

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-275
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-275, Hawaii Administrative Rules, entitled "Rules Governing Procedures for Historic Preservation Review for Governmental Projects Covered Under Sections 6E-7 and 6E-8, HRS", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 275

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION
REVIEW FOR GOVERNMENTAL PROJECTS COVERED UNDER
SECTIONS 6E-7 AND 6E-8, HRS

§13-275-1	Purpose, applicability, and participants
§13-275-2	Definitions
§13-275-3	Obtaining a determination letter; generally
§13-275-4	Fees
§13-275-5	Identification and inventory of historic properties
§13-275-6	Evaluation of significance
§13-275-7	Determining effects to significant historic properties
§13-275-8	Mitigation
§13-275-9	Verification of completion of the detailed mitigation plan
§13-275-10	Conclusion of the historic preservation review process
§13-275-11	Reconsideration of findings after the process is closed
§13-275-12	Discovery of previously unknown historic properties during implementation of a project
§13-275-13	Emergency projects
§13-275-14	Penalty

§13-275-1 Purpose, applicability, and participants. (a) The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of Hawaii by presenting a historic preservation review process for state and county projects. The review process is designed to

identify significant historic properties in project areas and then to develop and execute plans to handle impacts to the significant historic properties in the public interest. The process supports the policy of chapter 6E, HRS, to preserve, restore, and maintain historic properties for future generations.

(b) This chapter applies to all state or county agencies funding or directly undertaking a project, or having a project undertaken on lands under its ownership or control which may affect historic properties, or by a state agency transferring any land under its jurisdiction which may contain historic properties. Any proposed project which may affect a historic property shall not be commenced, or, in the event it has already begun, continued, until DLNR, as represented by SHPD, shall have given its written concurrence. This chapter itemizes the process to obtain concurrence.

(c) Participants in the historic preservation review process.

- (1) The primary participants in the process are DLNR, represented by the SHPD, and the agency with jurisdiction over the project. The agency has responsibility for complying with the historic preservation review process. The agency may have others prepare the review process items.
- (2) Interested persons are those organizations and individuals that are concerned with the effect of a project on historic properties. Provisions in these rules enable interested persons to participate in the process.
[Eff] (Auth: HRS §6E-3)
(Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the identification and documentation of archaeological historic properties and burial sites in a delineated

area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the identification and documentation of architectural historic properties in a delineated area and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the agency.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic documentation plan, a historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Determination letter" means the SHPD's written response which either concurs or does not concur with an agency's proposed project.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information about a significant historic property, through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the identification and documentation of historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Hawaii historic places review board" means the governor appointed board established by section 6E-5.5, HRS.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the State or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the State or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsections 13-275-6(b) or 13-284-6(b).
 "State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
 [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-3 Obtaining a determination letter; generally. (a) For the department to provide a letter of determination, an agency proposing a project which may have an effect upon historic properties shall notify the department of the proposed project and request a letter of determination. Upon the request of the department, the agency shall provide the department with information as to the number of historic properties within a proposed project area, their significance, the impact of the proposed project on the historic properties, and any proposed mitigation measures. Upon receipt of adequate information the department will provide a determination letter within ninety days. Any agency involved in the historic preservation review process shall consult and obtain the written approval of the SHPD at each step of the review. Once concurrence is received, the agency may begin the project. In cases where interim protection plans are adequately in place or data recovery fieldwork has been adequately completed, a determination letter may be issued.

(b) The review steps, to be described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments, committing to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and

(6) Verification of completion of detailed mitigation plan.

(c) Documents for review steps one through four shall be submitted concurrently.

(d) A receipt date will be stamped on all review documents received by the SHPD.

(e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this chapter, or by a mutually agreed upon date. Copies of SHPD written comments will also be sent to any interested persons who have expressed concerns with the project by that point in the process. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to concur with the agency's submittal.

(f) The SHPD shall consider interested persons' comments on any submittals' acceptability in accordance with this chapter and chapters 13-276 through 13-283. Comments must be submitted in writing to the SHPD within thirty days of the SHPD's posting a notice of "no historic properties affected" determination or posting a notice of SHPD receipt of information. The SHPD shall post notice every Friday of receipt of relevant documents and of issuance of SHPD "no historic properties affected" or receipt of information. The notice shall be posted at the SHPD office and on the SHPD's website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons shall contact the SHPD to obtain copies of this notice, or to find locations of documents, should they wish to review them.

(g) If the agency or interested persons disagree with the accuracy of the SHPD's determination and if disagreements cannot be resolved through meetings with the SHPD, an appeal may be made to the Hawaii historic places review board within thirty days of the SHPD's determination letter. An appeal is initiated by a written request to the Hawaii historic places review board to appeal a SHPD determination.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8)

§13-275-4 Fees. (a) The division may require a \$25 filing fee per request for a determination letter.

In addition, filing fees will be charged for the following:

- (1) \$50 for an archaeological assessment report;
- (2) \$150 for an archaeological inventory survey plan;
- (3) \$450 for an archaeological, architectural or ethnographic inventory survey report;
- (4) \$150 for a preservation plan;
- (5) \$25 for a monitoring plan;
- (6) \$150 for an archaeological data recovery plan;
- (7) \$250 for a burial treatment plan;
- (8) \$100 for a monitoring report, if resources are reported;
- (9) \$450 for an archaeological data recovery report;
- (10) \$450 for an ethnographic documentation report;
- (11) \$25 for a burial disinterment report; and
- (12) \$50 for an osteological analysis report.

(b) Preservation plans submitted to the division for review will be charged for each of the above plans they contain.

(c) Reports or plans submitted to the SHPD for review shall be accompanied by the appropriate fee. Reports or plans will not be considered received or reviewed, until the filing fees are paid.

(d) No fee will be charged for the review of any revisions to a previously submitted plan or report.

(e) All fees shall be payable to the Hawaii historic preservation special fund.

[Eff] (Auth: HRS §§6E-3, 6E-16)
(Imp: HRS §§6E-3, 6E-16)

§13-275-5 Identification and inventory of historic properties. (a) The agency shall be responsible for determining whether historic properties are present in the project area and, if so, to properly identify and inventory the properties.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel or parcels involved and a map shall be submitted to the SHPD to locate and define the boundaries of the project area. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating

request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present then the SHPD will make this determination in the form of a "no historic properties affected" letter within thirty days of receipt of the request.
- (2) Alternatively, the agency can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting any land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days of receipt of the request.
 - (A) If the SHPD agrees that no significant historic properties are present, then the SHPD shall issue a written concurrence to the agency in the form of a "no historic properties affected" determination and historic preservation review ends; or
 - (B) If the SHPD does not find the documentation satisfactory, then a letter shall be sent to the agency specifying why. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey, whichever is required.
- (3) The SHPD will make all "no historic properties affected" determinations available to interested persons by posting notice every Friday of all such determinations either at the SHPD office or on the SHPD website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. Should historic properties be reported to the

- SHPD during these thirty days the SHPD may reconsider its concurrence under the provisions of section 13-275-11.
- (4) If the SHPD determines that an adequate survey exists and that historic properties are present, then the agency shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to section 13-275-6.
 - (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD will indicate which category or combination of categories is needed.
 - (A) An archaeological inventory survey may be undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. An archaeological permit, issued by the SHPD, as set forth in chapter 13-282, is required for this survey and any lesser level of archaeological survey work. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in chapter 13-281. Results of the survey shall be reported either through an archaeological assessment, if no sites were found, or an archaeological survey report which meets the minimum standards set forth in chapter 13-276. An archaeological assessment shall include the information on the property and the survey methodology as set forth in subsections 13-276-5(a) and (c), as well as a brief background section discussing the former landuse and types of sites that might have been previously present.
 - (B) An ethnographic survey may be undertaken when the SHPD concludes that historic

properties which may be significant under criterion "e" of paragraph 13-275-6(b)(5) are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in chapter 13-281.

- (C) An architectural inventory survey may be undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Information shall be of sufficient quality to either complete a National Register of Historic Places nomination form, or have SHPD agree it provides an adequate basis for making historic preservation decisions. The survey must be directed by a qualified historian, architect or architectural historian who meets the qualifications set forth in chapter 13-281.

(c) Should the SHPD believe unusual archaeological conditions may be present in a project area, such as the presence of paleo-environmental materials or historic archaeology, the division may require an inventory plan be submitted for approval prior to the undertaking of any inventory survey work. This plan shall include, but not be limited to:

- (1) All the information required in subsections 13-276-5 (a) and (b) which identifies the project area, identifies the project owner, describes the environment, provides the results of background research, as appropriate, and reviews any relevant prior archaeological studies.
- (2) A research design for the identification of historic properties within the project area. This would be a section on the methods to be used in the archaeological field survey which shall include:

- (A) The names and qualifications of the principal investigator;
 - (B) The anticipated number of field personnel, and any specialized qualifications which they might possess;
 - (C) The anticipated duration of time for the survey;
 - (D) The extent of survey coverage, as appropriate. If the coverage is to be less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which include analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
 - (E) A discussion of any factors which might limit the survey effort, if appropriate;
 - (F) The techniques to be used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
 - (G) The anticipated extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques to be used, with the rationale for these techniques given, if appropriate; and
 - (H) The method to be used to plot site location, if appropriate.
- (3) Information obtained through the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals. This section would include all the information required in subsection 13-276-5(g).
- (d) If an inventory plan is required, once it is completed, one copy of the inventory plan shall be submitted to the SHPD for review. The plan shall meet the above requirements. The SHPD shall inform the agency within thirty days of receipt of the plan if the information contained in the plan is adequate or inadequate.
- (1) Any interested persons may comment on the plan. Comments must be submitted in writing to the SHPD within thirty days of the SHPD

posting notice of the receipt of the plan. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD may reconsider its determination under the provisions of section 13-275-11.

- (2) If the SHPD determines that the plan is inadequate, then a letter shall be sent to the agency stating why the plan is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (3) If the SHPD finds the plan adequate, then the agency will be sent a written notice of acceptance.

(e) If an inventory survey is needed, once it is completed, one copy of the inventory survey report or, if appropriate, an archaeological assessment shall be submitted to the SHPD for review. The report shall meet the requirements noted in chapter 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the requirements to complete a National Register of Historic Places nomination form or forms for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report will include a summary of the consultation. The SHPD shall inform the agency within forty five days of receipt of the report or archaeological assessment if the information contained in the report or archaeological assessment is adequate or inadequate.

- (1) Any interested persons may comment on the survey report or archaeological assessment. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the report or assessment. The SHPD shall take all comments into consideration when issuing its determination letter. In the event comments are received after the issuance of the determination letter, the SHPD may reconsider its determination under the provisions of section 13-275-11.

