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

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A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawaii

Report No. 04-15  
December 2004



**THE AUDITOR**  
STATE OF HAWAII

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## Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

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2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
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4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
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### THE AUDITOR STATE OF HAWAII

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# 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

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### 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.

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## 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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Submitted by

**THE AUDITOR**  
STATE OF HAWAII

Report No. 04-15  
December 2004

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## Foreword

This investigation of the Department of Land and Natural Resources was conducted in response to House Concurrent Resolution 165, Senate Draft 1 of the 2004 Regular Session. Our investigation focused on the department's process for developing recommended candidate lists for appointment to the island burial councils.

We wish to extend our appreciation for the cooperation and assistance extended to us by officials of the Department of Land and Natural Resources and others whom we contacted during the course of the investigation.

Marion M. Higa  
State Auditor

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# Chapter 1

## Introduction

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### Introduction

The Constitution of the State of Hawai‘i recognizes the value of conserving and developing historic and cultural property within the state for the public good. In 1976, the Legislature declared the state’s historic and cultural heritage is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage.

The 1976 Legislature also declared that it is in the public interest to engage in a comprehensive program of historic preservation to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of Hawai‘i’s citizens. It therefore created a Historic Preservation Program, under Chapter 6E, Hawai‘i Revised Statutes (HRS), to be administered by a state historic preservation officer. It also established a legal framework for the protection, preservation, reinterment, and archaeological examination of significant prehistoric and historical burial sites.

Exhibit 1.1 depicts the reinterment of human skeletal remains at a construction site of a residential condominium.

#### **Exhibit 1.1** **Reinterment of Skeletal Remains**



*Human skeletal remains discovered during construction of a residential condominium are reinterred at the site by a state employee. Office of the Auditor photograph.*

To further the State's preservation efforts and in response to the discovery of human skeletal remains, the 1990 Legislature established island burial councils for Hawai'i, Maui/Lâna'i, Moloka'i, O'ahu, and Kaua'i/Ni'ihau through Act 306, Session Laws of Hawai'i (SLH) 1990, now codified in Section 6E-43.5, HRS.

The purpose of the island burial councils is to decide on the preservation in place or the relocation of previously identified Hawaiian burial sites; assist the Department of Land and Natural Resources in the inventory and identification of native Hawaiian burial sites; and make recommendations as to appropriate management, treatment, and protection of native Hawaiian burial sites and any other matters relating to the sites.

Concerns regarding the nomination and appointment of candidates to the island burial councils prompted the 2004 Legislature to inquire about this process. Accordingly, House Concurrent Resolution (HCR) No. 165, Senate Draft 1 of the 2004 legislative session requested the State Auditor to investigate the Department of Land and Natural Resources' administrative practices involving recommendations for island burial council appointments and whether they differ significantly from Chapters 6E, HRS, and 13-300, Hawai'i Administrative Rules (HAR).

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## Background

In 1989, the Legislature passed Act 324, elevating the Historic Preservation Program to a division within the Department of Land and Natural Resources. The act also added evaluation and management of burial sites to the new division's responsibilities.

By November 1988, more than 1,100 sets of human skeletal remains were unearthed at Honokahua, Maui during the construction of the Ritz-Carlton Kapalua Hotel. Historic preservation laws at the time did not provide a framework for dealing with native Hawaiian human skeletal remains or burial sites.

The Legislature therefore passed Act 306, SLH 1990, establishing island burial councils and adding protection of burial sites, funerary objects, and human skeletal remains of native Hawaiian burial sites of high preservation value (such as those with numerous skeletal remains or associated with important individuals or events). In 1991, a further responsibility to maintain a statewide inventory of historic properties and burial sites was given to the department through Act 108.

***Appointments are guided by the Historic Preservation Act***

The Historic Preservation Act's Section 6E-43.5 establishes island burial councils for Hawai'i, Maui/Lâna'i, Moloka'i, O'ahu, and Kaua'i/Ni'ihau. The councils are responsible for:

- determining whether native Hawaiian skeletal remains are preserved in place or relocated;
- assisting the department in inventorying and identifying native Hawaiian burial sites;
- making recommendations regarding appropriate management, treatment, and protection of native Hawaiian burial sites, and any other matters related to these burial sites; and
- maintaining a list of appropriate Hawaiian organizations, agencies, and offices to notify regarding discovery of remains.

Each council elects a chairperson for a four-year term, who may serve a maximum of two consecutive terms.

Councils must include at least one representative from each geographic region designated on each island, as well as representatives of development and large property interests. At least 20 percent of regional representatives must be appointed from a list of at least nine candidates provided by the Office of Hawaiian Affairs. Each council must have between nine and 15 members.

Appendix 1 shows the current members and the geographic regions of each council. Appendix 2 details the councils' representation ratios as required by Section 6E-43.5, HRS.

Sections 6E-43.5, HRS, and 13-300-22, HAR, require that regional representatives on the island burial councils be members of the Hawaiian community and represent specific geographic regions. Regional representatives should also possess an understanding of the culture, history, burial beliefs, customs, and practices, particularly those relating to the care and protection of native Hawaiian burial sites, ancestral remains, and burial goods.

Candidates for developer and large property owner representatives must be currently employed by or associated with either a developer conducting large-scale developments or a property owner with at least 100 acres of land under fee or lease on the respective island. These members represent the interests of developers or large property owners, or both interests if the owners of large properties are also the developers of the properties. Regional and developer representatives may not serve on another state board or commission while serving on an island burial council.

***Island burial councils  
are administratively  
attached to the  
Department of Land  
and Natural Resources***

Island burial councils are administratively supported by the department's State Historic Preservation Division. The division is responsible for developing and maintaining a comprehensive program of historic preservation to promote the use and conservation of historic properties and for the overall management and evaluation of burial sites in the state. The division is made up of the Historical and Cultural Branch, Archaeological Branch, and Architectural Branch.

The Historical and Cultural Branch provides professional expertise for activities involving properties with historical or cultural significance and for departmental decisions and policies relating to such activities. The Archaeological Branch does the same for properties with archaeological significance. It also evaluates and coordinates the management of burial sites and provides scientific and planning expertise following the discovery of burial sites in coordination with the appropriate county medical examiner or coroner and appropriate county police department, and works with the Historical and Cultural Branch in burial matters.

The Architectural Branch provides professional expertise for decisions and activities involving properties with architectural significance.

Exhibit 1.2 shows a burial site covered with rocks and coral. Exhibit 1.3 pictures a beach where burials were discovered.

**Exhibit 1.2  
Burial Site Covered with Rocks and Coral**



*A burial site close to the ocean is covered with rocks and coral. Office of the Auditor photograph.*



### Exhibit 1.3 Beach Burial Sites Discovery



*Because native Hawaiians buried their dead on beaches, tide activity as well as erosion reveal human skeletal remains, a frequent occurrence. Burial Sites Program photograph.*

#### ***Burial Sites Program preserves the sanctity and integrity of human skeletal remains***

*Na iwi kupuna* (the bones of ancestors) are sacred to Hawaiians, containing the *mana* (spirits) of the ancestors. Thus, care of the *iwi* (bones) is paramount in respecting ancestors who, in turn, nourish the body and spirit of their descendants. Hawaiians buried their dead beneath their dwellings; under trees; elsewhere on the *ahupua'a* (land division usually extending from the uplands to the sea) where they lived; in the sand on seashores; on mountain ridges; or anywhere else they felt was meaningful to their ancestors. They also laid their dead to rest in caves (lava tubes) and left no markers except rocks and other significant funerary objects, and no names or dates were recorded because the Hawaiian language was not set to writing until the early nineteenth century. Consequently, these unmarked burial sites are frequently discovered when construction commences on real property development.

The Burial Sites Program is responsible for the management of any human skeletal remains more than 50 years old and works with cultural organizations when remains related to specific ethnic groups are discovered. According to the department, approximately 98 percent of the program's burial cases relate to native Hawaiian remains. The department also reports that the program responds to about three inadvertent discoveries of one or more sets of remains each week and is involved with up to 250 burial cases annually. Since the program's inception in 1991, approximately 3,000 sets of skeletal remains have been reinterred. These remains are separated into two categories, previously identified and inadvertently discovered.

### **Previously identified burial sites**

Previously identified burial sites are governed by Section 6E-43, HRS, which provides that at any site other than a cemetery where human remains are found or known to be buried and appear more than 50 years old, the remains and their associated burial goods must not be moved without department approval.

The appropriate island burial council is responsible for determining whether to preserve such remains in place or relocate them. Councils are required to recognize burial sites of high preservation value, such as areas with a concentration of skeletal remains or prehistoric or historic burials associated with important individuals and events. Councils are also required to give greater consideration to preserve in place burials found in areas that are within the context of historic properties or have known lineal descendants.

The department, the Office of Hawaiian Affairs, representatives of large property owner interests and development, and appropriate Hawaiian organizations, such as Hui Mālama I Na Kupuna O Hawai'i Nei, are required to develop criteria for preserving burials in place.

### **Inadvertently discovered burial sites**

Inadvertently discovered burial sites are governed by Section 6E-43.6, HRS. In the event of discovery of human skeletal remains, any activity in the immediate area that could damage the remains or potential historic site must cease until certain requirements are met.

The inadvertent discovery must be reported to the department, appropriate medical examiner or coroner, and police department as soon as possible. The department is responsible for notifying the appropriate island burial council and the Office of Hawaiian Affairs as soon as practicable. Section 6E-43.6, HRS, requires the following steps to be taken:

1. A representative of the medical examiner's or coroner's office and a qualified archaeologist must examine the remains to determine jurisdiction. If the remains are less than 50 years old, the department's responsibility ends.
2. If the remains are older than 50 years, the department is responsible for gathering sufficient information, including oral tradition, to document the nature of the burial context and determine an appropriate treatment for the remains. Members of the appropriate burial council may oversee the on-site examination and, if warranted, removal of the remains.

3. If removal of the remains is necessary (and based on previously established criteria), the process is overseen by a qualified archaeologist, and a mitigation plan is prepared by the department.

**2002 audit found  
mismanagement of the  
State Historic  
Preservation Division**

In 2002, we conducted an *Audit of the State Historic Preservation Division of the Department of Land and Natural Resources* (Report No. 02-20). This audit did not review island burial councils. The 2002 audit found that:

1. The Department of Land and Natural Resources mismanages the State Historic Preservation Division, thereby jeopardizing the protection of Hawai‘i’s unique cultural and historical properties and unfairly exposing private developers to risks of financial loss.
2. The department enabled division staff to misuse and exploit historic preservation resources. Division staff were also allowed to miss funding opportunities.

With regard to burial sites, we found that the disarray of burial files caused project and reinterment delays. The inconsistent and untimely review of discovered burial sites also exposed developers to risks of financial loss and could lead to the development of a *quid pro quo* culture. We also found that the division did not maintain an inventory of historical artifacts along with human skeletal remains and associated funerary objects. In fact, the skeletal remains maintained by the division were stored in unacceptable conditions.<sup>1</sup>

**Alleged  
Questionable  
Island Burial  
Councils  
Nomination  
Practices  
Prompted  
Legislative Action**

During the 2004 session, the Legislature expressed concerns about the process of making appointments to island burial councils. Specifically, the Legislature noted that during the 2003 legislative session the department failed to submit a timely list of burial council nominees to the governor despite the fact that 13 of 50 council members’ terms were to expire on June 30, 2003.

The 2004 Legislature also alleged that in 2003 the department did not recommend two candidates respected by the Hawaiian community. The Legislature noted that these questionable practices undermine the ability of island burial councils to carry out their statutory responsibilities. Consequently, the Legislature passed House Concurrent Resolution 165, Senate Draft 1, requesting this investigation.

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## Objectives of the Investigation

1. Assess the Department of Land and Natural Resources' process of qualifying candidates for the list to be provided to the governor for appointment to island burial councils.
2. Review the adequacy of the statutory framework to qualify candidates for island burial councils.
3. Assess the support services provided to island burial councils by the Department of Land and Natural Resources.
4. Make recommendations as appropriate.

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## Scope and Methodology

Our investigation of the Department of Land and Natural Resources' qualification of candidates for appointment to island burial councils included a review of pertinent laws and rules.

We assessed the department's ability to develop lists of qualified candidates to recommend to the governor. We reviewed the department's coordination efforts with the Office of Hawaiian Affairs, Hawaiian organizations, development companies, and large landowners in identifying qualified candidates for island burial councils. We also assessed the efficacy of the law and the department's administrative support of island burial councils to ensure that councils are able to achieve their purpose and mission.

Our investigation included reviewing documents and taking oral testimonies from departmental staff and members of the Hawaiian community. Paragraph 6E-43.6(c)(2), HRS, recognizes the validity of oral tradition in the Hawaiian culture, directing the department to gather "sufficient information, including oral tradition" to document the context of a burial site and recommend appropriate treatment of an inadvertent discovery.

We conducted fieldwork interviews with division staff, chairpersons of the island burial councils, and judgmentally selected current and former members of the island burial councils, Office of Hawaiian Affairs officials, Office of the Governor staff, former governors, Hawaiian community leaders and individuals, native Hawaiian organization officials, University of Hawai'i-Mānoa academics, landowner and developer executives, and non-profit organization officials. The governor did not respond to our requests for an interview although we met with individuals from her staff.

Our work was conducted from May 2004 through November 2004 according to generally accepted government auditing standards.

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# Chapter 2

## A Disorderly Process of Naming Island Burial Council Candidates Demeans Hawaiian Reverence for Ancestral Remains

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State and federal laws recognize the reverence paid by native Hawaiians to the remains of their ancestors. Chapter 6E, HRS, requires the Department of Land and Natural Resources to administer a preservation program for historic sites of both previously identified and inadvertently discovered native Hawaiian skeletal remains. However, the department has taken a haphazard approach to the trusteeship and the respectful disposition of *na iwi kupuna*, the bones of the ancestors.

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### Summary of Findings

1. Contrary to concerns raised in the Legislature's request for this investigation, the Department of Land and Natural Resources did submit a list of recommendations for island burial council appointments to the Office of the Governor for action during the 2003 Legislature. Further, the department's initial submission of the 2003 list was timely and included the names of two nominees allegedly omitted by the department. However, subsequent submissions of a revised 2003 list and a 2004 list were delayed, confirming legislative concern over delays in council nominations and resulting in many interim appointments.
2. The department has no written guidelines or protocols related to native Hawaiian culture and history with respect to burial beliefs, customs, and practices. This lack of criteria results in an incoherent candidate qualification process for island burial council seats.
3. Deficiencies in the State's Historic Preservation Law hinder appointments to the island burial councils and preservation of ancestral remains. Despite knowing of the inadequacies, the department has not sought to amend the law.
4. The department failed to create an organizational structure to carry out its responsibilities, and its management failures undermine its administration of the burial councils and council nominations.

---

## **We Confirm Some Delays and Questionable Island Burial Councils Nomination Practice Allegations But Not Others**

### ***The department's initial list of 2003 candidates was submitted to the governor on time***

We found that the department did submit its initial 2003 nominations on time and that the list included the names of two nominees allegedly omitted by the department. Thereafter, however, the process was plagued by both delays and other questionable practices, including untimely submission of subsequent lists and improper sharing of information regarding pending nominations. Delays in the submission of candidate lists resulted in a large number of interim appointments, thus validating legislative concern over the nomination process.

