



### SCR3

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

Senate Committee on Hawaiian Affairs  
Senate Committee on Water and Land

February 6, 2020

1:16 p.m.

Room 016

The Office of Hawaiian Affairs (OHA) **STRONGLY SUPPORTS** SCR3, a measure in OHA's 2020 legislative package. **This resolution urges the Department of Land and Natural Resources (DLNR) and its State Historic Preservation Division (SHPD) to ensure that anticipated historic preservation rulemaking efforts better protect iwi kūpuna and Native Hawaiian cultural and historic resources.**

The State of Hawai'i, through its constitution, laws, and policies, has long recognized the profound value of historic burials, sites, and resources, and has established a robust statutory framework under Hawai'i Revised Statutes (HRS) Chapter 6E to provide for their protection.<sup>1</sup> However, many of the administrative rules intended to implement Chapter 6E are outdated, ineffective, or otherwise in need of amendment. Notably, despite longstanding and significant concerns, these administrative rules have not been amended or refined in over 15 years – and the rules pertaining to burials specifically have remained unchanged for over 20 years. Unfortunately, the persistent gaps in our state historic preservation rules have become a source of considerable and growing confusion, frustration, and overall concern within the Native Hawaiian and cultural preservation communities, who have called on SHPD to amend the state historic preservation administrative rules for a number of years.

With SHPD finally acknowledging the necessity for at least some change to state historic preservation rules, OHA believes that **a firm statement from the Legislature may be critical to ensuring that the rulemaking process reflects the urgency of this matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community.** SCR3 accordingly provides SHPD, the DLNR, and the Governor with a clear "roadmap" of important priorities that should be addressed in the anticipated rulemaking effort. Developed through years of discussions with and advocacy by the Native Hawaiian and cultural preservation communities, SCR3 highlights the need for administrative rule amendments to:

- **Improve accountability for archaeologists who violate historic preservation laws or who fail to meet standards of professional responsibility.** Contracted archaeologists are responsible for surveying project areas for historic features; recording discovered historic burials, sites, and

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<sup>1</sup> The state constitution specifically recognizes the value of conserving and developing historic and cultural property for the public good. HAW. CONST. ART. IX SEC. 7. Hawai'i's historic preservation laws, embodied in Hawai'i Revised Statutes (HRS) Chapter 6E, was enacted in 1976 to establish a system of historic preservation review and help the State manage, develop, and preserve these valuable resources. In justifying these laws, the Legislature declared that "the historic and cultural heritage of the State 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." Haw. Rev. Stat. § 6E-1.

resources; and making recommendations for the treatment of historic properties; the appropriate treatment of Hawaiian sites and burials accordingly depends on their competency and professionalism. However, while current historic preservation rules contain a process for permitting archaeologists to fulfill this role, the rules lack any process to impose discipline upon or hold accountable archaeologists who commit historic preservation law violations, or who continually fail to comply with relevant rules and standards. As a result, archaeologists who fail to adequately fulfill their professional responsibilities are allowed to continue receiving contracts, placing burials and other historic sites and resources at great risk. Rule amendments to increase accountability for contracted archaeologists will promote a higher level of competency in their work, and ensure that those who repeatedly fail to comply with historic preservation laws or meet professional standards are prevented from jeopardizing additional historic burials, sites, and resources.

- **Improve standards for archaeological inventory survey (AIS) survey methods, locational data, and report formats to increase consistency in archaeological practice and data accuracy, and promote the expeditious and consistent implementation of historic preservation review and protections.** Standardized presentation of research methodology and findings in AIS reports will reduce the wide variations in archaeological reporting that currently cause public confusion, administrative delay, and inconsistent documentation and protection of historic burials, sites, and resources.
- **Facilitate, not hamper, projects intended to rehabilitate, steward, or preserve burials, cultural sites, or other historic properties.** Native Hawaiian organizations seeking to rehabilitate or steward historic and cultural resources currently face substantial procedural obstacles and costs to comply with the same extensive administrative process applied to large scale development projects. In addition, reviews of proactive historic preservation proposals by both landowners and community stewardship groups are sometimes deprioritized by SHPD, allowing such proposals to languish. In such cases, the current state historic preservation review process inadvertently disincentivizes historic preservation and responsible stewardship initiatives, contrary to the goals of HRS 6E. Rule amendments to facilitate and prioritize such projects will better achieve the historic preservation goals and vision embodied in the constitution and state laws.
- **Reduce the likelihood of inconsistencies in the treatment of “previously identified” and “inadvertently discovered” burials, and discourage survey techniques that fail to adequately identify and protect burials as “previously identified.”**<sup>2</sup> HRS 6E directs that the disposition of “previously identified” burials, or burials identified during an AIS or previously registered with SHPD, is determined by the Island Burial Councils (IBCs), who possess substantial cultural and community expertise. Meanwhile, the treatment of “inadvertently discovered” burials (all other burials, including those found during SHPD-ordered exploratory testing that may use the same exact survey methodologies as an AIS) is determined by SHPD, despite the division’s lack of commensurate expertise. These different processes have led to the inconsistent treatment of burials, even in cases where they were found in the same project area. Moreover, such inconsistent treatment may lead developers to use skewed survey methods that avoid the early discovery of “previously identified” burials and subsequent, proactive review by the IBCs. At minimum, rule amendments are needed to provide for the reclassification of certain “inadvertently discovered” burials as “previously identified,” to allow for IBC intervention where

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<sup>2</sup> HRS § 6E-43 assigns authority over “previously identified” burials to the IBCs, whereas § 6E-43.6 directs that “inadvertently discovered” should be referred to the DLNR/SHPD for a disposition determination which must be made within 2-3 working days. See also, tech info section on *Inconsistent Burial Treatments: “Previously Identified” vs. “Inadvertently Discovered” burial treatments* for more policy and contextual background.

it is appropriate and prudent, and to discourage inadequate survey methods that fail to properly identify and protect iwi kūpuna.

- **Provide better staff support and training for the IBCs, to empower them to more effectively fulfill their important kuleana.** The IBCs have long called for periodic and comprehensive training on burial laws and rules as well as reliable legal advice to best inform their critical decisions. With better preparation, the IBCs can take on greater responsibility and authority, reduce the workload of SHPD staff, offer well-informed solutions for complex project needs, and ultimately provide stronger protections for our precious iwi kūpuna. Rule amendments that clarify the roles and authorities of the IBCs as well as SHPD staff in supporting and informing their work can empower the IBCs to more meaningfully apply their cultural expertise and knowledge and fulfill their kuleana as envisioned under Chapter 6E.
- **Require adequate and consistent recordation of historic sites and burials to ensure their continued protection and to better inform future project planning.** Rule amendments are needed to more uniformly require the recordation of metes and bounds for historic burials, sites, and burials designated for preservation, and to clearly identify the entity responsible for such recordation. This will help inform potential subsequent landowners of the existence and locations of these important historic features, avoid duplicitous archaeological surveys, and better ensure the protection of historic burials, sites, and resources in perpetuity.
- **Develop a more inclusive administrative consultation process that involves the Native Hawaiian community early and often during historic preservation review.** Inclusive consultation processes, clearly and consistently required under amended administrative rules, would appropriately allow Native Hawaiian cultural knowledge and perspectives to better inform historic preservation determinations, reduce the likelihood of late-stage community opposition to development projects, and improve trust among the Native Hawaiian community of the State's agencies, policies, and processes.

To best accomplish the intent of this measure and improve clarity, OHA respectfully recommends amending page 3, lines 16-21, to read as follows:

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

This resolution will express the Legislature's strong desire for SHPD to engage in long-awaited and much-needed administrative rulemaking that strengthens the state historic preservation review process and addresses priority focus areas of importance to the Native Hawaiian community, ultimately ensuring stronger, more consistent, and more appropriate protections for iwi kūpuna and Native Hawaiian cultural sites and historic resources, as otherwise envisioned under our constitution and laws.

For the reasons set forth above, OHA respectfully urges the Committees to **PASS SCR3**. Mahalo piha for the opportunity to testify on this important measure.

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
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

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committees on  
HAWAIIAN AFFAIRS  
and  
WATER and LAND**

**Thursday, February 6, 2020  
1:16 PM**

**State Capitol, Conference Room 016**

**In consideration of  
SENATE CONCURRENT RESOLUTION 3**

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

Senate Concurrent Resolution 3 requests the Department of Land and Natural Resources (Department) to adopt administrative rules that strengthen historic resource protections. **The Department offers comments on this resolution.**

Senate Concurrent Resolution 3 requests the Department to adopt administrative rules that strengthen historic resource protection. It also requests the Department undertake actions that are already underway with respect to rulemaking. Other parts of Senate Concurrent Resolution 3 requests the Department to adopt policy inconsistent with the express language of the statute.

The Department is currently in the process of drafting amendments to the administrative rules that include the standards of performance, accountability, compliance, and professional qualifications regarding the practice of archaeology in the State. All affected stakeholders, including Native Hawaiian Organizations will be consulted during the development of the rules amendments, and will, of course, also have the opportunity to participate in the public review of the rules are published for public comment.

The Department fully respects the significance and importance of all burial sites. It is the Department's view that Section 6E-43, Hawaii Revised Statutes (HRS), establishes a clear policy preference for protecting burials in place and only allowing relocation when preservation in place is not possible.

In accordance with the express language of the statute the various island burial councils have jurisdiction over all requests to preserve in place or relocate previously identified Native Hawaiian burial sites. The island burial councils have sole decision-making authority over previously identified Native Hawaiian burials. The Department has authority over all requests to preserve in place or relocate inadvertently discovered burial sites.

Section 6E-43, HRS, defines previously identified and inadvertently discovered burials. These terms are not defined by rule. Furthermore, it is the Department's view that there is real value in the distinction made between these two categories. Previously identified burials are identified either by reliable testimony about the presence of a burial site in at a particular location or through an archaeological inventory survey. They are known before the fact, and treatment decisions regarding them can be made with due deliberation by the burial council. Inadvertent discoveries can occur at any time, and must be dealt with promptly. Some do occur during construction; more often they are the result of erosion. When a burial is exposed as a result of, for example, winter storm beach erosion, waiting weeks for a burial council to make a decision about treatment of the burial is impractical.

In addition to defining inadvertent discoveries, Section 6E-43, HRS, also sets forth the procedures the Department follows for addressing them. These are not an artifact of the Department's rulemaking and can only be addressed by amendments to statute.

Thank you for the opportunity to comment on this measure.

TO: Senator Maile Shimabukuro, Chair  
Senator Kaiali'i Kahele, Vice Chair  
Senate Committee on Hawaiian Affairs

**SOCIETY FOR HAWAIIAN  
ARCHAEOLOGY**



Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Senate Committee on Water and Land

FROM: Angus Raff-Tierney, M.A., Legislative Committee Chair,  
Society for Hawaiian Archaeology  
angusrafftierney@yahoo.com

HEARING: February, 6 2020, 1:16 PM, Conference Room 016

SUBJECT: Testimony in **SUPPORT** of SCR3, Requesting the Department of Land and Natural Resources to Adopt Administrative Rules That Better Protect Iwi Kupuna and Native Hawaiian Cultural and Historic Resources

I am Angus Raff-Tierney, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, I am providing the following testimony in **SUPPORT** of SCR3 (Requesting the Department of Land and Natural Resources to Adopt Administrative Rules That Better Protect Iwi Kupuna and Native Hawaiian Cultural and Historic Resources).

The current Hawai'i Administrative Rules (HAR) have not been updated in over fifteen years, despite repeated calls to do so. There are numerous portions that provide incomplete, ineffective, or inadequate guidance on the historic review process. The problems with the HARs have caused significant confusion, litigation and the unnecessary destruction of irreplaceable cultural resources. During the revision process the revised HARs should go out for public comment.

Should the DLNR take on the necessary task of revising the HARs, we recommend reaching out to SHA and other organizations with expert knowledge of the subject. SHA has many members that have gained knowledge and perspective on the HARs through working with them on a professional basis for decades. Should you have any questions, please feel free to contact me at the above email. Mahalo for considering our testimony.

<https://hawaiianarchaeology.org/>

The Society for Hawaiian Archaeology is a registered tax-exempt organization established in 1980 to promote and stimulate interest and research in the archaeology of the Hawaiian Islands, encourage a more rational public appreciation of the aims and limitations of archaeological research, serve as a bond among those interested in Hawaiian archaeology, both professionals and non-professionals, and aid in directing their efforts into more scientific channels as well as encourage the publication of their results, advocate and assist in the conservation of archaeological data, discourage unethical commercialism in the archaeological field and work for its elimination.

# HISTORIC HAWAII FOUNDATION

**TO:** Kenekoa/Senator Maile S.L. Shimabukuro, Luna Ho‘omalu/Chair  
Kenekoa/Senator Kaiali‘i Kahele, Hope Luna Ho‘omalu/Chair  
Ke Kōmike Kuleana Hawai‘i / Committee on Hawaiian Affairs

Kenekoa Senator Kaiali‘i Kahele, Luna Ho‘omalu/Chair  
Kenekoa Senator Gilbert S.C. Keith-Agaran, Hope Luna Ho‘omalu/Chair  
Ke Kōmike no ka Wai a me ka ‘Āina / Committee on Water and Land

**FROM:** Kiersten Faulkner, Executive Director  
Historic Hawai‘i Foundation

**Committee:** Thursday, February 6, 2020  
1:16 p.m.  
Conference Room 016

**RE: SCR 3, Requesting the Department of Land and Natural Resources to Adopt Administrative Rules That Better Protect Iwi Kūpuna and Native Hawaiian Cultural and Historic Resources**

On behalf of Historic Hawaii Foundation, I am writing in **support for the intent of SCR 3**, with additional comments and recommendations. The Resolution urges DLNR and its Historic Preservation Division to update its rules related to administration of the review and compliance sections of HRS 6E.

## **INTERESTS OF HISTORIC HAWAII FOUNDATION**

Since 1974, Historic Hawai‘i Foundation (HHF) has been a statewide leader for historic preservation. HHF works to preserve Hawaii’s unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

## **PRESERVATION FRAMEWORK**

The Constitution of the State of Hawai‘i recognizes the value of conserving and developing the historic and cultural property within the State for the public good, and the Legislature has declared that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of its citizens.

In order to meet this mandate and to ensure that the historic and cultural resources of Hawai‘i are treated appropriately, it is necessary to have a framework based on criteria and standards to define and differentiate which properties are subject to the state’s historic preservation program and appropriate treatment of those properties.

Hawai‘i State Law (HRS §6E-2, §6E-8, §6E-10 and §6E-42) requires that prior to issuing any permit or land use approval for any project that affects a historic property, state and local jurisdictions shall refer the matter to the State Historic Preservation Division (SHPD) for review and comment. The referral applies to any property over 50 years old; SHPD’s review then establishes whether the property has historic significance and integrity that would make it eligible for the state register of historic places, following rules contained in HAR Title 13. Additional referrals and

reviews are associated with human burials and cultural or funerary objects, and with oversight and review of archaeological activities in the state.

The Administrative Rules were promulgated in 2002. Many things have changed in the past 18 years, including technology changes; greater community concern and awareness of effects on historic properties; a significant backlog in conducting inventory and survey projects to identify in advance those historic properties and districts; and issues with enforcement. Sections of the Rules are inconsistent, contradictory, obscure and confusing. There are both gaps and conflicts between sections. The result is frustrating for applicants, community groups and individuals concerned with the effect on historic properties and for reviewers.

## **RECOMMENDATIONS**

HHF agrees with the Resolution that it is necessary for DLNR to conduct a comprehensive review of the Administrative Rules that govern the historic preservation process, including both the review submittal and approval processes and the standards and criteria used to make determinations of effect and treatment of historic properties.

The Resolution implies that the rules would only apply to properties and/or projects associated with Native Hawaiian applicants or resources. However, we note that the Rules apply to all historic properties governed by HRS 6E, and not only those that are significant to Native Hawaiian communities. Indeed, HRS 6E and the implementing Rules apply to all property types associated with the history of Hawai'i and apply to all applicants that meet the thresholds for permitting or review.

It would be inappropriate to have separate rules based on the applicant rather than a uniform set of procedures, standards and review criteria. The Resolution should be amended to clarify this point.

In addition, HHF recommends that the Resolution be amended to include:

1. Direction to DLNR/SHPD to conduct a comprehensive review and amend the Administrative Rules related to:
  - a. governmental projects per HRS §6E-7 and §6E-8 (HAR 13-275);
  - b. review of private property per §6E-42 and §6E-10 (HAR 13-284);
  - c. burials and iwi kūpuna per §6E-43 (HAR 13-280, 13-283 and 13-300), and
  - d. archaeologists and archaeology (HAR 13-276; 13-277; 13-278; 13-279, 13-281 and 13-282).
  
2. The review and amendment of the Rules should be conducted with the advice and technical assistance of a steering committee(s) or task force(s) to include professionals with subject matter expertise and stakeholders with jurisdiction over projects that may affect historic properties as well as organizations and individuals with concern for the effect of projects on historic and cultural resources.

Thank you for the opportunity to comment.



**SCR-3**

Submitted on: 2/1/2020 4:27:48 PM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| cheryl              | Individual          | Support                   | Yes                       |

Comments:

Again, we see that we are asking the DLNR to better protect the iwi kupuna and Native Hawaiian Cultural and historic resources. Again, that's what we should do. In reality, we know that the DLNR acts in the interests of \$\$\$\$. IF it did not, we would not still be discussing a telescope on a Mauna. Hawai'i law has 8 criteria for a conservation land, they are not met. AND we all know what the Hawai'i Supreme Court ruled, "hey, it's already been desecrated once, what can it hurt to desecrate something again". When you think about your vote on this..and what you're asking the DLNR to do, keep the above in mind for our water, land, ocean, mountains. If the highest court in our islands states that.. then really, what does "to better" protect mean to the DLNR>

**SCR-3**

Submitted on: 1/31/2020 12:48:21 PM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Leimomi Khan        | Individual          | Support                   | No                        |

Comments:

**SCR-3**

Submitted on: 1/31/2020 1:59:06 PM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Richard Spacer      | Individual          | Support                   | No                        |

Comments:

Aloha Committee on Hawaiian Affairs and Committee on Water and Land.

I SUPPORT this resolution.

In Koolau, Kauai we have a historic, state-owned, ala loa trail that is not being protected by DLNR. Private land owners Patricia Hanwright (ahupua'a Kaakaaniu), Waioli Corporation (ahupua'a Lepeuli), and Mark Zukerberg (ahupua'a (Waipake, Pila'a), disregard the existence of this historic and cultural feature despite multiple letters from DLNR, the Attorney General, and OHA stating there is a trail owned in fee simple by the State of Hawaii in each of these properties. Despite this, we have letters from the Attorney General simultaneously stating the State of Hawaii owns the trail AND that they will do nothing about the trail. I would ask the bill be edited to require preservation of historic trails and enforcing public access to them. DLNR State Historic Preservation Division has been USELESS in protecting public trust and assisting the public in adding this trail to state inventory and enforcing public access rights we do have. Thank you.

**SCR-3**

Submitted on: 2/1/2020 6:58:09 AM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b>          | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|------------------------------|---------------------|---------------------------|---------------------------|
| Benton Kealii Pang,<br>Ph.D. | Individual          | Support                   | No                        |

Comments:

**SCR-3**

Submitted on: 2/1/2020 11:05:56 AM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Regina Gregory      | Individual          | Support                   | No                        |

Comments:

**SCR-3**

Submitted on: 2/2/2020 10:29:43 AM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| maelani Lee         | Individual          | Oppose                    | No                        |

Comments:

**SCR-3**

Submitted on: 2/2/2020 7:05:14 PM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Rhonda              | Individual          | Oppose                    | No                        |

Comments:

**SCR-3**

Submitted on: 2/3/2020 2:24:32 PM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Megan Fox           | Individual          | Support                   | No                        |

Comments:

Rules relating specifically to burials and iwi kupuna have not been updated in over 20 years - this is overdue.



## shimabukuro2 - Richard

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**From:** carol lee kamekona <hynmahi@yahoo.com>  
**Sent:** Monday, February 3, 2020 2:59 PM  
**To:** HWNTestimony  
**Subject:** Pass SCR3!

Aloha Committee: I STRONGLY SUPPORT SCR3, a measure in OHA's 2020 legislative package. This resolution urges the DLNR and SHPD to ensure that anticipated historic preservation rulemaking efforts better protect iwi kūpuna and Native Hawaiian cultural and historic resources. With SHPD finally acknowledging the necessity for at least some change to state historic preservation rules, I believe that a firm statement from the Legislature may be critical to ensuring that the rulemaking process reflects the urgency of this matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community. This will: Improve accountability for archaeologists who violate historic preservation; improve standards for archaeological inventory survey (AIS) survey methods; facilitate, not hamper, projects intended to rehabilitate, steward, or preserve burials, cultural sites, or other historic properties; reduce the inconsistencies in "previously identified" and "inadvertently discovered" burials. For these reasons, I respectfully urge the Committee to PASS SCR3. Mahalo piha for the opportunity to testify on this important measure. Sincerely,

Sent from my iPhone

## shimabukuro2 - Richard

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**From:** beccakamaka <beccakamaka@yahoo.com>  
**Sent:** Monday, February 3, 2020 2:55 PM  
**To:** HWNTestimony  
**Subject:** Pass SCR3!

Aloha Committee: I STRONGLY SUPPORT SCR3, a measure in OHA's 2020 legislative package. This resolution urges the DLNR and SHPD to ensure that anticipated historic preservation rulemaking efforts better protect iwi kūpuna and Native Hawaiian cultural and historic resources. With SHPD finally acknowledging the necessity for at least some change to state historic preservation rules, I believe that a firm statement from the Legislature may be critical to ensuring that the rulemaking process reflects the urgency of this matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community. This will: Improve accountability for archaeologists who violate historic preservation; improve standards for archaeological inventory survey (AIS) survey methods; facilitate, not hamper, projects intended to rehabilitate, steward, or preserve burials, cultural sites, or other historic properties; reduce the inconsistencies in "previously identified" and "inadvertently discovered" burials. For these reasons, I respectfully urge the Committee to PASS SCR3. Mahalo piha for the opportunity to testify on this important measure. Sincerely,  
Rebecca Kamakawiwoole  
45 404 Akimala St  
Kaneohe, Hawaii 96744

Sent from my T-Mobile 4G LTE Device

**SCR-3**

Submitted on: 2/4/2020 8:54:29 AM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Donna K Santos      | Individual          | Support                   | No                        |

Comments:

Aloha,

I am a Native Hawaiian from Kaua`i and I urge you to PASS SCR3 to help strengthen protection of our iwi kupuna and cultural sites.

Mahalo,

D. Kaliko Santos

**SCR-3**

Submitted on: 2/4/2020 10:18:54 AM

Testimony for HWN on 2/6/2020 1:16:00 PM

| Submitted By         | Organization | Testifier Position | Present at Hearing |
|----------------------|--------------|--------------------|--------------------|
| Rona Ikehara-Quebral | Individual   | Support            | No                 |

Comments:

**Testimony in SUPPORT of SCR3, Requesting the Department of Land and Natural Resources to Adopt Administrative Rules That Better Protect Iwi Kupuna and Native Hawaiian Cultural and Historic Resources**

Aloha Committee,

My name is Rona Ikehara-Quebral and I am providing the following testimony in SUPPORT of SCR3 (Requesting the Department of Land and Natural Resources to Adopt Administrative Rules That Better Protect Iwi Kupuna and Native Hawaiian Cultural and Historic Resources). I have been a professional archaeologist in Hawai'i for over 30 years, and advocate the protection and preservation of our island's dwindling cultural resources. I am also a member of Society for Hawaiian Archaeology (SHA), but am writing here as an individual concerned citizen.

This resolution urges the DLNR and SHPD to ensure that anticipated historic preservation rulemaking efforts better protect iwi kÅ«puna and Native Hawaiian cultural and historic resources. The current Hawai'i Administrative Rules (HAR) have not been updated in over fifteen years, despite repeated calls to do so. There are numerous portions that provide incomplete, ineffective, or inadequate guidance on the historic review process. The problems with the HARs have caused significant confusion, litigation and the unnecessary destruction of irreplaceable cultural resources. During the revision process, the revised HARs should go out for public comment. Should the DLNR take on the necessary task of revising the HARs, I recommend reaching out to SHA and other organizations with expert knowledge of the subject. SHA has many members who have gained knowledge and perspective on the HARs through their professional work in Hawai'i. I respectfully urge the Committee to **pass** SCR3. Mahalo for this opportunity to provide testimony on this important measure.

Please feel free to contact me by telephone at (808) 946-2548 ext. 103 or by e-mail at [rikehara@iarii.org](mailto:rikehara@iarii.org) if you have any questions.

Kind Regards,

Rona Ikehara-Quebral, Ph.D.

International Archaeological Research Institute, Inc.

## shimabukuro2 - Richard

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**From:** Armance Flores <paka\_ivy@hotmail.com>  
**Sent:** Tuesday, February 4, 2020 9:09 AM  
**To:** HWNTestimony  
**Subject:** Pass SCR3!

Aloha Committee: I STRONGLY SUPPORT SCR3, a measure in OHA's 2020 legislative package. This resolution urges the DLNR and SHPD to ensure that anticipated historic preservation rule-making efforts better protect iwi kūpuna and Native Hawaiian cultural and historic resources. With SHPD finally acknowledging the necessity for at least some change to state historic preservation rules, I believe that a firm statement from the Legislature may be critical to ensuring that the rule-making process reflects the urgency of this matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community. This will: Improve accountability for archaeologists who violate historic preservation; improve standards for archaeological inventory survey (AIS) survey methods; facilitate, not hamper, projects intended to rehabilitate, steward, or preserve burials, cultural sites, or other historic properties; reduce the inconsistencies in "previously identified" and "inadvertently discovered" burials. For these reasons, I respectfully urge the Committee to PASS SCR3. Mahalo piha for the opportunity to testify on this important measure.

Sincerely,  
Armance Flores

## shimabukuro2 - Richard

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**From:** THE808PEOPLE :D <dvierra22@gmail.com>  
**Sent:** Monday, February 3, 2020 6:59 PM  
**To:** HWNTestimony  
**Subject:** Pass SCR3!

Aloha Committee: I STRONGLY SUPPORT SCR3, a measure in OHA's 2020 legislative package. This resolution urges the DLNR and SHPD to ensure that anticipated historic preservation rulemaking efforts better protect iwi kūpuna and Native Hawaiian cultural and historic resources. With SHPD finally acknowledging the necessity for at least some change to state historic preservation rules, I believe that a firm statement from the Legislature may be critical to ensuring that the rulemaking process reflects the urgency of this matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community. This will: Improve accountability for archaeologists who violate historic preservation; improve standards for archaeological inventory survey (AIS) survey methods; facilitate, not hamper, projects intended to rehabilitate, steward, or preserve burials, cultural sites, or other historic properties; reduce the inconsistencies in "previously identified" and "inadvertently discovered" burials. For these reasons, I respectfully urge the Committee to PASS SCR3. Mahalo piha for the opportunity to testify on this important measure. Sincerely,

Sent from my iPhone

## shimabukuro2 - Richard

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**From:** Heide Kila <hkila@icloud.com>  
**Sent:** Monday, February 3, 2020 10:10 PM  
**To:** HWNTestimony  
**Subject:** Pass SCR3!

Aloha Committee: I STRONGLY SUPPORT SCR3, a measure in OHA's 2020 legislative package. This resolution urges the DLNR and SHPD to ensure that anticipated historic preservation rulemaking efforts better protect iwi kūpuna and Native Hawaiian cultural and historic resources. With SHPD finally acknowledging the necessity for at least some change to state historic preservation rules, I believe that a firm statement from the Legislature may be critical to ensuring that the rulemaking process reflects the urgency of this matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community. This will: Improve accountability for archaeologists who violate historic preservation; improve standards for archaeological inventory survey (AIS) survey methods; facilitate, not hamper, projects intended to rehabilitate, steward, or preserve burials, cultural sites, or other historic properties; reduce the inconsistencies in "previously identified" and "inadvertently discovered" burials. For these reasons, I respectfully urge the Committee to PASS SCR3. Mahalo piha for the opportunity to testify on this important measure. Sincerely, Heide kila

Sent from my iPhone



## shimabukuro2 - Richard

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**From:** leolani <leolani5523@yahoo.com>  
**Sent:** Monday, February 3, 2020 10:17 PM  
**To:** HWNTestimony  
**Subject:** Pass SCR3!

Aloha Committee: I STRONGLY SUPPORT SCR3, a measure in OHA's 2020 legislative package. This resolution urges the DLNR and SHPD to ensure that anticipated historic preservation rulemaking efforts better protect iwi kūpuna and Native Hawaiian cultural and historic resources. With SHPD finally acknowledging the necessity for at least some change to state historic preservation rules, I believe that a firm statement from the Legislature may be critical to ensuring that the rulemaking process reflects the urgency of this matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community. This will: Improve accountability for archaeologists who violate historic preservation; improve standards for archaeological inventory survey (AIS) survey methods; facilitate, not hamper, projects intended to rehabilitate, steward, or preserve burials, cultural sites, or other historic properties; reduce the inconsistencies in "previously identified" and "inadvertently discovered" burials. For these reasons, I respectfully urge the Committee to PASS SCR3. Mahalo piha for the opportunity to testify on this important measure. Sincerely,

## shimabukuro2 - Richard

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**From:** Mark Hyde <HYDEM001@hawaii.rr.com>  
**Sent:** Tuesday, February 4, 2020 10:46 AM  
**To:** HWNTestimony  
**Subject:** Support SCR3

I SUPPORT SCR3, a measure in OHA's 2020 legislative package. This issues addressed in this bill have been begging for attention and resolution for years. This is a good fix.

Mark Hyde  
individually and as President of South Maui Citizens for Responsible Growth, a Hawaii nonprofit corporation  
4320 E. Waiola Loop  
Kihei, Hawaii 96753

**SCR-3**

Submitted on: 2/4/2020 10:10:31 PM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b>        | <b>Organization</b>                | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|----------------------------|------------------------------------|---------------------------|---------------------------|
| Trisha Kehaulani<br>Watson | Testifying for Honua<br>Consulting | Comments                  | No                        |

Comments:

Dear Chairs Shimabukuro and Chair Kahele,

I am writing to provide comments on the SCR. While well-intentioned, the language of the bill indicates a certain lack of understanding as to the field of historic preservation. While additional administrative rules may resolve some of the described problems, the larger issue is with the general field of archaeology, in which Native Hawaiian professionals are considerably under-represented.

Requiring new rules will only over-burden SHPD and it will not make firms more sensitive to Hawaiian issues. We urge the drafters of this bill to work with Native Hawaiian professionals and SHPD to craft a resolution that meets their goals.

Thank you,

Trisha Kehaulani Watson, JD, PhD

February 5, 2020

Hawaii State Legislature  
HEARING: February, 6 2020, 1:16 PM, Conference Room 016

**SUBJECT: Testimony in SUPPORT of SCR3, Requesting the Department of Land and Natural Resources to Adopt Administrative Rules That Better Protect Iwi Kupuna and Native Hawaiian Cultural and Historic Resources**

Aloha Committee,

I am a professional archaeologist with over 20 years of experience in Hawai'i. I support SCR3. As noted in the resolution, an evaluation of, and updates to, the HAR that guide historic preservation actions are overdue. In addition to the items specified in the resolution, a thorough review of the HAR should entail consideration of revisions to certain "best practices" for archaeological fieldwork, laboratory analyses, and reporting; during the past two decades substantial advances have been made in methods of data generation and analyses, which are not reflected in the current HAR. Further, revised HAR could provide a coherent framework for addressing substantive research issues to elucidate Hawai'i's rich past in a way that values input from the Hawaiian community, other community members, and archaeologists.

Thank you,

Tim Rieth, M.A.  
Manager & Principal Investigator  
International Archaeological Research Institute, Inc.

**SCR-3**

Submitted on: 2/5/2020 10:04:27 AM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Noalani Nakasone    | Individual          | Support                   | No                        |

Comments:

Mahalo from Kauai!

**SCR-3**

Submitted on: 2/5/2020 11:18:09 AM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b> | <b>Organization</b>                                               | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|-------------------------------------------------------------------|---------------------------|---------------------------|
| Kalena Blakemore    | Testifying for Hawaii Island Burial Council - Puna Representative | Support                   | No                        |

Comments:

I strongly support this resolution! Please see it through.

Me ke aloha pumehana,

Kalena K. Blakemore

Testimony of Carmen Hulu Lindsey

Before the Joint House Committee on Hawaiian Affairs and Committee on Water and Land

Thursday, February 6, 2020

1:16 P.M.

State Capitol, Conference Room 016

In consideration of

**SENATE CONCURRENT RESOLUTION 3**

**REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ADOPT  
ADMINISTRATIVE RULES THAT BETTER PROTECT IWI KŪPUNA AND NATIVE HAWAIIAN  
CULTURAL AND HISTORICAL RESOURCES**

Aloha e Chair Shimabukuro and Chair Kahele:

My name is Carmen Hulu Lindsey and I am writing in **STRONG SUPPORT** of SCR3, which establishes and enhances enforcement mechanisms to meaningfully deter violations of state historic preservation laws and better protect culturally invaluable historic sites and burials. This resolution would allow the Department of Land and Natural Resources (DLNR) and its State Historic Preservation Division (SHPD) to engage in long-awaited and much needed administrative administrative rulemaking that will better protect iwi kūpuna and cultural sites in the state historic preservation review process.

Iwi kupunā are “a metaphor for the sacred bond of place and family, of mortal strength[,] and sacred power.” By ensuring that iwi are not disturbed in their resting places and by reintering iwi that have been distrubed, Kānaka Maoli seek to strengthen their ancestral foundation, maintain the interdependence between past and present, and reinfuse the land with spiritual power essential to sustain past, present, and future generations. The Hawai‘i Historic Preservation Law, codified in HRS Chapter 6E, was enacted to ensure that historic sites and archaeological resources are given appropriate consideration when they may be impacted by development activities. SHPD was established to administer the law and “provide leadership in preserving, restoring, and maintaining historic and cultural property” for future generations. The historic preservation review process identifies significant historic resources, including iwi kūpuna and burial sites, so that plans for their protection may be established prior to the commencement of ground-disturbing work or construction activity. In particular, it provides a process by which certain county permit applications (e.g. grading, construction permits) can be vetted for potential impacts to iwi kūpuna and other archaeological and historical sites. When potential impacts to iwi or sites are found, an Archaeological Inventory Survey (AIS) can provide additional and critical information about the historic resources, sites, and iwi, and help developers, decisionmakers (including the appropriate island burial council), and the community make well-informed decisions about preservation and protection measures.

Over the years, the Office of Hawaiian Affairs’ (OHA) compliance division has chronicled and commented on persistent procedural inconsistencies relating to the identification and protection of iwi kūpuna and burial sites, which have led to inconsistent and inadequate protection for iwi kūpuna. Concerns about SHPD were also noted by a 2010 review of the Hawai‘i SHPD by the

National Park Service, who found significant operational problems with the division. Despite the apparent need for greater regulatory guidance to address these issues, no rule amendments have been made to the administrative rules for burial sites, iwi kūpuna, or archaeological/historical sites and resources for many years. Specifically, there have also not been any updates to the administrative rules relating to the protection of iwi kupuna and burial sites for over 23 years, and the protection of archaeological/historical resources and sites for over 16 years.

Additionally, the historic preservation review process has been undermined by weak enforcement provisions. One issue of great concern is SHPD's inability to investigate or take enforcement action against potential impacts to iwi kūpuna or historic sites from unpermitted grading or construction activities. Since such activities are not accompanied by a county permit application, they do not undergo the historic preservation review process, which might otherwise protect iwi or historic sites through appropriate assessment, consultation, and planning. Moreover, in such instances, SHPD is often unable to take enforcement action for the destruction of iwi or historic sites, due to the loss of necessary evidence. The lack of enforcement and penalties for unpermitted work can even create a financial incentive for some landowners and contractors to evade the historic preservation process and "build first, ask permission later."

However, this resolution seeks to prevent historic preservation review evasion. The survival of the few remaining Native Hawaiian historic resources, historic sites, and burials relies on a robust and well-enforced historic preservation review process. This measure will reinforce the historic review process and encourage compliance with existing historic preservation laws by:

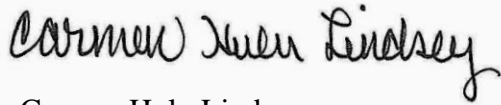
- Establishing, as a standalone violation, any unpermitted or unauthorized activities that would have triggered state historic preservation review;
- Allowing SHPD to issue stop work orders or stop the issuance of development-related permits for any parcel where unpermitted activities have occurred, unless and until a site inspection is conducted to identify any evidence of potential impacts to iwi kūpuna or historic sites, as well as mitigation measures to address such impacts;
- Creating a process to reclassify "inadvertently discovered" burials as "previously identified" burials, especially where burials are discovered during exploratory testing or where burials are found in concentrations;
- Empowering the Island Burial councils and providing the councils with stronger and periodic training on their statutory and administrative authorities and responsibilities;
- Holding landowners and contractors responsible for all assessment and mitigation costs;
- Requiring the establishment of a citizen complaint hotline and process;
- Requiring the posting of notice at worksites regarding iwi kūpuna and historic preservation laws, and informing workers and the public of the citizen complaint process;
- Requiring SHPD to maintain and publish a list of violators to inform other state agencies of whom they are restricted from contracting with;
- Increasing the maximum fines for violations for the first time in over 15 years, from \$10,000 to \$25,000 per violation; and
- Amending the historic preservation special fund, which collects historic preservation



- fines and fees, to explicitly allow fund monies to be dedicated toward enforcement-related activities.

After centuries of desecration of iwi kūpuna and their resting places, it is important for DLNR and SHPD to engage in critical rulemaking that will enforce and add to the legal framework meant to protect our iwi kūpuna.

Mahalo for your time and consideration,

A handwritten signature in black ink that reads "Carmen Hulu Lindsey". The signature is written in a cursive style with a large, looped initial "C".

Carmen Hulu Lindsey

## shimabukuro2 - Richard

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**From:** Eileen Rodrigues <keonabear@icloud.com>  
**Sent:** Tuesday, February 4, 2020 5:47 PM  
**To:** HWNTestimony  
**Subject:** Pass SCR3!

Aloha Committee: I STRONGLY SUPPORT SCR3, a measure in OHA's 2020 legislative package. This resolution urges the DLNR and SHPD to ensure that anticipated historic preservation rulemaking efforts better protect iwi kūpuna and Native Hawaiian cultural and historic resources. With SHPD finally acknowledging the necessity for at least some change to state historic preservation rules, I believe that a firm statement from the Legislature may be critical to ensuring that the rulemaking process reflects the urgency of this matter, and on the need to comprehensively address the longstanding concerns of the Native Hawaiian community. This will: Improve accountability for archaeologists who violate historic preservation; improve standards for archaeological inventory survey (AIS) survey methods; facilitate, not hamper, projects intended to rehabilitate, steward, or preserve burials, cultural sites, or other historic properties; reduce the inconsistencies in "previously identified" and "inadvertently discovered" burials. For these reasons, I respectfully urge the Committee to PASS SCR3. Mahalo piha for the opportunity to testify on this important measure. Sincerely,

Sent from my iPhone

**SCR-3**

Submitted on: 2/5/2020 2:15:05 PM

Testimony for HWN on 2/6/2020 1:16:00 PM

| <b>Submitted By</b>      | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|--------------------------|---------------------|---------------------------|---------------------------|
| Sage-Lee Medeiros-Garcia | Individual          | Support                   | No                        |

Comments: