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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE HISTORIC PRESERVATION DIVISION

April 24, 2026

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Approval of Mālama Kanakilua, Ho'oponopono o Mākena, and Pele Defense Fund's Petition for Rulemaking Filed on March 25, 2026.

Pursuant to Hawaii Revised Statutes §92-5(a) (4) the Board may go into Executive Session to consult with its attorney on questions and issues pertaining to the Board's powers, duties, immunities and liabilities.

BACKGROUND:

On March 25, 2026, Mālama Kanakilua, Ho'oponopono o Mākena, and Pele Defense Fund (Petitioners) submitted their Petition for Rulemaking (Petition). A copy of the Petition is attached as Exhibit A.

DISCUSSION:

Hawaii Administrative Rules (HAR) §13-1-26 states:

“(a) Any interested person may petition the Board for adoption, amendment, or repeal of any rule.

(b) Petitions for proposed rulemaking shall set forth the text of any proposed rule or amendment desired or specifying the rule the repeal of which is desired and stating concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the adoption, amendment, or repeal of the rule and shall include any facts, views, arguments, and data deemed relevant by petitioner. The board may require the petitioner to notify persons or governmental agencies known to be interested in the proposed rulemaking of the existence of the filed petitions. No request for the issuance, amendment, or repeal of a rule which does not conform to the requirements set forth above shall be considered by the board.

(c) Petitions for proposed rulemaking shall become matters of public record upon filing. The board shall within thirty days following the filing of the petition either deny the petition in writing or initiate public rulemaking procedures. No public hearing, oral argument, or other form of proceedings need be held on the petition. If the board determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed shall be as set forth in section 91-3, HRS, §13-1-21 and §13-1-22. When the board determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in any material respect to comply with the requirements of these rules, the petitioner shall be notified and given the grounds for the denial. The provisions of this section shall not operate to prevent the board, on its own motion, from acting on any matter disclosed in any petition.”

The Petition articulates Mālama Kanakilua, Ho‘oponopono o Mākena, and Pele Defense Fund’s interest in the matter noting that they and their supporters have long advocated to improve public processes to protect historic properties, especially iwi kupuna. The Petitioners have significant experience with and history contesting various developments and permitting activities with potential to disturb or desecrate iwi kupuna and other historic resources. Mālama Kanakilua, Ho‘oponopono o Mākena, and Pele Defense Fund are comprised of cultural and religious practitioners operating across Hawai‘i and have a longstanding record of protecting Kānaka Maoli cultural and spiritual traditions, with particular concern for the protection of burial sites. They have repeatedly engaged in historic review and burial council procedures that impact their rights and interests. Furthermore, the Petitioners have advocated for improved historic properties review of multiple projects that are subject to HAR. Mālama Kanakilua, Ho‘oponopono o Mākena, and Pele Defense Fund submitted the Petition with the stated purpose to improve procedures for historic review, burial sites protection, and to ensure these procedures comply with applicable statutes and the Hawai‘i State Constitution.

The Petition states that amending existing administrative rules for HRS Chapter 6E, found at HAR Chapters 13-275, 13-276, 13-277, 13-278, 13-279, 13-280, 13-281, 13-284, and 13-300 as proposed within the Petition, will ensure lineal and cultural descendants are primary participants in the historic preservation review process where burial sites may be affected. Petitioners also claim adopting the proposed amendments will result in more efficient and responsive historic preservation review processes when lineal and cultural descendants are treated as primary participants at every stage of the process rather than merely informed or updated after project plans have been established. Additionally, the Petition also identifies clarifying language for archaeological consultants to ensure they are qualified and responsible for maintaining certain professional standards of practice.

The Petition raises important concerns regarding the implementation of the State’s historic preservation program, the identification and evaluation of historic properties and burial sites, and inclusion of lineal and cultural descendants in the historic preservation review

processes established throughout HRS Chapter 6E. Some of the proposed amendments, including those to HAR §13-275-3 removing the presumption of concurrence if the Department of Land and Natural Resources fails to comment on a project within the allotted amount of time, however, conflict with HRS Chapter 6E. Other proposed amendments, including those to HAR §13-275 and §13-300, may require revisions once the current legislative session has concluded and all newly enacted legislation and HRS Chapter 6E amendments have been finalized. Despite these issues, staff believes amendments proposed in the Petition, such as those pertaining to HAR §13-279, are consistent with amendments currently in the process of being drafted by staff for the Board’s consideration but may require minor revisions. The State Historic Preservation Division (SHPD) believes the Petition provides sufficient justification to initiate rulemaking.

Pursuant to HAR §13-1-26(c), upon filing of the petition, the Board is required to either deny the Petition or initiate the rulemaking process within 30 days. If the Board determines that the Petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the Petition for rulemaking fails in any material respect to comply with the requirements of these rules; Petitioners shall be notified and provided reasons for the denial in writing. In contrast, if the Board determines that the Petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures found at HRS §91-3 and HAR §13-1-21 and §13-1-22 will be followed. After which, SHPD will return to the Board for approval of the draft rules to go out for public hearing. Draft amendments will be presented to the Board by chapter, not as a single package, to expedite amending the rules while affording the necessary amount of time required to amend each chapter.

RECOMMENDATION: That the Board:

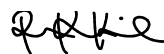
1. Approve Mālama Kanakilua, Ho’oponopono o Mākena, and Pele Defense Fund’s Petition for Rulemaking filed on March 25, 2026.

Respectfully Submitted,



Jessica Puff,
Administrator

APPROVED FOR SUBMITTAL:



For: _____

Ryan K. P. Kanaka’ole,
Acting Chairperson