

THIRTIETH LEGISLATURE, 2020
STATE OF HAWAI'I

____.C.R. NO._____

_____ **CONCURRENT
RESOLUTION**

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ADOPT
ADMINISTRATIVE RULES TO BETTER PROTECT IWI KUPUNA AND
NATIVE HAWAIIAN CULTURAL AND HISTORIC RESOURCES.

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

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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

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9 WHEREAS, Chapter 6E, Hawai'i Revised Statutes, authorizes
10 the Department of Land and Natural Resources (Department),
11 through its State Historic Preservation Division, to adopt rules
12 in accordance with Chapter 91, Hawai'i Revised Statutes, in order
13 to administer historic preservation review laws and regulate the
14 treatment and protection of invaluable historic properties and
15 resources throughout the state; and

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17 WHEREAS, the Department's historic preservation rule
18 chapters have not been updated in over fifteen years or longer
19 in some instances; and

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21 WHEREAS, the Department's historic preservation rules are,
22 in places, incomplete, ineffective, and inadequate to provide
23 clear guidance on historic preservation processes and strong
24 protection for historic resources and iwi kupuna; and

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26 WHEREAS, the Department's historic preservation rules
27 contain no standards for professional responsibility in
28 archaeology and no process to regulate archaeology permits or
29 discipline archaeologists who engage in practices that cause
30 harm to historical resources or departmental resource waste; and

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1 WHEREAS, the Department's historic preservation rules fail
2 to distinguish requirements for projects aimed at developing
3 land which may harm, displace, or destroy historic and cultural
4 resources and projects aimed at rehabilitating, restoring,
5 preserving, and or stewarding historic or cultural resources;
6 and
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8 WHEREAS, the Department's historic preservation rules have
9 failed to adequately effectuate statutory protections for burial
10 sites, especially in areas with large concentrations of skeletal
11 remains, as contemplated in Section 6E-63, Hawai'i Revised
12 Statutes; and
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14 WHEREAS, under current historic preservation rules,
15 "previously identified" burials are burials identified during an
16 archaeological inventory survey (AIS) or burials previously
17 registered with the State Historic Preservation Division; and
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19 WHEREAS, "inadvertently discovered" burials are all other
20 burials including burials found during exploratory testing that
21 may use the same exact methodologies as an AIS and that may
22 occur prior to the commencement of work; and
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24 WHEREAS, the current distinction between what are
25 considered "previously identified" burials and "inadvertently
26 discovered" burials leads to vastly different decision-making
27 processes, with "previously identified" burial disposition
28 determinations made by the Island Burial Councils and
29 "inadvertently discovered" burial disposition determinations
30 made by the State Historic Preservation Division; and
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32 WHEREAS, the Island Burial Councils possess far more
33 appropriate expertise to advise upon, and make determinations
34 about dispositions of burials and moepu, irregardless of their
35 classification as "previously identified" or "inadvertently
36 discovered"; and
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38 WHEREAS, the distinction between "previously identified"
39 burials and "inadvertently discovered" burials does not warrant
40 such vastly differential treatment such that burial councils are
41 completely left out of decision-making on burial dispositions
42 for "inadvertently discovered" burials, especially when the
43 "inadvertently discovered" burials are located in close

1 proximity to previously identified burials, leading to patchwork
2 and inconsistent burial treatment plans; and
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4 WHEREAS, the different processes, treatments, and
5 dispositions applied respectively to "previously identified" and
6 "inadvertently discovered" burials has incentivized
7 irresponsible archaeological testing practices that minimize the
8 prior identification of burial sites, and that has thereby
9 resulted in the disinterment of countless burials contrary to
10 the intent of Hawai'i's historic preservation laws; and
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12 WHEREAS, the Department's historic preservation rules
13 require recordation of the metes and bounds of unmarked burial
14 sites with the Bureau of Conveyances to provide perpetual
15 protection to such sites, but they do not require the same for
16 historic preservation sites such as heiau, which has caused the
17 unintentional destruction of many historic properties; and
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19 WHEREAS, the Department's historic preservation rules
20 require consultation with descendants and knowledgeable
21 individuals to inform determinations on the historic
22 significance of sites, but these consultation requirements are
23 inconsistently effectuated and inadequately enforced; and
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25 WHEREAS, the inadequacy of the Department's historic
26 preservation rules has caused much confusion, costly litigation,
27 and the destruction of invaluable and irreplaceable historic
28 resources and cultural sites as well as iwi kupuna; now,
29 therefore,
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31 BE IT RESOLVED by the [originating chamber] of the
32 Thirtieth Legislature of the State of Hawai'i, Regular Session of
33 2021, the [non-originating chamber] concurring, that the
34 Department of Land and Natural Resources is requested to adopt
35 administrative rules that strengthen historic resource
36 protections by:
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- 38 (1) Improving accountability for archaeologists
39 responsible for surveying, recording, and making
40 recommendations for treatment of historic resources
41 discovered on development sites;
- 42 (2) Developing an alternative or streamlined historic
43 preservation process to facilitate the approval of
44 preservation plans and permits for projects

1 specifically aimed at rehabilitating, preserving, or
2 stewarding historic properties or cultural resources;

- 3 (3) Standardizing and formalizing the archaeological
4 inventory survey sampling and reporting requirements
5 to improve thoroughness and consistency;
- 6 (4) Creating a process to allow for the reclassification
7 of "inadvertently discovered" burials as "previously
8 identified", especially where burials are discovered
9 during exploratory testing authorized or ordered by
10 the Department or where burials are discovered in
11 concentrations;
- 12 (5) Empowering the Island Burial Councils with greater
13 authority, responsibility, and deference to advise in
14 the historic preservation review process and determine
15 the treatment of Native Hawaiian burials;
- 16 (6) Providing stronger and periodic training to Island
17 Burial Councils on their statutory and administrative
18 authorities and responsibilities;
- 19 (7) Requiring landowners to record the metes and bounds of
20 preservation sites with the Bureau of Conveyances to
21 ensure perpetual protection of culturally significant
22 and irreplaceable historic sites and resources;
- 23 (8) Clarifying requirements for consultation with the
24 Native Hawaiian community and organizations throughout
25 the historic preservation review process when Native
26 Hawaiian historic and cultural sites are threatened by
27 development; and
- 28 (9) Providing for stricter fines, clearer enforcement
29 processes, and a process by which citizens may report
30 the discovery and potential destruction of burials and
31 other historic resources, to improve the effectuation
32 of historic preservation review process and the
33 enforcement of historic properties protections; and
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35 BE IT FURTHER RESOLVED that the Department of Land
36 and Natural Resources is requested to report on the status and
37 progress of its administrative rules proceedings to the
38 Legislature no later than twenty days before the convening of
39 the regular session of 2021; and
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41 BE IT FURTHER RESOLVED that certified copies of this
42 Concurrent Resolution be transmitted to the Chairperson of
43 the Board of Land and Natural Resources and the Chairperson of
44 the Board of Trustees of the Office of Hawaiian Affairs.

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OFFERED BY: _____
By Request