

OHA-4

Requesting Amendments to the Department of Land and Natural Resources' (DLNR) Administrative Rules to Better Protect Iwi Kūpuna and Cultural Sites

This resolution urges DLNR and its State Historic Preservation Division (SHPD) to engage in long-awaited and much needed administrative rulemaking that will better protect iwi kūpuna and cultural sites in the state historic preservation review process.

WHAT IS THE HAWAI‘I HISTORIC PRESERVATION LAW?

The Hawai‘i Historic Preservation law, codified in Hawai‘i Revised Statutes (HRS) Chapter 6E, was enacted to ensure that historic sites and archaeological resources, including iwi kūpuna, are given appropriate consideration when they may be impacted by development activities. SHPD was established within DLNR pursuant to HRS Chapter 6E, to administer the law and “provide leadership in preserving, restoring, and maintaining historic and cultural property” for future generations. The DLNR’s administrative rules provide the specific procedures and mechanisms used by SHPD in administering HRS Chapter 6E.

IS AN UPDATE TO DLNR’S ADMINISTRATIVE RULES NECESSARY?

Many of the administrative rules intended to implement Hawai‘i’s Historic Preservation Law are outdated, ineffective, or otherwise in need of amendment. Hawai‘i Administrative Rules (HAR) Title 13 sets the process through which the State’s historic preservation policy and laws are to be managed by SHPD. **Despite longstanding and mounting concerns regarding their sufficiency, the administrative rules pertaining to SHPD have not been amended or refined in over 15 years, and the rules relating to burials specifically have not been amended or revisited in over 20 years.** Over this time, the State has seen many conflicts arise, and untold numbers of iwi kūpuna and priceless cultural sites may have been unnecessarily impacted, due to ineffective or insufficient rule provisions. Fortunately, SHPD and DLNR may have recognized the need for some change, and have indicated a willingness to explore some rule changes.

WHERE ARE WE NOW IN THE PROCESS?

Most recently, SHPD has taken initial steps to finally reopen its rules to amendments, and has already publicly acknowledged some preliminary areas of focus for potential changes, including:

- A disciplinary tool for professional archaeological misconduct;
- Clear standards for archaeological inventory surveys; and
- Increased opportunities for community discussion during the state historic preservation review.

The Native Hawaiian and historic preservation stakeholder communities have called on SHPD to amend its rules for years, and SHPD has finally acknowledged the necessity for at least some change. **OHA believes that a firm statement from the Legislature on the urgency of this**



matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community, will help unify support for SHPD to move forward with its rulemaking, and provide SHPD, the DLNR, and the Governor with a “roadmap” of important rulemaking priorities.

HOW WILL OHA-4 URGE DLNR AND SHPD TO AMEND THEIR ADMINISTRATIVE RULES?

OHA-4 requests that the DLNR and SHPD adopt administrative rules to strengthen protections for Native Hawaiian cultural, historic, and burial sites by:

- Improving accountability for archaeologists responsible for vetting development sites;
- Establishing a streamlined historic preservation review process for community groups seeking to proactively restore and steward historic cultural sites;
- Standardizing and formalizing archaeological inventory survey sampling and reporting requirements;
- Creating a process to allow for the reclassification of "inadvertently discovered" burials as "previously identified" when appropriate;
- Granting each Island Burial Council greater authority and responsibility in the historic preservation review process, including in the treatment of Native Hawaiian burials;
- Clarifying the requirements for consultation with the Native Hawaiian community and organizations throughout the historic preservation review process;
- Providing for stricter fines and clearer enforcement processes; and
- Creating a process by which citizens may report the discovery and potential destruction of burials and other historic resources.

This resolution suggests several specific focus areas—identified by Native Hawaiian practitioners and historic preservation community stakeholders—to guide the rule-making process. SHPD has already indicated its intent to initiate rule-making, and we believe that this resolution clearly identifies the shared priorities of SHPD, OHA, and Native Hawaiian community members.