

OVERVIEW

Investigation of the Department of Land and Natural Resources' Process for Developing Recommended Candidate Lists for Appointment to the Island Burial Councils

Report No. 04-15, December 2004

Summary

In 1990, the Legislature found that full recognition and protection of the unique cultural values of the multi-ethnic peoples of Hawai'i are directly affected by historic preservation decisions. The Legislature noted that the treatment and protection of burials was sensitive to all the peoples of Hawai'i, and found that native Hawaiian traditional prehistoric and unmarked burials are especially vulnerable and often not afforded the protection of law that assures dignity and freedom from unnecessary disturbance. Therefore, the 1990 Legislature established island burial councils in Act 306. The purpose of the burial councils is to advise the Department of Land and Natural Resources on all matters pertaining to unmarked burial sites more than 50 years old located on private, state, and county properties. Act 306 also added protection of burial sites, funerary objects, and human skeletal remains of native Hawaiian burial sites of high preservation value. The Legislature was responding to the discovery of more than 1,100 sets of human skeletal remains at Honokahua, Maui, during the construction of the Ritz-Carlton Kapalua Hotel.

During the 2004 session, the Legislature expressed concerns about the process of making appointments to island burial councils. The Legislature alleged that the department's questionable practices undermine the ability of the island burial councils to carry out their statutory responsibilities. As a result, the Legislature passed House Concurrent Resolution 165, Senate Draft 1, requesting the Office of the Auditor to investigate the Department of Land and Natural Resources to determine whether questionable administrative practices involving island burial council recommendations for appointment amount to significant deviations from Chapter 6E, Hawaii Revised Statutes, and Chapter 13-300, Hawaii Administrative Rules.

We found that a disorderly process of naming island burial council candidates demeans Hawaiian reverence for ancestral remains. While we were able to confirm some delays and questionable nomination practice allegations, there were others that we could not. For example, we found that the department did submit its initial 2003 list of candidates to the governor on time. In addition, both the department's original and revised 2003 lists included two candidates that were allegedly omitted. However, the slow pace of the development of subsequent candidate lists has resulted in a large number of interim appointments and holdover members.

We also found that the department lacks nomination criteria for regional representative candidates being considered for burial councils. We note that the



consideration of oral tradition is vital to the Hawaiian culture and should be valued in this process. Therefore, with oral tradition as the cornerstone, the department should work within a western context to develop guidelines that reflect regional differences and Hawaiian culture and practices and improve the departmental record-keeping in these matters.

We found that the State's historic preservation law is inadequate and does not advance the work of the burial councils and the development of candidate lists. The requirement that the Office of Hawaiian Affairs submit candidate lists is unclear. It is also unclear whether a regional representative is required to be a resident of the island burial council district represented. Moreover, the classification of burial sites as inadvertent discoveries bypasses the burial councils altogether.

Finally, we found a lack of commitment to the burial councils and the burial sites program foreshadows a collapse of Hawaiian *iwi* (bones) preservation efforts. Functional statements, organization charts, and policies and procedures have not been developed for the burial sites program. The burial sites program is not adequately staffed and has resulted in the private funding of public positions. The program's work is also suffering. There are hundreds of cases that need to be closed; the inventory of *iwi*, funerary objects, and burial sites has not been developed; burial council minutes are months behind; and families are kept waiting for determinations of lineal and cultural descendancy.

Recommendations and Response

We made several recommendations to improve the administration and operation of the island burial councils and the burial sites program. Most notably, we recommended that the governor require the department to respond to repeated native Hawaiian requests for a consultative *'aha* (meeting) to develop protocols related to burial beliefs, customs, and practices. The protocols should provide the basis for criteria to qualify candidates for regional representative seats on island burial councils.

The department agreed with most of the investigation's findings and reported that prior to the investigation the State Historic Preservation Division had already begun to address many of these issues. The department disagreed with the investigation's general characterization that the island burial council nomination process is disorderly and demeaning of ancestral remains. The department believes the current administration has significantly improved the process and has demonstrated its commitment to complying with the legal mandates of the appointment process. The department also submitted clarifying information that, in some cases, fell outside the timeframe of our investigation and were therefore presented to us only after the fact. However, based on the department's response, we have made some technical revisions.

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