- (2) If the SHPD determines that the survey, report, or assessment is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the agency stating why the inventory survey is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (3) If the SHPD finds the report or archaeological assessment adequate, then the agency will be sent a written notice of acceptance. Once the survey report or archaeological assessment is accepted, seven copies of the report or assessment shall be provided by the agency to the following repositories: two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office's library, one copy shall be sent to the University of Hawaii at Manoa Hamilton Library Pacific Collection, one copy shall be sent to the Bishop Museum library, one copy shall be sent to the University of Hawaii at Hilo library, one copy shall be sent to the Maui Community College library, and one copy sent to the Kauai Community College library.

(f) If the SHPD gives the archaeological assessment or report final acceptance and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written concurrence to the project in the form of a "no historic properties affected" determination.

(g) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff] (Auth: HRS §§6E-3, 6E-7, 6E-8) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this assessment or delegate this assessment, in

writing, to the SHPD. This information shall be submitted in the survey report, if historic properties were found through the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criterion:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction, represent the work of a master, or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or
- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with ethnic organizations or members of the ethnic group for whom some of the historic properties may have significance under criterion "e" to seek their views on the significance evaluations. For native Hawaiian properties which may have significance under criterion "e" the Office of Hawaiian Affairs also shall be consulted.

(d) Significance assessments shall be submitted to the SHPD for review. The concurrence of the SHPD is required before significance is finalized. The SHPD shall agree or disagree with the significance evaluations within forty five days of receipt of the significance evaluations.

- (1) The assessment shall:
 - (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property;
 - (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites; and
 - (C) Provide evidence of any consultation shall be submitted with the assessment, to include:
 - (i) A description of the consultation process used;
 - (ii) A list of the individuals or organizations contacted; and
 - (iii) A summary of the views and concerns expressed.
- (2) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the significance of a historic property, a letter shall be sent to the agency presenting the SHPD's findings. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.
- (3) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the agency. Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.
- (e) If there is an agreement that none of the historic properties are significant, then historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no historic properties affected" determination. When significant historic properties are present, then impacts of the proposed action on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff: _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-7 Determining effects to significant historic properties. (a) The effects or impacts of a project on significant properties shall be determined by the agency. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No historic properties affected". The project will have no effect on significant historic properties; or
- (2) "Effect, with proposed mitigation commitments". The project will affect one or more significant historic properties, and the effects will be potentially harmful. However, the agency has proposed mitigation commitments involving one or more forms of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction.

(c) Effect determinations shall be submitted to SHPD for review and approval. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood.

- (1) If the SHPD disagrees with the effect determinations, a letter that specifies the disagreements shall be sent within forty five days of SHPD receipt of the effect determinations. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the effect determinations.
- (2) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within forty five days of SHPD receipt of the effect determinations.

(d) No historic properties affected determinations for architectural properties shall be expedited when the SHPD agrees with the agency that minor changes to a building or structure will not affect its significant character. Because these changes are typically non-controversial and require

prompt processing, the SHPD shall write its concurrence as a "no historic properties affected" determination.

- (1) The SHPD shall post notifications of any such "no historic properties affected" determinations every Friday either at the SHPD office or on the SHPD website. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following working day.
- (2) Interested persons have the opportunity to comment on such determinations within thirty days. At the end of thirty days if objections to the minor changes to the properties are submitted, the SHPD may reconsider its findings under the provisions of section 13-275-11.

(e) When the SHPD agrees that the action will not affect any significant historic properties, this is the SHPD's written concurrence and historic preservation review ends. If the project will have an "effect, with proposed mitigation commitments", then mitigation commitments and detailed mitigation plans shall be developed by the agency and approved by SHPD, as discussed in the following section.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the agency to the SHPD for review and approval.

- (1) Mitigation can occur in five forms.
 - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use.
 - (B) Architectural recordation, which involves the photographic documentation and possibly the measured drawing of a building, structure or object prior to its alteration or destruction.

- (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its alteration or destruction. Data recovery may include archaeological mapping, surface collection, excavation, monitoring, laboratory analyses, and interpretive analyses.
 - (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
 - (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
- (2) If properties with significance, so evaluated under criterion "e", as defined in paragraph 13-275-6(b)(5), are involved, the agency shall consult with ethnic organizations or members of the ethnic group for whom the historic properties have significance under criterion "e" to seek their views on the proposed forms of mitigation. For native Hawaiian properties deemed significant under paragraph 13-275-6(b)(5) the Office of Hawaiian Affairs also shall be consulted.
- (3) The proposed mitigation commitment shall include:
- (A) A table of the significant historic properties, indicating which form or forms of mitigation is proposed for each property--preservation, archaeological data recovery, architectural documentation, historical documentation, or ethnographic documentation;
 - (B) Brief text justifying these proposed treatments. Similar sites can be discussed together in this justification; and

(C) If properties deemed significant under paragraph 13-275-6(b)(5) are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.

(b) If the proposal is not acceptable, SHPD shall send a letter outlining needed changes or a determination letter not concurring with the project, within forty five days of SHPD receipt of the mitigation commitments. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within forty five days of SHPD receipt of the mitigation commitments.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for native Hawaiian burials, following section 6E-43, HRS, and section 13-300-33.

(e) Should either the agency or any interested person disagree with the SHPD's determination letter, the disagreeing party shall within thirty days of the determination letter submit in writing a request for the Hawaii historic places review board to hold a non-judicial appeal hearing in accordance with chapter 91. The intent of the appeal hearing is to provide an informal fact-finding process, characterized by great latitude, in which all parties have ample opportunity to present information to the Hawaii historic places review board for consideration, and answer any questions the review board may have. The request for an appeal hearing shall include:

- (1) A statement indicating which step in the process the appellant believes is in error;
- (2) Information to support the appellant's position; and
- (3) Any other information, including legal memoranda, the appellant may wish the review board to read prior to the hearing.

(f) The review board shall schedule an appeal hearing to be held within thirty days of receipt of the appeal request. The hearing process will proceed in the following manner:

- (1) The review board shall receive testimony from the SHPD on the basis of its determination letter;
- (2) The appellant will present its basis for appealing the SHPD determination letter;
- (3) Thereafter, the review board will hear and receive testimony from any other interested persons or agencies;
- (4) The review board may ask questions of those testifying before it; and
- (5) Once the review board has reviewed all the written and oral testimony, it will render a decision regarding the appeal within fifteen days of the conclusion of the hearing.

(g) Should either the agency or any interested person be dissatisfied with the decision of the review board, they may within thirty days of the review board decision apply to the governor to take action as the governor deems best in overruling or sustaining the department.

(h) After mitigation commitments are accepted by SHPD, the agency shall provide detailed plans for the mitigation work for SHPD review and approval. The approved plans shall serve as scopes of work for mitigation.

- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in chapter 13-278. Qualifications of the principal investigator directing this work shall comply with chapter 13-281. An archaeological permit from the SHPD is required to undertake this work, as provided in chapter 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with chapter 13-279. Qualifications of the principal investigator directing the monitoring shall comply with chapter 13-281.
- (2) Architectural recordation plans shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications. Qualifications for the historian, architect, or architectural historian directing this work shall comply with chapter 13-281.

- (3) Historical data recovery plans shall conform to SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with chapter 13-281.
- (4) Ethnographic documentation plans shall conform to SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with chapter 13-281.
- (5) Preservation plans shall meet the minimal standards as provided by chapter 13-277 and the Secretary of the Interior's standards for historic preservation projects for architectural properties. If preservation plans involve historic properties deemed significant under paragraph 13-275-6(b)(5), the agency shall consult with interested individuals and organizations of the relevant cultural group with which the properties are associated. For native Hawaiian properties deemed significant under paragraph 13-275-6(b)(5) the Office of Hawaiian Affairs also shall be consulted. The plans shall describe the consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.
- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
- (7) If a detailed mitigation plan is not acceptable, SHPD shall send a letter outlining needed changes, within forty five days of SHPD receipt of the plan. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the plan.
- (8) If the detailed mitigation plan is acceptable, the SHPD shall send a letter of agreement within forty five days of receipt of the plan. Once a plan is accepted, work can then proceed on the plan.

- (9) If unmarked burials are involved, the detailed mitigation plan must be covered under a burial treatment plan, as specified in chapter 13-300. This treatment plan can serve as the burial site component of an archaeological data recovery plan (in cases of disinterment and reinterment elsewhere) or of a preservation plan.
[Eff] (Auth: HRS §6E-3)
(Imp: HRS §§6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-9 Verification of completion of the detailed mitigation plan. (a) Once the detailed mitigation plans are carried out, a request for verification shall be submitted by the agency to the SHPD. This request shall document completion of the detailed mitigation plans' tasks--usually in the form of a completion report, with one copy submitted. For archaeological data recovery, a data recovery report that meets the minimum standards set forth in chapter 13-278 shall be submitted to SHPD for review and approval.

(b) If the SHPD disagrees that the work has been successfully completed, it shall send a letter noting uncompleted tasks or inadequately completed tasks within forty five days of receipt of the request. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(c) If the SHPD agrees that the work has been successfully concluded, SHPD shall send a verification letter within forty five days and the historic preservation process is concluded.

(d) In cases involving preservation, archaeological data recovery, or architectural recordation, the agency has the option to request an accelerated, two step verification, understanding that construction projects often need to proceed rapidly and that a completion report is often finished months after fieldwork is completed.

- (1) Step 1. The agency shall submit documentation to the SHPD indicating that data recovery fieldwork, architectural recordation, or interim protection measures for properties to be preserved have been successfully completed. The SHPD writes a

letter within thirty days to the agency agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the agency indicating what needs to be completed. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the documentation.

- (2) Step 2. The agency shall submit to the SHPD a completion report for the data recovery work, architectural recordation, or final preservation work. The SHPD shall write a letter to the agency within thirty days stating the completion report is acceptable and that the historic preservation process is concluded. If the completion report is not acceptable, the SHPD shall write a letter within thirty days to the agency indicating needed changes. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery or ethnographic documentation where no field study of the historic property or properties is to occur, the agency has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The agency shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the agency within thirty days stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with subsections 13-275-9(a) through (c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the agency indicating the SHPD's concerns. If the agency wishes to proceed with the accelerated verification process, the agency shall correct the problems, consulting with the SHPD as needed to

resolve differences, and resubmit the request.

(f) Once a final report is accepted, the agency shall ensure that seven copies are made available to the same repositories as the survey reports as noted in paragraph 13-275-5(e)(3). [Eff
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)]

§13-275-10 Conclusion of the historic preservation review process. The historic preservation review process ends when:

- (1) The SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
- (2) The SHPD agrees that no historic properties will be affected by the project; or
- (3) The SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been successfully executed. [Eff
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)]

§13-275-11 Reconsideration of findings after the process is closed. (a) The SHPD shall reconsider the findings under sections 13-275-5 (adequate identification and inventory procedures), 13-275-6 (significance evaluations), 13-275-7 (determination of effects), and 13-275-8 (mitigation), when new information is submitted by an interested party with a request for reconsideration. To be considered, the inquiry must address a specific problem in the findings with supportive new evidence presented. The agency conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD will not suspend action on a project, but the agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within ten working days of receipt of the request at the SHPD office, the SHPD shall advise in writing the

interested party and the agency undertaking the project of the SHPD conclusions.

(b) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD and the agency undertaking the project shall attempt to reach agreement on how to correct the problem. If agreement cannot be reached within ten working days, the Hawaii historic places review board shall be asked for their advice. The review board shall provide their advice within thirty days after receiving a request. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-5.5, 6E-7, 6E-8)

§13-275-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found after the acceptance of the inventory report or during the implementation of a project, then the historic preservation review process is reopened. This action, however, applies only to the immediate area where a historic property is discovered, and the historic preservation review process is accelerated, following the procedures of chapter 13-280. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-13 Emergency projects. (a) When an agency proposes an emergency project as an essential and immediate response to an imminent threat to public health, safety, or welfare as a result of natural disaster or state of emergency as provided by law, the agency shall consult with the SHPD to attempt to develop consensus plans to take into account the effect of the project on significant historic properties. This consensus shall be reached within three working days. If consensus is not reached, appeal to the governor for an immediate decision shall occur.

(b) This section does not apply to projects that will not be implemented within thirty days after the disaster or emergency. Such projects shall be reviewed in accordance with the normal historic preservation review process. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8)

§13-275-14 Penalty. Any violation of this chapter may result in denial or revocation of the SHPD's written concurrence or agreement, and prosecution under Section 6E-11, Hawaii Revised Statutes. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-11)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-275, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-275 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young,
Chairperson
Board of Land and Natural
Resources

APPROVED:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-276
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-276, Hawaii Administrative Rules,
entitled "Rules Governing Standards for Archaeological
Inventory Surveys and Reports", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 276

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL INVENTORY
SURVEYS AND REPORTS

§13-276-1	Policy and purpose
§13-276-2	Definitions
§13-276-3	Archaeological inventory survey, generally
§13-276-4	Archaeological field survey
§13-276-5	Archaeological inventory survey report
§13-276-6	Final disposition of collections
§13-276-7	Significance assessments
§13-276-8	Recommendations
§13-276-9	Penalty

§13-276-1 Policy and purpose. This chapter establishes standards for archaeological inventory surveys and reports required by chapters 13-275 and 13-284 for the historic preservation review process. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a

written report for review and acceptance by the department.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff _____] (Auth: HRS §§6E-2, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-3 Archaeological inventory survey, generally. An archaeological inventory survey shall:

- (1) Determine if archaeological historic properties are present in the project area and, if so, identify all such historic properties.
 - (2) Gather sufficient information to evaluate each historic property's significance in accordance with the significance criteria listed in subsection 13-275-6(b).
- [Eff] (Auth: HRS §6E-3)
(Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-4 Archaeological field survey. (a) Portions of the project area that have no adequate inventory survey reports prepared for them shall undergo archaeological inventory survey to determine whether archaeological historic properties are present and, if so, to present their description, interpretation, and location. The entire surface of the project area shall be visually inspected, and any proposed deviations from this level of inspection shall be approved by SHPD prior to implementation.

(b) The presence or absence of subsurface sites shall be evaluated for areas which have no visible historic properties. This evaluation shall include findings of test excavations, if deemed necessary by the department, or a conclusion, with supportive documentation, that historic properties are not anticipated to be present.

(c) Test excavations shall be undertaken on historic properties, or features of properties, that have several possible alternative functions based on surface examination to provide additional information that might help to resolve the question of property or feature function. Recordation of such excavations and any necessary laboratory analysis of recovered materials shall be undertaken as part of the archaeological inventory survey. If human skeletal remains are found, they shall not be disturbed, excavations shall be backfilled, and SHPD notified as soon as possible. Archaeological historic properties, or features of properties, that are highly probable to be burials based on surface examination shall not undergo test excavation without authorization from the department.

(d) If 100% of the proposed project's surface area is not inventoried, sampling strategies need prior approval from the department. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-5 Archaeological inventory survey report. (a) An archaeological inventory survey report shall be prepared to record and synthesize the data gathered from background research, field survey and consultation process with knowledgeable individuals. The report shall include:

- (1) Identification of the survey area:
 - (A) On a 1:24000 scale United States Geological Survey quadrangle map, or on a portion or an enlargement of a portion of this map; and
 - (B) In the text, stating the island, district and ahupua`a of the area and the tax map key (TMK) and acreage of the parcel.
- (2) Identification of the owner or owners of the parcel; and
- (3) A description of the environment, to include:
 - (A) Topography (including general elevations, distance inland, and general terrain patterns);
 - (B) Vegetation;
 - (C) Geology and soils;
 - (D) Climate, including rainfall; and
 - (E) Hydrology.

(b) The report shall contain a section on background research which shall be used to predict the kinds and distributions of historic properties that might still be present and to provide a context for understanding and evaluating the significance of any historic properties that are found. The background section of the report shall include:

- (1) Historic background information, which shall:
 - (A) Present findings on land use and site patterns for the project area and either ahupua`a or other appropriate areas as determined in consultation with the SHPD for:
 - (i) Prehistoric and early historic times, as revealed by any

- eighteenth or nineteenth century literature on Hawaii;
 - (ii) 1848-1851 times, as indicated by land commission awards; and
 - (iii) Post-1850 times as revealed in later literature or through oral history.
 - (B) Provide a summary of documents and materials reviewed during the research; and
 - (C) Indicate:
 - (i) Whether any land commission awards were granted within the project area and within either the ahupua`a in which the project area is located or other appropriate areas as determined in consultation with SHPD; and
 - (ii) If awards were granted within the ahupua`a or other appropriate areas as determined in consultation with SHPD, specify the number of these awards, their LCA number, the use of each plot or apana awarded, and locate the awards on a map whenever possible.
- (2) Archaeological background information, which shall review any relevant prior archaeological studies in the project area and in either the ahupua`a in which the project is located or other relevant areas as determined in consultation with SHPD. At a minimum, the SHPD library shall be consulted for prior studies. If no studies exist, the archaeological inventory survey report shall so state this fact. If studies exist, the findings shall be summarized. This summary shall include:
 - (A) The areal extent of the prior survey coverage indicated on a map;
 - (B) A synthesis and analysis of information on the project area and its related lands' chronology, function and land use patterns, reconciling, as needed, the historical and archaeological information; and

- (C) Predictions as to types of sites expected to be encountered during field survey.
- (3) If an inventory plan was submitted to, and approved by, the SHPD, the information in this section may be omitted from the inventory report.
- (c) The report shall contain a section on methods used in the archaeological field survey which shall include:
 - (1) The names and qualifications of the principal investigator;
 - (2) The number of field personnel, the dates when the survey was performed and the duration of time for the survey;
 - (3) The extent of survey coverage. If the coverage was less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which included analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
 - (4) A discussion of any factors which limited the survey effort;
 - (5) The techniques used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
 - (6) The extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques used, with the rationale for these techniques given;
 - (7) The method used to plot site location; and
 - (8) The method used to determine a site and its boundaries.
- (d) The report shall contain a section on its archaeological field survey and laboratory findings. Each archaeological property found shall be individually described as follows:
 - (1) A state inventory number and any previous numbers;
 - (2) A reference to a previous study, if the property has been previously recorded;
 - (3) The property's formal type (e.g., C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major features, then each of these should be noted (e.g., 3

- C-shaped enclosures, 1 platform, 4 stone cairns); and
- (4) A description of each property, to include:
 - (A) Size, horizontal extent;
 - (B) Shape, materials, methods of construction, and area of the major feature or features with representative architectural heights and widths, etc., (in metrics);
 - (C) The presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains and their density and distribution;
 - (D) The presence or absence of any subsurface deposits, and if present, an assessment of the general depth and nature of the deposits. If test excavations, augering, etc., occurred, these results must be presented here and shall include stratigraphic information with:
 - (i) Standard U.S.D.A. soil descriptions (with Munsell colors); and
 - (ii) Stratigraphic profile drawings, to scale, that include observed surface and subsurface features. When appropriate, representative line-drawn profiles, to scale, of test excavations not through surface architecture may be used where no subsurface features are visible in the excavation side walls;
 - (E) Representative photographs, illustrations, or both;
 - (F) Drafted plan map to scale, which shall include major features, and location and shape of internal features such as firepits, cupboards, midden deposits, a bar scale, north arrow, and indicate in the text the method used (e.g., tape and compass or type of instrument mapping);
 - (G) The integrity of the site;
 - (H) An assessment of site function or functions, with reasonable and adequate supportive arguments. The character of

- habitation sites shall be clearly interpreted;
- (I) An assessment of site age, with absolute dating results when available; and
- (J) An evaluation of site significance.
- (e) The report shall document, describe, and graphically display any previous land disturbances (e.g., bulldozing, grubbing by machine, or sugarcane cultivation) identified during the survey.
- (f) The report shall contain a summary of the findings, to include, but not be restricted to:
 - (1) Total number of archaeological sites found;
 - (2) A map or maps locating all the archaeological properties found and, if practical, their boundaries, with at least one site location map being a portion of the relevant United States Geological Survey standard 1:24,000 topographic map;
 - (3) A table presenting the sites with their state number, formal type, and possible function listed;
 - (4) If multiple archaeological sites within a major functional type (such as religious, burial, permanent habitation, and temporary habitation site types) are found, summaries of each type shall occur;
 - (5) A re-evaluation of ideas on the history of land use in the ahupua`a and the parcel; and
 - (6) In cases where more than five sites are present within a major functional type, the summary of the functional type shall include:
 - (A) A table which itemizes for each site and its relevant constituent structures the key variables used to determine the function (e.g., form, area); and
 - (B) A map showing the distribution of the sites within that functional type.
- (g) The report shall contain information on the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals.
 - (1) Information shall include:
 - (A) Personnel conducting the consultation process, with names and qualifications;
 - (B) Methods of identifying and contacting knowledgeable persons;

- (C) Names of knowledgeable persons consulted, or, if the person wishes to remain anonymous, a characterization of the person; and
- (D) A summary as to whether additional archaeological historic properties were identified during the consultation process, and whether additional information on archaeological site function was obtained during the consultation process;
- (2) Should additional information on site function be obtained, that information shall be presented in the site description portion of the report;
- (3) Consult SHPD guidelines on ethnographic surveys and reports for assistance in preparing findings from the consultation process; and
- (4) If an inventory plan was submitted to, and approved by, the SHPD, the information in this section may be omitted from the inventory report. [Eff
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)]

§13-276-6 Final disposition of collections.

(a) All collections, excluding human remains and grave goods, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) In the event human skeletal remains are recovered during survey, final treatment of any such remains and associated grave goods shall follow the procedures of section 6E-43, HRS. [Eff
(Auth: HRS §§6E-3, 6E-43) (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43)]

§13-276-7 Significance assessments.

Significance evaluations shall be included in the survey report. They shall be included at the end of each site description and in a separate section of the report,

which shall be labeled "Significance Assessments" and shall include a summary table listing all sites and their significance. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-8 Recommendations. Recommendations such as mitigation commitments shall be included in the survey report. They shall be included in the summary table listing all the sites and their significance. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-276-9 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with project ground alteration, a denial or revocation of SHPD written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-11)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-276, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-276 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young,
Chairperson
Board of Land and Natural
Resources

Approved:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-277
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-277, Hawaii Administrative Rules, entitled "Rules Governing Requirements for Archaeological Site Preservation and Development", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 277

RULES GOVERNING REQUIREMENTS FOR ARCHAEOLOGICAL SITE
PRESERVATION AND DEVELOPMENT

§13-277-1	Policy and purpose
§13-277-2	Definitions
§13-277-3	Preservation plan
§13-277-4	Buffer zones
§13-277-5	Interim protection measures
§13-277-6	Long term preservation measures
§13-277-7	Interpretation requirements
§13-277-8	Penalty

§13-277-1 Policy and purpose. This chapter provides standards for preservation approaches to ensure proper preservation in the public's interest. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interpretation" means the presentation of information about an historic property to the public.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-277-3 Preservation plan. A preservation plan prepared pursuant to chapters 13-275 or 13-284, shall:

- (1) Identify for each significant historic property which forms of preservation will be implemented: avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use;

- (2) Specify the buffer zones around each significant historic property and depict them on a map of sufficient scale;
- (3) Specify short-term protection measures for each significant historic property that will be within or near a construction area;
- (4) Discuss the agency or person's consultation process for historic properties deemed significant under paragraphs 13-275-6(b)(5) or 13-284-6(b)(5). The agency or person shall consult with ethnic organizations and individuals for whom the historic properties are of significance. The comments on preservation treatment expressed by these individuals or organizations shall be considered when preparing the preservation plan. The plan shall include a list of individuals and organizations consulted, and shall summarize their input.
- (5) Specify the long term preservation measures to be undertaken at each significant historic property. [Eff
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)]

§13-277-4 Buffer zones. (a) Buffer zones shall ensure that the integrity and context of the historic property is preserved, in many cases including the visual integrity.

(b) The size of a buffer zone shall be proposed by the person or agency on a site-by-site basis. Size will vary with the local terrain, eventual use of the site, surrounding land uses, the type of site, and the criterion for which a site is significant.

(c) The manner in which a buffer zone will be treated with regards to demarcation, landscaping and other activities shall be proposed by the person or agency on a site-by-site basis.

(d) Once approved, buffer zones shall be marked on overall project maps, and physical markers shall be placed in the ground delineating the buffers. [Eff
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)]

§13-277-5 Interim protection measures. Interim protection measures shall protect the significant

historic property and its buffer zone during construction activities. Interim measures may include:

- (1) Flagging the perimeter of the buffer zone;
- (2) Erecting barriers (such as plastic fencing) along the buffer zone;
- (3) Placing avoidance instructions on construction plans and specifications;
- (4) On-site, pre-construction briefing of the hired construction firm; and
- (5) Having an archaeological monitor on-site during ground alteration activities. [Eff
] (Auth: HRS §6E-3)
(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-6 Long term preservation measures.

Long term preservation measures shall follow the appropriate Secretary of the Interior's Standards for Historic Preservation Projects. The preservation plan shall address the following long term preservation measures:

- (1) Maintenance measures to be followed;
- (2) Methods for clearing vegetation;
- (3) The manner in which litter is controlled;
- (4) Access to the site and possible use of the site for cultural practices, if appropriate;
- (5) Approaches to interpret and inform the public about the site, if appropriate;
- (6) Permanent marked markers, if appropriate;
- (7) If appropriate, provisions to address potential future impacts and site stability; and
- (8) Provisions for reasonable monitoring of site integrity by the person or agency, and SHPD inspection to assure compliance. [Eff
] (Auth: HRS §6E-3)
(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-277-7 Interpretation requirements. (a)

When using interpretive text for signs, brochures, etc., the text shall be reviewed and approved by SHPD.

- (b) Interpretive signs shall be:
 - (1) Of sufficient quality to enhance public understanding of the site;
 - (2) Culturally sensitive, based on consultation with appropriate organizations and individuals; and

(3) Located so as not to adversely affect the site visually.

(c) Any data recovery work to improve the interpretation of the site shall meet the standards set forth in chapter 13-278. [Eff
(Auth: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42) (Imp:
HRS §§6E-3, 6E-7, 6E-8, 6E-42)]

§13-277-8 Penalty. Non-compliance with the provisions and procedures established by this chapter may result in a directive to the person not to proceed with construction in the project area, a denial or revocation of SHPD's written concurrence or agreement, and penalties as provided in section 6E-11, HRS, chapters 13-275, 13-278, 13-281, 13-282, 13-284, HAR, and applicable laws. [Eff
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-8, 6E-42)]

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-277, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-277 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young,
Chairperson
Board of Land and Natural
Resources

APPROVED:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-278
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-278, Hawaii Administrative Rules,
entitled "Rules Governing Standards for
Archaeological Data Recovery Studies and Reports",
is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 278

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL DATA
RECOVERY STUDIES AND REPORTS

§13-278-1	Policy and purpose
§13-278-2	Definitions
§13-278-3	Preparation of a data recovery plan
§13-278-4	Archaeological data recovery report
§13-278-5	Final disposition of collections
§13-278-6	Penalty

§13-278-1 Policy and purpose. This chapter establishes uniform standards for archaeological data recovery studies and reports, to ensure the overall quality of mitigation measures and to better protect the public's interests. [Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-278-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these

properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff] (Auth: HRS §§6E-2, 6E-3, 6E-7, 6E-8, 6E-42) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-278-3 Preparation of a data recovery plan.

(a) An archaeological data recovery plan (research design) shall be prepared by an archaeologist who meets the minimum requirements under chapter 13-281 prior to the start of archaeological data recovery. This plan shall:

- (1) Identify historic properties to be studied;
 - (2) Identify research objectives to be addressed. This shall be done through reviewing prior archaeological and historical work in the parcel, ahupua`a, and wider region. The specifics of these research objectives will vary with the extent of prior work;
 - (3) Identify data needed to address the research objectives;
 - (4) Identify field methods to be used to acquire and analyze the data. Any sampling approaches to be used shall be noted here. The plan shall also use the most efficient methods to try to answer the research objectives;
 - (5) Identify any necessary laboratory work. This work may include, but not be limited to, dating, faunal analyses, soil analyses, botanical analyses, and artifact analyses. If osteological analysis of human skeletal remains is to be undertaken it shall conform to chapters 13-300 and 13-283;
 - (6) Identify a procedure for depositing collections after conclusion of the data recovery project; and
 - (7) If burials are to be disinterred, a written data recovery plan is not required for inadvertent discoveries. For burials the procedures of section 6E-43, HRS, and chapter 13-300 shall be followed.
- (b) If properties deemed significant under paragraphs 13-275-6(b)(5) or 13-284-6(b)(5) are involved, the archaeologist shall consult with members of the relevant ethnic group and consider any comments when preparing this plan. The plan shall describe the consultation process, list the consulted individuals and organizations, and summarize their comments.
- [Eff] (Auth: HRS §§6E-3, 6E-43, 6E-43.5) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-278-4 Archaeological data recovery report.

- (a) The archaeological data recovery report shall be prepared by an archaeologist who meets the minimum requirements under chapter 13-281. It shall include the following:

- (1) A management summary that presents concise information, with the lay reader in mind, to include:
 - (A) The sites studied; and
 - (B) General findings relevant to research objectives;
 - (2) An introduction, including the reasons for the project and the location of the study area. This shall include:
 - (A) A portion of the relevant United States Geological Survey standard 1:24,000 topographic map showing the ahupua`a, the parcel, and the sites studied; and
 - (B) Text, which specifies the island, district, ahupua`a, and the tax map key (TMK) of the parcel.
 - (3) A research objectives section which identifies the research objectives, test implications, and relevant information to address the research objectives;
 - (4) An archaeological field methods section which identifies:
 - (A) Number of personnel, with the names and qualifications of the principal investigator and field director;
 - (B) When the work was done; and
 - (C) Methods planned in the data recovery plan and any deviations, to include sampling strategies and specifics on techniques used.
 - (5) Archaeological fieldwork findings;
 - (6) Laboratory findings;
 - (7) Historical and oral historical findings, if covered in the data recovery plan and if not reported elsewhere;
 - (8) Research conclusions;
 - (9) References; and
 - (10) Location of depository (archive) for collections, photographs, written site records, and maps (may be presented in an appendix).
- (b) In the archaeological fieldwork findings section of the report, each site studied shall be individually described, to include:
- (1) State site number and any previous numbers;
 - (2) Reference to a previous study, if the site has been recorded before;

- (3) The site's formal type (e.g., C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major features, then each of these should be noted (e.g., three C-shaped enclosures, one platform, four stone cairns);
- (4) A description of the site, to include any of the following, if not recorded in previous studies:
 - (A) Size, horizontal extent;
 - (B) Shape, area, with representative architectural heights and widths, etc. (in metrics), of the major feature or features;
 - (C) The presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains, their density, and distribution;
 - (D) The presence or absence of any subsurface deposits, and if so, an assessment of the general depth and nature of these deposits;
 - (E) Representative photographs, or line drawings, or both;
 - (F) Drafted plan maps, which shall include major features, a bar scale, north arrow, and indicate method used (e.g. tape and compass or instrument mapping.); and
 - (G) The integrity of the site.
- (5) If excavations, augering, shovel tests, etc. occurred, findings must be presented under each site's description, to include:
 - (A) Location of the excavations, augering, etc. on a plan map of the site;
 - (B) Description of stratigraphic layers, with United States Department of Agriculture standard soil descriptions (using Munsell colors);
 - (C) Line-drawings depicting the entire length of the profiles, to scale, of all test excavations through surface architecture or of all test excavations with cultural layers;
 - (D) Representative stratigraphic profiles, to scale, of test excavations not through surface architecture or where no

- cultural layers are visible in the excavation side walls;
 - (E) Descriptions of features, including provenience within layers;
 - (F) Listing of artifacts, including provenience within layers;
 - (G) Listing of faunal remains, by layer;
 - (H) Listing of debris and other remains, by layer; and
 - (I) Listing of carbon samples, by provenience;
- (6) An assessment of site function, with reasonable and adequate supportive arguments; and
- (7) An assessment of site age.
- (c) The results and analysis section of the report shall include:
 - (1) An overall presentation of artifacts, to include:
 - (A) A master list with provenience, material and type;
 - (B) Measurements of each artifact, as appropriate, which can be in table form and can be presented under the next item;
 - (C) Analysis of artifact assemblage by artifact types, materials, and provenience, as appropriate; and
 - (D) Illustrations (line drawings or photographs, or both) of a representative sample of artifacts.
 - (2) An overall presentation of faunal and botanical remains, to include:
 - (A) A master list, presenting the species within each layer of each site and their counts and weight in grams;
 - (B) Analysis by taxa, as possible; and
 - (C) Methods of sample selection.
 - (3) An overall presentation of chronology to include absolute and relative dating, to include:
 - (A) A master list, by site and by provenience within site, which includes laboratory numbers for each date;
 - (B) Methods of collection and lab treatment;
 - (C) For radiocarbon dates, C12/C13 ratios shall be obtained; and
 - (D) Methods of sample selection.

- (4) An overall presentation of lithic sourcing, if appropriate, to include:
 - (A) A master list, by site and by provenience within site;
 - (B) Methods of sample selection; and
 - (C) Methods and techniques of source analysis.
- (5) Osteological analyses, if human skeletal remains are to be analyzed, the analysis shall conform to chapters 13-283 and 13-300.
 [Eff] (Auth: HRS §§6E-3, 6E-43) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-278-5 Final disposition of collections.

- (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.
- (b) Final disposition of human skeletal remains shall be in accordance with chapter 13-300.
 [Eff] (Auth: HRS §§6E-3, 6E-43)
 (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43)

§13-278-6 Penalty. Non-compliance with the provisions and procedures established by this chapter may result in a directive to the person not to proceed with construction in the project area, a denial or revocation of SHPD's written concurrence or agreement, and penalties as provided in section 6E-11, HRS, and applicable laws. [Eff] (Auth: HRS §§6E-3, 6E-43) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-278, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-278 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young,
Chairperson
Board of Land and Natural
Resources

Approved:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-279
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-279, Hawaii Administrative Rules,
entitled "Rules Governing Standards for Archaeological
Monitoring Studies and Reports", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 279

RULES GOVERNING STANDARDS FOR ARCHAEOLOGICAL MONITORING
STUDIES AND REPORTS

§13-279-1	Policy and purpose
§13-279-2	Definitions
§13-279-3	Archaeological monitoring, generally
§13-279-4	Archaeological monitoring plan
§13-279-5	Monitoring report
§13-279-6	Final disposition of collections and human skeletal remains.
§13-279-7	Penalty

§13-279-1 Policy and purpose. This chapter establishes standards for archaeological monitoring studies and reports, to improve the overall quality of this activity and to better protect the public's interests. [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-279-2 Definitions. As used in this chapter unless the context requires otherwise:
"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.
"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.
"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in a delineated area, gathering sufficient information to

evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will

take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-279-3 Archaeological monitoring, generally.
Archaeological monitoring may be an identification, mitigation, or post-mitigation contingency measure. Monitoring shall entail the archaeological observation of, and possible intervention with, on-going activities which may adversely affect historic properties.
[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-279-4 Archaeological monitoring plan. (a)
Archaeological monitoring undertaken in response to SHPD requirements or recommendations shall be based on a written plan, which specifies:

- (1) What kinds of archaeological remains or historic properties are anticipated or require protection;
- (2) Where in the project area these properties are known to be or anticipated to be located;
- (3) Needed fieldwork to protect or document known or anticipated historic properties, which may include, but not be limited to, profile documentation of stratigraphy, drawings, photographs, lithic sourcing, and excavation of exposed features;
- (4) A provision that the archaeologist conducting the monitoring has been given the authority to halt ground disturbing activities in the immediate area of a find, in order to carry-out the plan. Project activities can shift to other areas in such a case;
- (5) A coordination meeting with any construction team and the archaeologist, so the construction team is aware of the plan;
- (6) Any laboratory work expected to be done;

- (7) Report preparation; and
 - (8) Archiving of any collections.
 - (b) This plan shall be reviewed and approved by the SHPD prior to the monitoring project, unless otherwise agreed to by SHPD.
 - (c) If monitoring is proposed in response to the inadvertent discovery of human skeletal remains, a written monitoring plan may not be required.
- [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-279-5 Monitoring report. A monitoring report, prepared by an archaeologist who meets the minimum requirements under chapter 13-281, shall be submitted for monitoring undertaken in response to SHPD requirements or recommendations. It shall include the following:

- (1) Management Summary, including:
 - (A) Presence or absence of sites; and
 - (B) General findings.
- (2) Location of the study area:
 - (A) On a 1:24000 scale United States Geological Survey quadrangle map, or on a portion or an enlargement of a portion of this map; and
 - (B) In the text, stating the island, district and ahupua`a of the area and the tax map key (TMK) and acreage of the parcel.
- (3) Purpose of the monitoring;
- (4) Archaeological field methods, including:
 - (A) Number of personnel, with the names and qualifications of the principal investigator and field director;
 - (B) When the work was done; and
 - (C) Methods and specific techniques planned in the monitoring plan and any deviations, with explanations why;
- (5) Archaeological fieldwork. Each site studied shall be individually described, including:
 - (A) State site number and any previous numbers;
 - (B) Reference to a previous study, if the site has been recorded before;
 - (C) The site's formal type (e.g., C-shaped enclosure, platform, enclosure, wall, paving, etc.). If it has several major

- features, then each of these should be noted (e.g., three C-shaped enclosures, one platform, four stone cairns);
- (D) Description of the site, including any of the following not recorded in previous studies:
- (i) Size, horizontal extent;
 - (ii) The major feature or features' shape, area, with representative architectural heights and widths, etc., (in metrics);
 - (iii) Presence or absence of surface remains (artifacts, midden, debris, etc.), and if present, the general nature of these remains and their density and distribution;
 - (iv) Presence or absence of any subsurface deposits, and if present, an assessment of the general depth and nature of these deposits;
 - (v) Photographs, line drawings, or both; and
 - (vi) Drafted plan maps, which shall include a bar scale, north arrow, and indicate method used (e.g., tape and compass; instrument mapping).
- (E) If subsurface analysis occurred, findings must be presented under each site's description, including:
- (i) Placing analysis locations on a plan map of the site;
 - (ii) Description of stratigraphic layers, with United States Department of Agriculture standard soil descriptions (using Munsell colors);
 - (iii) Line-drawings depicting the entire length of the profiles, to scale, of all excavations through surface architecture or of all excavations with subsurface features visible in the excavation side walls;
 - (iv) Representative stratigraphic profiles, to scale, of excavations not through surface architecture or where no subsurface features are

- visible in the excavation side walls;
 - (v) Descriptions of features, including provenience within layers;
 - (vi) Listing of artifacts, including provenience within layers;
 - (vii) Listing of faunal and botanical remains, by layer;
 - (viii) Listing of debris and other remains, by layer; and
 - (ix) Listing of any processed radiocarbon, by provenience.
 - (F) An assessment of site function, with supportive arguments;
 - (G) An assessment of site age;
 - (H) An assessment of site significance in accordance with 13-275-6(b); and
 - (I) Recommendations.
- (6) Laboratory analyses, including:
 - (A) An overall presentation of artifacts, including:
 - (i) A master list;
 - (ii) Measurements of artifacts, which can be in table form and can be presented under the next item;
 - (iii) Analysis by artifact types; and
 - (iv) Illustrations (line drawings, photographs or both) of a representative sample of artifacts.
 - (B) An overall presentation of faunal and botanical remains, including:
 - (i) A master list, presenting the species within each layer of each site and their weights in grams; and
 - (ii) Analysis by species, as possible.
 - (C) An overall presentation of absolute dating, including:
 - (i) A master list, by site and by provenience within site, which includes laboratory numbers for each date;
 - (ii) Methods of collection and lab treatment; and
 - (iii) For radiocarbon dates, C12/C13 ratios shall be obtained.
 - (D) An overall presentation of lithic sourcing, if appropriate, to include:

- (i) A master list, by site and by provenience within site;
 - (ii) Methods of sample selection; and
 - (iii) Methods and techniques of source analysis.
- (E) Osteological analyses, if human skeletal remains are found and analyzed, shall conform to chapters 13-283 and 13-300.
- (7) If properties deemed significant under criteria 13-275-6(b)(5) or 13-284-6(b)(5) are discovered, the archaeologist shall consult with members of the relevant ethnic group, when appropriate, and consider any comments when determining appropriate treatment. The report shall describe any consultation process, list the consulted individuals and organizations, and summarize their comments.
- (8) Conclusions including additional findings on any studies previously conducted in the project area.
- (9) References.
- (10) Location of depository (archive) for collections, photographs, written site records, and maps (may be presented in an appendix).
 [Eff _____] (Auth: HRS §6E-3)
 (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-279-6 Final disposition of collections and human skeletal remains. (a) All collections, excluding human remains, from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) If human skeletal remains are recovered during monitoring, they shall be treated as an inadvertent discovery. Any relocation of the human remains and any associated grave goods shall follow the procedures of chapter 13-300. [Eff _____]
 (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-6, 6E-7, 6E-8, 6E-42, 6E-43)

§13-279-7 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with construction in the project area, shall result in a denial or revocation of SHPD's written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff
(Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)]

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-279, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-279 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young, Chairperson
Board of Land and Natural
Resources

Approved:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-280
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-280, Hawaii Administrative Rules, entitled "Rules Governing General Procedures for Inadvertent Discoveries of Historic Properties During a Project Covered by the Historic Preservation Review Process", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 280

RULES GOVERNING GENERAL PROCEDURES FOR INADVERTENT
DISCOVERIES OF HISTORIC PROPERTIES DURING A PROJECT
COVERED BY THE HISTORIC PRESERVATION REVIEW PROCESS

§13-280-1	Policy and purpose
§13-280-2	Definitions
§13-280-3	Procedure for inadvertent discoveries
§13-280-4	Proceeding with the project in the immediate vicinity of the historic property
§13-280-5	Penalty

§13-280-1 Policy and purpose. The inadvertent discovery of a historic property, other than a burial site, found after an archaeological assessment or inventory survey needs to be addressed in all mitigation plans. This chapter provides an expedited process to handle these discoveries.
[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-280-2 Definitions. As used in this chapter unless the context requires otherwise:

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains

and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic data recovery, historic data recovery, and architectural recordation.

"Mitigation plan" means the plan setting forth appropriate treatment of historic properties, burial sites or human skeletal remains.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-280-3 Procedure for inadvertent discoveries.

(a) The procedure to handle a discovery of a historic property, other than a burial site, during the course of work on a project which has already gone through the historic preservation review process, is as follows:

- (1) Halt construction in the immediate area and do not disturb the historic property any further. No item shall be moved from the ground at the discovery location without the SHPD's approval, to prevent damage to the historic property.
- (2) Notify the SHPD as soon as possible.
- (3) The SHPD shall gather sufficient information to evaluate the significance of the historic property. This may be done by:
 - (A) A field check of the site by SHPD staff;
 - (B) A field check by an archaeologist hired by the person or agency undertaking the project; or
 - (C) SHPD gathering of oral and written information.
- (4) The SHPD and the agency or person undertaking the project shall evaluate all information to determine if a significant historic property has been discovered.
- (5) If the property is deemed significant, an appropriate mitigation plan shall be jointly developed by the SHPD and agency or person undertaking the project. The mitigation plan shall specify the form of mitigation and shall briefly itemize a scope of work. The plan may not be written. If the historic property is deemed significant under criteria in paragraph 13-275-6(b)(5) or 13-284-6(b)(5), the SHPD, agency or person undertaking the project shall initiate the consultation process by consulting with

representatives of the relevant ethnic group and consider their comments when developing the mitigation plan.

- (6) The agency or person undertaking the project shall execute the mitigation plan. The SHPD shall verify the execution of the mitigation plan. In cases of archaeological data recovery, an archaeological data recovery report shall be prepared in accordance with the standards set forth in chapter 13-278, and submitted to SHPD for review and approval.
- (7) Any collections, excluding human remains, recovered from public lands shall be placed in an acceptable archive to be designated by the SHPD. Arrangements shall be made with private landowners on the disposition of collections from their lands. If private landowners request archiving of material, then the archive shall be determined in consultation with the SHPD.

(b) For inadvertent discoveries made after an archaeological assessment or inventory survey and prior to construction, the procedure enumerated in subsection 13-280-3(a) shall be followed except for step one.

(c) After notification of the SHPD of the discovery, mitigation plan decisions shall be made within five working days or by a mutually agreed upon date. [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-280-4 Proceeding with the project in the immediate vicinity of the historic property. The project may proceed in the area of the inadvertently discovered historic property when:

- (1) The SHPD verifies the execution of the mitigation plan;
- (2) The SHPD verifies in writing that the archaeological data recovery fieldwork is completed, with the condition that the report and final disposition of collections shall follow as per the mitigation plan; or
- (3) The SHPD verifies in writing that interim protection measures are in place for sites to be preserved, with the condition that the final preservation plan for the site will follow as per the mitigation plan.

[Eff
§§6E-3, 6E-7, 6E-8, 6E-42)] (Auth: HRS §6E-3) (Imp: HRS

§13-280-5 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a directive to the person not to proceed with construction in the project area, shall result in a denial or revocation of SHPD's written concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws.
[Eff
§§6E-1, 6E-3, 6E-7, 6E-8, 6E-42, 6E-43)] (Auth: HRS §6E-3) (Imp: HRS

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-280, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-280 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young, Chairperson
Board of Land and Natural
Resources

Approved:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-281
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-281, Hawaii Administrative Rules,
entitled "Rules Governing Professional
Qualifications", is adopted.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-281
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-281, Hawaii Administrative Rules,
entitled "Rules Governing Professional
Qualifications", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 281

RULES GOVERNING PROFESSIONAL QUALIFICATIONS

§13-281-1	Purpose
§13-281-2	Definitions
§13-281-3	Archaeology
§13-281-4	Architecture
§13-281-5	Architectural history
§13-281-6	Ethnography
§13-281-7	History
§13-281-8	Physical Anthropology
§13-281-9	Advice available from state historic preservation division
§13-281-10	Penalty

§13-281-1 Purpose. The purpose of this chapter is to establish professional qualifications for archaeologists, architects, architectural historians, ethnographers, historians, and physical anthropologists who undertake projects which must be reviewed by the state historic preservation division. [Eff _____](Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-2 Definitions. As used in this chapter unless the context requires otherwise:

"Historic preservation review process" means the process specified in chapters 13-275 and 13-284, used to comply with sections 6E-7, 6E-8 and 6E-42, HRS.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Principal investigator" means the individual directly responsible and accountable for assuring the quality of all aspects of an historic preservation project, and the accuracy and completeness of its written documentation.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources.
[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-281-3 Archaeology. An archaeologist serving as principal investigator for any archaeological project shall have the following professional qualifications:

- (1) A graduate degree from an accredited institution in archaeology, or anthropology, with a specialization in archaeology, or an equivalent field;
 - (2) At least one year of cumulative archaeological experience in Hawaii or the Pacific;
 - (3) At least four months of supervised archaeological field and analytic experience in Hawaii;
 - (4) At least one year of archaeological research, administration, or management at a supervisory level with at least four months of field experience;
 - (5) A demonstrated ability to carry research to completion, as shown by completed theses, publications, and manuscripts; and
 - (6) A demonstrated knowledge of historic preservation laws, rules, and guidelines.
- [Eff] (Auth: HRS §6E-3)
(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-4 Architecture. An architect shall possess a Hawaii license to practice architecture. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-5 Architectural history. An architectural historian shall possess one or both of the following professional qualifications:

- (1) A graduate degree from an accredited institution in architectural history, art history, historic preservation, or a closely related field with coursework in American architectural history; or
- (2) A bachelor's degree from an accredited institution in architectural history, art history, historic preservation, or a closely related field plus one of the following:
 - (A) At least two years of full-time research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
 - (B) Have made a substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-6 Ethnography. (a) An ethnographer shall possess one of the following professional qualifications:

- (1) A graduate degree from an accredited institution in anthropology, with a specialization in cultural or social anthropology, or in a closely related field; or
- (2) A bachelor's degree from an accredited institution in cultural or social anthropology, or in a closely related field, plus one of the following:

- (A) Two or more years of full-time experience in research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historic organization or agency, historic preservation consulting firm, or other professional institution; or
 - (B) Have made a substantial contribution through research and publication to the body of scholarly knowledge in cultural or social anthropology, ethnohistory, or related fields; or
 - (3) Four or more years of full-time experience conducting research on the culture and history of ethnic groups in the State of Hawaii under the tutelage of recognized cultural authorities.
- (b) In addition to meeting the qualifications of either (1), (2) or (3), the person shall meet three or more of the following requirements, including one of the first two:
- (1) Be conversant in the language of the applicable ethnic group addressed by the ethnographic study;
 - (2) Have a demonstrated familiarity with the traditions, customs, practices, and beliefs of the applicable ethnic group addressed by the ethnographic study;
 - (3) Have a demonstrated ability to conduct and document interviews for ethnographic or historical purposes and to summarize information gained from interviews;
 - (4) Contributed through teaching, presentations, research, or publication to the body of knowledge in cultural or social anthropology, ethnohistory, or related fields; or
 - (5) Have a working knowledge of the historic preservation review process.
- [Eff] (Auth: HRS §6E-3)
(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-7 History. A historian shall possess one or both of the following professional qualifications:

- (1) A graduate degree from an accredited institution in history or a closely related field.
 - (2) A bachelor's degree from an accredited institution in history or a closely related field, plus at least one of the following:
 - (A) Two or more years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historic organization or agency, museum, historic preservation consulting firm, or other professional institution; or
 - (B) Substantial contribution through research and publication to the body of scholarly knowledge in the field of history. [Eff]
- (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-8 Physical anthropology. A physical anthropologist shall possess the following professional qualifications:

- (1) A graduate degree from an accredited institution in anthropology or anatomy with a specialization in physical anthropology and human osteology or forensic anthropology; and
- (2) Demonstrated ability to carry research to completion, usually shown by completed theses, publications, and manuscripts. [Eff] (Auth: HRS §6E-3)(Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42, 6E-43)

§13-281-9 Advice available from state historic preservation division. The state historic preservation division, upon request, shall advise agencies or persons whether an individual meets the minimal professional qualifications. The state historic preservation division shall maintain a list of archaeologists who are known by the SHPD to meet these minimal professional standards. Copies of this list shall be available upon request. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-42)

§13-281-10 Penalty. Should any archaeological, historical, ethnographic, architectural, architectural historical, or physical anthropological (osteological) work be conducted as part of the historic preservation review process (chapters 13-275 and 13-284) or under an archaeological permit (chapter 13-282) with a principal investigator who fails to meet minimal professional standards, that work shall be automatically rejected, the SHPD's written concurrence for the relevant step in the historic preservation process shall be denied, and any archaeological permit shall be revoked or denied, and the penalties of chapters 13-275 and 13-282 and section 6E-11, HRS, shall be applied as appropriate. [Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-7, 6E-8, 6E-11, 6E-42).

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-281, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-281 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young,
Chairperson
Board of Land and Natural
Resources

Approved:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 282

RULES GOVERNING PERMITS FOR ARCHAEOLOGICAL WORK

§13-282-1	Policy and purpose
§13-282-2	Definitions
§13-282-3	Archaeological permits
§13-282-4	Fees
§13-282-5	Penalty

§13-282-1 Policy and purpose. Chapter 6E, HRS, authorizes the department of land and natural resources to regulate archaeological activities throughout the state. This rule establishes a permit system for all archaeological field work undertaken anywhere in this state, other than on federal lands, to ensure the quality of archaeological work, to obtain reports on all work for the Hawaii inventory of historic places, and thereby to better protect historic properties in the public's interest. [Eff: _____] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-2 Definitions. As used in this chapter unless the context requires otherwise;

"Agency" means any state or county governmental entity.

"Applicant" means archaeological consulting firms, museums, universities, non-profit institutions, or scholars who desire to undertake archaeological field work in Hawaii and whose principal investigator meets the minimal professional standards for archaeologists as provided in chapter 13-281.

"Department" or "DLNR" means the state department of land and natural resources.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-282-3 Archaeological permits. (a) No archaeological firms, independent individuals, agencies or organizations shall perform any alteration to historic properties in the state of Hawaii until an annual permit is first obtained from the department. Permits shall only be issued to archaeological consulting firms, museums, universities, agencies, non-profit institutions, or scholars who have on staff at least one principal investigator who meets the minimal professional standards for archaeologists as provided in chapter 13-281.

(b) Each permit shall be valid only for the calendar year for which it is issued, regardless of when it is issued in the calendar year.

(c) The archaeological permit application shall include:

- (1) The name, address, and phone number of the applicant; and
- (2) The name and professional resume of each principal investigator to be covered by the permit.

(d) A permit shall be issued to an applicant within ten working days of receipt of a complete application. If an application is not complete, the SHPD shall notify the applicant by letter within ten working days of receipt of the application specifying what information is missing.

(e) In the event a principal investigator leaves a firm, museum, university, or non-profit institution, or a new principal investigator is employed or gains qualifications, the SHPD shall be notified in writing, with any necessary resumes attached.

(f) Each permit shall contain the following conditions:

- (1) The permittee shall submit, within one month of the conclusion of any field work, a brief report on findings to consist of:

- (A) A map locating all sites studied, to be on a portion of the relevant United States Geological Survey standard 1:24,000 topographic map; and
- (B) A table listing each site, its major architectural features, its probable function, and the nature of work at each site (mapping, description, surface collection, test excavation).
- (2) The permittee shall submit a minimum of two copies of a report or paper on any archaeological work to the SHPD.
- (3) The permittee shall ensure all personnel are capable of adequately conducting the necessary work to accomplish any scopes of work.
- (4) The permittee shall comply with all applicable statutes, ordinances, rules and regulations of the federal, state and county governments; and
- (5) The permittee shall hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the permittee and its employees, contractors and agents under the permit. [Eff]
(Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-4 Fees. An archaeological permit application shall be accompanied by a filing fee of \$50. All fees shall be in the form of cash, certified or cashier's check, and payable to the Hawaii historic preservation special fund. [Eff] (Auth: HRS §6E-3) (Imp: HRS §6E-3)

§13-282-5 Penalty. Should a party alter an archaeological property without a permit or should not fulfill a permit's conditions:

- (1) The principal investigator of the archaeological work or the firm, or both shall be subject to penalties as covered under section 6E-11, HRS;
- (2) The principal investigator of the archaeological work or the firm, or both,

- shall forfeit all items collected and all recorded information to the SHPD; and
- (3) A permit may be revoked. [Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-3;
6E-11)

DEPARTMENT OF LAND AND NATURAL RESOURCES

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Peter T. Young,
Chairperson
Board of Land and Natural
Resources

Approved:

Linda Lingle, Governor
State of Hawaii

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Deputy Attorney General

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DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-283
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-283, Hawaii Administrative Rules,
entitled "Rules Governing Standards for Osteological
Analysis of Human Skeletal Remains", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 283

RULES GOVERNING STANDARDS FOR OSTEOLOGICAL ANALYSIS
OF HUMAN SKELETAL REMAINS

§13-283-1	Policy and purpose
§13-283-2	Definitions
§13-283-3	Osteological analysis and recording
§13-283-4	Report of osteological analysis
§13-283-5	Treatment of human skeletal remains
§13-283-6	Penalty

§13-283-1 Policy and purpose. (a) Burial sites with human skeletal remains have cultural significance and are sensitive historic properties, significant to the descendants and to the relevant cultural group. Burials are quite different from other historic properties. Human remains, under American common law, cannot be owned; rather the burials are held in trust for their descendants. Treatment of burials must meet this trust with the utmost sensitivity. It is the Department of Land and Natural Resource's policy to preserve burials in place when at all possible. However, when removal must occur, and if osteological analysis must take place, it is the Department of Land and Natural Resource's policy that this be done with the utmost sensitivity and with high standards of analysis.

(b) This rule establishes standards for osteological analysis of human skeletal remains, when analysis is done to determine ethnicity of skeletal remains, to ensure the quality of burial analysis and thereby to better protect the public's interests.

[Eff] (Auth: HRS §6E-3) (Imp:
HRS §§6E-3, 6E-8, 6E-43)

§13-283-2 Definitions. As used in this chapter unless the context requires otherwise:

"Ahupua`a" means a traditional Hawaiian land division usually extending from the mountain to the sea.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface and subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Ethnicity" means the ethnic group to which the deceased belonged by birth, such as Hawaiian, Japanese, and Chinese.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-7, 6E-8, 6E-42)

§13-283-3 Osteological analysis and recording. The procedures for osteological analysis are set forth in chapter 13-300. Recording shall involve completion of forms available at the SHPD. Only those forms which are relevant to the recovered remains are to be completed. The forms are:

- (1) Individual summary record.
- (2) Burial register form.
- (3) Skull register form.
- (4) Child burial register form.
- (5) Cranial measurements form.
- (6) Non-metric cranial traits form.
- (7) Dental observations form.
- (8) Infracranial measurements form.
- (9) Infracranial morphology form.

- (10) Vertebral non-metric traits form.
- (11) Mandible measurements form.
- (12) Dental measurements form.

Forms will be relevant, depending on the age and extent of the remains. [Eff]

(Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-4 Report of osteological analysis. (a)

A report on the osteological analysis shall be prepared by a physical anthropologist meeting the qualifications set forth in chapter 13-281. The report shall include the following:

- (1) Abstract, including the number of individuals studied, their ethnic affiliation and the name of the historic sites with which they are associated.
- (2) Introduction.
 - (A) Reasons for the project; and
 - (B) Location of the study area which shall include a portion of the relevant United States Geological Survey standard 1:24,000 topographic map showing the ahupua`a, the parcel, and the sites from which the remains came and text, which states the island, district, ahupua`a, and the tax map key (TMK) of the parcel
- (3) Laboratory methods, which shall include:
 - (A) The number of personnel, with the name and degree of the principal investigator;
 - (B) When the work was done; and
 - (C) Methods planned in the analysis and any deviations, with explanations why.
- (4) Osteological analysis: Descriptions of individuals, to include:
 - (A) The provenience--site, layer, and age of layer;
 - (B) The information recorded, as required by section 13-283-4 and this section; and
 - (C) A summary for each individual, to include:
 - (i) Probable ethnic group affiliation;
 - (ii) Sex;
 - (iii) Stature;
 - (iv) Completeness and condition of remains;

- (v) Salient morphological features of the skull, teeth, and infracranial skeleton; and
- (vi) Time since death.
- (5) Findings; and
- (6) References.
- (b) The osteological report shall be submitted separately to the SHPD from the archaeological report required under chapters 13-275, 13-276, 13-278 and 13-284. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-5 Treatment of human skeletal remains. Because human remains are highly sensitive to many individuals and ethnic groups, all archaeological excavations and osteological laboratory analysis shall treat the remains with dignity and respect. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-3, 6E-8, 6E-43)

§13-283-6 Penalty. Non-compliance with the provisions and procedures established by this chapter shall result in a denial or revocation of SHPD's written historic preservation review concurrence or agreement, and shall also be penalized as provided in section 6E-11, HRS, and applicable laws. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-8, 6E-11, 6E-42)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-283, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-283 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young,
Chairperson
Board of Land and Natural
Resources

Approved:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-284
Hawaii Administrative Rules

October 31, 2002

SUMMARY

Chapter 13-284, Hawaii Administrative Rules, entitled "Rules Governing Procedures for Historic Preservation Review to Comment on Section 6E-42, HRS, Projects", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 13

STATE HISTORIC PRESERVATION DIVISION RULES

CHAPTER 284

RULES GOVERNING PROCEDURES FOR HISTORIC PRESERVATION REVIEW TO
COMMENT ON SECTION 6E-42, HRS, PROJECTS

§13-284-1	Purpose, applicability, and participants
§13-284-2	Definitions
§13-284-3	Conducting a historic preservation review; generally
§13-284-4	Fees
§13-284-5	Identification and inventory of historic properties
§13-284-6	Evaluation of significance
§13-284-7	Determining effects to significant historic properties
§13-284-8	Mitigation
§13-284-9	Verification of completion of the detailed mitigation plan
§13-284-10	Conclusion of the historic preservation review process
§13-284-11	Review of Findings Based on Agency Requests
§13-284-12	Discovery of previously unknown historic properties during implementation of a project
§13-284-13	Penalty

§13-284-1 Purpose, applicability, and participants. (a)
The purpose of this chapter is to promote the use and
conservation of historic properties for the education,
inspiration, pleasure and enrichment of the citizens of Hawaii
by articulating a historic preservation review process for
projects requiring the approval of a state or county agency for
a permit, license, certificate, land use change, subdivision, or
other entitlement to use. Section 6E-42, Hawaii Revised
Statutes, requires state and county agencies to

afford the department an opportunity to comment on any such permit or approval. The following procedures in part define how agencies meet this statutory requirement. The goal of the review process is to identify significant historic properties in project areas, assess any effects, and then to develop and execute plans to avoid, minimize, or mitigate adverse effects to the significant historic properties in the public interest. The process supports the policy of chapter 6E, HRS, to preserve, restore and maintain historic properties for future generations.

(b) This chapter itemizes the review process that the SHPD shall follow to make comments to state and county agencies on permits, licenses, certificates, land use changes, subdivisions, or other entitlements for use which may affect historic properties, thereby meeting the opportunity to comment under section 6E-42, HRS.

(c) Participants in the historic preservation review process.

(1) The primary participants in the process are DLNR, represented by the SHPD, the agency with jurisdiction over the project, and the person proposing the project. The agency has responsibility for initiating the historic preservation review process. The agency may have others prepare the review process items.

(2) Interested persons are those organizations and individuals that are concerned with the effect of a project on historic properties.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-2 Definitions. As used in this chapter unless the context requires otherwise:

"Adverse effects" means any alteration to the characteristics of a historic property.

"Agency" means any state or county governmental entity.

"Archaeological data recovery" means the form of mitigation that archaeologically records or recovers a reasonable and adequate amount of information as determined by the department, from a significant historic property.

"Archaeological inventory survey" means the process of identifying and documenting the archaeological historic properties and burial sites in

a delineated area, gathering sufficient information to evaluate significance of the historic properties and burial sites, and compiling the information into a written report for review and acceptance by the department.

"Architectural inventory survey" means the process of identifying and documenting the architectural historic properties in a delineated area, and providing the information to the department.

"Architectural recordation" means the form of mitigation that records and analyzes through architectural study a reasonable and adequate amount of the information about a significant historic property.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods if any, are interred, and its immediate surrounding archaeological context, including any associated surface or subsurface features, deemed a unique class of historic property, and not otherwise included in section 6E-41, HRS.

"Comment" means the findings and recommendations of the department provided in writing to the agency.

"Consensus determination" means the evaluation of a historic property's significance, arrived at by the consensus of the SHPD and the person.

"Consultation process" means notifying interested organizations and individuals that a project could affect historic properties of interest to them; seeking their views on the identification, significance evaluations, and mitigation treatment of these properties; and considering their views in a good faith and appropriate manner during the review process.

"Department" or "DLNR" means the state department of land and natural resources.

"Detailed mitigation plan" means the specific plan for mitigation, including, but not limited to, a preservation plan, an archaeological data recovery plan, an ethnographic data recovery plan, a historic data recovery plan, a burial treatment plan, and an architectural recordation plan. The detailed mitigation plan serves as a scope of work for mitigation.

"Ethnographic documentation" means the form of mitigation that records and analyzes a reasonable and adequate amount of information about a significant historic property through interviews with knowledgeable individuals and the study of historical source materials.

"Ethnographic inventory survey" means the process of identifying and documenting historic properties in a delineated area, gathering information through interviews with individuals knowledgeable about the area and a study of historical source materials.

"Historic data recovery" means the form of mitigation that records, compiles, and analyzes a reasonable and adequate amount of information about a significant historic property prior to its destruction, through the study of historical source materials.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Interested persons" means those organizations and individuals that are concerned with the effect of a project on historic properties.

"Mitigation" means the measures taken to minimize impacts to significant historic properties. Mitigation may take different forms, including, but not limited to, preservation, archaeological data recovery, reburial, ethnographic documentation, historic data recovery, and architectural recordation.

"Mitigation commitment" means the commitment to the form or forms of mitigation to be undertaken for each significant historic property.

"Person" means any individual, firm, association, agency, organization, partnership, estate, trust, corporation, company, or governmental unit that is proposing a project.

"Preservation" means the mitigation form in which a historic property is preserved.

"Project" means any activity directly undertaken by the state or its political subdivisions or supported in whole or in part through appropriations, contracts, grants, subsidies, loans, or other forms of funding assistance from the state or its political subdivisions or involving any lease, permit, license, certificate, land use change, or other entitlement for use issued by the state or its political subdivisions.

"Project area" means the area the proposed project may potentially affect, either directly or indirectly. It includes not only the area where the proposed project will take place, but also the proposed project's area of potential effect.

"Significant historic property" means any historic property that meets the criteria of the Hawaii register of historic places or the criteria enumerated in subsection 13-275-6(b) or 13-284-6(b).

"State historic preservation division" or "SHPD" means the state historic preservation division within the state department of land and natural resources. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-3 Conducting a historic preservation review; generally. (a) A historic preservation review may involve up to six procedural steps, in order to determine if significant historic properties are present and, if so, to develop and execute a detailed mitigation plan and thereby satisfactorily take into account the impact of the project on such historic properties. Any agency involved in this review shall consult with the SHPD and shall obtain the written comments of the SHPD at each step of the review. In cases where any interim protection plans are adequately in place and any data recovery fieldwork has been adequately completed, the project may commence from a historic preservation perspective.

(b) The review steps, described in greater detail in the following sections, are as follows:

- (1) Identification and inventory, to determine if historic properties are present in the project's area and, if so, to identify and document (inventory) them;
- (2) Evaluation of significance;
- (3) Effect (impact) determination;
- (4) Mitigation commitments which commit to acceptable forms of mitigation in order to properly handle or minimize impacts to significant properties;
- (5) Detailed mitigation plan, scope of work to properly carry-out the general mitigation commitments; and
- (6) Verification of completion of detailed mitigation plan.

(c) Documents for review steps one through four shall be submitted concurrently.

(d) A receipt date shall be stamped on all review documents received by the SHPD.

(e) The SHPD shall send its written comments on each step's submittal to the agency within the amount of time specified under each section of this rule, or by a mutually agreed upon date. If the SHPD fails to send written comments within the set time, or by a mutually agreed upon date, then the SHPD is presumed to

concur with the agency's submittal.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-4 Fees. (a) Filing fees will be charged for the following:

- (1) \$50 for an archaeological assessment report;
- (2) \$150 for an archaeological inventory survey plan;
- (3) \$450 for an archaeological, architectural, or ethnographic inventory survey report;
- (4) \$150 for a preservation plan;
- (5) \$25 for a monitoring plan;
- (6) \$150 for an archaeological data recovery plan;
- (7) \$250 for a burial treatment plan;
- (8) \$100 for a monitoring report, if resources are reported;
- (9) \$450 for an archaeological data recovery report;
- (10) \$450 for an ethnographic documentation report;
- (11) \$25 for a burial disinterment report; and
- (12) \$50 for an osteological analysis report.

(b) Preservation plans submitted to the division for review will be charged for each of the above plans they contain.

(c) Reports or plans submitted to the SHPD for review shall be accompanied by the appropriate fee. Reports or plans will not be considered received or reviewed, until the filing fees are paid.

(d) No fee will be charged for the review of any revisions to a previously submitted plan or report.

(e) All fees shall be payable to the Hawaii historic preservation special fund.

[Eff] (Auth: HRS §§6E-3, 6E-16) (Imp: HRS §§6E-3, 6E-16)

§13-284-5 Identification and inventory of historic properties. (a) The agency shall ensure whether historic properties are present in the project area and, if so, it shall ensure that these properties are properly identified and inventoried.

(b) An agency shall first consult the SHPD to determine if the area proposed for the project needs to

undergo an inventory survey to determine if historic properties are present. The tax map key for the parcel or parcels involved and a map shall be submitted to the SHPD to locate and define the boundaries of the actual project. The SHPD shall supply a response in writing within thirty days of the receipt of the initiating request at the SHPD office. This response shall include a justification by the SHPD for its conclusion.

- (1) If the SHPD concludes that no significant historic sites are likely to be present due to past land disturbances then the SHPD shall make this determination in the form of a "no historic properties affected" letter within thirty days; or
- (2) Alternatively, the agency can submit documents claiming no significant historic sites are likely to be present. The document must present supportive evidence documenting the land altering activities (including areal extent and depth of disturbances) and documenting the likely nature and depth of historic properties that may have once existed in the area. The SHPD shall respond in writing within thirty days.
 - (A) If the SHPD finds that no significant historic properties are present, then the SHPD shall issue a written response to the agency in the form of a "no historic properties affected" determination and historic preservation review ends; or
 - (B) If the SHPD finds historic properties may be present, then a letter shall be sent to the agency specifying why. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed, and resubmit the documentation or shall conduct an inventory survey.
- (3) The SHPD shall make all "no historic properties affected" comments available to interested persons by posting notice of all such "no historic properties affected" comments at the SHPD office and on the SHPD's website every Friday. Should the office be closed on any Friday as a result of a holiday or some type of disaster, the information shall be posted on the first following

- working day. Interested persons have the opportunity to submit written comments on such determinations within thirty days of the notice's posting. During these thirty days, should historic properties be reported to the SHPD, the SHPD shall reconsider its response under the provisions of section 13-284-12.
- (4) If the SHPD indicates that an adequate survey exists and that historic properties are present, then the agency shall proceed to the next step in the review process, evaluation of the significance of the historic properties according to the following section of this rule.
 - (5) If the SHPD concludes an inventory survey needs to be done, this survey shall identify all historic properties and gather enough information to evaluate the properties' significance. Inventory surveys fall into three main categories, and the SHPD shall indicate which category or combination of categories is needed.
 - (A) An archaeological inventory survey may be undertaken when the SHPD concludes that archaeological properties are present or are likely to be present. Archaeological survey often involves detailed field mapping and test excavations, laboratory analyses, and interpretive studies. Specific minimal requirements for this survey are contained in chapter 13-276. A permit, issued by the SHPD, as set forth in chapter 13-282, is required for this survey and any lesser level of archaeological survey work. The survey must be directed by a qualified archaeologist who meets the qualifications set forth in chapter 13-281. Results of the survey shall be reported either through an archaeological assessment, if no sites were found, or an archaeological survey report which meets the minimum standards set forth in chapter 13-276. An archaeological assessment shall include the information on the property and the

survey methodology as set forth in subsections 13-276-5(a) and (c).

- (B) An ethnographic survey may be undertaken when the SHPD concludes that historic properties which may be significant under criterion "e" of paragraph 13-284-6(b)(5) are present or are likely to be present within the project area and when the project area is known to have been used by members of an ethnic community at least fifty years ago or by preceding generations. Guidelines for this survey can be obtained from the SHPD. The survey must be directed by a qualified ethnographer who meets the qualifications set forth in chapter 13-281.
- (C) An architectural inventory survey may be undertaken when the SHPD concludes that historic buildings, structures, objects, or districts are present or are likely to be present within the project area. Minimally, information shall be of sufficient quality to complete a National Register of Historic Places nomination form. The survey must be directed by a qualified historian, architect, or architectural historian who meets the qualifications set forth in chapter 13-281.

(c) Should the SHPD believe unusual archaeological conditions may be present in a project area, such as the presence of paleo-environmental materials or historic archaeology, the SHPD may request an inventory plan be submitted for approval prior to the undertaking of any inventory survey work. This plan shall include, but not be limited to:

- (1) All the information required in subsections 13-276-5(a) and (b) which identifies the project area, identifies the project owner, describes the environment, provides the results of background research, as applicable, and reviews any relevant prior archaeological studies.
- (2) A research design for the identification of historic properties within the project area. This would be a section on the methods to be

used in the archaeological field survey which shall include:

- (A) The name and qualifications of the principal investigator and investigators;
 - (B) The anticipated number of field personnel, and any specialized qualifications which they might possess;
 - (C) The anticipated duration of time for the survey;
 - (D) The extent of survey coverage, if applicable. If the coverage is to be less than one hundred percent, the rationale for the sample (the sampling design) must be presented in a careful discussion. Sampling designs which include analysis of possible subsurface sites under sand dunes, urban fill, and other areas must also be presented here;
 - (E) A discussion of any factors which might limit the survey effort, if applicable;
 - (F) The techniques to be used to identify archaeological properties (transects, sweeps, test excavations, augering, etc.);
 - (G) The anticipated extent of historic property recording (mapping, measuring, photographing, test excavations) and the techniques to be used, if applicable, with the rationale for these techniques given; and to plot site location, if applicable; and
 - (H) The method to be used to plot site location, if applicable.
- (3) Information obtained through the consultation process with individuals knowledgeable about the project area's history, if discussions with the SHPD, background research or public input indicate a need to consult with knowledgeable individuals. This section would include all the information required in subsection 13-276-5(g).
- (d) If an inventory plan is requested, once it is completed, one copy of the inventory plan shall be submitted to the SHPD for review. The plan shall meet the above requirements. The SHPD shall inform the agency within thirty days of receipt of the plan if the

information contained in the plan is adequate or inadequate.

- (1) If the SHPD determines that the plan is inadequate, then a letter shall be sent to the agency stating why the plan is inadequate. To proceed with the review process, the agency shall correct the problems, consulting with the SHPD as needed to resolve differences, and resubmit the results.
- (2) If the SHPD finds the plan adequate, then the agency will be sent a written notice of acceptance.
- (e) If an inventory survey is needed, once it is completed, one copy of the inventory survey report or, if appropriate, an archaeological assessment shall be submitted to the SHPD. The report shall meet the requirements noted in chapter 13-276 for archaeology; shall conform with the SHPD guidelines for ethnography; or shall meet the requirements to complete a National Register of Historic Places nomination form or forms for architecture. When consultation is required, as specified in any of the reporting rules or guidelines for surveys, the report shall include a summary of the consultation process. The SHPD shall inform the agency within forty five days of SHPD receipt of the report, if the information contained in the report or archaeological assessment is adequate or inadequate.
 - (1) If the SHPD determines that the survey, assessment or report is inadequate (e.g., survey failed to cover the entire project area, historic properties are incompletely described, etc.), then a letter shall be sent to the agency stating why the inventory survey or archaeological assessment is inadequate. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the results.
 - (2) If the SHPD finds the report or archaeological assessment adequate, then the agency shall be sent a written notice of acceptance;
 - (3) Once the survey report or archaeological assessment is considered adequate, seven copies of the report or archaeological assessment shall be made available by the

agency to the public. Two copies shall be sent to the SHPD library with one copy going to the relevant SHPD neighbor island office libraries, one copy shall be sent to the University of Hawaii at Manoa's Hamilton Library's Pacific Collection, one copy shall be sent to the Bishop Museum's library, one copy shall be sent to the University of Hawaii at Hilo's library, one copy shall be sent to Maui Community College's library and one copy to Kauai Community College's library.

(f) If the SHPD finds the report or archaeological assessment adequate and if no historic properties are present, then historic preservation review ends and the SHPD shall include in the notice of final acceptance its written "no historic properties affected" determination.

(g) If the SHPD finds the report adequate and historic properties are present, then the significance of each property shall be evaluated as discussed in the following section. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-6 Evaluation of significance. (a) Once a historic property is identified, then an assessment of significance shall occur. The agency shall make this initial assessment or delegate this assessment, in writing, to the SHPD. This information shall be submitted concurrently with the survey report, if historic properties were found in the survey.

(b) To be significant, a historic property shall possess integrity of location, design, setting, materials, workmanship, feeling, and association and shall meet one or more of the following criteria:

- (1) Criterion "a". Be associated with events that have made an important contribution to the broad patterns of our history;
- (2) Criterion "b". Be associated with the lives of persons important in our past;
- (3) