

**Date:** April 25, 2026

**To:**

Board of Land and Natural Resources (BLNR)

**Cc:**

State Historic Preservation Division (SHPD)

**Re:** Testimony – SHPD Rules & Protection of Iwi Kūpuna at Honolulu

Aloha Chair Chang and Members of the Board,

My testimony speaks to lineage, responsibility, and the urgent need to strengthen protections for iwi kūpuna in Honolulu and across Hawai'i.

I am a lineal descendant of Honolulu. This is not a claim made lightly—it is documented. I have submitted SHPD Descendancy Recognition Letters, along with sworn affidavits and genealogical records, establishing our direct connection to these lands and to the iwi kūpuna who remain there.

I have attached supporting documentation, including my SHPD Descendancy Recognition Application and a certified Land Affidavit from the Bureau of Conveyances, which establish my genealogical connection and kuleana to this area. These documents are submitted as part of the official record.

Archaeological documentation conducted by the Bishop Museum in the 1970s confirms that Honolulu is not a single site, but a dense cultural and burial landscape. These reports identify habitation sites, heiau, agricultural complexes, and multiple burial locations—including exposed human remains. This area has been known for over 50 years to contain iwi kūpuna.

Despite this, the process for recognizing descendants and protecting these sites has been inconsistent.

In 2022, when I first applied through HICRIS, my application remained unreviewed for over three months. There was no site visit, no communication, and no meaningful engagement. I had to repeatedly follow up just to receive assistance. These delays directly impact our ability, as descendants, to protect our kūpuna.

In contrast, my 2025 application reflected improvement. Once the application was located, acknowledgment was expedited, and a site visit was conducted with archaeologists and SHPD representative Leinoa Kong. This demonstrates that a respectful and effective process is possible—but it is not yet consistent.

This inconsistency cannot continue.

The current system also creates unnecessary financial strain on all parties.

Native Hawaiian Organizations and community groups often spend years in litigation and advocacy just to protect known burial sites. At the same time, developers face costly delays, legal fees, and project disruptions when iwi kūpuna are encountered during construction.

These are not small impacts. They represent significant time, funding, and resources that could be better used in ways that benefit both the community and the State.

Instead of funding conflict, those resources could be directed toward:

- Early and thorough cultural and archaeological assessments
- Proper consultation with lineal descendants from the beginning
- Long-term preservation and stewardship of cultural sites
- Education, monitoring, and protection programs

A system that prioritizes early protection does not stop development—it prevents costly mistakes.

Additionally, the Save Honolua Coalition has now acquired approximately 17.3 acres of former Maui Land & Pine land in Honolua. With that acquisition comes a heightened responsibility. These lands are not vacant—they are part of a living cultural landscape with known and unrecorded burial sites.

Yet under current rules, iwi kūpuna continue to be treated as discoveries rather than known ancestors.

Rule changes are not optional—they are necessary.

We respectfully call for:

- Mandatory and timely review of descendance applications
- Required site visits as part of the determination process
- Formal and enforceable inclusion of lineal descendants in decision-making
- Stronger protections that prevent disturbance, not just mitigate it after the fact

Our kūpuna are not resources. They are not obstacles. They are our ancestors.

Protecting iwi kūpuna is not just policy—it is kuleana.

I stand here for our lineage, for our responsibility to this place, and for those who can no longer speak.

Mahalo for your time and consideration.

Respectfully submitted,

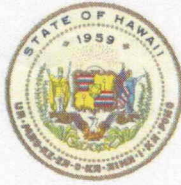
Cheryl Hotta  
Lineal Descendant, Honolua

1.808.385.5476  
makaolevioletheir2@gmail.com  
Maui, Hawai'i

**Attachments:**

1. SHPD Descendancy Recognition Application (Filed via HICRIS)
2. Certified Land Affidavit – Bureau of Conveyance
3. Links to Bishop Museum Press

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

601 Kamokila Boulevard, Suite 555  
Kapolei, HI 96806

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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

May 27, 2022

Cheryl Hotta  
631 Kalakaua Street  
Wailuku, HI 96793

LOG NO: 2022PR00679  
DOC NO: 2202AKP07

Aloha mai e Cheryl:

**SUBJECT: Cultural Descendancy Recognition of Cheryl Hotta to Unidentified Human Skeletal Remains at Honolua Bay Ahupua'a of Honolua, Ka'anapali District, Island of Maui, TMK: (2) 2-4-1-001: 008.**

At its May 18, 2022, meeting, the Maui Lāna'i Islands Burial Council voted to recognize you as a cultural descendant to the unidentified human skeletal remains buried at the above parcel.

Please contact the Maui Burial Sites Specialist, Mr. Kealana Phillips, if you have any questions or concerns, at (808) 243-4641, or via email [andrew.k.phillips@hawaii.gov](mailto:andrew.k.phillips@hawaii.gov).

Sincerely,

*Hinano Rodrigues*

Mr. Hinano Rodrigues, J.D.  
History & Culture Branch Chief

YFAF



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

September 18, 2025 10:06 AM  
Doc No(s) A - 9392000717

Pkg 12605245 ICL

/s/ MIKE H. IMANAKA  
REGISTRAR

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Cheryl Ann Bautista HOTTA  
631 Kalakaua Street  
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT: AFFIDAVIT of: Cheryl Ann Bautista HOTTA

TAX MAP KEY (S): (2) 4-1-001-004, (2) 4-1-001-008 & (2) 4-1-001-002  
LAND COMMISSION AWARD: 4243:D  
ROYAL PATENT: 4188

This document consists of **29** pages.

JOSH GREEN, M.D.  
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SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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December 26, 2025

Maika Lacio  
5035 Napilihau St. PMB 305  
Lāhainā, HI 96761

Aloha e Mr. Lacio,

IN REPLY REFER TO:  
Project TBD  
Doc No: 2512LK03  
History & Culture

**SUBJECT: Descendancy Recognition Application of Maika Lyle Martin Lacio to Identified Native Hawaiian Skeletal Remains Located at Honolua Bay, Ahupua'a of Honolua, Kā'anapali District, Island of Maui, TMK: (2) 4-1-001:006.**

At its monthly meeting on December 17, 2025, the Maui, Lāna'i Island Burial Council voted to recognize you, Maika Lyle Martin Lacio, as a Lineal descendant to identified native Hawaiian skeletal remains of Hulimai Manuwa located at Honolua Bay, Ahupua'a of Honolua, District of Kā'anapali, Island of Maui.

Should you have any questions or concerns, you may contact our Maui Island Burial Sites Specialist, Leinoa Kong, at (808) 243-4626 or via email at [leinoa.kong@Hawaii.gov](mailto:leinoa.kong@Hawaii.gov).

Mahalo,

A handwritten signature in black ink, appearing to read "Jessica L. Puff".

Jessica L. Puff  
State Historic Preservation Administrator  
Deputy State Historic Preservation Officer

THE ORIGINAL OF THE DOCUMENT  
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% 5095 Napilihau Street 109B PMB305  
Lahaina, HI 96761

TITLE OF DOCUMENT: AFFIDAVIT of: Maika Lyle Martin LACIO

TAX MAP KEY (S): (2) 4-1-001-003-0000, (2) 4-1-001-006-0000  
LAND COMMISSION AWARD: 3992/3692  
ROYAL PATENT: 4174

This document consists of 47 pages.

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STATE PARKS

December 26, 2025

Misty Lacio  
5095 Napili Hau St. PMB 305  
Lāhainā, HI 96761

IN REPLY REFER TO:  
Project TBD  
Doc No: 2512LK02  
History & Culture

Aloha e Ms. Lacio,

**SUBJECT: Descendancy Recognition Application of Misty Ann Kalamaula Ku'uipo Lacio to Identified Native Hawaiian Skeletal Remains Located at Honolulu Bay, Ahupua'a of Honolulu, Kā'anapali District, Island of Maui, TMK: (2) 4-1-001:006.**

At its monthly meeting on December 17, 2025, the Maui, Lāna'i Island Burial Council voted to recognize you, Misty Ann Kalamaula Ku'uipo Lacio, as a Lineal descendant to identified native Hawaiian skeletal remains of Hulimai Manuwa located at Honolulu Bay, Ahupua'a of Honolulu, District of Kā'anapali, Island of Maui.

Should you have any questions or concerns, you may contact our Maui Island Burial Sites Specialist, Leinoa Kong, at (808) 243-4626 or via email at [leinoa.kong@Hawaii.gov](mailto:leinoa.kong@Hawaii.gov).

Mahalo,

A handwritten signature in black ink, appearing to read "JPuff".

Jessica L. Puff  
State Historic Preservation Administrator  
Deputy State Historic Preservation Officer

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% 5095 Napilihau Street 109B PMB305  
Lahaina, HI 96761

TITLE OF DOCUMENT: AFFIDAVIT of: Misty Ann Kalamaula Kuuipo LACIO

TAX MAP KEY (S): (2) 4-1-001-003-0000, (2) 4-1-001-006-0000  
LAND COMMISSION AWARD: 3992/3692  
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JOSH GREEN, M.D.  
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LAND  
STATE PARKS

December 26, 2025

Kristy Lacio  
5095 Napilihau St. PMB 305  
Lāhainā, HI 96761

Aloha e Ms. Lacio,

**SUBJECT: Descendancy Recognition Application of Kristy Francisca Kauionalani Leialoha Lacio to Identified Native Hawaiian Skeletal Remains Located at Honolua Bay, Ahupua'a of Honolua, Kā'anapali District, Island of Maui, TMK: (2) 4-1-001:006.**

At its monthly meeting on December 17, 2025, the Maui, Lāna'i Island Burial Council voted to recognize you, Kristy Francisca Kauionalani Leialoha Lacio, as a Lineal descendant to identified native Hawaiian skeletal remains of Hulimai Manuwa located at Honolua Bay, Ahupua'a of Honolua, District of Kā'anapali, Island of Maui.

Should you have any questions or concerns, you may contact our Maui Island Burial Sites Specialist, Leinoa Kong, at (808) 243-4626 or via email at [leinoa.kong@Hawaii.gov](mailto:leinoa.kong@Hawaii.gov).

Mahalo

A handwritten signature in black ink, appearing to read "JPuff".

Jessica L. Puff  
State Historic Preservation Administrator  
Deputy State Historic Preservation Officer

IN REPLY REFER TO:  
Project TBD  
Doc No: 2512LK01  
History & Culture

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Lahaina, HI 96761

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AFFIDAVIT of: Kristy Francisca

Kauai'onalani Leialoha LACIO

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[EXTERNAL] Testimony for 04.24.2026 Meeting, Support for Agenda Item, I.1

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From kimeona kane <kimeonakane@gmail.com>

Date Wed 4/22/2026 8:37 PM

To DLNR.BLNR.Testimony <blnr.testimony@hawaii.gov>

aloha kākou,

Kimeona Kane in support of Agenda Item, I.1

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

Mahalo nui

--

'O wau nō me ka ha'aha'a,

Kimeona Kane

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## Board of Land and Natural Resources

Regular Meeting

1151 Punchbowl Street, 1<sup>st</sup> Floor DLNR Boardroom, Honolulu, O‘ahu

April 24, 2026

Regarding Agenda Item I.1. Approval of Mālama Kakanilua, Ho‘oponopono o Makena and Pele Defense Fund’s Petition for Rulemaking filed on March 26, 2026

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The Office of Hawaiian Affairs (OHA) supports the staff recommendation to approve Mālama Kakanilua, Ho‘oponopono o Makena, and Pele Defense Fund’s Petition for Rulemaking Filed on March 25, 2026. Petitioners propose amending several chapters of the Hawai‘i Administrative Rules (HAR) related to protection of iwi kūpuna and cultural sites.<sup>1</sup> The petitioners, inclusive of long-time advocates for iwi kūpuna, request the proposed amendments to: ensure that recognized descendants are primary participants in the historic preservation review process when burial sites may be affected; ensure that archaeological consultants involved in reviewing cultural sites and burials are professionally qualified for the task; and, to allow for updated archaeological inventory surveys (AIS) when appropriate. For years, OHA has likewise advocated for updates to the rules as many are outdated, ineffective, or otherwise in need of amendment.<sup>2</sup>

The OHA is the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians,<sup>3</sup> including traditional and customary practices such as mālama iwi that are protected by Article XI, section 7 of the Hawai‘i Constitution. Among its statutory duties, OHA is required to (1) serve as principal public agency in the State of Hawai‘i responsible for the performance, development and coordination of programs and activities relating to native Hawaiians and Hawaiians; (2) assess the policies and practices of other agencies impacting native Hawaiians and Hawaiians; and (3) conduct advocacy efforts for native Hawaiians and Hawaiians.<sup>4</sup>

In fulfillment of our mandates, OHA has been deeply involved with protection of iwi kūpuna for decades. Under HRS Chapter 6E, the state’s historic preservation law which sets forth the regulatory framework for protection of Native Hawaiian burials, OHA is tasked with specific kuleana, including nominating moku candidates to serve on the Island Burial Councils (IBC) and consulting on sites that are important to Native Hawaiians.<sup>5</sup> OHA participated in a working group to revise the rules convened under the Governor Ige Administration; however, the work was never carried forward under Governor Green. OHA still wrote a letter in support of the proposed rule

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<sup>1</sup> HAR Chapters 13-275, -276, -277, -278, -279, -280, -281, -284, and -300.

<sup>2</sup> In fact, rules implementing Hawai‘i Revised Statutes (HRS) Chapter 6 E have not been amended or refined in over 15 years, and the rules pertaining to burials specifically have not been amended or revisited in over 20 years.

<sup>3</sup> Haw. Const. Art. XII § 5.

<sup>4</sup> HRS § 10-3.

<sup>5</sup> See HRS §6E-43.5, HAR 13-284-6(c) and 13-275-6(c).



## **Board of Land and Natural Resources**

Regular Meeting

1151 Punchbowl Street, 1<sup>st</sup> Floor DLNR Boardroom, Honolulu, O‘ahu

April 24, 2026

changes and even drafted a resolution calling for a rule change in June 2021. *See Attachment A* for reference.

Through these years of advocacy efforts and interfacing with the community, OHA has identified a list of areas within the administrative rules which should be amended, many of which were informed by a 2022 Burial Sites Working Group (BSWG)<sup>6</sup> and are likewise identified in the subject petition. OHA convened the 2022 BSWG to evaluate implementation of the current burial sites program and to provide statutory and regulatory recommendations for improvement. While statutory amendments recommended by the 2022 BSWG were proposed to the legislature (and some were adopted), amendments to the administrative rules rely on agency rulemaking which has not yet been initiated. Therefore, OHA supports the proposed rulemaking to address longstanding community concerns and OHA’s own assessment of necessary improvement.

Among the areas proposed to be addressed by the subject petition which OHA agrees are priorities for reform are the following:

- **Archaeologist Permitting:** Archaeologists who violate historic preservation laws or who fail to meet standards of professional responsibility should be held accountable and should face repercussions including suspension from future work until compliance is achieved. Currently, the rules have no mechanisms for disciplinary action against archaeological permit holders that commit violations, conduct substandard work, or turn in reports late. Archaeological monitoring reports are often submitted late as they occur post-project and typically after a permit has already been issued, but are important accountability mechanisms for cultural and lineal descendants concerned about treatment of iwi and cultural sites. This type of violation should at minimum disqualify the permit holder from further work through SHPD until compliance is achieved.
- **Archaeological Inventory Survey (AIS) Standards:** Standards for AIS survey methods, locational data acquisition, and report formats should be improved to limit the wide variation in report formats and better document cultural sites and burials. We believe standardizing report formats could potentially reduce SHPD review times. While technology has improved over the years in the realm of GPS accuracy, there is no mechanism in the rules for SHPD to require the integration of these improvements or provide for a means to require an updated AIS when older AIS reports rely on outdated standards or methods.
- **Consultation:** Consultation with Native Hawaiians (i.e., recognized descendants, community groups) should be required early on and often during the historic preservation review process to better identify sites of significance for Native Hawaiians (Criteria E, HAR 13-284-6(c) and 13-275-6(c)) and related preservation treatments. This is especially

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<sup>6</sup> See Appendix B, [BSWG Report to the 2023 Legislature - Google Docs](#).



## Board of Land and Natural Resources

Regular Meeting

1151 Punchbowl Street, 1<sup>st</sup> Floor DLNR Boardroom, Honolulu, O‘ahu

April 24, 2026

true in sensitive areas, such as sandy soils, cave systems, and lava tubes, where iwi kūpuna and other cultural objects are more likely to be encountered. In addition, if an archaeologist determines a site to be important to Native Hawaiians, there is no process for formal consultation with Native Hawaiians that requires consent for use of information shared. As a result, sometimes informal conversations have been used for HRS Chapter 6E compliance without consent of the consulting party. Native Hawaiians should be the ones to determine which sites are important to them and play a greater role in the review process when clear consent is provided. OHA actually wrote directly to SHPD questioning how consent is verified for consultation in a letter dated June 3, 2021, due to numerous concerns about informal consultations being used to satisfy statutory consultation requirements. No response was received. *See Attachment B for reference.*

- **Preservation Projects:** Projects intended to rehabilitate and preserve cultural sites should not be hampered by rules intended to prevent harm from development projects where cultural or historical preservation is not a primary purpose. Groups seeking to steward cultural sites sometimes face procedural obstacles that force such projects to comply with administrative processes intended for development projects. SHPD often fails to review these projects in a timely manner absent a permitting nexus thereby hindering such proactive stewardship projects from moving forward.
- **Inadvertent Discoveries:** Currently, the process for designating inadvertent discoveries oftentimes results in inaccuracies. For example, in many cases, an AIS does not test the entire footprint of a project. Rather, a percentage of the area (sometimes as low as 1%) is tested. If a burial is found during the AIS, it is classified as previously identified. However, if other burials are later found in close proximity to the previously identified burial, they are classified as inadvertent and may receive different burial treatments. For example, a previously identified burial under the jurisdiction of the respective IBC may have a designation of preserve in place whereas the inadvertent burial under the jurisdiction of SHPD may be relocated. In reality, these iwi are likely be part of the same burial site and should be treated in the same manner to the extent practicable. A project where the AIS has tested a smaller percentage of the total project footprint are more likely to encounter this problem.
- **IBC Training and Legal Counsel:** The rules should have a requirement that periodic training and adequate legal counsel be provided to IBC members. The IBCs have repeatedly requested trainings and consistent legal counsel over the years, but do not always receive this support, oftentimes receiving full agendas or other meeting materials a few minutes before the start of a meeting if at all. With standardized training, the IBCs can take on greater responsibility, reduce the workload on SHPD staff, and ultimately provide stronger protections for iwi kūpuna. OHA did write a letter to the Attorney General in May 2025 to get details on the legal counsel provided to IBCs, but we never received a response that answered our inquiry on policies and procedures. *See Attachment C for reference.*



**Board of Land and Natural Resources**

Regular Meeting

1151 Punchbowl Street, 1<sup>st</sup> Floor DLNR Boardroom, Honolulu, O‘ahu

April 24, 2026

Currently, OHA is convening another BSWG to in-part re-evaluate these recommendations and provide a second report to the legislature ahead of the 2027 session. Based on the meetings convened so far in 2026, OHA anticipates that again HAR amendments will be proposed that will necessitate DLNR open the rule making process.

Mahalo for the opportunity to testify in **SUPPORT** of this agenda item.

# ATTACHMENT A - OHA TESTIMOMNY

PHONE (808) 594-1888

FAX (808) 594-1938



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
560 N. NIMITZ HWY., SUITE 200  
HONOLULU, HAWAII 96817

June 21, 2021

Sara Lin  
Senior Special Assistant  
Office of the Governor, State of Hawaii  
Executive Chambers  
State Capitol  
Honolulu, HI 96813

Re: Recommended Amendments for HARs 13-284 and 13-275

Aloha e Sara :

The Office of Hawaiian Affairs (OHA) writes to provide recommendations on amendments to Hawai'i Administrative Rules (HAR) 13-275 (state projects) and 13-284 (private projects), relating to the Hawai'i Revised Statutes Chapter 6E historic preservation review process. Currently, the Office of the Governor is working with the State Historic Preservation Division (SHPD) to convene a working group to discuss needed improvements to these HARs until the end of June. OHA has participated in several of these working group meetings over the past month and understands that SHPD is looking to address the following via rule changes: simplify process by combining HAR 13-275 and 13-284; minimize the number of steps in the historic preservation review process; integrate consultation throughout the historic preservation review process; reduce the occurrence of incomplete submissions by standardizing SHPD submittals; and, create an automatic rejection sheet for non-applicable projects. OHA, as well as other working group members, have been advised to provide recommendations by mid-June so that the formal rule change process can be initiated towards the fall of 2021.

Over the years, OHA has participated in the HRS 6E (State level) and National Historic Preservation Act (NHPA) (Federal level) processes as OHA is specifically called out and often required to be consulted per statute, rule, or ordinance<sup>1</sup>. Given this technical experience and first-hand observations of beneficiary concerns pertaining to the process, we put forth the following recommendations that we believe are in-line with the current scope of proposed rule changes:

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<sup>1</sup> See HRS 6E-43; HAR 13-284-6(c), 13-275-6(c), 13-300-40; Maui County Code 19.510.010.D.9; 16 USC 470w(18); and, 25 USC 3001(12).

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- **Consultation throughout the HRS 6E Process:** As part of the historic preservation review process, archaeologists (employed by developers) survey project areas for historic sites and resources and burials and, in their archaeological inventory survey (AIS) report, identify any sites they deem “significant”. HAR 13-284-6/13-275-6 lays out several criteria for historic significance determinations, including Criterion E, which identifies historic properties that have an important value to the Native Hawaiian people due to associations with cultural practices or traditional beliefs. Notably, Native Hawaiian community consultation is only required for sites that meet Criterion E, as recommended by contract archaeologists, or when SHPD otherwise specifically requests that such consultation occur. However, such consultation usually occurs only *after* site identification and cultural significance determinations have already been made and mitigation has already been planned, often without Hawaiian community involvement.

Moreover, in practice, OHA observes that archaeologists usually only apply this designation to heiau and burial sites, while stewarded cultural sites and the vast majority of other ancient Native Hawaiian cultural sites are overlooked completely. The glaring disorder of this process has led to much conflict and distrust between the Hawaiian community, project developers, and SHPD. Native Hawaiians should logically be consulted at the earliest stage of any development project, to help identify Hawaiian historic sites, on the cultural significance of their *own* historic sites, and on appropriate mitigation planning. In fact, the definition of consultation in the HARs would appear to incorporate this prudent approach, mirroring the federal definition of consultation required with native people in the National Historic Preservation Act; however, the procedures established under the rules do not impose adequate consultation requirements to honor these sentiments. Thus, stronger and clearer requirements to consult with the Hawaiian community early and often on Hawaiian historic sites should be established to allow Hawaiians to inform decision-making on Hawaiian sites and reduce distrust and conflict between Native Hawaiians, developers, and the State regarding these issues.

- **Consultation Reporting:** OHA has observed over the years that even when sites are found significant under Criterion E and consultation is required by SHPD, some archaeological firms do not make an honest attempt to conduct meaningful consultation. The rules<sup>2</sup> minimally require that archaeological firms provide a list of consulted parties to SHPD as well as a summary of the consultation discussion. OHA has repeatedly received complaints from beneficiaries not being informed that they were being consulted by archaeological firms under HRS 6E for Criterion E purposes or provided with transcripts or summaries of the consultation so they may review the content.

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<sup>2</sup> HAR 13-275-6(d)(1)(C) (for State projects) and HAR 13-284-6(d)(1)(C) (for private projects).

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There is a general apprehension and fear now that simple phone calls or informal discussions could later be used as part of the HRS 6E process even though an individual may not have consented for such information to be used that way. While the rules provide minimum requirements pertaining to consultation, OHA recommends that SHPD amend the rules to: 1) require proof of consent that consulting parties were fully informed when participating in any HRS 6E related consultations; and 2) require methodologies that show consulting parties had the opportunity to review any information shared prior to publishing the contents of consultation within any archaeological report.

- **Separate Process for Preservation-Oriented Projects:** OHA has observed that Native Hawaiian organizations and community groups seeking to steward historic and cultural resources can face substantial procedural obstacles and costs to comply with the same extensive administrative process applied to large scale development projects. In these cases, the historic preservation review process inadvertently disincentivizes historic preservation work and responsible stewardship of ‘āina and wai, contrary to the goals of HRS 6E.

OHA, alongside several other Native Hawaiian organizations and land trusts, has indeed experienced challenges in pursuing historic preservation review for projects that would proactively rehabilitate, preserve, steward, and allow for cultural use of Native Hawaiian historic sites and resources. Projects aimed at revitalizing cultural practices and historic uses for sites like ancient lo‘i, terrace walls, and heiau are currently held to the administrative preservation, repair, and use restrictions developed for historic architecture. Unlike historic architecture, however, Native Hawaiian historic structures are elements of a living culture; the administrative requirements should therefore reflect and support, rather than inhibit, Native Hawaiians’ unique value for, relationship with, and living use of these sites. Thus, the current rules could be amended to create a separate, less burdensome, process for these types of projects that does not require as much SHPD oversight as typical development projects. Some of these types of projects could further be part of an automatic rejection sheet to indicate SHPD review is not required.

- **Standard Report Formats:** The HARs list requirements for archaeological report content, but they do not dictate standards for report format (i.e., presentation of research methodology and findings, executive summaries). OHA observes that wide variations still exist among reports reviewed, which tends to contribute to long review times. It is OHA’s understanding though that SHPD does already have a template report format within their Standard Operating Procedures, but cannot mandate that the format be used by archaeological firms. Thus, SHPD could take this opportunity to now standardize report formats in the rules. OHA believes this would greatly

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improve review timeliness, quality, and aid in reducing incomplete submissions.

- **Archaeological Locational Standards:** Advances in technology have allowed for more accurate GPS units that can pinpoint locations within a 1-meter margin of error. While these units have become more accessible and affordable, there is no mechanism or requirement in the rules to take advantage of modern technology that would help identify historic sites more easily and improve their protection. OHA has observed that errors in GPS accuracy have resulted in duplicative work and sometimes the destruction of cultural sites. Thus, SHPD could amend the rules in a way that would mandate inclusion of better locational standards.

### Closing Remarks

Mahalo for the opportunity to share these recommendations. As was shared by OHA staff at the working group meetings, many of these recommendations are in-line with a Senate (and House) Concurrent Resolution that OHA put forth last year encouraging rule changes for the historic preservation review process. A copy of the resolution was previously provided to you via email; but, included again here as an enclosure for quick reference. Notably, OHA put forth the resolution as we have observed various concerns from beneficiaries over the years regarding consultation, preservation actions, archaeological qualifications, disciplinary actions for permit holders, burial classifications, as well as trainings and administrative support for the Island Burial Councils. Furthermore, historic preservation administrative rules have not been amended or refined in over 15 years, and the rules pertaining to burials specifically have not been amended or revisited in over 20 years.

While the Senate version of the resolution was amended to include the establishment of a task force, both House and Senate resolutions were not successful in getting adopted. However, we do look forward to the proposed rule changes to HAR 13-284 and 13-275 as it could address some of the concerns raised in our resolution. As apparent in the resolution language, OHA would recommend that the historic preservation rules beyond the subject HARs (i.e., HAR 13-300 governing burials, 13-282 governing archaeological permits) be examined for improvement in the future. It is OHA's understanding that both the Office of the Governor and SHPD acknowledge these additional concerns beyond the current scope and may look to amending other historic preservation related administrative rules in the future.

Additionally, the Office of the Governor and SHPD are looking into generating a memo and primer to aid various State agencies in completing acceptable HRS 6E submittals. On this front, it may further behoove you and the SHPD to explore a means to ensure qualified staff or third-party reviewers and respective resources are available to aid these agencies in submittals where necessary and limit liabilities pertaining to adverse

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effect determinations. OHA is certainly willing to participate in further discussions on these possibilities.

Should you have any questions, please contact OHA's Lead Compliance Specialist, Kamakana C. Ferreira at (808) 594-0227 or by email at [kamakanaf@oha.org](mailto:kamakanaf@oha.org). We look forward to continuing working group discussions with you regarding the proposed rule changes and participating in the forthcoming formal rule change process.

‘O wau iho nō me ka ‘oia ‘i‘o,



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

SH:kf

Enclosure – Senate Concurrent Resolution No. 3, SD 1 (2020)

cc: Alan Downer, Administrator, SHPD  
Ku‘upuamaeole Kiyuna, SHPD Law-Fellow Intern

THE SENATE  
THIRTIETH LEGISLATURE, 2020  
STATE OF HAWAII

S.C.R. NO. 3  
S.D. 1

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ADOPT  
ADMINISTRATIVE RULES THAT BETTER PROTECT HISTORIC RESOURCES  
AND TO CREATE A TASK FORCE.

1           WHEREAS, our State's cultural heritage is imbued in its  
2 historic and cultural resources; and

3  
4           WHEREAS, preservation of irreplaceable historic properties  
5 and cultural resources as well as responsible stewardship of  
6 precious and sacred iwi kupuna is of utmost importance to Native  
7 Hawaiians and the State; and

8  
9           WHEREAS, the State Historic Preservation Division of the  
10 Department of Land and Natural Resources is authorized to adopt  
11 rules to administer historic preservation, review laws, and  
12 regulate the treatment and protection of invaluable historic  
13 properties and resources throughout the State; and

14  
15           WHEREAS, the current historic preservation rules adopted by  
16 the Department of Land and Natural Resources have not been  
17 updated in more than fifteen years; and

18  
19           WHEREAS, the current historic preservation rules, in some  
20 respects, provide incomplete, ineffective, or inadequate  
21 guidance on historic preservation processes and protection for  
22 historic resources and iwi kupuna; and

23  
24           WHEREAS, the current historic preservation rules contain no  
25 standards for professional responsibility in archaeology, no  
26 process to regulate archaeology permits, and no procedures to  
27 discipline archaeologists who engage in practices that cause  
28 harm to historical resources; and

29  
30           WHEREAS, the current historic preservation rules fail to  
31 distinguish requirements for projects for the development of



1 land that may harm, displace, or destroy historic and cultural  
2 resources and those that will rehabilitate, restore, preserve,  
3 or steward historic or cultural resources; and  
4

5 WHEREAS, the current historic preservation rules have  
6 failed to adequately effectuate statutory protections for burial  
7 sites, especially in areas with large concentrations of skeletal  
8 remains; and  
9

10 WHEREAS, under current historic preservation rules,  
11 "previously identified" burials are burials identified during an  
12 archaeological inventory survey or burials previously registered  
13 with the State Historic Preservation Division; and  
14

15 WHEREAS, "inadvertently discovered" burials are all other  
16 burials, including burials found during exploratory testing that  
17 may use the same methodologies as an archaeological inventory  
18 survey and that may occur prior to the commencement of work; and  
19

20 WHEREAS, the current distinction between "previously  
21 identified" and "inadvertently discovered" burials leads to  
22 vastly different decision-making processes regarding their  
23 treatment, with determinations regarding the disposition of the  
24 former made by the appropriate Island Burial Council and  
25 determinations regarding disposition of the latter made by the  
26 State Historic Preservation Division; and  
27

28 WHEREAS, each Island Burial Council possesses far more  
29 appropriate expertise than the State Historic Preservation  
30 Division to advise and make determinations regarding any  
31 disposition of burials and moepu, regardless of classification  
32 as "previously identified" or "inadvertently discovered"; and  
33

34 WHEREAS, the distinction between "previously identified"  
35 burials and "inadvertently discovered" burials does not warrant  
36 such vastly different treatment; and  
37

38 WHEREAS, specifically, it appears inconsistent for the  
39 respective Island Burial Councils to be completely left out of  
40 decision-making regarding burial dispositions for "inadvertently  
41 discovered" burials, especially when the "inadvertently



1 discovered" burials are located in close proximity to previously  
2 identified burials; and

3  
4 WHEREAS, the vastly different treatment between "previously  
5 identified" burials and "inadvertently discovered" burials has  
6 led to a patchwork of inconsistent burial treatment plans; and

7  
8 WHEREAS, the different processes, treatments, and  
9 dispositions applied respectively to "previously identified" and  
10 "inadvertently discovered" burials has incentivized  
11 irresponsible archaeological testing practices that minimize the  
12 prior identification of burial sites, resulting in the  
13 disinterment of countless burials contrary to the intent of  
14 Hawaii's historic preservation laws; and

15  
16 WHEREAS, the current historic preservation rules require  
17 perpetual protection of unmarked burial sites through  
18 recordation of the metes and bounds with the Bureau of  
19 Conveyances, but they do not require the same for historic  
20 preservation sites such as heiau, which has caused the  
21 unintentional destruction of many historic properties; and

22  
23 WHEREAS, the current historic preservation rules require  
24 consultation with descendants and knowledgeable individuals to  
25 inform determinations regarding the historic significance of  
26 these sites, but these consultation requirements are  
27 inconsistently effectuated and inadequately enforced; and

28  
29 WHEREAS, the inadequacy of the current historic  
30 preservation rules has caused significant confusion, costly  
31 litigation, and the destruction of invaluable and irreplaceable  
32 historic resources and cultural sites, including iwi kupuna;  
33 now, therefore,

34  
35 BE IT RESOLVED by the Senate of the Thirtieth Legislature  
36 of the State of Hawaii, Regular Session of 2020, the House of  
37 Representatives concurring, that the Department of Land and  
38 Natural Resources is requested to adopt administrative rules  
39 that strengthen historic resource protections by:

40  
41 (1) Improving accountability for archaeologists  
42 responsible for surveying, recording, and making



- 1 recommendations for treatment of historic resources  
2 discovered on development sites;  
3
- 4 (2) Establishing an alternative or streamlined historic  
5 preservation process to facilitate the approval of  
6 preservation plans and permits for projects  
7 specifically aimed at rehabilitating, preserving, or  
8 stewarding historic properties or cultural resources;  
9
- 10 (3) Standardizing and formalizing the archaeological  
11 inventory survey sampling and reporting requirements  
12 to improve thoroughness and consistency;  
13
- 14 (4) Creating a process to allow for the reclassification  
15 of "inadvertently discovered" burials as "previously  
16 identified", especially where burials are discovered  
17 during exploratory testing authorized or ordered by  
18 the Department of Land and Natural Resources or where  
19 burials are discovered in concentrations;  
20
- 21 (5) Granting each Island Burial Council greater authority,  
22 responsibility, and deference to advise during the  
23 historic preservation review process and determine the  
24 treatment of native Hawaiian burials;  
25
- 26 (6) Providing to each Island Burial Council stronger and  
27 periodic training relating to relevant statutory and  
28 administrative authorities and responsibilities;  
29
- 30 (7) Requiring landowners to record the metes and bounds of  
31 preservation sites with the Bureau of Conveyances to  
32 ensure perpetual protection of culturally significant  
33 and irreplaceable historic sites and resources;  
34
- 35 (8) Clarifying the requirements for consultation with the  
36 native Hawaiian community and organizations throughout  
37 the historic preservation review process when native  
38 Hawaiian historic and cultural sites are threatened by  
39 development;  
40
- 41 (9) Providing for stricter fines, clearer enforcement  
42 processes, and a process by which citizens may report



1 the discovery and potential destruction of burials and  
2 other historic resources, to improve the effectuation  
3 of historic preservation review processes and the  
4 enforcement of protections for historic properties;  
5 and  
6

- 7 (10) Reviewing administrative rules governed by section 6E,  
8 Hawaii Revised Statutes, related to government  
9 projects, private property, burials and iwi kapuna,  
10 and archaeologists and archaeology; and  
11

12 BE IT FURTHER RESOLVED that the Department of Land and  
13 Natural Resources is requested to convene and staff a task force  
14 to provide advice and technical assistance in the adoption of  
15 administrative rules that strengthen historic resource  
16 protections; and  
17

18 BE IT FURTHER RESOLVED that the task force is requested to  
19 include the following members:  
20

- 21 (1) Professionals with subject matter expertise;  
22  
23 (2) Stakeholders with jurisdiction over projects that may  
24 affect historic properties; and  
25  
26 (3) Organizations and individuals with concern for the  
27 effect of projects on historic and cultural resources;  
28 and  
29

30 BE IT FURTHER RESOLVED that the Department of Land and  
31 Natural Resources is requested to submit a report to the  
32 Legislature on the status and progress of its administrative  
33 rulemaking proceedings related to historic resource protections  
34 no later than twenty days before the convening of the Regular  
35 Session of 2021; and  
36

37 BE IT FURTHER RESOLVED that certified copies of this  
38 Concurrent Resolution be transmitted to the Chairperson of the  
39 Board of Land and Natural Resources, Chairperson of the Board of  
40 Trustees of the Office of Hawaiian Affairs, each member of the  
41 Hawaii Island Burial Council, each member of the Kauai and  
42 Niihau Islands Burial Council, each member of the Maui and Lanai



**S.C.R. NO. <sup>3</sup>  
S.D. 1**

- 1 Islands Burial Council, each member of the Oahu Island Burial
- 2 Council, and each member of the Molokai Island Burial Council.



## ATTACHMENT B - OHA Testimony

PHONE (808) 594-1888

FAX (808) 594-1938



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
560 N. NIMITZ HWY., SUITE 200  
HONOLULU, HAWAII 96817

June 3, 2021

Dr. Alan Downer  
Administrator  
State Historic Preservation Division  
601 Kamokila Blvd, Suite 555  
Kapolei, HI 96707

Re: Application of Criterion E Significance Determination and Related Consultation During HRS 6E Review

Aloha e Dr. Downer:

The Office of Hawaiian Affairs (OHA) writes this letter to seek written guidance and an opinion from the State Historic Preservation Division (SHPD) on the Hawai'i Administrative Rules (HAR) pertaining to the application of Criterion E for significance assessments and related consultation requirements. As part of the historic preservation review process under Hawai'i Revised Statutes (HRS) 6E-8 (state projects) and 6E-42 (private projects) for permitted actions, identified historic properties are assessed for significance. Arguably, the Criterion E significance assessment is the most important to Native Hawaiians as it is provided for historic properties that "have an important value to the native Hawaiian people... due to associations with cultural practices once carried out." As such, consultation is required with OHA and Native Hawaiians who find the site significant pursuant to HAR 13-284-6(c) (for private projects) and HAR 13-275-6(c) (for State projects).

While the HARs pertaining to Criterion E simply mandate consultation as part of the HRS 6E process, OHA has repeatedly faced resistance from archaeological firms, developers, and landowners when we request that they more broadly apply the Criterion E designation. There is a general fear that the Criterion E designation requires preservation or will limit a landowner's ability to develop their property. In discussions with some SHPD staff, it seems that they too have observed this uninformed reluctance to more broadly apply Criterion E. Despite OHA pointing to the HARs in these discussions and emphasizing that the designation only requires consultation, we are told that "in practice", Criterion E leads to preservation and could limit their development. Thus, OHA seeks a written opinion from SHPD to clarify that the HARs pertaining to Criterion E do not automatically lead to preservation or limit a landowner's ability to develop their property.

It has been OHA's general stance that more (if not all) Hawaiian sites should arguably be treated as Criterion E and that the determination of what sites are important to Native Hawaiians should in fact be made by Native Hawaiians. This should inherently require consultation as part

## ATTACHMENT B

Dr. Alan Downer – SHPD

Application of Criterion E Significance Determination and Consultation

June 3, 2021

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of the HRS 6E process whenever Hawaiian sites are identified. All Native Hawaiian cultural sites, including traditional period occupation sites, can be viewed as important in some way to many Native Hawaiians, as they are a record of life prior to the period of foreign contact. Many traditional period sites and the cultural materials they contain are regarded as endangered by many Native Hawaiians who have lost much of their history and culture to non-native settler development. The current practice is to typically only consider heiau and burial sites as significant under Criterion E, yet other types of archaeological sites are still viewed as significant and interconnected by many Native Hawaiians. While Criterion E sites require consultation, OHA observes that Native Hawaiians are often excluded from significance evaluation discussions for other types of sites. OHA believes that Native Hawaiians should have a greater voice in determining a site's significance for Native Hawaiian sites during the historic preservation review process; in turn, encouraging a broader discussion or application of Criterion E.

Over the years, OHA does acknowledge that sometimes we do receive significance assessments to review for draft archaeological inventory surveys (AIS) from both SHPD and archaeological firms. However, this is not always the norm and leaves OHA wondering why this practice is so inconsistent. To OHA, it makes sense to make a Criterion E determination in collaboration with Native Hawaiians rather than solely relying on archaeological firms to determine which sites are important or not to Native Hawaiians and utilized for cultural practices. There are indeed some archaeological firms that strive to integrate consultation throughout the HRS 6E process. In OHA's opinion, these firms have garnered better trust from the community and minimized the occurrence of contentious situations. We have further observed that sometimes SHPD does recommend consultation as part of AIS or archaeological monitoring work even though it may not be required by the HARs. OHA has supported these occurrences and appreciates when these consultation opportunities are afforded. However, to remedy what appears to be a seemingly inconsistent practice and to ensure Criterion E sites are meaningfully assessed, OHA implores SHPD to develop a policy that encourages greater consultation opportunities for Native Hawaiians throughout the HRS 6E process and ensures relevant significance assessments are sent to OHA for review.

OHA further observes, however, that even when sites are found significant under Criterion E and consultation is required by SHPD, some archaeological firms do not make an honest attempt to conduct meaningful consultation. The rules<sup>1</sup> minimally require that archaeological firms provide a list of consulted parties to SHPD as well as a summary of the consultation discussion. OHA has repeatedly received complaints from beneficiaries not being informed that they were being consulted by archaeological firms under HRS 6E for Criterion E purposes or provided with transcripts or summaries of the consultation so they may review the content. There is a general apprehension and fear now that simple phone calls or informal discussions could later be used as part of the HRS 6E process even though an individual may not have consented for such information to be used that way. While the rules provide minimum requirements pertaining to consultation, OHA requests that SHPD verify that consulting parties were fully informed when participating in any HRS 6E related consultations and provided with an opportunity to review any information shared prior to publishing the contents of consultation within any archaeological report. SHPD

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<sup>1</sup> HAR 13-275-6(d)(1)(C) (for State projects) and HAR 13-284-6(d)(1)(C) (for private projects).

## ATTACHMENT B

Dr. Alan Downer – SHPD

Application of Criterion E Significance Determination and Consultation

June 3, 2021

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should be requiring this as part of any review when evaluating consultation lists and summaries provided by archaeological firms.

Mahalo for the opportunity to share this concern. OHA looks forward to a response from SHPD providing 1) clarification on whether the application of Criterion E requires anything other than consultation (i.e., preservation) or limits a landowner's ability to develop their property; 2) verification that the list of consulting parties provided to SHPD for Criterion E acknowledges proof of consent; and, 3) verification that the consultation summary provided to SHPD for Criterion E includes a methodology (i.e., transcripts or summaries provided to consultees for review) that demonstrates the summary accurately reflects what was shared by consultees. OHA is further willing to discuss this matter with you and SHPD staff via a meeting. Should you have any questions, please contact OHA's Lead Compliance Specialist, Kamakana C. Ferreira at (808) 594-0227 or by email at [kamakanaf@oha.org](mailto:kamakanaf@oha.org).

'O wau iho nō me ka 'oia 'i'o,



Sylvia M. Hussey, Ed.D.

Ka Pouhana, Chief Executive Officer

SH:kf

C: Dr. Susan Lebo, Archaeology Branch Chief, SHPD

## ATTACHMENT C - OHA Testimony

PHONE (808) 594-1888

FAX (808) 594-1938



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
560 N. NIMITZ HWY., SUITE 200  
HONOLULU, HAWAII 96817

March 19, 2025

Anne E. Lopez  
State of Hawai'i Attorney General  
Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813

Re: Legal Counsel for Island Burial Councils

Aloha e Attorney General Lopez:

The Office of Hawaiian Affairs (OHA) writes to you seeking clarification on policies and procedures pertaining to the Department of the Attorney General's (AG) responsibility to provide legal counsel for the Island Burial Councils (IBCs). In particular, we would like to know how often IBC meetings are staffed by your department and if you believe the AG has been able to provide adequate legal counsel to the IBCs upon request by IBC members or the Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD). Further, we would like to know the procedures in place if both the IBC and the SHPD require legal counsel in instances where their respective positions may be in conflict or direct opposition.

Per Hawai'i Revised Statutes (HRS) Chapter 10-3, it is OHA's responsibility to assess the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conduct advocacy efforts for native Hawaiians and Hawaiians. OHA takes matters pertaining to iwi kūpuna very seriously considering their cultural importance and the emotional impact that disinterment has on our beneficiaries. As part of our advocacy efforts related to historic preservation matters, OHA has specific kuleana within HRS Chapter 6E and implementing regulations, which includes recommending IBC candidates to the Governor.<sup>1</sup> Thus, OHA is well aware of challenges that the IBCs face and has a vested interest in ensuring their ability to function in the manner and with the support mandated by law.

The DLNR (via SHPD) is tasked with establishing and administering the IBCs per HRS Chapter 6E-43.5. The DLNR has promulgated implementing rules for the IBCs pursuant to Hawai'i Administrative Rules (HAR) 13-300. HAR section 13-300-28, "Role of the Department," enumerates SHPD's specific duties with respect to providing administrative support to the IBCs, and also states that "legal issues may be referred to the attorney general's office for appropriate

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<sup>1</sup> See HRS 6E-3, 43, -43.5, 43.6; and, HAR 13-284-6(c) and HAR 13-275-6(c).

## ATTACHMENT C

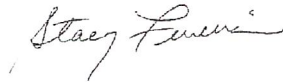
Anne E. Lopez  
State of Hawaii Attorney General  
Legal Counsel for Island Burial Councils  
March 19, 2025  
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action”.<sup>2</sup> The AG’s role may further include providing legal counsel in matters related to contested case hearings.<sup>3</sup>

OHA did convene a Burial Sites Working Group (BSWG) in 2022 pursuant to proposed resolutions<sup>4</sup> during the 2021 legislative session to examine SHPD’s administration of the IBCs. Testimony received as part of the BSWG meetings included specific mention of a lack of appropriate support from the AG’s office. Over the years, OHA has indeed noticed that the IBC meetings do not always have an AG present or one available when IBC members have legal questions; thus, sometimes resulting in IBC related delays.

In closing, OHA would like to work more closely and collaboratively with the DLNR in regards to improving administration of the IBCs. Understanding staffing needs and internal policies and procedures helps OHA to better comprehend the challenges that DLNR faces and how best we can assist. Likewise, OHA is looking to you in the writing of this letter to better understand the AG’s involvement in administration of the IBCs given that your department is specifically tasked in HAR 13-300 with providing legal counsel. Any insight you are able to provide concerning existing policies and procedures would be very much appreciated. OHA is also available for discussion on this matter if helpful.

‘O wau iho nō me ka ‘oia ‘i‘o,



Stacy Ferreira  
Ka Pouhana, Chief Executive Officer

SF:kf

CC: Dawn Chang, Chairperson, DLNR  
Jessica Puff, Administrator, SHPD  
Jordan Calpito, History & Culture Branch Chief, SHPD

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<sup>2</sup> See HAR 13-300-28(c).

<sup>3</sup> See HAR 13-300-55(d).

<sup>4</sup> HR 113 and SR 171.