We found that a candidate list for 2003 action was submitted on December 26, 2002 by the chair of the Board of Land and Natural Resources (the outgoing governor's appointee, who remained in office until December 30, 2002). The current governor took office on December 2, 2002). In April 2003, however, the Office of the Governor returned the list to the department, advising that the governor wanted a list that offered more than one name for each vacancy on all boards and commissions, giving her a choice on every appointment. The department did not provide a revised list of 2003 candidates until January 20, 2004.

### ***Both the department's original and revised 2003 lists included two candidates allegedly omitted***

We also found that two persons allegedly omitted from the 2003 candidate lists were in fact included on both the original and revised departmental lists sent to the Office of the Governor.

However, a comment written beside the name of one candidate—a well-qualified member of the Hawaiian community—caused problems on the revised list. The list, which was forwarded on February 13, 2004, to the governor by her boards and commissions director, noted that the Board of Land and Natural Resources chair, a member of the governor's cabinet, "is not strongly recommending [this candidate]. If [the candidate] is not reappointed, [the board chair] will accept your decision easily."

The same February 13, 2004 intra-office memorandum was also sent by the Office of the Governor to the department's Historical and Cultural Branch chief. The chief then circulated it in the Hawaiian community, thereby violating the confidentiality of pending nominations and precipitating the Legislature's resolution calling for this investigation.



***Delays in the development of candidate lists resulted in a large number of interim appointments***

Prior to the 2004 legislative session, which began on the third Wednesday in January, the department needed to submit nominations for 23 burial council appointments. The Legislature's annual session is adjourned after 60 session days, generally in early May. However, the department's list of 2004 candidates was not forwarded to the Office of the Governor until April 22, 2004, just days before the Legislature's May 6, 2004 adjournment.

The short turnaround time resulted in five holdover and 19 interim appointments—some 45 percent of the 53 total members statewide. Interim appointments bypass the Legislature's scrutiny until it reconvenes the following year. However, island burial councils have continued to meet and take action because Section 26-34, HRS, provides that any board or commission member whose term has expired may continue in office until a successor is nominated and appointed. Holdover status, though, is limited to the end of the second legislative session after a member's term is expired.

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**The Department Lacks Nomination Criteria for Regional Representative Candidates to Island Burial Councils**

The Department of Land and Natural Resources has failed to establish criteria for the qualification of regional representatives from the Hawaiian community. Section 6E-43, HRS, requires criteria to be “developed by the department in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations.” The law recognizes the role of oral tradition and charges the department with gathering “sufficient information, including oral tradition, to document the nature of the burial context and determine appropriate treatment of the remains.” The law also requires that regional representatives “be selected from the Hawaiian community on the basis of their understanding of the culture, history, burial beliefs, customs and practices of native Hawaiians.” In the Hawaiian community, such knowledge is passed from generation to generation via oral tradition.

In testimony before the 2004 Legislature, the chair of the Board of Land and Natural Resources recognized that candidates for regional seats need to be chosen on the basis of their knowledge of Hawaiian history, customs, practices, and burial beliefs. The chair said that the department also recognized that the burial

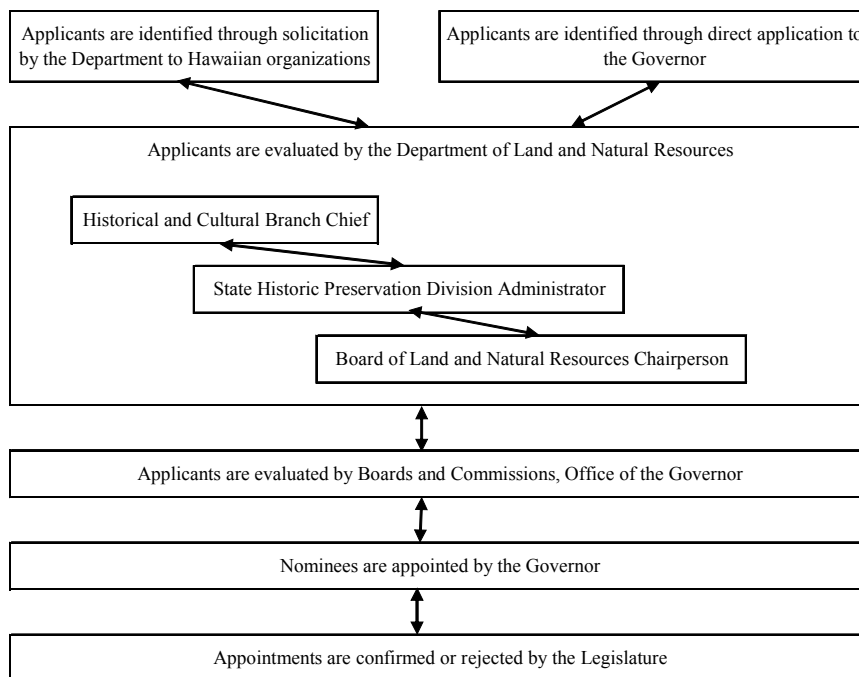
beliefs can vary within the community and among families, and that having this diversity represented on the councils is an important consideration. While possessing a cultural background is the primary and necessary qualification for regional representatives, the statute does not preclude consideration of other qualities and experiences

that favor individuals who the administration believes would make fair and well-reasoned decisions that are not incompatible with their cultural beliefs.

The chair later said that criteria for the “other qualities and experiences” had not been put in writing.

Exhibit 2.1 details the process of appointments to the island burial councils.

### Exhibit 2.1 Appointment Process for the Island Burial Councils



Source: Compiled by the Office of the Auditor from information gathered through interviews with the Department of Land and Natural Resources and the Office of the Governor.

### ***Oral tradition is vital to Hawaiian culture***

Hawaiian culture and historical knowledge are preserved in oral tradition. Thus, oral tradition and testimony play a significant role in qualifying regional representative candidates for island burial councils because a candidate’s knowledge was received orally from elders. Hawaiian language and culture is rich and complex, and an extensive history was passed orally from generation to generation for more than a

millennium between the time Hawaiians migrated to the islands until the early nineteenth century, when Westerners introduced a written language.<sup>1</sup>

David Malo put Hawaiian history and culture in writing. In *Hawaiian Antiquities* (*Mo'olelo Hawai'i*), published in 1838 in Hawaiian, he noted:

Memory was the only means possessed by our ancestors of preserving historical knowledge... Faults of memory in part explain the contradictions that appear in the ancient traditions... [Differing memories] also operated in the same way in producing contradictions in historical traditions; one party received the tradition one way, another party received it another way.<sup>2</sup>

For example, although there are variations in versions, the creation myth of Wākea, “Sky Father,” and Papa, “Earth Mother,” establishes the sanctity of Hawaiian *iwi* (bones). The story says these deities had a son who did not survive and was buried under their residence. From his bones grew a taro plant, linking his bones to the propagation of the food Hawaiians considered the staff of life. This representation was considered to be cyclical in nature. The *mana* (spirituality) of the *iwi* continues to provide living descendants with nourishment of both body and spirit, the foundation of the Hawaiian belief in the sanctity of the *iwi*.<sup>3</sup>

Hawaiian oral tradition continues to the present. The tradition also includes *mele* (songs) and chants, genealogy, and honorific stories. Family genealogies are considered sacred and are passed orally to specially chosen children by their *kupuna* (grandparents), who also teach them their cultural heritage, including the family’s particular burial practices.<sup>4</sup>

Subsections 6E-43.5(d) and (e), HRS, recognize the sensitivity of locations and descriptions of burial sites as well as family genealogical information and allow island burial councils to hold closed meetings to protect the information families consider private.

Exhibit 2.2 is a Hawaiian aphorism translated by the late Hawaiian language scholar Mary Kawena Pukui.

## Exhibit 2.2

### Translation of Hawaiian Aphorism by Mary Kawena Pukui

*Mai kaula'i iwi o kupuna i ka la.*

Literal translation: "Do not put the bones of your ancestors out in the sun to dry."

The meaning: "Do not discuss the ancestors too freely with strangers, for it is like bringing their bones out of their hiding places for everybody to stare at."

— Mary Kawena Pukui<sup>5</sup>

The secrecy required with respect to treatment of the *iwi* sites stems from the fear that enemies would find the sites and steal the *iwi* to make fish hooks or fashion arrowheads to kill rats or use skulls as spittoons, high forms of desecration of the *iwi*.<sup>6</sup>

***With oral tradition as the cornerstone, the department should work within a western context to write guidelines that reflect regional differences***

Although burial customs, practices, and rites differ among islands and districts and even within families, the department has never attempted to develop criteria for the qualification of regional burial council representatives. Instead, it has relied on its "cultural expert," a sole departmental official who claims to solicit and assess candidates and make decisions that are forwarded to the chair of the Board of Land and Natural Resources and on to the governor for appointments.

We spoke with two former governors, who told us they placed their trust in the recommendations of the department when making burial council appointments. According to our review, in the six years beginning 1991, the burial council appointment process was efficient and sensitive as overseen by the then-chair of the Board of Land and Natural Resources. Lists submitted to these two governors were organized, and several even included biographical sketches of each candidate. Then, as now, appointments to the councils were made by the governor according to Section 26-34, HRS, *Selection and terms of members of board and commissions*. The governor selected members from a list provided to the governor by the department.

The current process, however, varies considerably from those early years. Relying solely on his own knowledge and contacts within the Hawaiian community, the current chief of the department's Historical and Cultural Branch (within the State Historic Preservation Division) told us he does not maintain a list of Hawaiian community members or

organizations in order to protect the privacy of his contacts and safeguard the trust of his fellow native Hawaiians. Citing the same privacy grounds, he also does not document his work nor conduct formal reviews of candidates' résumés or credentials. Another department official also acknowledged that no verification of résumés or credentials and no criminal background checks are done.

### **Records can still be maintained while observing oral tradition's secrecy strictures**

According to one department official, the branch chief (also the branch's designated cultural expert) could have established procedures for selecting burial council nominees years ago based on his expertise. If candidate solicitation was being conducted in accordance with oral tradition, the official indicated that the branch chief should be able to convey orally, and in some systematic and detailed form, whom he contacted, when, why, and the results of these contacts. Systematically followed, this process would help support the retention of detail and avoid replication.

Regarding the department's efforts to collect oral knowledge and information, we reviewed an August 2000 draft entitled "Guidance Document for Conducting Ethnographic Inventory Surveys." We found it a well-written, detailed process for seeking oral tradition knowledge. However, the 13-page document was never circulated for review and comment because the then State Historic Preservation Division administrator "wanted to keep the process 'vague,'" according to the draft's author. The author, who at the time was employed in the division's Historical and Cultural Branch, later became acting administrator of the division.

### **The branch chief keeps scant written records**

We also found that the branch chief is reactive rather than proactive in soliciting candidates. Because he also has no lists of organizations, he writes no letters of solicitation. Instead, he relies on informal conversations with his contacts either via telephone or in person. His files show scant results of his solicitations, such as in telephone call logs or notes of interviews. Lack of written records precludes the building of institutional memory, making each appointment a new process. The branch chief's memory is the only repository of official data, yet it sometimes fails.

For instance, in 2004 the Office of the Governor sought the whereabouts of a Kaua'i burial council landowner/developer representative member. The seat had expired on June 30, 2003, but no one was aware of this until the governor's inquiry. The branch chief did not know the

member's whereabouts, and his files did not show the member's status or a letter of resignation. Eventually, a division employee on Kaua'i reported that the member had moved to another island in 2002. Council meeting records show the member last attended a meeting in June 2001, and by March 2002 was no longer listed as a member. Given these minimal records, it appears the seat was vacant for more than a year without the department's knowledge.

### **Lacking established criteria, the branch chief has taken some questionable actions**

We found several instances of questionable actions on the part of the branch chief. In one case, he dismissed as unofficial a list of nominations from the Department of Hawaiian Home Lands, claiming it originated from his supervisor who had received it from a friend. The branch chief took no action on the submission, characterizing it as a "dream list."

Although the branch chief's files showed no contact with the Department of Hawaiian Home Lands over a two-year period, we found an August 16, 2004 document from the former acting administrator of the State Historic Preservation Division including nominations made by the Department of Hawaiian Home Lands in 2003. Further, the Board of Land and Natural Resources chair received nominations in April 2004 from the Department of Hawaiian Home Lands deputy director at the behest of the chair of the Hawaiian Homes Commission.

In another case, the branch chief informed his supervisor in 2004 that the Kamehameha Schools, the state's largest private landowner, might not be nominating a candidate for an O'ahu landowner/developer vacancy—traditionally known as the Kamehameha seat. Other nominees unrelated to the Kamehameha Schools were therefore considered for the seat. However, in April 2004, Kamehameha Schools nominated the only native Hawaiian with a doctorate in anthropology who previously had served on the council. This name was on the April 19, 2004 draft list submitted to the board chair, but was not one of those subsequently recommended by the department. The name was, however, recommended by other groups or individuals in the department's April 22, 2004 submittal to the governor. Ironically, two months later, the anthropologist was asked by the board chair to interview for the position of division administrator.

In a third case, a nominee from the original 2003 list sent to the governor was removed from the revised list sent in 2004. Through a series of intra-office memoranda, the branch chief gave several reasons for this. In an interview with us, though, he accused the former acting administrator of writing to the Office of the Governor saying why the

candidate should not be appointed. However, neither his nor the acting administrator's files revealed any such correspondence sent to the governor. But the former acting administrator's files did contain a February 12, 2004 memorandum from the governor's boards and commissions director to the board chair which stated, in part:

[The branch chief] indicated that [the candidate] should not be considered because of his past unfavorable relationship with [the department]. Because I cannot simply ignore an application without just cause (and because I did not know if [the branch chief] had the authority to make a decision such as this), I asked for a formal statement from [the department] explaining why the Governor should not consider this applicant... If it is decided...that [the candidate's] application shall not progress any further, I would suggest that [the department's] State Historic Preservation Division document the reasons why consideration has been terminated (I don't know if [the branch chief] has the authority to make that decision...or if he needs approval from [the former acting administrator] or [the board chair]). I have reason to believe that this decision could blow up in your face sometime down the road, and it would be beneficial if your department had solid evidence to back up your decisions.

In a return memorandum to the boards and commissions director, the branch chief denied the director's characterization of the issue. Instead, he said he had advised the director's subordinate that the candidate in question was involved in litigation against the department and its board chair and that there was no vacancy in the island region for which the candidate wished to be appointed. The December 2002 list submitted to the Office of the Governor included the candidate's name; subsequent lists did not.

### **Lack of criteria casts doubts on the appointment process**

Interviewees in the department as well as in the Hawaiian community expressed dissatisfaction with the department's appointment process and said it reflected the dysfunctional Historical and Cultural Branch. Meanwhile, the department has not responded to requests from stakeholders for meetings to establish criteria for regional representatives. Some island burial council members were critical of individual staff members, others of the lack of focus, of staff shortages, and of the lack of commitment and respect of native Hawaiians and their beliefs on the part of the Department of Land and Natural Resources. With no lists of native Hawaiian organizations to use in soliciting nominations, numerous stakeholders fall outside the scope of searches for candidates.

