review documentation have accurate, relevant information to protect historic properties.

HAR § 13-276-4 Archaeological field survey.
[. . . .]

HAR § 13-276-4 Archaeological field survey.
[. . . .]

<p>(c) Test excavations shall be undertaken on historic properties, or features of properties, that have several possible alternative functions based on surface examination to provide additional information that might help to resolve the question of property or feature function. Recordation of such excavations and any necessary laboratory analysis of recovered materials shall be undertaken as part of the archaeological inventory survey. If human skeletal remains are found, they shall not be disturbed, excavations shall be backfilled, and SHPD notified as soon as possible. Archaeological historic properties, or features of properties, that are highly probable to be burials based on surface examination shall not undergo test excavation without authorization from the department.</p> <p>(d) If 100% of the proposed project's surface area is not inventoried, sampling strategies need prior approval from the department.</p>	<p>(c) Test excavations shall be undertaken on historic properties, or features of properties, that have several possible alternative functions based on surface examination to provide additional information that might help to resolve the question of property or feature function. Recordation of such excavations and any necessary laboratory analysis of recovered materials shall be undertaken as part of the archaeological inventory survey. If human skeletal remains are found, they shall not be disturbed, excavations shall be backfilled, and SHPD notified as soon as possible. Archaeological historic properties, or features of properties, that are highly probable to be burials based on surface examination shall not undergo test excavation without authorization from the department.</p> <p>(d) If 100% of the proposed project's surface area is not inventoried, sampling strategies need prior approval from the department. <u>Sampling strategies must be designed to detect historic properties and burial sites. If infrastructure, buildings, or operations prevent sufficient sampling locations, this insufficiency must be considered in assessing the archaeological inventory report, the accuracy of the archaeological inventory, and in developing mitigation measures.</u></p>
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Rationale: Amendments emphasize archaeological sampling strategies cannot be designed only to accommodate pre-existing structures and where such accommodation occurs, requires SHPD to account for these limitations. This is particularly relevant for expansions and rebuilds of projects that are located in areas of heightened historic property sensitivity. For instance, Petitioners' archaeologists reviewed the archaeological testing strategy employed at the Grand Wailea resort. The archaeologists found the strategy flawed because it was not designed for randomized or sensitive areas, but rather located testing grounds by convenience - in landscaping. Despite such limitations on testing strategy, the resort's findings that no historic properties or burial sites was encountered were taken to mean no further such historic properties would likely be found. Yet, years later when the resort was excavating below one of its buildings, three iwi kupuna were disturbed.

HAR § 13-276-5 Archaeological inventory survey report.

[. . . .]

(f) The report shall contain a summary of the findings, to include, but not be restricted to:

- (1) Total number of archaeological sites found;
- (2) A map or maps locating all the archaeological properties found and, if practical, their boundaries, with at least one site location map being a portion of the relevant United States Geological Survey standard 1:24,000 topographic map;
- (3) A table presenting the sites with their state number, formal type, and possible function listed;
- (4) If multiple archaeological sites within a major functional type (such as religious, burial, permanent habitation, and temporary habitation site types) are found, summaries of each type shall occur;
- (5) A re-evaluation of ideas on the history of land use in the ahupua'a and the parcel; and
- (6) In cases where more than five sites are present within a major functional type, the summary of the functional type shall include:
 - (A) A table which itemizes for each site and its relevant constituent structures the key variables used to determine the function (e.g., form, area); and
 - (B) A map showing the distribution of the sites within that functional type.
- (g) The report shall contain information on the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals.

HAR § 13-276-5 Archaeological inventory survey report.

[. . . .]

(f) The report shall contain a summary of the findings, to include, but not be restricted to:

- (1) Total number of archaeological sites found;
- (2) A map or maps locating all the archaeological properties found and, if practical, their boundaries, with at least one site location map being a portion of the relevant United States Geological Survey standard 1:24,000 topographic map;
- (3) A table presenting the sites with their state number, formal type, and possible function listed;
- (4) If multiple archaeological sites within a major functional type (such as religious, burial, permanent habitation, and temporary habitation site types) are found, summaries of each type shall occur;
- (5) A re-evaluation of ideas on the history of land use in the ahupua'a, the relevant moku, and the parcel; ~~and~~
- (6) In cases where more than five sites are present within a major functional type, the summary of the functional type shall include:
 - (A) A table which itemizes for each site and its relevant constituent structures the key variables used to determine the function (e.g., form, area); and
 - (B) A map showing the distribution of the sites within that functional type.
- (7) Any prior disturbance of burial sites or finding of human skeletal remains during previous land disturbances must be described, including whether such disturbance or finding resulted in full recovery of all human skeletal remains in the area. The report shall describe, quantitatively and qualitatively, the likelihood of encountering disturbed human skeletal remains in project areas.
- (g) The report shall contain information on the consultation process with individuals and groups knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals.
 - (1) Information shall include:

<p>(1) Information shall include:</p> <p>(A) Personnel conducting the consultation process, with names and qualifications;</p> <p>(B) Methods of identifying and contacting knowledgeable persons;</p> <p>(C) Names of knowledgeable persons consulted, or, if the person wishes to remain anonymous, a characterization of the person; and</p> <p>(D) A summary as to whether additional archaeological historic properties were identified during the consultation process, and whether additional information on archaeological site function was obtained during the consultation process;</p> <p>(2) Should additional information on site function be obtained, that information shall be presented in the site description portion of the report;</p> <p>(3) Consult SHPD guidelines on ethnographic surveys and reports for assistance in preparing findings from the consultation process; and</p> <p>(4) If an inventory plan was submitted to, and approved by, the SHPD, the information in this section may be omitted from the inventory report.</p>	<p>(A) Personnel conducting the consultation process, with names and qualifications;</p> <p>(B) <u>Methods of identifying and contacting knowledgeable persons, and informing these persons of the project, historic review process, and the ways information from the consultation may be used by the project proponents and agency;</u></p> <p>(C) Names of knowledgeable persons consulted, or, if the person wishes to remain anonymous, a characterization of the person; and</p> <p>(D) A summary as to whether additional archaeological historic properties were identified during the consultation process, and whether additional information on archaeological site function was obtained during the consultation process;</p> <p><u>(E) A description of the summary of the knowledgeable person's recommendations for protection and mitigation of historic properties, including burial sites.</u></p> <p>(2) Should additional information on site function be obtained, that information shall be presented in the site description portion of the report;</p> <p>(3) Consult SHPD guidelines on ethnographic surveys and reports for assistance in preparing findings from the consultation process; and</p> <p>(4) If an inventory plan was submitted to, and approved by, the SHPD, the information in this section may be omitted from the inventory report.</p>
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Rationale: Amendments require: (1) histories of the land to include that of the relevant moku; (2) assessment of the likelihood of encountering previously disturbed burial sites; (3) informing, and not just contacting, knowledgeable persons who may be consulted in preparation of the report, as well as documenting their recommendations; and (4) removing the option to omit this information where an inventory plan was approved. Reasons for these changes include: (1) requiring inclusion of contextual information from the surrounding moku to augment tendencies to piecemeal descriptions of historic significance. (2) All iwi kupuna are significant and are to be protected, even and especially if they have been previously disturbed. (3) Reports often list knowledgeable persons without those persons knowing or understanding that they are taking part in a historic review process that could advance a project to which they may be opposed. These persons should be informed and their knowledge documented as recommendations. (4) The historic review process involves production of multiple documents, often with significant cross-reference. Including as much information in the report as possible would prevent undue difficulty in understanding the report and actions taken by the public for whom these historic properties are held in trust.

HAR § 13-279-4. Archaeological monitoring plan.

(a) Archaeological monitoring undertaken in response to SHPD requirements or recommendations shall be based on a written plan, which specifies:

- (1) What kinds of archaeological remains or historic properties are anticipated or require protection;
- (2) Where in the project area these properties are known to be or anticipated to be located;
- (3) Needed fieldwork to protect or document known or anticipated historic properties, which may include, but not be limited to, profile documentation of stratigraphy, drawings, photographs, lithic sourcing, and excavation of exposed features;
- (4) A provision that the archaeologist conducting the monitoring has been given the authority to halt ground disturbing activities in the immediate area of a find, in order to carry out the plan. Project activities can shift to other areas in such a case;
- (5) A coordination meeting with any construction team and the archaeologist, so the construction team is aware of the plan;
- (6) Any laboratory work expected to be done;
- (7) Report preparation; and
- (8) Archiving of any collections.

(b) This plan shall be reviewed and approved by the SHPD prior to the monitoring project, unless otherwise agreed to by SHPD.

(c) If monitoring is proposed in response to the inadvertent discovery of human skeletal remains, a written monitoring plan may not be required.

HAR § 13-279-4. Archaeological monitoring plan.

(a) Archaeological monitoring undertaken in response to SHPD requirements or recommendations shall be based on a written plan, which specifies:

- (1) What kinds of archaeological remains or historic properties are anticipated or require protection, including the likelihood of encountering previously disturbed burial sites and human skeletal remains and the reasons this likelihood exists;
- (2) Where in the project area these properties are known to be or anticipated to be located;
- (3) Needed fieldwork to protect or document known or anticipated historic properties, which may include, but not be limited to, profile documentation of stratigraphy, drawings, photographs, lithic sourcing, and excavation of exposed features;
- (4) A provision that the archaeologist conducting the monitoring has been given the authority to halt ground disturbing activities in the immediate area of a find, in order to carry out the plan. Project activities can shift to other areas in such a case;
- (5) A coordination meeting with any construction team and the archaeologist, so the construction team is aware of the plan;
- (6) Any laboratory work expected to be done;
- (7) Report preparation and timely submission for review by SHPD; and
- (8) Archiving of any collections;
- (9) A description of qualifications of monitoring- archaeologist(s) to identify cultural deposits, human skeletal remains, and archaeological strata; and,
- (10) A detailed contingency plan for redesigning the project to be implemented should the SHPD or Burial Council recommend preservation in place for any burial sites and associated burial goods encountered during ground disturbance.

(b) This plan shall be reviewed and approved by the SHPD prior to the monitoring project, ~~unless otherwise agreed to by SHPD.~~

	(c) If monitoring is proposed in response to the inadvertent discovery of human skeletal remains, a written monitoring plan may not be required.
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Rationale: Amendments expressly require monitoring plans to assess whether human skeletal remains that were previously disturbed will be encountered in order to better plan to prevent these encounters. Under (a)(7), archaeological monitoring plan reports are expressly required to be submitted for SHPD review because such reports are often delinquent. Subsection (a)(9) requires detailing the qualifications of monitoring archaeologists because otherwise they may be untrained and simply be watching heavy machinery demolish historic properties. Under (a)(10), the plan must include a contingency plan for redesigning the project so that project proponents are not left unprepared in the event that historic properties must be preserved in place. Too often, Petitioners and other kupuna iwi advocates are confronted by artificially limited options. These proposals will allow advocates and agencies to consider more effective mitigation.

<p>HAR §13-279-6 Final disposition of collections and human skeletal remains. (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD. (b) If human skeletal remains are recovered during monitoring, they shall be treated as an inadvertent discovery. Any relocation of the human remains and any associated grave goods shall follow the procedures of chapter 13-300.</p>	<p>HAR §13-279-6 Final disposition of collections and human skeletal remains. (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD. (b) If human skeletal remains are recovered during monitoring, <u>they only the first such remains shall be treated as an inadvertent discovery. Subsequent remains are anticipated and therefore previously identified.</u> Any relocation of the human remains and any associated grave goods shall follow the procedures of chapter 13-300.</p>
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Rationale: In accord with the redefinition of “previously identified”, human skeletal remains found during one project are only “inadvertently discovered” the first time they are encountered. Petitioners, and members of the general public, have been challenged to understand how burial sites in areas where burials were previously identified are not themselves considered “previously identified.” The proposed revision will ensure those operating in historically sensitive areas do so in an appropriately sensitive manner.

<p>HAR § 13-281-1. Definitions [Add definition of “archaeologist”]</p>	<p>HAR § 13-281-1. Definitions “Archaeologist” means a person with skills, education, or training, with at minimum a bachelor’s degree from an accredited institution in anthropology, archaeology, history, geography, osteology, or geology.</p>
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Rationale: Currently, there is no definition of “archaeologist”. This omission has allowed persons without proper qualifications, and sometimes with adverse interests, to accede to positions in which they are entrusted with protecting historic properties. For instance, many archaeological monitoring plans require an archaeologist to be on site during ground disturbance. But if that person is merely paid to be an archaeologist without working knowledge of at least one of relevant discipline, they should not be so entrusted with roles in protecting Hawaii’s historic properties.

<p>HAR § 13-281-3. Archaeology An archaeologist serving as principal investigator for any archaeological project shall have the following professional qualifications:</p> <ul style="list-style-type: none"> (1) A graduate degree from an accredited institution in archaeology, or anthropology, with a specialization in archaeology, or an equivalent field; (2) At least one year of cumulative archaeological experience in Hawaii or the Pacific; (3) At least four months of supervised archaeological field and analytic experience in Hawaii; (4) At least one year of archaeological research, administration, or management at a supervisory level with at least four months of field experience; (5) A demonstrated ability to carry research to completion, as shown by completed theses, publications, and manuscripts; and (6) A demonstrated knowledge of historic preservation laws, rules, and guidelines. 	<p>HAR § 13-281-3. Archaeology An archaeologist serving as principal investigator for any archaeological project shall have the following professional qualifications:</p> <ul style="list-style-type: none"> (1) A graduate degree from an accredited institution in archaeology, or anthropology, with a specialization in archaeology, or an equivalent field; (2) At least one <u>five</u> years of cumulative archaeological experience in Hawaii or the Pacific; (3) At least four months <u>two years</u> of supervised archaeological field and analytic experience in Hawaii; (4) At least one year <u>two years</u> of archaeological research, administration, or management at a supervisory level with at least four months of field experience; (5) A demonstrated ability to carry research to completion, as shown by completed theses, publications, and manuscripts; and (6) A demonstrated knowledge of historic preservation laws, rules, and guidelines. <p><u>(b) All projects for which the archaeologist served as a principal investigator must have completed and submitted monitoring reports pursuant to HAR § 13-279-5, where such reports are required as part of</u></p>
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their archaeological monitoring plan, in order for the archaeologist to obtain or renew an archaeological services permit.

Rationale: Petitioners have suffered from mishandling of kupuna iwi by archaeological consultants working under a SHPD permit that is held by a principal investigator who testified he only worked a few dozen hours a year with the consultants as he had his own firm on another island. The archaeological consultant (Archaeological Services Hawaii, LLC) was also delinquent on 37 monitoring reports and still obtained a new permit. *See Mālama Kakanilua v. BLNR*, 155 Hawai'i 512, 567 P.3d 217 (App. 2025).

HAR § 13-282-3. Archaeological permits.

- (a) No archaeological firms, independent individuals, agencies or organizations shall perform any alteration to historic properties in the state of Hawaii until an annual permit is first obtained from the department. Permits shall only be issued to archaeological consulting firms, museums, universities, agencies, nonprofit institutions, or scholars who have on staff at least one principal investigator who meets the minimal professional standards for archaeologists as provided in chapter 13-281.
- (b) Each permit shall be valid only for the calendar year for which it is issued, regardless of when it is issued in the calendar year.
- (c) The archaeological permit application shall include:
 - (1) The name, address, and phone number of the applicant; and
 - (2) The name and professional resume of each principal investigator to be covered by the permit.
- (d) A permit shall be issued to an applicant within ten working days of receipt of a complete application. If an application is not complete, the SHPD shall notify the applicant by letter within ten working days of receipt of the application specifying what information is missing.
- (e) In the event a principal investigator leaves a firm, museum, university, or non-profit institution, or a new principal investigator is employed or gains qualifications, the SHPD shall be notified in writing, with any necessary resumes attached.

HAR § 13-282-3. Archaeological permits.

- (a) No archaeological firms, independent individuals, agencies or organizations shall perform any alteration to historic properties in the state of Hawaii until an annual permit is first obtained from the department. Permits shall only be issued to archaeological consulting firms, museums, universities, agencies, nonprofit institutions, or scholars who have on staff at least one principal investigator who meets the minimal professional standards for archaeologists as provided in chapter 13-281.
- (b) Each permit shall be valid only for the calendar year for which it is issued, regardless of when it is issued in the calendar year.
- (c) The archaeological permit application shall include:
 - (1) The name, address, and phone number of the applicant; and
 - (2) The name and professional resume of each principal investigator to be covered by the permit.
- (3) All reports for field work conducted in any prior year as set forth in subsection (f).
- (d) A permit shall be issued to an applicant within ten working days of receipt of a complete application. If an application is not complete, the SHPD shall notify the applicant by letter within ten working days of receipt of the application specifying what information is missing.
- (e) In the event a principal investigator leaves a firm, museum, university, or non-profit institution, or a new principal investigator is employed or

(f) Each permit shall contain the following conditions:

(1) The permittee shall submit, within one month of the conclusion of any field work, a brief report on findings to consist of:

(A) A map locating all sites studied, to be on a portion of the relevant United States Geological Survey standard 1:24,000 topographic map; and

(B) A table listing each site, its major architectural features, its probable function, and the nature of work at each site (mapping, description, surface collection, test excavation).

(2) The permittee shall submit a minimum of two copies of a report or paper on any archaeological work to the SHPD.

(3) The permittee shall ensure all personnel are capable of adequately conducting the necessary work to accomplish any scopes of work.

(4) The permittee shall comply with all applicable statutes, ordinances, rules and regulations of the federal, state and county governments; and

(5) The permittee shall hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the permittee and its employees, contractors and agents under the permit.

gains qualifications, the SHPD shall be notified in writing, with any necessary resumes attached.

(f) Each permit shall contain the following conditions:

(1) The permittee shall submit, within one month of the conclusion of any field work or of the cessation of the permittee's work on a project, or, if the field work has an unspecified end date, upon annual application for an archaeological services permit, a brief report on findings to consist of:

(A) A map locating all sites studied, to be on a portion of the relevant United States Geological Survey standard 1:24,000 topographic map; and

(B) A table listing each site, its major architectural features, its probable function, and the nature of work at each site (mapping, description, surface collection, test excavation).

(2) The permittee shall submit a minimum of two copies of a report or paper on any archaeological work to the SHPD.

(3) The permittee shall ensure all personnel are capable of adequately conducting the necessary work to accomplish any scopes of work.

(4) The permittee shall comply with all applicable statutes, ordinances, rules and regulations of the federal, state and county governments; and

(5) The permittee shall hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the permittee and its employees, contractors and agents under the permit; and,

(6) For any project for which SHPD requires archaeological monitoring, the permittee shall ensure at least one archaeologist is on the same island during all ground-disturbing phases of the project.

Rationale: Same as HAR § 13-281-3 amendments *supra*.

HAR §13-283-5 Treatment of human skeletal remains.
Because human remains are highly sensitive to many individuals and ethnic groups, all archaeological excavations and osteological laboratory analysis shall treat the remains with dignity and respect.

HAR §13-283-5 Treatment of human skeletal remains.
Because human remains are highly sensitive to many individuals and ethnic groups, all archaeological excavations of burial sites, once identified as such for purposes of preservation, should be avoided where possible and osteological laboratory analysis shall treat the remains with dignity and respect.

Rationale: Amendments provide for protecting burial sites without excavating them unnecessarily. This provision further protects the ability of burial councils to determine to preserve burials in place and affords more respectful treatment of burial sites.

HAR §13-300-2. Definitions
"Cultural descendant" means with respect to non Native Hawaiian skeletal remains, a claimant recognized by the department as being the same ethnicity, or 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. Definitions
"Cultural descendant" means with respect to non Native Hawaiian skeletal remains, a claimant recognized by the department as being the same ethnicity, or 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 or neighboring ahupua'a, including 'ili lele, or district in which certain Native Hawaiian skeletal remains are located or originated from, or in the same moku in which the Native Hawaiian skeletal remains are located or originated from.

Rationale: Cultural descendants are too often burdened with re-establishing their descendancy to each individual set of remains even where they are located in the same parcel. This definition clarifies that cultural descendants belonged to the same ahupua'a, district, or moku. Petitioners have been challenged to repeatedly present their genealogies and other evidence of descendancy for iwi kupuna in the same parcel. In one case, Petitioners' member was determined to be a cultural descendant of one set of iwi, but her application for another set on the same parcel was not granted for unclear reasons.

<p>HAR §13-300-2. Definitions “Inadvertent discovery” means the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity.</p>	<p>HAR §13-300-2. Definitions “Inadvertent discovery” means the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity. <u>Any subsequent findings of human skeletal remains or burial goods found in the area shall be classified as previously identified, over which the Council shall have jurisdiction, if deemed Native Hawaiian, and the Department shall have jurisdiction to consider treatment if non-Native Hawaiian.</u></p>
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Rationale: After an area is identified with a burial site, subsequent encounters with human skeletal remains in that area cannot be considered inadvertently discovered. Those human skeletal remains are instead classified as previously identified, which is both more logically consistent. As discussed *supra*, this revision will encourage persons operating in historically sensitive areas will operate in a likewise more sensitive manner. Otherwise, as occurred at the Grand Wailea resort and in the Maui Sandhills, the failure of initial archaeological surveys to accurately locate burial sites thereby rendered subsequent burial sites “inadvertent discoveries” and thus removed opportunities for Petitioners’ members to advocate for their protection.

<p>HAR §13-300-2. Definitions "Lineal descendant" means with respect to Native Hawaiian skeletal remains, a claimant who has established to the satisfaction of the council, direct or collateral genealogical connections to certain Native Hawaiian skeletal remains, or with respect to non Native Hawaiian skeletal remains, a claimant who has established to the satisfaction of the department, direct or collateral genealogical connections to certain non Native Hawaiian skeletal remains.</p>	<p>HAR §13-300-2. Definitions "Lineal descendant" means with respect to Native Hawaiian skeletal remains, a claimant who has established to the satisfaction of the council, direct or collateral genealogical connections to certain Native Hawaiian skeletal remains, <u>or to family members who were granted use or ownership rights of the parcel in which the burial was encountered,</u> or with respect to non Native Hawaiian skeletal remains, a claimant who has established to the satisfaction of the department, direct or collateral genealogical connections to certain non Native Hawaiian skeletal remains.</p>
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Rationale: Establishing genealogical ties with specific burials is burdensome. A century of dispossession and displacement from historical lands has left many Native Hawaiian descendants without written or oral records of specific connections to individual burial sites. Further, burying family members on the lands on which they lived in a recognized tradition and custom. Therefore, revising “lineal descendant” to allow proof that ancestors lived or were granted use or ownership rights in a parcel will relieve this unnecessary burden.

HAR §13-300-2. Definitions
Add definition “Kūpuna iwi organization”

“Kūpuna iwi organization” means a Native Hawaiian-led organization whose mission includes the protection and preservation of Native Hawaiian iwi kūpuna may be recognized as a cultural descendant for purposes of consultation and advocacy, and shall work alongside any identified lineal or cultural descendants. Any such organization shall act in the best interest of the iwi kūpuna, shall prioritize cultural protocols, and shall work alongside any subsequently identified lineal or cultural descendants should they come forward at a later date.

Rationale: This addition will allow SHPD to benefit from input from organizations dedicated to protecting Native Hawaiian iwi kupuna and to allow these organizations to participate in the historic review process particularly where cultural or lineal descendants are not available for consultation. Petitioners are dedicated kupuna iwi organizations and commit to working with the department, burial councils, descendants, agencies, and other stakeholders.

HAR §13-300-2. Definitions

“Previously identified” means burial sites containing human skeletal remains and any burial goods identified during archaeological inventory survey and data recovery of possible burial sites, or known through oral or written testimony.

HAR §13-300-2. Definitions

“Previously identified” means burial sites containing human skeletal remains and any burial goods: (1) identified during archaeological inventory survey and or data recovery of possible burial sites documented through archaeological methods or submitted to the department, or (2) known to be contain burials through oral or written kama‘āina testimony; (3) identified in proximity to other previously discovered or inadvertently discovered burial sites; (4) discovered in an area subsequent to an initial inadvertent discovery; or (5) burial sites discovered in sedimentary contexts, including, but not limited to, sand and sand mixtures.

Rationale: These revisions better reflect the plain meaning of “previously identified” where such burials are known or are located in areas known to contain burials, including areas such as sand and sediment where burials were traditionally and customarily located, as discussed *supra*.

HAR §13-300-22 Composition.

(a) Each council shall be composed of at least one representative from each geographic region of the island and representatives of development and large property owner interests.

[. . .]

HAR §13-300-22 Composition.

(a) Each council shall be composed of at least one representative from each geographic region of the island and no more than three representatives of development and large property owner interests, except the Molokai council which shall have no more than one representative of development and large landowner interests.

Rationale: Revisions reflect HRS § 6E-43.5 provisions. The proposed revision better safeguards Petitioners' rights and interests in protecting historic properties necessary to their exercise of traditional and customary rights by preventing more than three large landowner and development representatives to sit on burial councils. Additionally, Moloka'i is a part of Maui County and is dominated by only a few large landowners and developers. Amending the rule to reflect HRS § 6E-43.5 will ensure a more representative balance on burial councils and thereby better protect Petitioners' rights and interests.

HAR §13-300-11 Adopt, amend, repeal rules.

[. . .]

(d) Upon receipt of a petition which fully complies with all requirements stated in subsection (b), the department shall date and accept the petition for consideration. Within one hundred eighty days, the department shall, following consultation with the councils, Office of Hawaiian Affairs, representatives of development and large landowner interests, Hui Malama I Na Kupuna `O Hawai`i Nei, and other appropriate Hawaiian organizations with respect to petitions involving Native Hawaiian skeletal remains and burial goods, and appropriate ethnic organizations when petitions involve non Native Hawaiian skeletal remains and burial goods, either deny the petition in writing stating its reasons for denial or initiate rulemaking procedures.

HAR §13-300-11 Adopt, amend, repeal rules.

[. . .]

(d) Upon receipt of a petition which fully complies with all requirements stated in subsection (b), the department shall date and accept the petition for consideration. Within one hundred eighty ~~thirty~~ days, the department shall, following consultation with the councils, Office of Hawaiian Affairs, representatives of development and large landowner interests, Hui Malama I Na Kupuna `O Hawai`i Nei, and other appropriate Hawaiian organizations with respect to petitions involving Native Hawaiian skeletal remains and burial goods, and appropriate ethnic organizations when petitions involve non Native Hawaiian skeletal remains and burial goods, either deny the petition in writing stating its reasons for denial or initiate rulemaking procedures.

Rationale: Revisions reflect HRS § 91-6, which governs rulemaking and provides in relevant part: "Upon submission of the petition, the agency shall within thirty days either deny the petition in writing, stating its reasons for the denial or initiate proceedings in accordance with section 91-3."

HAR §13-300-28 Role of the department. (a) The department shall provide all necessary administrative support services to the council which shall include but not be limited to the following:

- (1) Post a notice of council meeting agenda with the Lieutenant Governor's office;
- (2) Make necessary arrangements to reserve a place for council meetings and assist in arranging site inspections;
- (3) Record and transcribe minutes of council meetings;
- (4) Acquire and verify all information necessary for a council determination of burial treatment and refer the matter to the council for determination;
- (5) Submit to the applicant in writing the council's determination and any recommendations accepted by the department;
- (6) Generate correspondence on behalf of the council to implement the applicable provisions of chapter 6E, HRS, and this chapter;
- (7) Provide information to the council on any matters relating to appropriate management, treatment, and protection of Native Hawaiian burial sites and on any other matters relating to Native Hawaiian burial sites; and
- (8) Conduct any other administrative acts as deemed necessary.

[. . . .]

HAR §13-300-28 ~~Role of the department~~ Council administrative support. (a) The department ~~or a delegate of the Council~~ shall provide all necessary administrative support services to the council which shall include but not be limited to the following:

- (1) Post a notice of council meeting agenda with the Lieutenant Governor's office;
- (2) Make necessary arrangements to reserve a place for council meetings and assist in arranging site inspections;
- (3) Record and transcribe minutes of council meetings;
- (4) Acquire and verify all information necessary for a council determination of burial treatment and refer the matter to the council for determination;
- (5) Submit to the applicant in writing the council's determination and any recommendations accepted by the department;
- (6) Generate correspondence on behalf of the council to implement the applicable provisions of chapter 6E, HRS, and this chapter;
- (7) Provide information to the council on any matters relating to appropriate management, treatment, and protection of Native Hawaiian burial sites and on any other matters relating to Native Hawaiian burial sites; ~~and~~
- (8) Conduct any other administrative acts as deemed necessary;
- (9) Coordinate between the department and the Council's delegate, where applicable, to ensure timely completion of administrative tasks.

[. . . .]

Rationale: Amendments provide for a council delegate to conduct administrative affairs for the council. Too often overburdened SHPD staff have been unable to timely respond to especially applications for recognition as cultural and lineal descendants, leaving those descendants without a means to fulfill their kuleana to protect their kupuna iwi. This has occurred for Petitioners' members, leaving them with no other means to obtain recognition as lineal or cultural descendants.

<p>HAR §13-300-31 Burial site identification; ethnicity evaluation.</p> <p>(a) A burial site may be identified by oral or written testimony in the following manner:</p> <p>(1) The council or the department where appropriate shall evaluate the testimony presented;</p> <p>(2) To the best of their ability, witnesses shall provide information including the location and description of a burial site;</p> <p>(3) The council shall recommend to the department whether to accept the testimony presented regarding a Native Hawaiian burial site; and</p> <p>(4) A burial site recognized by the department based on oral or written testimony shall be classified as previously identified.</p> <p>[. . . .]</p> <p>(e) Where known lineal descendants disagree with the recording of any information from a related burial or reburial site, no information shall be placed on the burial site inventory provided the department maintains a record of the tax map key of the property in which the burial or reburial site is located for purposes of protection from harm.</p> <p>(f) The department shall immediately notify any known lineal descendants when a permit is being reviewed by the department for the parcel in which a related burial or reburial site is located, or where an activity is known which may cause harm to a related burial or reburial site.</p> <p>[. . . .]</p>	<p>HAR §13-300-31 Burial site identification; ethnicity evaluation.</p> <p>(a) A burial site may be identified by oral or written testimony in the following manner:</p> <p>(1) The council or the department where appropriate shall evaluate the testimony presented <u>within a reasonable time not to exceed 30 days, with extensions possible for extenuating circumstances, but not to exceed total 180 days. The council or department must provide written, detailed responses for their determination not to recognize a burial site within the 180 day period;</u></p> <p>(2) To the best of their ability, witnesses shall provide information including the location and description of a burial site;</p> <p>(3) The council shall recommend to the department <u>determine</u> whether to accept the testimony presented regarding a Native Hawaiian burial site; and</p> <p>(4) A burial site recognized by the department <u>or the council</u> based on oral or written testimony shall be classified as previously identified.</p> <p>[. . . .]</p> <p>(e) Where known <u>cultural or</u> lineal descendants disagree with the recording of any information from a related burial or reburial site, no information shall be placed on the burial site inventory provided the department maintains a record of the tax map key of the property in which the burial or reburial site is located for purposes of protection from harm.</p> <p>(f) The department shall immediately notify any <u>cultural and</u> known lineal descendants when a permit is being reviewed by the department for the parcel in which a related burial or reburial site is located, or where an activity is known which may cause harm to a related burial or reburial site.</p> <p>[. . . .]</p>
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Rationale: Revisions impose a more certain time limit for considering burial sites identified by written or oral testimony; provide the council with more authority in making its determinations; and requires immediate notification to cultural descendants where a permit may

affect burials. Petitioners are interested in ensuring timely, accurate, and transparent communication between affected persons and government decisionmakers.

<p>HAR §13-300-35 Recognition of lineal and cultural descendants. (a) In order to establish lineal or cultural descent to human skeletal remains, a person shall submit a claim to the department together with any of the following information:</p> <ol style="list-style-type: none">(1) The name of the deceased individual;(2) Family genealogy;(3) Birth certificates;(4) Death certificates;(5) Obituaries;(6) Marriage certificates;(7) Probate records;(8) Church records;(9) Census records;(10) Tax records;(11) Land conveyance documents including, but not limited to, deeds and land commission awards;(12) Oral family history; or(13) Any other applicable information or records that help establish a lineal connection between the claimant and the human skeletal remains. <p>(b) The department shall review all submitted information and assess whether direct or collateral genealogical connections can be demonstrated between the claimant and certain human skeletal remains.</p> <p>(c) The department shall obtain a written statement from the claimant concerning the confidentiality of any information submitted. No information shall be duplicated by the department without prior written consent.</p>	<p>HAR §13-300-35 Recognition of lineal and cultural descendants. (a) In order to establish lineal or cultural descent to human skeletal remains, a person shall submit a claim to the department <u>or a delegate of the Council</u> together with any of the following information:</p> <ol style="list-style-type: none">(1) The name of the deceased individual;(2) Family genealogy;(3) Birth certificates;(4) Death certificates;(5) Obituaries;(6) Marriage certificates;(7) Probate records;(8) Church records;(9) Census records;(10) Tax records;(11) Land conveyance documents including, but not limited to, deeds and land commission awards;(12) Oral family history; or(13) Any other applicable information or records that help establish a lineal connection between the claimant and the human skeletal remains. <p>(b) The department <u>or a delegate of the Council shall provide written confirmation within five (5) working days of receiving any of the information in subsection (a) and</u> shall review all submitted information and assess whether direct or collateral genealogical connections can be demonstrated between the claimant and certain human skeletal remains.</p> <p>(c) The department <u>or a delegate of the Council</u> shall obtain a written statement from the claimant concerning the confidentiality of any information submitted. No information shall be duplicated by the department without prior written consent.</p>
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(d) Where possible, the department shall compare submitted information with records found at appropriate repositories including:

- (1) State archives;
- (2) State bureau of conveyances;
- (3) Office of health status monitoring, department of health;
- (4) Family History Centers of the Church of Jesus Christ of Latter-Day Saints; or

(5) Any other appropriate repository or source.

(e) The department shall have no longer than thirty days from receipt of a written claim to review and assess the information submitted. Upon completion, the department shall return all information, unless the claimant indicates otherwise.

(f) With regard to Native Hawaiian skeletal remains, the department shall provide the council with a written assessment of the information submitted and a recommendation regarding recognition of the claimant as a known lineal descendant. It shall be the decision of the council to recognize the claimant as a known lineal descendant. The council shall give preference for proper treatment of previously identified Native Hawaiian skeletal remains and any burial goods to known lineal descendants.

(g) With regard to non Native Hawaiian skeletal remains, the department shall provide the claimant with a written assessment of the information submitted. It shall be the decision of the department to recognize a non Native Hawaiian claimant as a known lineal descendant. The department shall give preference for proper treatment of previously identified non Native Hawaiian skeletal remains and any burial goods to known lineal descendants.

(h) Where the submitted information fails to establish lineal descent, but establishes genealogical connections between the

(d) Where possible, the department or a delegate of the Council shall compare submitted information with records found at appropriate repositories including:

- (1) State archives;
- (2) State bureau of conveyances;
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- (4) Family History Centers of the Church of Jesus Christ of Latter-Day Saints; or

(5) Any other appropriate repository or source.

(e) The department or a delegate of the Council shall have no longer than thirty days from receipt of a written claim to review and assess the information submitted. Upon completion, the department or a delegate of the Council shall return all information, unless the claimant indicates otherwise.

(f) With regard to Native Hawaiian skeletal remains, the department or a delegate of the Council shall provide the council with a written assessment of the information submitted and a recommendation regarding recognition of the claimant as a known lineal descendant within a reasonable time, not to exceed 30 days, after submission of a claim. It shall be the decision of the council to recognize the claimant as a known lineal descendant. The council shall give preference for proper treatment of previously identified Native Hawaiian skeletal remains and any burial goods to known lineal descendants.

(g) With regard to non Native Hawaiian skeletal remains, the department or a delegate of the Council shall provide the claimant with a written assessment of the information submitted. It shall be the decision of the department to recognize a non Native Hawaiian claimant as a known lineal descendant. Hanai, or adopted descendants, may be recognized through documentation of their hanai process, including the date of hanai, and testimony from family members. The department or a delegate of the Council shall give preference for proper treatment of previously identified non Native Hawaiian skeletal remains and any burial goods to known lineal descendants.

claimant and 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 and any burial goods are located or originated from, the department shall provide the council with a written assessment and a recommendation regarding recognition of the claimant as a cultural descendant. In the event the department does not recommend recognition as a cultural descendant, the recommendation shall be deferral pending submission of additional information. It shall be the decision of the council whether to recognize the claimant as a cultural descendant. Testimony by a recognized cultural descendant concerning proper treatment of Native Hawaiian skeletal remains and any burial goods, shall be duly considered and given appropriate weight by the council.

(i) Where the submitted information fails to establish lineal descent but establishes that the non Native Hawaiian claimant is the same ethnicity as the human skeletal remains, the department shall provide the claimant with a written assessment and a decision regarding recognition as a cultural descendant. In the event the department does not determine to recognize the claimant as a cultural descendant, the department shall defer the matter pending submission of additional information. Testimony by a recognized cultural descendant concerning the proper treatment of non Native Hawaiian skeletal remains and any burial goods shall be duly considered and given appropriate weight by the department.

(h) Where the submitted information 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 certain Native Hawaiian skeletal remains and any burial goods are located or originated from, the department or a delegate of the Council shall provide the council with a written assessment and a recommendation regarding recognition of the claimant as a cultural descendant. In the event the department or a delegate of the Council does not recommend recognition as a cultural descendant, the recommendation shall be deferral pending submission of additional information. It shall be the decision of the council whether to recognize the claimant as a cultural descendant. Testimony by a recognized cultural descendant concerning proper treatment of Native Hawaiian skeletal remains and any burial goods, shall be duly considered and given appropriate weight by the council. The Council's decision shall be rendered within a reasonable time not to exceed six (6) months after a claim has been submitted.

(i) Where the submitted information fails to establish lineal descent but establishes that the non Native Hawaiian claimant is the same ethnicity as the human skeletal remains, the department or a delegate of the Council shall provide the claimant with a written assessment and a decision regarding recognition as a cultural descendant. In the event the department does not determine to recognize the claimant as a cultural descendant, the department or a delegate of the Council shall defer the matter pending submission of additional information. Testimony by a recognized cultural descendant concerning the proper treatment of non Native Hawaiian skeletal remains and any burial goods shall be duly considered and given appropriate weight by the department or a delegate of the Council.

Rationale: As with amendments to HAR § 13-300-28, these revisions provide for a council delegate to conduct administrative affairs for the council. Too often overburdened SHPD staff have been unable to timely respond to especially applications for recognition as

cultural and lineal descendants, leaving those descendants without a means to fulfill their kuleana to protect their kupuna iwi. Additionally, the council's decision should be made within six months to ensure descendants are not left without recourse or updates for too long.

HAR § 13-300-36. Criteria for evaluating request to preserve or relocate Native Hawaiian burial sites. (a) Previously identified Native Hawaiian burial sites and inadvertently discovered Native Hawaiian skeletal remains that meet any one of the following criteria shall be given greater consideration for preservation in place by the council and the department respectively:

- (1) When located in areas with a concentration of skeletal remains;
- (2) Pre-contact or historic period burial sites associated with important individuals and events as recommended by the council following consultation with known lineal or cultural descendants, appropriate Hawaiian organizations, knowledgeable individuals, or any other appropriate source of information;
- (3) When located in areas within a context of historic properties, as defined by section 6E-2, HRS;
- (4) Where known lineal descendants request preservation in place; or
- (5) Where the landowner agrees to preservation in place.

(b) When determining whether to preserve in place or relocate Native Hawaiian burial sites, the councils and the department where appropriate, shall give due consideration to the following:

- (1) The cultural appropriateness of the proposal to preserve in place or relocate;
- (2) Any possible harm to the Native Hawaiian skeletal remains if the burial site is left in place;
- (3) The request of known lineal or cultural descendants to relocate; and
- (4) Any reason presented by the applicant to relocate.

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- (1) When located in areas with a concentration of skeletal remains;
- (2) Pre-contact or historic period burial sites associated with important individuals and events as recommended by the council following consultation with known lineal or cultural descendants, appropriate Hawaiian organizations, knowledgeable individuals, or any other appropriate source of information;
- (3) When located in areas within a context of historic properties, as defined by section 6E-2, HRS;
- (4) Where known lineal descendants request preservation in place; or
- (5) Where the landowner agrees to preservation in place.

(b) When determining whether to preserve in place or relocate Native Hawaiian burial sites, the councils and the department where appropriate, shall give due consideration to the following:

- (1) The cultural appropriateness of the proposal to preserve in place or relocate;
- (2) Any possible harm to the Native Hawaiian skeletal remains if the burial site is left in place;
- (3) The request of known lineal or cultural descendants to relocate; and
- (4) Any reason presented by the applicant to relocate.

(c) In all cases under subsections (a) and (b), where landowners, known lineal or cultural descendants, appropriate Hawaiian organizations, knowledgeable individuals, or any other appropriate source of information disagree on whether to preserve in place or relocate Native Hawaiian burial sites, the council shall prepare written factual findings

	<p><u>and conclusions of law assessing the disagreement and the legal rationale for the course of action determined to be taken. This written document shall be timely served upon all consulted parties prior to action taken by the council or department.</u></p>
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Rationale: Addition of subsection (c) addresses situations in which the council or department staff are to exercise discretion to navigate disagreements between stakeholders by requiring a written record of the rationale for actions taken and to ensure all consulted parties, not just stakeholders, are aware of the determination prior to any action is taken.

<p>HAR §13-300-40 Inadvertent discovery of human remains. (a) The department shall have jurisdiction over any inadvertent discovery of human skeletal remains and any burial goods over fifty years old, regardless of ethnicity. [. . .] (e) Where human skeletal remains are reasonably believed to be Native Hawaiian following an evaluation pursuant to section 13-300-31, the department shall determine whether to preserve in place or relocate, following consideration and application of the criteria stated in section 13-300-36 and in consultation with appropriate council members, the landowner, and any known lineal or cultural descendants. [. . .] (m) Reburial shall be based on commonly accepted cultural practices as routinely recorded by the department. Additional requests by lineal or cultural descendants beyond commonly accepted cultural practices, deemed specific or special by the department following consultation with the appropriate council or ethnic organization, may be</p>	<p>HAR §13-300-40 Inadvertent discovery of human remains. (a) The department shall have jurisdiction over any inadvertent discovery of human skeletal remains and any burial goods over fifty years old, regardless of ethnicity. [. . .] (e) Where human skeletal remains are reasonably believed to be Native Hawaiian following an evaluation pursuant to section 13-300-31, the department shall determine whether to preserve in place or relocate, following consideration and application of the criteria stated in section 13-300-36 and in consultation with appropriate council members, the landowner, and any known lineal or cultural descendants. <u>In all cases where two or more Native Hawaiian burial sites have been discovered during the course of the same project, the landowner or project proponent is required to prepare an archaeological inventory survey for the project area if no survey was previously prepared, or an additional, new archaeological inventory survey for the project area with a new survey method adjusted by information surrounding the discovered burial sites. Either such archaeological inventory survey must be accompanied by plans for redesigning the project to avoid the areas where human skeletal remains were newly discovered.</u> [. . .] (m) Reburial shall be based on commonly accepted cultural practices as routinely recorded by the department. Additional requests by lineal or cultural descendants beyond commonly accepted cultural practices, deemed specific or special by the department following consultation with the appropriate council or</p>
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<p>accommodated provided that any additional expenses incurred are paid by the descendants.</p>	<p>ethnic organization, may be accommodated provided that any additional expenses incurred are paid by the descendants. <u>Where reburial is required due to ground disturbance by a project proponent or landowner, the department may require the project proponent or landowner to pay for reburial expenses.</u> [. . .]</p>
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Rationale: Revisions under subsection(c) support new definitions of “previously identified” burials by requiring new or supplemental archaeological inventory surveys to be conducted where more than one burial site is “inadvertently discovered”. Those new or supplemental surveys must also to include plans for redesigning the project to avoid the burial site in the event that decisionmakers determine to preserve the burial(s) in place. Removing provisions requiring descendants to pay for what the department deems to be more than commonly accepted cultural practices is appropriate to ensure those descendants are not limited by finances in advocating for their own understanding of proper reburial. Where reburial is necessitated by project development, as opposed to, for instance, natural shoreline erosion, the department has the option of requiring the project proponent or landowner to pay for reburial.