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## **An Inadequate Historic Preservation Law Does Not Advance the Work of the Burial Councils and the Development of Candidate Lists**

The State's historic preservation law pertaining to appointments to the island burial councils has remained essentially unchanged since its enactment in 1990. With the increased number of *iwi* discoveries and the resulting workload, the gap has widened between native Hawaiians and non-Hawaiians as traditional practices are confronted by scientific methodology. Despite staff acknowledging that the law needs updating, the department has not pursued any amendments to cure deficiencies. For instance, provisions requiring that the Office of Hawaiian Affairs submit candidate lists, that regional representatives be from geographic regions, and that burial councils be both decision makers and advisors are unclear. Further, inherent conflicts between native Hawaiian and Western beliefs are addressed in the law but not resolved; some decisions regarding archaeological surveys and classification of burial sites bypass the burial councils; time requirements for handling skeletal remains are unrealistic; and the naming of a single appropriate Hawaiian organization raises concerns.

### ***Requirement that the Office of Hawaiian Affairs submit candidate lists is unclear***

Section 6E-43.5, HRS, requires the list sent by the department to the governor to include "a minimum of twenty percent of regional representatives [to] be appointed from a list of at least nine candidates provided by the office of Hawaiian affairs." The department is not certain what the language means. The former acting administrator of the State Historic Preservation Division wondered whether the Office of Hawaiian Affairs candidate list should be sent directly to the governor or to the department to make the percentage determinations; and which entity should remind the Office of Hawaiian Affairs of its duty to submit such lists. For several years, the Office of Hawaiian Affairs did not submit lists; however, it submitted nominations in 2003 and 2004.

### ***It is unclear whether a regional representative is required to be a resident of the island burial council district represented***

Similarly unclear is Subsection 6E-43.5(b), HRS, which provides, "The membership of each council shall include at least one representative from each geographic region of the island as well as representatives of development and large property owner interests." How the word *from* should be interpreted is unclear. Given that burial customs differ between regions, it is unclear whether the law intended for members to have been raised in, currently reside in, or simply possess knowledge of the beliefs and practices of a particular region.

For example, we found that an island burial council member, who claims qualification because a grandparent moved to the area, no longer lives in the district he was appointed to represent. Area residents question his knowledge of the burial protocols of the particular region. Department files revealed that the Office of the Governor had asked the department



to “look over” the applicant’s résumé and later to add him to the candidate list for the governor. The department complied, and the candidate was appointed. However, we found no documentation in the department’s files to indicate that the information on the application or the résumé was verified.

In another case, we learned that a current council member previously held a landowner/developer seat, but in attempting to move another candidate of that designation on to the council, the department reclassified and assigned the current member to a regional representative seat. In a third case, according to a department memorandum, a sitting council member was assigned to another district because her originally assigned district did not exist. In a March 29, 2004, draft list sent to the board chair, the candidate’s name was appended with “she was in a non-existent district.”

**Law does not address conflict between native Hawaiian and western beliefs**

Native Hawaiians hold *iwi kupuna* in highest regard. Recognizing this, Subsection 13-300-32(c), HAR, limits the physical examination of remains to observation and prohibits intrusive examination (photography) and other methods such as radio carbon dating, since the *iwi* would be destroyed. According to Mary Kawena Pukui, “If the bones were destroyed, the spirit would never be able to join its *aumakua* (spirit god).”<sup>7</sup> Bone burning was reserved for defeated enemies, and the first man killed by the winning side was burned on a sacrificial altar. An enemy might be roasted to death “until all the bones, especially the skull, were ashes,” Pukui wrote. The law embraces the preservation of *iwi* by directing the department to “gather sufficient information, including oral tradition, to document the nature of the burial context and determine appropriate treatment of the remains.”

Consequently, prohibited from performing scientific testing that would destroy the bones and lacking written evidence, archaeologists encounter difficulty in identifying the age and ethnicity of human skeletal remains suspected to be those of native Hawaiians. Yet, the department as the sole arbiter of descendancy claims relies heavily on archaeologists and their methods to determine those claims. The department, thus, places greater emphasis on written documentation, resulting in the diminution of oral tradition. This conflict is not resolved in the law.

***The authority to require an archaeological survey or assessment rests exclusively with the department and warrants examination***

Unilateral decisions made by the department may open the door for manipulation—within or outside the department—to further institutional or individual interests. Although Section 13-276-4, HAR, which took effect on December 11, 2003, requires a survey for portions of a project area if no previous survey exists, it also allows the division to approve any deviations from Chapter 6E, HRS, and designates the department as the sole assessor on whether such a survey or assessment is required.

A departmental historic cultural specialist explained the difference between a survey and an assessment: for a survey, a private archaeologist under contract to the landowner/developer is instructed by the department to determine the history of the land's use. If any burials are found, they are categorized as previously identified, and the decision on disposition—preservation in place or reinterment elsewhere—resides with the appropriate island burial council. If a site cannot be positively identified, but is classified as a *possible* burial site and remains are subsequently found during construction activities, the case goes before the appropriate island burial council.

However, if a site is misnamed—for example, as an agricultural structure—any subsequent burials discovered are classified as inadvertent discoveries and the department decides whether to preserve remains in place or relocate them. In such cases, the contracted archaeologist may be instructed to prepare an assessment involving only a literature search. Subsequently, if any burials are found, as in the case of the construction of a Wal-Mart store on Ke'eumoku Street in Honolulu, the remains are classified as inadvertent discoveries and the department decides their disposition.

We encountered an example of the consequences borne by individuals when the department is authorized to act without checks and balances. In a March 2003 letter to an owner of a 15-acre beachfront property on O'ahu, the department "strongly recommended" an archaeological inventory survey prior to the start of any activity on the land. The department provided the owner, a resident of California, with a list of suitable, private archaeologists to contract for services. The landowner hired one of the companies on the department's list because the firm implied it had good relations with the department resulting from one of its former employees being a department archaeologist. At this time, however, the department did not have the authority under the law or the administrative rules to require such a survey, hence the "recommendation." The survey cost the landowner \$30,000.

The archaeological inventory survey resulted in 51 trenches dug on the property of up to seven feet deep and 60 feet long. The survey revealed

a set of remains weighing 1.75 ounces, about the weight of nine standard pencils. The archaeological firm submitted the survey in April 2003. According to the landowner, the department then called for changes to the report, essentially dictating the findings and recommendations regardless of support by the archaeologist's findings. The department's letter also required the owner to submit a burial treatment plan for the remains.

The landowner then learned that in April 2003, an island burial council member and an official of Hui Mālama I Na Kupuna O Hawai'i Nei (a not-for-profit organization named in the State's historic preservation law) mistakenly reinterred a set of remains repatriated from the Bishop Museum on his property instead of in the intended Pu'uiki Cemetery on land owned by Dole Food Company Hawai'i and adjacent to his property. The council member sent a memorandum to the department reporting the reinterment, claiming that "permission was given by Dole Foods Hawai'i." Subsequently, the landowner said that he managed to describe his problem to the chair of Castle & Cooke, the parent company of Dole, at an event in California. The corporate chair referred the landowner to a Honolulu-based Dole executive who wrote in a January 2004 letter that the company had not granted permission to Hui Mālama to reinter the remains at Pu'uiki Cemetery. The company, however, did extend permission to the landowner to reinter the misplaced *iwi* as well as the *iwi* discovered during the inventory survey in the cemetery.

In a December 2003 letter to the owner, the department notes on page one that the previously identified skeletal remains were "a probable Native Hawaiian burial of historic age." On page two of the letter, the "probable" becomes "previously identified burial site of a Native Hawaiian," and in an attachment to the letter, the language changes to "evidence suggests that the burial is historic in age, and that the probable ethnicity is Native Hawaiian." The landowner challenged the department's finding that the remains were of a native Hawaiian, questioning how this was determined from "a portion of a lower mandible with approximately six intact teeth, a skull fragment, and several small, fractured limb fragments" found in a modern trash pit. The survey did say that "no evidence of *in situ* [in original position] remains were identified."

In its December 2003 communication with the owner, the department mentioned Hui Mālama, suggesting a discussion with the group, but ignored the group's role and responsibility to exhume and reinter the remains it mistakenly buried. There was no suggestion that the reinterment of the second set of remains could have been handled by the department at no cost, as the owner was belatedly informed by a department employee. Instead, the landowner has to pay to have burial

treatment plans written and a \$250 fee to the department for each plan (the fee schedule went into effect December 11, 2003).

To make matters worse, the burial council member who participated in the mistaken reinterment solicited the landowner's business, offering "Genealogy Research, Hawaiian & Contemporary History [and] Land Title Research" services for "\$25 an hour with a minimum of six hours or a flat rate of \$150."

In July 2004, the owner received provisional approval of the survey which had to be rewritten two times to satisfy the department. In an August 2004 department inventory of pending cases, the case is described as follows: "Need to inform landowner...of determination of Hawaiian ethnicity and outline procedures necessary for obtaining decision by O'ahu Island Burial Council...Potential for litigation high." The landowner's costs have also been high, at more than \$45,000 as of September 1, 2004. By the end of October 2004, there had been no resolution of his case, 19 months after the department's letter "strongly" recommending an archaeological survey of his land.

***Island burial councils act as both decision makers and advisors, a confusing situation***

More contradictory than ambiguous, Section 6E-43, HRS, provides that an "island burial council shall determine whether preservation in place or relocation of previously identified native Hawaiian burial sites is warranted"—indicating a decision-making role—while Section 6E-43.5(d) says "the councils shall hold meetings and acquire information as they deem necessary and shall communicate their findings and recommendations to the department"—describing an advisory role.

For example, the Hawai'i Island Burial Council voted 5 to 4 at its August 2004 meeting to allow *iwi* to remain where discovered in the Ali'i Highway matter. The vote indicates that Section 6E-43, HRS, prevailed, making the island burial council the decision maker, not advisor. The decision forces the County of Hawai'i to rework design of the Ali'i Highway on the Kona Coast, costing the county some \$25 million in federal highway funds that had to be committed by September 30, 2004.

***Classification of burial sites as inadvertent discoveries bypasses the island burial councils***

Although Subsection 6E-43(b), HRS, gives jurisdiction over previously identified burial sites to the appropriate island burial councils, Section 6E-43.6, HRS, places control over inadvertent discoveries in the department. Thus, inadvertent discoveries avoid the island burial councils. In such cases, archaeologists can ignore Hawaiian cultural experts and practitioners by classifying a known burial site as, say, an agricultural structure. If human skeletal remains are subsequently unearthed, the site is classified as an inadvertent discovery, bypassing the burial councils and giving jurisdiction to the department. While this

process may undermine the intent of the historic preservation law and the authority of island burial councils, it enables construction projects to move forward.

According to a University of Hawai‘i-Mānoa anthropologist, the Hawaiian Islands have been an appealing place to live since their discovery more than a millennium ago. It is therefore understandable there are large number of burials, since the islands were at one time among the most densely populated areas in the Pacific region.

Thus, it is no surprise that recent construction in the Kakaako/Kewalo area of Honolulu, for example, has resulted in inadvertent burial discoveries. Originally, the area from approximately Punchbowl Street eastward to Ala Moana Shopping Center and south of King Street—including the Wal-Mart, Queen Street extension, and Ko‘olani condominium sites—consisted of low-lying marshes, tidal flats, reef areas, and fishponds.

Exhibit 2.3 of the Kakaako/Kewalo area (circa 1890s) as well as nineteenth-century maps and documents show that the Kewalo area was also utilized by Hawaiians for fishpond farming, salt-making, wetland agriculture, and burial grounds. Today, the area is predominantly landfill. Therefore, it is probable that many more burials lie in the vicinity.

**Exhibit 2.3**  
**Photograph of Kakaako/Kewalo Area with Punchbowl in the Background (circa 1890s)**



*The Kakaako/Kewalo area (circa 1890s) was wetlands, low-lying marshes, and fish ponds with Punchbowl in the background. Bishop Museum photograph.*

***Time requirements for handling native Hawaiian skeletal remains are unrealistic***

The time requirements for department action when informed of a burial site are unrealistic. Upon notification of inadvertent discoveries of multiple sets of remains, Subsection 6E-43.6(c), HRS, mandates the department make decisions within two working days if the discovery is on O‘ahu and three working days if on other islands.

Subsection 6E-43.6(d), HRS, further shortens the time for inadvertent discoveries of a single set of remains to one working day on O‘ahu and two working days if on other islands. A former program director, who played an integral role in establishing the island burial councils and the Burial Sites Program, said that when the law was written, no one foresaw the increasing number of remains that would be unearthed. Coupled with this increase in discoveries and staff shortages in the Burial Sites Program, these time deadlines are now unrealistic. Exhibit 2.4 depicts the maze-like processes followed by the Burial Sites Program.

***Hui Mālama is the only private organization named in the historic preservation law***

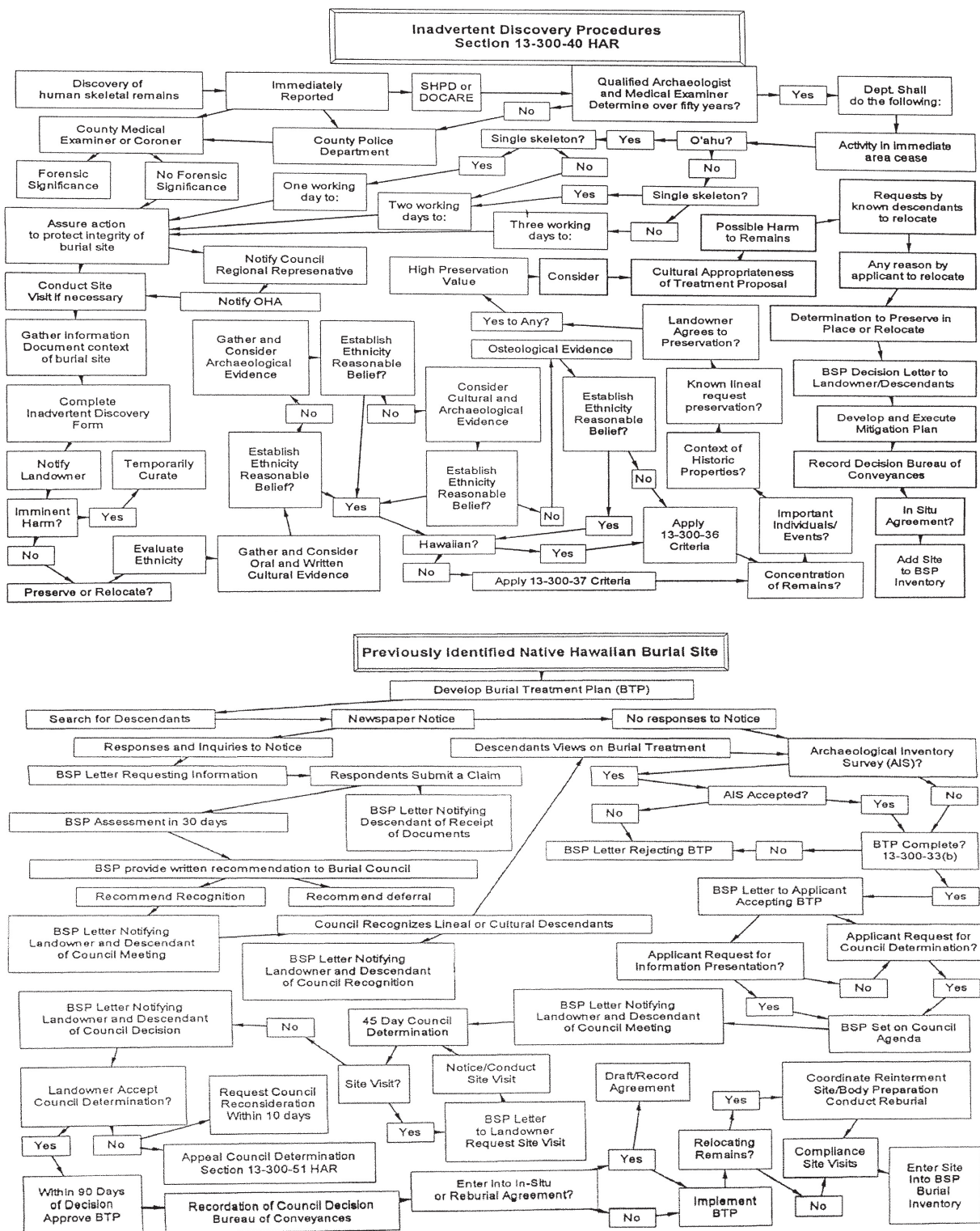
The naming of Hui Mālama I Na Kupuna O Hawai‘i Nei (Group Caring for Ancestors of Hawai‘i) in the law as the only example of an appropriate Hawaiian organization raises concerns. It infers authority and places an official imprimatur on the organization’s behavior and practices. Although Hui Mālama has been instrumental in the repatriation of thousands of sets of *iwi* and funerary objects from museums throughout the world, its involvement and practices have been controversial.

Hui Mālama is a non-profit, 501(c)(3) organization that was founded in December 1988 following the controversy during the development of the Ritz-Carlton Kapalua Hotel. The group believes that living Hawaiians are responsible for the care and protection of their ancestors and that cultural protocols need to be relearned.

As a non-profit organization, Hui Mālama is required to file federal income informational form 990 if its gross receipts exceed \$25,000. However, at least two of its five Internal Revenue Service (IRS) filings between 1998 and 2002 have been late. In addition, form 990 requires that every officer, director, trustee, or key employee be listed even if no compensation was involved. A cofounder of Hui Mālama, who died on February 16, 2000, reportedly worked one hour a week and is listed as vice president on the organization’s most recently filed returns of 2001 and 2002.

On February 26, 2000, Hui Mālama arranged for a one-year loan of 83 items from the Bishop Museum. It claimed to have reinterred the items in Forbes Cave, at Kawaihae on the Big Island, from whence the articles were initially taken in 1905. Subsequent to Hui Mālama’s action, other claimants of the items have come forward. In 2003, the federal Native

## Exhibit 2.4 Inadvertent Discovery and Previously Identified Burial Site Procedures



Source: State Historic Preservation Division.

(Note: Determinations to preserve in place or relocate human skeletal remains for inadvertent discoveries are made by the State Historic Preservation Division. The island burial councils make the decisions for previously identified burial sites.)

American Graves Protection and Repatriation Act (NAGPRA) review committee advised the Bishop Museum to retrieve the items and allow other claimants to argue their claims. To date, however, Hui Mâlama refuses to return the funerary objects. The review committee will meet in Hawai‘i in March 2005 to revisit the case.

Those educated by their *kupuna* in Hawaiian burial practices accuse Hui Mâlama of imposing its own burial protocols on others despite the fact that Hawaiian burial practices vary from island to island, region to region, and even within families. Indeed, a *kahuna nui* (high priestess) who was asked to advise in a South Kona matter declined, directing the advice seeker to engage the local *kahuna* (priest) as the area expert. Despite recognition of the many differences among various communities, Hui Mâlama proclaims itself the expert in the proper care of *iwi* and reinterments throughout the state.

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## **The Department’s Management Failures Undermine Its Administration of the Island Burial Councils and Council Nominations**

Chapter 6E, HRS, requires the Department of Land and Natural Resources to administer a state historic preservation program in the spirit of stewardship and trusteeship for future generations. As a part of this responsibility, the department must administer island burial councils in all that the term “administer” connotes.

We found, however, that the department has neglected these responsibilities and shown little commitment to the burial councils. This lack of dedication is evidenced in the department’s failure to formally establish a program to provide sufficient staff support to the councils. As a result, the department has failed to satisfy its statutory responsibility to maintain a current inventory of native Hawaiian burial sites and fallen behind in its workload supporting the councils.

Meanwhile, department hierarchy has focused almost no attention to native Hawaiians’ growing frustration and anger. The well-intentioned program to honor native Hawaiian culture and reverence for the bones of ancestors is reaching a point of collapse.

### ***A lack of commitment to island burial councils and the Burial Sites Program foreshadows a collapse of Hawaiian iwi preservation efforts***

Section 6E-3, HRS, establishes a historic preservation program in the department to administer, among other things, an ongoing program of historical, architectural, and archeological research and development. This includes surveys, excavation, scientific recording, interpretation, and publications on the State’s historical and cultural resources.

As a part of its mandate, the department is responsible for coordination of the evaluation and management of prehistoric and historic burial sites, including native Hawaiian burial sites. Despite its statutory directive,



the department has yet to formally establish the Burial Sites Program as an organizational entity of state government. Moreover, the program is staffed with temporary positions that are consistently vacant and face a perennial threat of abolishment. The department's haphazard approach to its responsibility to coordinate and manage the State's burial sites reflects an overall lack of respect for the native Hawaiian culture.

### **Functional statements, organization charts, and policies and procedures have not been developed for the Burial Sites Program**

According to the Governor's Administrative Directive No. 90-01, each department of the executive branch is required to maintain an effective organizational structure and detailed departmental organizational information, including organization charts and functional statements. In addition, each department must ensure such information accurately reflects its current organizations and that the charts and functional statements are evaluated and updated in a systematic manner.

The department has failed to comply with this administrative directive. In the case of the Burial Sites Program and the island burial councils, the department has been in noncompliance for more than 13 years.

The Burial Sites Program currently exists on an "ad-hoc" basis, staffed by temporary, exempt personnel. The department's functional statements do not mention the program or the legally-mandated island burial councils; they state only that the State Historic Preservation Division "coordinates the evaluation and management of burial sites." Neither do the department's organization charts include a Burial Sites Program or the island burial councils. To compound this situation, we found that there are no official policies and procedures for the program and that program staff have only the statute and administrative rules to guide and direct their work.

The department cannot explain why it has never complied with the governor's administrative directive. In answering this question, the Board of Land and Natural Resources chair told us merely, "We recently hired a permanent administrator for the Historic Preservation Division... We are looking at various ways to improve the division, including staffing and structure."

### **Lack of foundational elements for Burial Sites Program leads to private funding of public positions**

The department's failure to formally establish its Burial Sites Program and haphazard approach to its statutory responsibility reflects an overall lack of respect for the native Hawaiian culture. In fact, we found that

instead of seeking increased appropriations for its Burial Sites Program to ensure timely disposition of its workload, the department sought external private funding to pay for two historic sites preservation specialists positions.

In March 2002, the board chair requested that two historic sites preservation specialists be funded by the developer 1250 Oceanside Partners to carry out State Historic Preservation Division responsibilities for the developer's Hôkûli'a project on the island of Hawai'i. 1250 Oceanside Partners paid approximately \$71,000 per year for the two positions. Currently, 1250 Oceanside Partners still pays for at least one position to work at the Hôkûli'a project.

We question whether it is ethical for a private entity to pay for positions in the department related to the entity's project, particularly while the entity was involved in litigation with the department. There may be a real or at least a perceived conflict of interest. The department defends this arrangement, claiming the two positions are state employees independent of the private entity's control.

The department also says it consulted with both the Department of the Attorney General and the Hawai'i State Ethics Commission to determine if any conflict of interest existed. In its comments to the department, the State Ethics commission wrote that it did not have any concerns with the arrangement as it pertains to the State Ethics Code. However, it said, the department should take particular care to avoid even the appearance of impropriety.

***The Historical and Cultural Branch is poorly managed***

As the number of discoveries of native Hawaiian skeletal remains increases, staffing and other resource shortages are exacerbated. The department's failure to appoint a permanent division administrator contributed to a lack of oversight over the Historical and Cultural Branch; the branch is segregated from the division's other two branches; and the Burial Sites Program is not adequately staffed.

The department's ineptitude in managing the branch and its Burial Sites Program triggered the involvement of the Office of the Governor and the chair of the Hawaiian Homes Commission. Further, a redefinition of responsibilities for Burial Sites Program personnel was proposed by the division's former acting administrator, but got no further than a June 30, 2004 transmittal to the Historical and Cultural Branch personnel for review and comment. As of November 2004, action on the proposal was on hold, pending the appointment of a permanent administrator.

### **The Department's failure to appoint a permanent administrator for the division contributed to the problem**

The department's failure to appoint a permanent division administrator interfered with the authority of the acting administrator. Because her temporary assignment to the position was on a month-to-month basis, she claims the staff was "waiting [her] out." For the duration of her 21½-month tenure, the acting administrator also claimed branch staff members had continuing criticism of and hostility towards her.

For example, the branch chief declared to the acting administrator that he did not want supervisory duties and desired to work on only two of his responsibilities: developing the list of candidates for appointment and drafting the strategic plan for reinterment of *iwi* in the Burial Sites Program's custody.

The branch chief, however, is responsible for a range of administrative duties, including planning, programming, and budgeting; burials and project reviews; inventory work; management of historic preserves; historic register nominations; public information; grants program; fieldwork; and supervisory work. In addition, the branch chief is supposed to recommend and draft amendments to the law and administrative rules, prepare comments on bills and resolutions by the Legislature, and draft departmental and gubernatorial communications relating to the history and culture of Hawai'i. It is also the branch chief's duty to "oversee and coordinate the activities of the five island burial councils" as well as attend the meetings of the councils "to answer questions, explain, or amplify upon subjects under consideration."<sup>8</sup>

We note that this responsibility is the only mention of the island burial councils in any department functional or organizational document, and occurs only in a job description.

When asked about his responsibilities, the branch chief denied the former acting administrator's report. Regarding his so-called preferred duties, the branch chief stated that a draft strategic plan for reinterment had been submitted to the acting administrator but that she had not yet submitted it to the chair of the Board of Land and Natural Resources.

We reviewed the proposed strategic plan and found that it was a two-and-a-quarter-page outline in what appeared to be draft form. It was poorly written, lacking a vision or mission statement, goals and objectives, and an implementation plan by the Burial Sites Program. It also makes no provision for public notice, hearings, or recordation; sidesteps the rights of lineal and cultural descendants; calls for a discussion with only the island burial council's regional representative for the particular district in which the *iwi* were recovered (not the entire

council); and omits requirement of a reinterment plan. Further, the proposed plan speaks only to reinterment at a site other than where the remains were found. That is, reinterment in place is not an option—begging the question as to whose benefit such a plan favors. Finally, the plan makes no provision for an appeal by a lineal or cultural descendant.

As to the other duty the branch chief prefers to perform—the development of island burial council candidate lists—we found the process for development of these lists to be lacking in organization, research, timeliness, and solicitation of nominations from individuals and native Hawaiian organizations. With respect to the 2003 list, the branch chief publicly distributed a memorandum to the governor from her office’s boards and commissions director, violating privacy rights and confidentiality standards. The branch chief was rebuked for his action.

Moreover, because the boards and commissions director was organizing the appointments process for all boards and commissions in the state, she asked that each department be responsible for the first phase of the process. Thus, all applications or nominations sent directly to the Office of the Governor would be transferred to the department for investigation and assessment. In her May 2004 memorandum to the chair of the Board of Land and Natural Resources, the boards and commissions director said, “We will also be sending an email to the branch chief telling him that all correspondence needs to go through [the chair of the board’s] office and that we can no longer accept direct communications from him.”

The branch chief viewed this as “decentralization” of the process rather than an official procedure to be followed. He interpreted this to mean that he was removed from the task of developing the candidate lists, which the former acting administrator said was a misinterpretation. We found in reviewing the branch chief’s files that even after receiving the directive, and notwithstanding his understanding that he had been relieved of the task, he continued to work on the lists.

### **The Historical and Cultural Branch is segregated from the division’s other two branches**

Citing cultural reasons, the Historical and Cultural Branch refuses to move to the division’s Kapolei offices where the division management and the Architectural and Archaeological Branches are located. Because more than 150 sets of *iwi* are in storage at its leased downtown office site, the staff claims that if the branch is relocated to Kapolei, the *iwi* would have no guardians because other state department employees in Kapolei objected to the *iwi* being relocated to the Kapolei facility. Yet, remains in storage on Maui and Kaua‘i are not overseen on a daily basis

because no fulltime division personnel are located on either island. Further, it costs the taxpayers some \$22,000 annually to keep the downtown office open.

Separation of the branches has fostered hostilities especially between the Historical and Cultural Branch and the Archaeological Branch. Such hostilities arise in part from differences in beliefs. Archaeologists are trained in western science; Hawaiian cultural practitioners in oral tradition. While housing both branches at the same location will not change beliefs, it may facilitate cooperation between the branches.

### **The Burial Sites Program is not adequately staffed**

As a part of its statutory charge to administer a comprehensive historic preservation program, the department is responsible for employing sufficient professional and technical staff. Included in this mandate is the responsibility to provide adequate support for the care, protection, and preservation of native Hawaiian burial sites, as well as administrative and technical support to island burial councils, which are established for the same purpose.

We found that the department is not sufficiently staffed to meet its statutory responsibilities. The Burial Sites Program has a total of five positions, two of which are vacant. The program currently has three historic preservation specialists on staff who are responsible for handling any and all duties related to the Burial Sites Program as well as providing support to five island burial councils, most of which meet on a monthly basis.

One reason for the difficulty in keeping Burial Sites Program positions filled is the temporary status of the positions themselves. A temporary position in state government, by nature, is not attractive to employees because it lacks job security. Even more concerning is the fact that 50 percent (13 of 26) of the State Historic Preservation Division's staff are temporary, exempt positions that are not recognized by the Legislature through an appropriations act. However, the chair of the board defended the department's use of temporary positions to staff the Burial Sites Program as an effective management tool. The department does not intend to request the Legislature to convert any of these temporary positions to permanent.

To compound issues surrounding the temporary nature of the positions, the administration has sought on several occasions to abolish various positions within the State Historic Preservation Division. In a letter dated June 30, 2003 to the department, the governor instructed the chair of the board to abolish two division positions, including the Burial Sites program director's position, at the end of FY2003-04. The Office of the

Governor subsequently reassessed the situation and decided to extend the position another year to quell public outcry. However, by that time, the program director had decided not to remain in the department and vacated his position on June 30, 2004. As of November 2004, the position remains vacant.

### **The Office of the Governor recently became aware of the serious problems and is taking action**

In responding to the outcry of the native Hawaiian community, both the Office of the Governor's chief of staff and the chair of the Hawaiian Homes Commission became involved in June 2004 when the Office of the Governor learned of the disarray, dysfunction, inefficiency, and ineptitude of the department. A meeting with native Hawaiians was held, after which the Burial Sites Program director's position was reinstated. In October 2004, a member of the governor's staff was appointed as administrator of the State Historic Preservation Division.

### ***The department must abide by the Sunshine Law***

Openness in government is the hallmark of a democracy. The Legislature declared its policy and intent in Section 92-1, HRS:

In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decisions, and action of government agencies – shall be conducted as openly as possible.

This policy of open government provides the foundation for the requirement of legal notice of all meetings of any agency, board, commission, authority, or committee of the State and its political subdivisions. Chapter 92, HRS, (Public Agency Meetings and Records, also known as the Sunshine Law) sets forth the manner in which all state and county boards, including island burial councils, must conduct their business.

Section 92-7, HRS, requires notices for public agency meetings to be filed with the Office of the Lieutenant Governor or appropriate county clerk's office at least six calendar days before the meeting. Failure to do so requires the Office of the Lieutenant Governor or the appropriate county clerk's office to notify the chairperson of the board or the director of the department of such lateness and results in cancellation of the meeting.

Other penalties are in place for noncompliance with public meeting notice provisions. For example, Section 92-11, HRS, allows any action taken during public agency meetings to be voided upon proof of willful violation through a lawsuit. Section 92-12, HRS, allows lawsuits to be filed to require compliance with the section; prevent violations of the section; or determine applicability of the section to discussions or decisions of a public body. Finally, Section 92-13, HRS, establishes criminal penalties for any person who willfully violates any provision of the Sunshine Law. The law is silent, however, when negligence results in a failure to file meeting notices.

### **Notices for island burial council meetings were never filed**

The department failed to comply with the ministerial task of filing meeting notices with the Office of the Lieutenant Governor. From September 2003 through September 2004, 40 out of 50 (80 percent) notices for island burial council meetings were not filed. According to the division's former acting administrator, these omissions "were the result of one staff member not realizing that a hard copy had to be filed with the lieutenant governor's office in addition to submitting them to the electronic Hawai'i State calendar."

### **The department's negligence may not affect island burial council decisions**

Although the department failed to comply with the Sunshine Law's notice provision, it appears it did not do so willfully. Further, the Office of the Lieutenant Governor was not able to notify the chair of the Board of Land and Natural Resources or the chair of the appropriate island burial council to cancel meetings that were not properly filed because it was not aware the meetings were scheduled.

The Office of the Lieutenant Governor's chief of staff, the Office of Information Practices' director, and the deputy attorney general formerly assigned to the island burial councils all told us they believed the department did not willfully violate the law. Furthermore, they told us, failure to file notices does not automatically invalidate the island burial councils' actions. Although the Office of Information Practices was not formally asked to address the issue, the Office of the Lieutenant Governor's chief of staff confirmed that an informal request for guidance had been made. The Office of Information Practices' director also confirmed that his office will be pursuing amendments to the law, including the removal of *willful* from Section 92-11, HRS.

The Office of Information Practices' director told us he was not certain if someone could challenge the island burial councils' decisions on the basis of Section 92-12, HRS, and the department's failure to file meeting

notices. It is possible, however, that if the island burial councils' decisions are allowed to be challenged, many controversial issues may be revisited. Among these issues are decisions on cultural and lineal descendant claims and whether to relocate or preserve in place previously identified burial sites, thus affecting landowners, developers, and the Hawaiian community.

Recently, the Office of the Lieutenant Governor sent a memorandum to all department directors and all boards and commissions spelling out procedures needed to comply with Section 92-7, HRS. The October 6, 2004 memorandum stated:

- Meeting notices must be filed with the Office of the Lieutenant Governor by hand-delivered hard copy or facsimile transmission;
- The office will not accept transmittal by electronic mail; and
- "It is insufficient and does not satisfy the statutory filing requirement for a board or commission to input notice of the meeting on the state internet website calendar...without also providing the Office of the Lieutenant Governor with copies of the meeting notice and agenda in the manner described..."

Attached to the memorandum was a July 2003 Sunshine Law Public Meeting Notice Checklist developed by the Office of Information Practices.

***A current inventory of human skeletal remains, burial sites, and associated funerary objects does not exist***

Section 6E-3, HRS, requires the department to develop a statewide survey and inventory to identify and document historic properties and burial sites, including all those owned by the State and counties. This inventory is important because it serves as a basis for identifying and recording not only historic places, but more importantly, burial sites, including those of native Hawaiian origin.

In our 2002 audit of the State Historic Preservation Division, we found that the division was not preparing adequate inventories of human skeletal remains and associated funerary objects. The inventory was piecemeal and failed to ensure that cultural and geographical affiliation information was preserved. Despite our 2002 recommendation to improve the accuracy of its inventory, the department has failed to address this matter. The inventory of the Burial Sites Program remains in a piecemeal condition, and program staff cannot ensure that there is a complete accounting for all human skeletal remains, burial sites, and associated funerary objects.



A fragmented inventory provided to us by the Burial Sites Program staff did not contain all of the burial sites and human skeletal remains in the custody of the department. According to the former acting administrator, the inventory was meticulous and up-to-date under the aegis of the first Burial Sites Program director (1991-1995). The former acting administrator told us that each *iwi* case was numbered, assisting the Archaeological Branch in its responsibilities. When the then-program director left and the data input clerical staff member followed in 1996, the work ceased.

The division's failure to establish an inventory of skeletal remains and funerary objects in its custody could result in civil penalties. The federal Native American Graves Protection and Repatriation Act authorizes the Secretary of the Interior to fine the State Historic Preservation Division .25 percent of its budget or \$5,000, whichever is less.

***The workload of the Burial Sites Program is backlogged***

Vacancies in the Burial Sites Program staff have taken their toll on the program's workload and the technical and administrative support it must provide to the island burial councils. The program currently has hundreds of unresolved cases involving human skeletal remains that need to be closed. The program has also fallen behind in its recordation of island burial council meetings. Finally, long-standing delays exist in the determination of lineal and cultural descendants before the island burial councils.

Exhibit 2.5 shows the storage area in the Burial Sites Program's Honolulu office.

**Exhibit 2.5**  
**Burial Sites Program Storage Area in Honolulu**



*Iwi are stored in a room of the Burial Sites Program office in Honolulu. Office of the Auditor photograph.*

**Hundreds of cases need to be closed**

As part of the department's overall responsibility for historic preservation, it must provide information to the island burial councils relating to the appropriate treatment and protection of native Hawaiian burial sites and on any other matters relating to native Hawaiian burial sites. The disposition of hundreds of sets of remains goes before the island burial councils on an annual basis. The cases culminate in

decisions to preserve in place or relocate native Hawaiian remains. The importance of burial council decisions is paramount, as they deal with the ancestors of many individuals in the Hawaiian community.

Despite efforts of the island burial councils and Burial Sites Program staff, the program continues to struggle with a crushing number of cases for just three staff members to resolve, in addition to their other duties. According to State Historic Preservation Division data as of July 2004, the current burial case load includes approximately 350 sets of human skeletal remains in storage statewide awaiting reinterment.

Burial Sites Program staff report that this number may even be higher. Some of these remains have been in storage for more than eight years awaiting reinterment. One of the recent cases involves at least 44 sets of human remains that were found during construction of the Wal-Mart/Sam's Club in Honolulu. As of October 2004, the *iwi* have yet to be laid in their final resting place. The *iwi* are stored on the Wal-Mart site, pending department action and the outcome of a lawsuit brought by cultural descendants.

The backlog of cases is ever-increasing. Delays in determining the disposition of human skeletal remains result in construction delays and their ensuing costs, including layoffs of laborers. In addition, the State is exposed to litigation, particularly as several large and controversial projects, such as Hôkûli'a, may face court challenges.

### **The preparation of council minutes is months behind**

According to Section 13-300, HAR, the department is responsible for recording and preparing minutes of council meetings. Further, Subsection 92-9(b), HRS, requires minutes to be available 30 days after the meeting. The department's records show it has failed to prepare minutes of council meetings in a timely manner. As of October 2004, minutes for 21 island burial council meetings had not been posted. Some of the outstanding minutes date back to March 2004.

The department has delegated this responsibility to the Burial Sites Program—specifically, to one historic preservation specialist, who is responsible for preparing the minutes of each council meeting statewide. According to department data, it will take the Burials Sites Program approximately 75 days to catch up with the minutes of past meetings. Staff report that it takes approximately eight uninterrupted hours to transcribe a 90-minute tape.

However, we feel that the department may be overestimating the amount of time needed to prepare council meeting minutes. This is because the branch chief interpreted the law to require the minutes be transcribed

verbatim in case the minutes are subpoenaed. According to Subsection 92-9(a), HRS, unless otherwise required by law, neither a full transcript nor a recording of meetings is required, but written minutes are to give a true reflection of matters discussed and the views of participants.

The impact of not completing council meeting minutes in a timely fashion is significant. First, the department fails to comply with the 30-day statutory provision. Second, members of the burial councils must make informed decisions regarding the preservation of native Hawaiian burial sites without approved minutes from previous meetings to guide them. Such minutes contain important facts and information about particular cases, some of which are deferred from one meeting to the next.

### **Families are kept waiting for determinations of lineal and cultural descendants**

Chapter 6E, HRS, recognizes the consultation of both lineal and cultural descendants in determining the disposition of native Hawaiian burial sites. In order to establish lineal or cultural descendancy to human skeletal remains, administrative rules require a person to submit a claim to the department along with information containing the name of the deceased individual; family genealogy; birth certificate; death certificates; obituaries; church records; and oral family history, to name a few. Once submitted, the department has a maximum of 30 days to review the information and assess whether direct or collateral genealogical connections can be demonstrated between the claimant and the remains.

The department's Historical and Cultural Branch is responsible for making all such lineal and cultural descendancy determinations. While staff recognize there is a significant backlog in genealogy determinations, the branch could not provide us with information on the exact number of outstanding cases.

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## **Conclusion**

Neither the island burial councils nor the Burial Sites Program appear anywhere in the Department of Land and Natural Resources' functional statements or organization charts. No written criteria for the selection of candidates to serve on the councils exists. Selection of candidates is left to a single person, who keeps no substantive records of his work. The department's candidate lists have been submitted late to the Office of the Governor, resulting in many interim appointments.

Statutory law and administrative rules governing burial councils and the preservation of burial sites and native Hawaiian ancestral remains are ambiguous and inadequate. They fall short of addressing either current or the ever-growing responsibilities unforeseen when the law was enacted in 1990. Even though the department is aware of the deficiencies, it has not sought amendments to improve or clarify the law.

Despite the respect for native Hawaiian *iwi* held by Burial Sites Program employees, the program is inadequately staffed, causing lateness in candidate lists, lack of proper notice of council meetings, an eight-month backlog of council minutes, and a disarray of human skeletal remains inventories.

Moreover, the Historical and Cultural Branch has discordant relations with the other two branches of the State Historic Preservation Division and refuses to move to division headquarters in Kapolei. The department's trusteeship of the preservation of Hawaiian burial sites and ancestral skeletal remains is challenged, and without focused attention may be on the verge of collapse.

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## Recommendations

1. The governor should require the Department of Land and Natural Resources to respond to repeated native Hawaiian requests for mutual consultation by convening an *'aha* (meeting) to encourage collaboration to describe and agree on protocols for reflecting Hawaiian oral traditions related to burial beliefs, customs, and practices. The protocols should provide the basis for criteria to qualify candidates for regional representative seats on burial councils.
2. The department should:
  - a. Adopt the agreed protocols related to burial beliefs, customs, and practices in dealing with the disposition of human skeletal remains;
  - b. Establish policies, procedures, and guidelines to ensure the list of candidates for island burial councils is developed in a methodical, comprehensive, consistent, and timely manner;
  - c. Encourage the Office of Hawaiian Affairs to satisfy Section 6E-43.5, HRS, by providing a list of at least nine candidates for each burial council to the department;

- d. Compile and maintain a catalog of Hawaiian organizations with which it develops trusting working relationships and routinely consults to ensure compilations of comprehensive lists of nominees to the island burial councils;
- e. Seek amendment to Section 6E-43.5(b), HRS, to remove Hui Mālama I Na Kupuna O Hawai‘i Nei as the only example of an appropriate organization because it suggests singularity and places an official imprimatur on its behavior and practices. Statutory law should avoid references to private organizations;
- f. Review the historic preservation law and its administrative rules and propose appropriate amendments;
- g. Develop a strategic plan for the Burial Sites Program and move to formally implement the program by developing program functional statements and amending the organizational charts to reflect both the island burial councils and the Burial Sites Program;
- h. Seek expeditious authorization of additional personnel for the Burial Sites Program and budgetary allocations for personnel, office, and other costs required to operate the Burial Sites Program and administratively support the island burial councils;
- i. Eliminate the backlog of island burial council meeting minutes by disposing of the excessive requirement that minutes be transcribed verbatim;
- j. Develop a statewide inventory, reinstate the case number system, and adopt a standard form and format for recording human skeletal remains as discovered;
- k. Relocate the Historical and Cultural Branch chief and Burial Sites Program staff to the State Historic Preservation Division’s Kapolei office to effect fiscal savings and facilitate better supervision and management; and
- l. Conduct periodic review and assessment of position descriptions and responsibilities in the Historical and Cultural Branch.

## Appendix 1

### Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

#### HAWAII ISLAND BURIAL COUNCIL (July 1, 2004)

	NAME	TERM APPOINTMENT DATE(S)		TERM EXPIRATION	1 <sup>ST</sup> OR 2 <sup>ND</sup> TERM	REPRESENTING	STATUS
1	Ku Kahakalau		7/1/2004	6/30/2008	1	Hāmākua	Interim (1)
2	Ululani Sherlock		11/22/2002	6/30/2006	1	Hilo	Senate Confirmed in 2003 (2)
3	Anna Cariaga		7/1/2004	6/30/2008	1	Kaʻū	Interim (3)
4	Ronald N.M. Dela Cruz		7/1/2004	6/30/2008	1	Kohala	Interim (4)
5	Ruby McDonald		7/1/2001	6/30/2005	1	Kona	Sitting member
6	Lily M.N.H. Kong		6/30/2004	6/30/2007	1	Kona	Interim (5)
7	Melvyn Kaleo Kualii		7/1/2004	6/30/2008	1	Kona	Interim (6)
8	Dutchie K. Saffrey		6/30/2004	6/30/2007	1	Puna	Interim (7)
9	Geraldine Bell	8/28/1997	7/1/2001	6/30/2005	2	Landowner/Developer (National Park Service)	Sitting member
10	Roger Harris	8/4/1998	7/1/2002	6/30/2006	2	Landowner/Developer (Pauoa Beach)	Sitting member
11	John B. Ray	8/23/2000	7/1/2004	6/30/2008	2	Landowner/Developer (Hawai'i Leeward Planning Conference)	Interim (8)

11 Members; 8/3 Regional to Landowner/Developer Representatives; Quorum 6

Boards and Commissions, Office of the Governor, provided the following caveats:

- The *appointment date* rather than the Senate *confirmation date* is the point at which the clock starts ticking on a council member's four-year term.
- Once a four-year term has been established, it may be vacated, but it does not expire. An individual is thus appointed to fill an already existent *term* rather than to fill a council *position*. That means that the individual's tenure on the island burial council is determined by the length of time remaining in the *term* to which s/he is appointed.

(1), (3), (4), (6), (8) Interim appointments made after the January to May 2004 legislative session require Senate confirmation the following year. According to Boards and Commissions, Office of the Governor, the four-year term began 7/1/2004 and will expire 6/30/2008.

(2) Interim appointment made after the January to May 2002 legislative session requires Senate confirmation the following year. According to Boards and Commissions, Office of the Governor, the four-year term began 11/22/2002 and will expire 6/30/2006.

(5) Charles Young completed a four-year Kona term (1999-2003) and was held over to 2004 when Lily Kong replaced him. Because one year of the term had already been completed, Lily Kong will finish the three years of the Kona term until 2007.

(7) Dutchie Saffrey was appointed to a Puna term vacancy on 6/30/2004. The term was vacant in 2003, with three remaining years left to complete. Interim appointment made after the January to May 2004 legislative session requires Senate confirmation during the following year. According to Boards and Commissions, Office of the Governor, the four-year term began 6/30/2003 and will expire 6/30/2007.

Source: The list and appended information was provided by Boards and Commissions, Office of the Governor, July 2004. The Office of the Auditor does not attest to the veracity of the information.

Appendix 1 (continued)

Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

**Island of Hawai‘i**



Source: Office of the Auditor's estimate of the geographic regions referred to in Section 13-300-22(b), Hawaii Administrative Rules, altered from maps dated 1989 from the Hawaii Judicial System Master Plan.



## Appendix 1 (continued)

## Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

## MAUI/LĀNA'I ISLANDS BURIAL COUNCIL (July 1, 2004)

	NAME	TERM APPOINTMENT DATE(S)		TERM EXPIRATION	1 <sup>ST</sup> OR 2 <sup>ND</sup> TERM	REPRESENTING	STATUS
1	Charles K. Maxwell, Sr.		7/1/2002	6/30/2006	1	Makawao	Sitting member
2	Dana Naone Hall	8/27/1999	6/30/2003		1	Wailuku	Holdover (1)
3	Michael P. Minn	7/31/1997	7/1/2001	6/30/2005	2	Hana	Sitting member
4	William Waiohu, Jr.	7/20/1998	7/1/2002	6/30/2005	2	Lahaina	Sitting member (2)
5	Glenn Richardson	6/30/1999	6/30/2003		1	Lāna'i	Holdover (3)
6	Leslie A. Kuloloio		7/1/2001	6/30/2005	1	Wailuku	Sitting member
7	Clifford J. Naeole	7/22/1997	7/1/2002	6/30/2005	2	Landowner/Developer (Ritz Carlton Kapalua)	Sitting member (4)
8	Mei Lee Wong	7/27/1999	4/22/2004	6/30/2007	2	Landowner/Developer (Dowling Company)	Senate Confirmed 2004 (5)
9	William C. Frampton	7/1/2002	7/1/2004	6/30/2008	1	Landowner/Developer	Interim (6)

9 Members; 6/3 Regional to Landowner/Developer Representatives; Quorum 5

Boards and Commissions, Office of the Governor, provided the following caveats:

- The *appointment date* rather than the Senate *confirmation date* is the point at which the clock starts ticking on a council member's four-year term.
  - Once a four-year term has been established, it may be vacated, but it does not expire. An individual is thus appointed to fill an already existent *term* rather than to fill a council *position*. That means that the individual's tenure on the island burial council is determined by the length of time remaining in the *term* to which s/he is appointed.
- (1) The term that Dana Hall is occupying as a holdover runs from 2003 to 2007. According to Boards and Commissions, Office of the Governor, an individual may remain on the council as a holdover until the end of the 2005 Legislative session or until replaced by 2004/2008 appointment.
  - (2) Per Boards and Commissions, Office of the Governor, William Waiohu Jr. was appointed in 1998 to fill the vacancy in Anthony Akana's 1997-2001 term and served three years. Boards and Commissions, Office of the Governor, said the paperwork is unclear and it cannot explain the time lapse from 2001 to 2002. William Waiohu Jr.'s term would have been 2001-2005. On 4/17/02, Mr. Waiohu was sent word he was to be confirmed on 7/1/02. Then the files indicate 8/27/02 as an appointment date with 6/30/2005 as an expiration date. Boards and Commissions, Office of the Governor, deferred to the institutional memory of State Historic Preservation Division. Boards and Commissions, Office of the Governor, noted that the governor counts the holdover period as part of the term, but that it was unclear whether the prior governor's administration did so. Section 43.5, Hawaii Revised Statutes (HRS), refers to compliance with Section 26-34 HRS, which states any member may continue as a holdover provided the member shall not hold office beyond the end of the second regular session following expiration of the member's term. Section 13-300-23, Hawaii Administrative Rules (HAR) refers to compliance with Section 26-4, HRS, and also article 5, section 6 of the Hawaii State Constitution, which states an interim appointment must be confirmed at the end of the next session of the senate.
  - (3) The term that Glenn Richardson is occupying as a holdover runs from 2003 to 2007. According to Boards and Commissions, Office of the Governor, an individual may remain on the council as a holdover until the end of the 2005 Legislative session or until replaced by 2004/2008 appointment.
  - (4) Clifford J. Naeole was appointed in 1997 to complete the term James Murray Jr. had occupied ending in 1998. He was appointed in 7/1/98 for a four year term. His second term must conclude 6/30/05 because he cannot serve for more than eight consecutive years.
  - (5) Mei Lee Wong began her second term as a holdover from 7/1/03. Officially appointed on 4/22/04, her term expires in 6/30/2007.
  - (6) William C. Frampton was a replacement in 7/1/02, but Boards and Commissions, Office of the Governor, does not know for whom or for how long. Interim appointment made after the January to April 2004 legislative session requires Senate confirmation the following year. According to Boards and Commissions, Office of the Governor, the four-year term began 7/1/2004 and will expire 6/30/2008.

Source: The list and appended information was provided by Boards and Commissions, Office of the Governor, July 2004. The Office of the Auditor does not attest to the veracity of the information.

Appendix 1 (continued)

Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

**Maui and Lâna‘i**



Source: Office of the Auditor's estimate of the geographic regions referred to in Section 13-300-22(b), Hawaii Administrative Rules, altered from maps dated 1989 from the Hawaii Judicial System Master Plan.

## Appendix 1 (continued)

## Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

## MOLOKA'I ISLAND BURIAL COUNCIL (July 1, 2004)

	NAME	TERM APPOINTMENT DATE(S)		TERM EXPIRATION	1 <sup>ST</sup> OR 2 <sup>ND</sup> TERM	REPRESENTING	STATUS
1	Louella Opuulani Albino	7/20/1998	7/1/2002	6/30/2006	2	Central	Sitting member
2	Edwina H. Cacoulidis		5/28/04	6/30/2007	1	East Moloka'i	Interim (1)
3	Nanette Lehua Napoleon		7/1/2002	6/30/2006	1	East Moloka'i	Sitting member
4	Roxanne L. French		7/1/2001	6/30/2005	1	Kalawao	Sitting member
5	Lawrence K. Aki		7/1/2001	6/30/2005	1	West Moloka'i	Sitting member
6	Walter W. Mendes		7/1/2004	6/30/2008	1	West Moloka'i	Interim (2)
7	Pearl Alice Hodgins		7/1/2001	6/30/2005	1	Landowner/Developer	Sitting member
8	Lance "Kip" Dunbar		7/1/2001	6/30/2005	1	Landowner/Developer	Sitting member
9	Pilipo Solatario	7/20/1998	7/1/2002	6/30/2006	2	Landowner/Developer (Moloka'i Ranch)	Sitting member

9 Members; 6/3 Regional to Landowner/Developer Representatives; Quorum 5

Boards and Commissions, Office of the Governor, provided the following caveats:

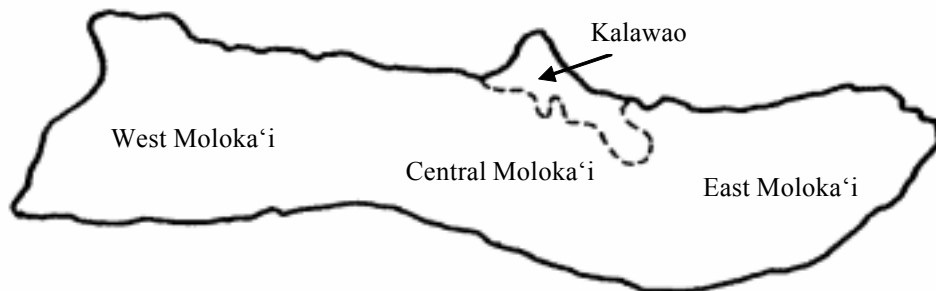
- The *appointment date* rather than the Senate *confirmation date* is the point at which the clock starts ticking on a council member's four-year term.
  - Once a four-year term has been established, it may be vacated, but it does not expire. An individual is thus appointed to fill an already existent *term* rather than to fill a council *position*. That means that the individual's tenure on the island burial council is determined by the length of time remaining in the *term* to which s/he is appointed.
- (1) Edwina H. Cacoulidis was appointed to a vacant seat on a term that had been occupied by Robert Alcain, who served for four years from 1999 to 2003. Boards and Commissions, Office of the Governor, stated she was appointed when it was already one year into the 2003 to 2007 term. Her interim appointment was made after the January to May 2004 legislative session and requires Senate confirmation the following year.
  - (2) Interim appointment made after the 2004 legislative session requires Senate confirmation the following year. According to Boards and Commissions, Office of the Governor, the four-year term began 7/1/2004 and will expire 6/30/2008.

Source: The list and appended information was provided by Boards and Commissions, Office of the Governor, July 2004. The Office of the Auditor does not attest to the veracity of the information.

Appendix 1 (continued)

Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

**Moloka'i**



Source: Office of the Auditor's estimate of the geographic regions referred to in Section 13-300-22(b), Hawaii Administrative Rules, altered from maps dated 1989 from the Hawaii Judicial System Master Plan.

## Appendix 1 (continued)

## Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

## O‘AHU ISLAND BURIAL COUNCIL (July 1, 2004)

	NAME	TERM APPOINTMENT DATE(S)		TERM EXPIRATION	1 <sup>ST</sup> OR 2 <sup>ND</sup> TERM	REPRESENTING	STATUS
1	A. Van Horn Diamond	7/17/2000	7/1/2002	6/30/2006	2	Kona	Sitting member (1)
2	T. Kehaulani Kruse		7/1/2002	6/30/2006	1	Kona	Sitting member
3	Lynette “Nettie” Tiffany	7/2/2001	7/1/2002	6/30/2006	2	‘Ewa	Sitting member (2)
4	Phyllis “Coochie” Cayan	7/17/2000	7/1/2004	6/30/2008	2	‘Ewa	Interim (3)
5	Kalei Kini	12/30/1999	4/22/2004	6/30/2007	2	Ko‘olaupoko	Senate Confirmed 2004 (4)
6	Cy M. Bridges		4/22/2004	6/30/2007	1	Ko‘olauloa	Senate Confirmed 2004 (5)
7	Thomas Shirai, Jr.	7/17/2000	6/30/2004		1	Waialua	Holdover (6)
8	Analu K. Josephides		7/1/2004	6/30/2008	1	Wai‘anae	Interim (7)
9	Charles “Chuck” Ehrhorn	7/2/2001	7/1/2003	6/30/2007	2	Landowner/Developer (C & J Land Planning)	Interim (8)
10.	Jace L. McQuivey		7/23/2002	6/30/2005	1	Landowner/Developer (Hawai‘i Reserves, Inc.)	Sitting member (9)
11	Aaron D. Mahi		7/1/2004	6/30/2008	1	Landowner/Developer (City & County)	Interim (10)

11 Members; 8/3 Regional to Landowner/Developer Representatives; Quorum 6

Boards and Commissions, Office of the Governor, provided the following caveats:

- The *appointment date* rather than the Senate *confirmation date* is the point at which the clock starts ticking on a council member’s four-year term.
- Once a four-year term has been established, it may be vacated, but it does not expire. An individual is thus appointed to fill an already existent *term* rather than to fill a council *position*. That means that the individual’s tenure on the island burial council is determined by the length of time remaining in the *term* to which s/he is appointed.

- (1) A. Van Horn Diamond filled the last two years in the 1998-2002 term of Kaleikoa Kaeo and was reappointed for four years.
- (2) Lynette “Nettie” Tiffany was appointed as a landowner representative in 1998; she resigned that slot in 2001 and was appointed in 2001 to fill the rest of Carolyn Kehaunani Abad’s Ewa 1998-2002 term.
- (3) Interim appointments made after the January to May 2004 legislative session require Senate confirmation the following year. According to Boards and Commissions, Office of the Governor, the four-year term began 7/1/2004 and will expire 6/30/2008.
- (4) Kalei Kini’s second term began 7/1/2003 as a holdover member although he was not officially appointed until 4/22/2004.
- (5) Cy M. Bridges was appointed 4/22/04 to fill a vacant slot in a 2003 to 2007 term.
- (6) The term that Thomas Shirai, Jr is occupying as a holdover runs from 7/1/04 to 6/30/08. If he were reappointed it would be his second term. According to Boards and Commissions, Office of the Governor, an individual may remain on the council as a holdover until the end of the 2005 Legislative session or until replaced by 2004/2008 appointment.
- (7) Interim appointments made after the January to May 2004 legislative session require Senate confirmation the following year. According to Boards and Commissions, Office of the Governor, the four-year term began 7/1/2004 and will expire 6/30/2008.
- (8) Charles “Chuck” Ehrhorn served two years of a 1999-2003 term and was held over for one year to 2003. The decision to reappoint was made after session ended in 2004; the files reflect the 2007 expiration date because the term began in 2003. He is interim because he has not yet been confirmed by the Senate.
- (9) Jace L. McQuivey replaced a vacant slot in the 2001-2005 term.

Source: The list and appended information was provided by Boards and Commissions, Office of the Governor, July 2004. The Office of the Auditor does not attest to the veracity of the information.

Appendix 1 (continued)

Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

**O‘ahu**



Source: Office of the Auditor's estimate of the geographic regions referred to in Section 13-300-22(b), Hawaii Administrative Rules, altered from maps dated 1989 from the Hawaii Judicial System Master Plan.

## Appendix 1 (continued)

## Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

## KAUA'I/NĪ'ĪHAU ISLANDS BURIAL COUNCIL (July 1, 2004)

	NAME	TERM APPOINTMENT DATE(S)		TERM EXPIRATION	1 <sup>ST</sup> OR 2 <sup>ND</sup> TERM	REPRESENTING	STATUS
1	La France Kapaka-Arboleda	8/30/2000	7/1/2004	6/30/2008	1	Kawaihau	Interim (1)
2	Grace H. Kamai	8/10/1998	7/1/2002	6/30/2006	2	Waimea	Sitting member
3	John Kruse	8/30/2000	7/1/2004	6/30/2008	1	Kōloa	Interim (2)
4	Sandra P. Quinsaat		7/1/2004	6/30/2008	1	Kōloa	Interim (3)
5	Catherine Ham Young Pfeffer		7/1/2002	6/30/2006	1	Hanalei	Sitting member
6	Barbara Say		4/22/2004	6/30/2007	1	Hanalei	Senate Confirmed 2004 (4)
7	Henrietta E.K. Thaxton		4/22/2004	6/30/2007	1	Līhu'e	Senate Confirmed 2004
8	Presley Wann	8/30/2000	6/30/2003		2	Na Pali	Holdover (5)
9	Leiana Robinson		5/28/2004	6/30/2007	1	Ni'ihau	Interim (6)
10	Donna Aana Nakahara		4/22/2004	6/30/2007	1	Landowner/Developer (Kamehameha Schools)	Senate Confirmed 2004
11	Michael Furukawa	7/30/1999	6/30/2003		2	Landowner/Developer (Grove Farm Co.)	Holdover (7)
12	Mark S. Hubbard		7/1/2004	6/30/2008	1	Landowner/Developer (Grove Farm Co.)	Interim (8)
13	Tom Shigemoto	8/10/1998	7/1/2002	6/30/2006	2	Landowner/Developer (A&B Properties)	Sitting member

13 Members; 8/3 Regional to Landowner/Developer Representatives; Quorum 7

Boards and Commissions, Office of the Governor, provided the following caveats:

- The *appointment date* rather than the Senate *confirmation date* is the point at which the clock starts ticking on a council member's four-year term.
  - Once a four-year term has been established, it may be vacated, but the term does not expire. An individual is thus appointed to fill an already existent *term* rather than to fill an individual's *position*. That means that a member's tenure on the island burial council is determined by the length of time remaining in the *term* to which s/he is appointed.
- (1), (2), (3), (8) Interim appointments made after the January to May 2004 legislative session require Senate confirmation the following year. According to Boards and Commissions, Office of the Governor, the four-year term began 7/1/2004 and will expire 6/30/2008
  - (4) The governor created a new term retroactively to 7/1/03 so that Barbara Say could be appointed on 4/22/04. The term is from 7/1/03 to 6/30/07. Boards and Commissions, Office of the Governor said they wanted an additional Hanalei representative and they wanted to appoint one right away. (The law requires a minimum of 9 members and a maximum of 15 on each council.)
  - (5) The term that Presley Wann is occupying as a holdover runs from 2003 to 2007. According to Boards and Commissions, Office of the Governor, individual may remain on the council as a holdover until the end of the 2005 Legislative session or until replaced by 2004/2008 appointment.
  - (6) Leiana Robinson's interim appointment made after the January to May 2004 legislative session requires Senate confirmation the following year. Her husband Bruce Robinson who had occupied the seat from 1995 to 2003 was not eligible to serve because he had already served eight years. When Leiana was appointed in May 2004, one year of the four year term had elapsed. According to Boards and Commissions, Office of the Governor, the four-year term began in 7/1/2003 and will expire 6/30/2007.
  - (7) The term that Michael Furukawa is occupying as a holdover runs from 2003 to 2007. According to Boards and Commissions, Office of the Governor, individual may remain on the council as a holdover until the end of the 2005 Legislative session or until replaced by 2004/2008 appointment.

Source: The list and appended information was provided by Boards and Commissions, Office of the Governor, July 2004. The Office of the Auditor does not attest to the veracity of the information.

Appendix 1 (continued)

Current Members of the Island Burial Councils and Maps Depicting Geographic Regions of Each Island

**Kaua‘i and Ni‘ihau**



Source: Office of the Auditor's estimate of the geographic regions referred to in Section 13-300-22(b), Hawaii Administrative Rules, altered from maps dated 1989 from the Hawaii Judicial System Master Plan.



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## Appendix 2

### Tables for Determining Appropriate Representation on Island Burial Councils

#### Representation Ratios

No. Council Members	Regional/Landowner Representatives
9	6/3
10	7/3
11	8/3
12	8/4 or 9/3
13	9/4
14	10/4
15	10/5 or 11/4

#### Office of Hawaiian Affairs Representation Ratios

Number of Appointments	20 Percent
2	0.4
3	0.6
4	0.8
5	1.0
6	1.2
7	1.4
8	1.6
9	1.8
10	2.0
11	2.2
12	2.4
13	2.6
14	2.8
15	3.0
16	3.2
17	3.4
18	3.6
19	3.8
20	4.0
21	4.2
22	4.4
23	4.6
24	4.8
25	5.0
26	5.2

#### Majority Council Representation Quorum

No. Council Members	Majority
9	5
10	6
11	6
12	7
13	7
14	8
15	8

Source: Department of Land and Natural Resources, State Historic Preservation Division.

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Appendix 3  
Historical and Cultural Branch Chief Position Description

Developed October 1990  
Page 1 of 6

Historical and Cultural Branch Chief  
Historic Preservation Specialist III  
Position No. 12975

I. INTRODUCTION

A. Organizational Location:

State Historic Preservation Division, Department of Land and Natural Resources, Honolulu, O'ahu.

B. Organizational Unit Function:

This position is responsible for administering and directing the Historical and Cultural Branch of the State Historic Preservation Division.

Chapter 6E, HRS, gives historic preservation responsibilities to the Department of Land and Natural Resources, including: develop a state-wide survey of historic properties, prepare information for a register of such properties, develop a preservation plan and accompanying budget and land use recommendations, provide for matching grants-in-aid to political subdivisions, and public and private agencies for projects, seek technical assistance and funds from the federal government, coordinate the evaluation and management of burial sites, regulate archaeological activities throughout the State, review and provide written concurrence/recommendations for projects which may have an effect upon a historic property, and employ sufficient professional and technical staff for the purposes of this chapter without regard to Chapters 76 and 77.

The federal program under the National Historic Preservation Act, as amended, includes similar survey, register, review work and historic planning requirements and through Federal Fiscal Year 1989 has awarded to Hawaii approximately \$5,000,000.00 in grants-in-aid funds. In order to continue in this federal program, 36 Code of Federal Regulations 61.3 required that no later than October 1, 1978, the professional staff working under the direction of the State Historic Preservation Officer "shall include at least one full-time professional in each of the following disciplines: history, archaeology, architectural history, and historical architecture." The professional staff shall meet qualification standards prescribed by 36 Code of Federal Regulations 61.4 and its Appendix A and professional staff credentials shall be submitted to the Secretary of the Interior for review and approval.

C. Position Function: Historical and Cultural Branch Chief

The department has positions to meet the minimum professional staff requirements of 36 CFR 61.3 and the incumbents to these positions also meet the standards of 36 CFR Appendix A. When this position is filled by other than a member of the required professional staff, insure that the professional staff requirements are maintained.

II. MAJOR DUTIES AND RESPONSIBILITIES

Responsible for the Statewide historical and cultural preservation program.

A. Administrative . . . . . 10%

Initiate, formulate and recommend policies which affect the immediate activities of the Historical and Cultural Branch.

Develop a schedule and plan of operations for the Historical and Cultural Branch.

Direct investigations and reviews, evaluate and make recommendations for areas of historical and cultural importance; recommend standards and priorities for historic preservation projects.

Recommend, by drafting or supervising drafting of, regulations and amendments; recommend, by drafting or supervising drafting of legislative bill, legislation affecting historic preservation; prepare comments on bills and resolutions by the legislature or Congress.

Draft departmental and Governor's correspondence relating to the history and culture of Hawaii.

Recommend, by drafting or supervising drafting of, contracts requiring special skills or professional competency in the execution of a task.

Review, edit, and revise to final draft form all reports and documents emanating from the Historical and Cultural Branch.

Oversee and coordinate the activities of the five Island Burial Councils.

Oversee and coordinate the activities involved in the management of State Historic Preserves.

Oversee and coordinate activities related to the Statewide curator program.

B. Planning, Programming and Budgeting . . . . . 5%

Provide, by drafting or supervising drafting of, information for plans as proposals for short and long term goals and objectives to enhance historic preservation in Hawaii. Devise a strategy that systematically prioritizes the statewide survey of historical and cultural properties and allows for more expeditious decision making during the review and management processes.

Direct Historical and Cultural Branch activities related to the protection and preservation of historical and cultural areas, including State-owned historic preserves, and enforcement of laws and regulations within those areas.

Prepare, submit and present Branch budget and capital improvement requirements to the Administrator of the Division, SHPO, or Board, as applicable, and the Legislature.

C. Burials and Project Reviews . . . . . 20%

Develop program policy proposals with regards to the burials program, and supervise the implementation of this program with its five Island Burial Councils.

Review and oversee the historical and cultural review of conservation district use applications, EIS statements, State Clearing House Reviews and other requests to construct, alter or improve any historic sites as required by state law. Review and oversee the historical and cultural review of federal or federally financed or licensed projects for their effect on sites on or eligible for inclusion in the National Register or required by federal regulations. Negotiate with property owners and governmental planners historic preservation stipulations.

Attend meetings of the various Island Burial Councils to answer questions, explain or amplify upon subjects under consideration.

D. Inventory Work . . . . . 5%

Prioritize, direct and oversee the development of a statewide historical and cultural properties inventory of historic properties and burials. Help maintain this inventory for public and governmental use.



E. Management of Historic Preserves . . . . . 10%

Develop, or oversee the development of the State Historic Preserve Program, to include proposed management policies and procedures, short- and long-range management and interpretive plans for specific preserves, and implementation of such plans.

F. Register Nomination . . . . . 5%

Direct the preparation of and prepare nomination forms through research and write historical and cultural studies of sites, districts, and themes employing established professional methods and techniques including: locating and evaluating evidence from documentary, oral, pictorial, artifactual, field studies, and/or other sources; analyzing historical facts, and present the results in narrative form for the Hawaii and National Registers and coordinate with other staff members as appropriate. Ensure the content and professional quality of the nomination forms, including those where work is done by others under contract or otherwise.

G. Public Information . . . . . 15%

Develop and administer the interpretation and public information/education program within the Division. Coordinate with other professionals within and outside the Division to implement this program.

Establish and maintain cooperative relationships with federal, county, state and community organizations; represent the department in meeting with civic organizations, government agencies, and the general public in matters involving the historic preservation program.

Determine and prioritize public information needs with regards to the history and culture of Hawaii, and develop programs to meet these needs, including those for interpretive programs associated with historic preserves.

Provide technical advice regarding historic preservation to agencies and organizations and the general public through appropriate media.

Oversee the preparation of publications, including the development of necessary information, determination of appropriate format and design, and monitoring of production.

Participate in regional, national, and international historic preservation conferences, workshops and colloquia.

H. Grants Program . . . . . 5%

Analyze information and physical plans for restoration and other projects carried out under the grants program to ensure historical and cultural integrity of the projects. Coordinate this with the historian, archaeologist, historic architect or architectural historian as appropriate.

Review and make prioritization recommendations for sub-grant applications; prepare and process and oversee the preparation and processing of sub-grantee applications and contracts; inspect and monitor and oversee the inspection and monitoring of contract work; verify payment requests; and provide input during audit.

Oversee the preparation of federal historic preservation grant applications, and monitor that all requirements are fulfilled.

Prepare review analysis information and recommendations in writing for the Department, the State Historic Preservation Officer, and State Historic Preservation Division Director, as appropriate.

I. Field Work . . . . . 5%

Oversee and conduct field (out-of-office) work as necessary to locate, record and evaluate historical and cultural sites, burials, places and objects throughout the state.

J. Supervisory . . . . . 20%

Provide supervision of Branch staff including distribution of work load, determination of the Branch's priorities, and assignments of special duties and responsibilities to carry out the program activities.

III CONTROLS OVER THE POSITION

Supervisor:

Don Hibbard, Administrator, State Historic Preservation Division  
Position No. 26869E, EM 07

Positions supervised are:

Historic Preservation Specialist	I, SR-24, No. 27130E,
Historic Preservation Specialist	I, SR-24, No. 27147E,
Historic Preservation Specialist	I, SR-22, No. 26877E,
Historic Preservation Specialist	I, SR-22, No. 26878E,
Historic Preservation Specialist	I, SR-22, No. 26901E,

The Historic Preservation Division Operations Manual and National Register Program Guidelines (NPS-49), and "How to Complete National Register Forms," provide guidelines. State and Federal laws and regulations govern review procedures. Work loads, priorities, and assignment of duties and responsibilities not described in II, but necessary to fulfill the intent of I, will be assigned by the supervisor as necessary. The person in this position must be able to work independently in research in the field and with historical and cultural materials, deal with the public effectively and coordinate work with other professionals on the staff and with other government agencies. Percentages shown are approximate time spent which may vary considerably at the discretion of the supervisor.

#### IV QUALIFICATION REQUIREMENTS OF THE WORK

The minimum professional qualifications for the Historical and Cultural Branch Chief, Historic Preservation Specialist III, are:

[1] A graduate degree in history or closely related field plus at least five years of full-time experience in Hawaiian historical or ethnographic research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or a bachelor's degree in history or closely related field plus one of the following:

[a] At least seven years of full-time experience in Hawaiian historical or ethnographic research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

[b] Substantial contribution through research and publication to the body of scholarly knowledge in the field of Hawaiian history and/or culture.

[2] A demonstrated record of publication in the field.

Knowledge of: State and Federal legislation, rules and regulations governing the historic preservation program; principles and practices of historic preservation management.

Ability to: Establish and maintain effective working relationships with other agencies, professional or lay groups, public officials, and the general public; supervise and direct the Statewide historical and cultural preservation program; express ideas in a clear and concise manner and prepare clear and comprehensive reports.

Employee must be physically able to participate in rough terrain field work. A State of Hawaii driver's license is desirable.



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## Notes

### Chapter 1

1. The Auditor, “Audit of the State Historic Preservation Division of the Department of Land and Natural Resources, a Report to the Governor and the Legislature of the State of Hawai‘i,” Report No. 02-20, State of Hawai‘i, 2002.

### Chapter 2

1. U.S. Senate Report 108-85, *Expressing the Policy of the United States Regarding the United States Relationship with Native Hawaiians and to Provide a Process for the Recognition by the United States of the Native Hawaiian Governing Entity, and for Other Purposes*, Washington, D.C., June 27, 2003, p. 7.
2. David Malo, *Hawaiian Antiquities (Mo‘olelo Hawai‘i)*, Bishop Museum, Honolulu, 1951, pp. 1, 2.
3. Martha Beckwith, *Hawaiian Mythology*, University of Hawai‘i Press, Honolulu, 1976, p. 294.
4. Op. Cit., *Report*, U.S. Senate, p. 18.
5. Handy, E. S. Craighill and Mary Kawena Pukui, *The Polynesian Family System in Ka‘ū, Hawai‘i*, Mutual Publishing, Honolulu, 1998, p. 195.
6. Pukui, Mary Kawena, E.W. Haertig, M.D., Catherine A. Lee, *Nana I Ke Kumu (Look to the Source)*, Vol. 1, Hui Hanai, Honolulu, 1972, pp. 109, 110.
7. Ibid., Pukui, Haertig, Lee, p. 107.
8. See Appendix 3.

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## Response of the Affected Agency

### Comments on Agency Response

We transmitted a draft of this report to the Department of Land and Natural Resources on December 17, 2004. A copy of the transmittal letter to the department is included as Attachment 1. The department's response is included as Attachment 2.

The department was pleased that we found that it had submitted a timely list for action during the 2003 Legislature and that it included the names of two nominees allegedly omitted.

The department agreed with most of the investigative findings and was "pleased to report" that it had begun to address many of the issues raised by the investigation. It said that it has begun to strengthen the nominations process "in a consistent and timely manner" and that it "is committed to ensuring oral traditions are given appropriate attention." It recognized the staffing deficiencies in the Historical and Cultural Branch and has taken steps to redescribe vacant positions and creating additional ones for the Burial Sites Program.

Importantly, the department is moving to revise its functional statement and organization charts to include the Burial Sites Program and the Island Burial Councils. The department said it will add cultural specialists to be based on the islands of Hawai'i, Maui, and O'ahu, and these specialists will conduct cultural reviews "concurrently" with division archaeologists and will be responsible for processing "descendants' cultural and lineal claims." The department will also hire a burial reinterment specialist to ensure the timely reinterment of *na iwi kupuna*.

The department said that the Historical and Cultural Branch chief returned from sabbatical in July 2003 and that since then he has overseen the reinterment of about half of the 300 sets of remains. We note that the approximately 300 sets of remains awaiting reinterment were stored in the downtown office. This number, however, does not include the sets of *iwi* in storage on Kaua'i, Maui, Hawai'i, and Moloka'i.

The department is working with the Department of Accounting and General Services "to identify facility space on Oahu" to accommodate the branch's needs. Further, the department recognizes the importance of compliance with the Sunshine Law.

The department recommended that we remove two photographs from the report, one picturing the reinterment of remains and the other displaying

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the storage closet door. We carefully discussed the issue of the sensitivity and the invasiveness of photography with department officials and members of the Hawaiian community, and we were assured that so long as the bones were covered, the photograph of the department employee was properly respectful. The employee pictured also provided us with his permission for usage. The photograph of the storage room showed only the slightly opened door with no bare remains pictured.

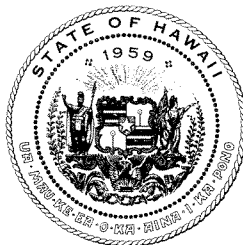
Second, the department disagrees with our assessment that Chapter 6E, Hawai'i Revised Statutes, is inadequate with respect 1) to the responsibilities of the Office of Hawaiian Affairs, 2) the ambiguity of whether a regional representative must live in the district to which he/she is being appointed, and 3) the advisor/decision-maker roles of the island burial councils. The department misunderstood our assessment. The statute may be clear on paper, but in practice, is confusing and needs amendment. Department officials confirmed the confusion.

Third, the department agrees that it did not transmit to the governor its revised 2003 list of candidates for island burial council nominations in a timely manner, but said the investigative report "fails to explain that the delay was the result of a Hawaiian organization's failure to submit" its recommendations. Further, the department stated, "This information was provided to your staff but is not included in the draft report." We disagree with the department's statement because 1) it places unjustified blame on the Office of Hawaiian Affairs and 2) no such documentation was provided to us. The department's files show no proactive communication with the Office of Hawaiian Affairs; what the files do show is a disorderly, undocumented process of identifying potential candidates for island burial council seats.

Fourth, the department said the draft report "incorrectly states that the appointment process" overseen by previous chairs of the Board of Land and Natural Resources as well as the two previous governors was efficient and sensitive. The department charges that the previous administration did not comply with the law and "should not be described as efficient and sensitive." We stand by our assessment. During the first six years of the appointments process as evidenced by documents provided to us by the department, the process was efficient and sensitive. We also note that the reason the department's original 2003 list was timely is because it was submitted by the outgoing administration the department now criticizes as non-compliant with the law.

Finally, the department asked that charts in Appendix 1 be corrected. The information in the charts was provided by the Office of the Governor, and we state on each page that the Office of the Auditor does not attest to the veracity of the information.

STATE OF HAWAII  
OFFICE OF THE AUDITOR  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917



MARION M. HIGA  
State Auditor

(808) 587-0800  
FAX: (808) 587-0830

December 17, 2004

*COPY*

The Honorable Peter T. Young, Chair  
Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Dear Mr. Young:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Investigation of the Department of Land and Natural Resources' Process for Developing Recommended Candidate Lists for Appointment to the Island Burial Councils*. We ask that you telephone us by Monday, December 20, 2004, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Wednesday, December 22, 2004.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

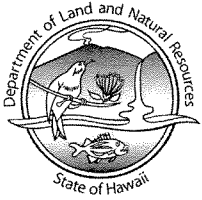
Sincerely,

Marion M. Higa  
State Auditor

Enclosures

## ATTACHMENT 2

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

YVONNE Y. IZU  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

December 22, 2004

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OFFICE OF THE AUDITOR  
STATE OF HAWAII

Ms. Marion Higa  
Auditor  
Office of the Legislative Auditor  
Kekuanaoa Building  
465 South King Street, Room 500  
Honolulu, Hawaii 96813

Dear Ms. Higa:

We appreciate the opportunity to respond to your draft audit report entitled *Investigation of the Department of Land and Natural Resources' Process for Developing Recommended Candidate Lists for Appointment to the Island Burial Councils*.

We are pleased your office has confirmed that the allegations raised in House Concurrent Resolution 165, Senate Draft 1 were unfounded. Specifically, the resolution expressed concern that the Department failed to submit a timely list of burial council nominees to the Governor, and that two candidates respected and recommended by the Hawaiian community were not referred to the Governor for consideration. You concluded:

"Contrary to concerns raised in the Legislature's request for this investigation, the Department of Land and Natural Resources did submit a list of recommendations for island burial council appointments to the Office of the Governor for action during the 2003 Legislature. Further, the department's initial submission of the 2003 list was timely and included the names of two nominees allegedly omitted by the department."

Although the Legislature's primary concerns, which led to this audit, were unsubstantiated, areas in which program operations can be improved have been identified, and we appreciate your review and recommendations. We agree with most of the audit findings and are pleased to report that prior to the audit the State Historic

Preservation Division (SHPD) had already begun to address many of these issues. *Attachment 1* to this response includes a brief overview of some of these actions.

Although we concur with many of the audit findings, we disagree with the audit's general characterization that the island burial council nomination process is disorderly and demeaning of ancestral remains. We believe that the current Administration has significantly improved the process, and has demonstrated our commitment to complying with the legal mandates of the appointment process.

We also disagree that Hawaii's preservation law (Chapter 6E, Hawaii Revised Statutes) does not advance the work of the burial councils. Specifically, we disagree that the requirement that the Office of Hawaiian Affairs (OHA) submit a candidate list to the division is unclear. Chapter 6E clearly states the list of candidates submitted by the Department to the Governor is to include a list of at least nine candidates provided by OHA. We included OHA candidates in our submittals.

The audit also reports that Chapter 6E is unclear as to whether regional representatives are required to be residents of the districts they represent. The Attorney General has advised us that State law does not preclude non-residents from representing a district provided they have an understanding of the culture, history, burial beliefs, customs and practices of Native Hawaiians. Limiting district representation to residents could adversely affect the councils, as many knowledgeable individuals and kupuna who have a broad knowledge base of the cultural practices of a specific district, and whose ancestors may have resided for many generations in that district, may no longer live there.

Finally, we disagree that the role of the island burial councils as decision makers and advisors is confusing. The law clearly establishes the parameters in which council members have the authority to make decisions. The decision-making authority of the councils is limited to recognizing descendants as cultural or lineal, and determining whether previously identified Hawaiian burials should be kept in place or relocated. This latter authority establishes a process that allows for widespread community input.

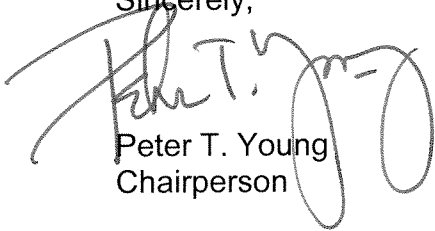
In contrast, the councils' role becomes advisory in the event a burial is inadvertently discovered. In these cases, the statute is clear that the decision-making authority remains with the Department, which must make a determination to preserve in place or relocate within specified time periods. The statute is written in order to spare developers from unforeseen lengthy work stoppages. Nevertheless, when the SHPD obtains the developer's consent to exceed the statutory time requirements in which it must render its decision, the SHPD often seeks the input of the appropriate burial council.

Ms. Marion Higa  
Page 3  
December 22, 2004

Again, please accept our appreciation for the work of your staff and our assurance that we will give serious consideration to each of your audit recommendations. Because the Department was provided only three business days to review and comment on the draft report findings and recommendations, this limited our ability to respond as extensively as we would have preferred.

Should you have any questions, please do not hesitate to contact me at 587-0401.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter T. Young", with a large, stylized circular flourish at the end.

Peter T. Young  
Chairperson

PTY:jf

Attachments: 1, 2

cc: Melanie Chinen, SHPD



## **Attachment 1 (12/22/04)**

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

#### Overview of State Historic Preservation Division's Actions in Addressing Audit Findings

The division has strengthened the process in which island burial councils' nominations are assessed by submitting a list of interested candidates and their resumes to the Office of the Governor for review. Staff at the Governor's Office have and will continue to verify the information submitted in these resumes.

The division agrees with the audit recommendation that procedures be developed to ensure the list of candidates is developed in a consistent and timely manner, and that a list of Hawaiian organizations be compiled for the purpose of identifying potential candidates for the island burial councils. The new division administrator is in the process of developing an operations procedure manual that will include guidelines to govern the nomination process. In addition, the division is coordinating a January burial summit for council chairs and vice-chairs that will include a discussion on establishing criteria for regional representatives.

The Department is committed to ensuring that oral traditions are given appropriate attention, and the division administrator will continue to work within the guidance provided through existing laws and rules to ensure that information obtained through this fact finding activity are properly documented for future reference. The Department is currently reviewing its Geographic Information System and will be establishing procedures to ensure information obtained through oral traditions is included in its database while protecting sensitive cultural information.

The audit reports that archaeologists may ignore Hawaiian cultural experts by inappropriately identifying burial sites as archaeologist sites. Division archaeologists scrutinize all archaeological survey reports to ensure this work is conducted within acceptable professional standards. The branch chief also reviews all reports to ensure division staff applies clear criteria to their reviews. Moreover, the division is in the process of developing a checklist that will be used by all division staff to ensure reviews are conducted in accordance with acceptable standards.

We recognize the challenges posed by the staffing resources and funding allocated to the division. The Administrator has completed a staffing assessment and is in the process of redescribing existing vacant positions and creating additional positions to ensure the burial program is adequately staffed. The division's organizational charts and functional statements will be updated as part of this process. The revised charts will include the island burial councils that are administratively attached to the division. In addition, cultural specialists will be based on the islands of Hawaii, Maui and Oahu. These specialists will be responsible for conducting cultural reviews concurrently with division archaeologists, and will process descendants' cultural and lineal claims. In addition, a burial reinterment specialist will be hired to assist in ensuring the timely reinterment of iwi kupuna.

The current cultural and history branch chief returned from sabbatical leave in July 2003 and has made significant progress in reinterring human skeletal remains. At the time of his return over 300 sets of remains were awaiting reinterment. The branch chief oversaw the reinterment of approximately half of these remains within one year.

The division is now up to date in recording burial councils' meeting minutes and approval for the final sets of transcribed minutes will be placed on the January agendas for each council. The division administrator has assigned additional clerical support to the councils to ensure that minutes continue to be transcribed in a timely manner and in accordance with Section 92-9(b), HRS, which requires minutes to be available 30 days after the meeting.

The audit recommends all staff be relocated to Kapolei. We are currently working with the Department of Accounting and General Services to identify facility space on Oahu that will accommodate the staff's need to be located near the resource centers they frequent and allow for the iwi kupuna to remain near staff.

The division recognizes the importance of the Sunshine Law and has developed a checklist to ensure all public meetings are properly posted. In addition, training has been provided to the SHPD and other DLNR staff. Sunshine Law training will also be provided to all burial councils' chairs and vice-chairs as part of the division's January burial summit.

## **Attachment 2 (12/22/04)**

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

#### Recommended Amendments to the Draft Audit Report

We recommend that you remove the photographs associated with the reburial of human skeletal remains and displaying the storage of iwi kupuna as we believe many in the Hawaiian community would be offended by their publication as they may be deemed culturally sensitive in content.

In addition, in the interest of ensuring the final report is balanced and fair we strongly recommend that the discussion on the delays in the island burial councils' nomination process articulate that they were the result of the current Administration's desire to ensure compliance with Chapter 6E-43.5, HRS.

Although the audit correctly states that the Department did not provide the revised list of 2003 candidates as requested by the Governor in a timely manner, it fails to explain that the delay was the result of a Hawaiian organization's failure to submit their recommendations to the Department as required by Chapter 6E, HRS.

This information was provided to your staff but is not included in the draft report.

Instead, the draft report incorrectly states that the appointment process as overseen by the previous Chair of the Board of Land and Natural Resources and two former Governors was efficient and sensitive. The previous Administration did not comply with Section 6E-43.5, HRS, and this oversight should not be described as efficient and sensitive.

We also recommend the following technical changes:

- Chapter 1, page 6 provides an incomplete citation of the statutory timelines established for responding to inadvertent burials. The information provided here should be consistent with that correctly stated on page 26 of Chapter 2.
- Chapter 2, page 17 indicates the draft guidance document for conducting ethnographic surveys is dated August 2002. Our records indicate the draft was completed during August 2000, and we recommend the Auditor verify whether they were provided with the official draft of this document.
- Chapter 2, page 18 incorrectly states that the nomination from Kamehameha Schools was not submitted to the Governor for consideration. The nominated candidate was included on the April 22, 2004, list signed by the Chair and submitted to the Governor.

- Chapter 2, page 21 incorrectly states that archaeologists are responsible for positively identifying the age and ethnicity of human skeletal remains suspected to be those of native Hawaiians. This language should be corrected to conform to Section 13-300-31 of the Hawaii Administrative Rules, which specifies that ethnicity and age should be established by a reasonable belief.
- Chapter 2, Page 21 incorrectly states that descendant claims rely solely on archaeologists. Descendant claims are reviewed by the division's cultural and history branch that makes recommendations to the appropriate island burial council. Final determination as to whether a claim for cultural or lineal descendant should be recognized lies solely with the island burial councils.
- Chapter 2, page 22 incorrectly states that the Department may require archaeological surveys or assessments. All activities on the property discussed in the case cited in the report are reviewed pursuant to Chapter 6E-42, HRS, which requires agencies to submit materials to the division at *their discretion*. (Emphasis added) Consequently, division opinions on such materials are advisory and not mandatory, since discretion to implement the division's recommendations remain with the agency issuing the permit or approval.
- Chapter 2, page 22 provides an inaccurate description of the difference between an archaeological survey and assessment. A survey consists of a literature search, surface and sub-surface testing to identify the history of land use and possible historic sites. An assessment is conducted only when survey work was completed previously and included field inspections and a literature search. These assessments are allowed when the previous survey work resulted in no identified sites.
- Chapter 2, page 24 should state the owner of the property received final rather than provisional approval of the survey. In addition, the survey report was rewritten twice, not three times as incorrectly stated in the audit report. Moreover, the report should specify that the project remains open pending the owner submitting a monitoring and burial treatment plan. Without receiving these documents the division is unable to move forward.
- Chapter 2, page 30 incorrectly states that two burial site positions were privately funded. This information should be corrected to state that one burial position and one archaeological position was funded by 1250 Oceanside Partners. In addition, the draft should be amended to reflect that this arrangement no longer exists. Furthermore, the draft should indicate that the division took particular care to avoid the appearance of impropriety by basing these staff members out of the division's office and providing them with direct supervision of a Department-paid employee.

- Chapter 2, page 32 incorrectly states that Department personnel do not oversee human remains stored on Maui and Kauai. The archaeologists assigned to these islands are responsible for the iwi.
- Chapter 2, page 33 incorrectly states that the Governor abolished two burial site positions in the division. This should be corrected to state one burial site position was abolished. The second abolished position was an archaeologist position assigned to the archaeology branch.
- Appendix 1, page 45 should be corrected to indicate that William C. Frampton is serving a second term.
- Appendix 1, page 49 should be corrected to indicate that 7/1/03 is the second appointment date for Kalei Kini. In addition, note 6 on this page should indicate that the holdover period for Thomas Shirai ends at the end of the 2006 Session.
- Appendix 1, page 51 should be corrected to indicate that La France Kapaka-Arboleda is currently serving a second term. In addition, Presley Wann is serving his first term.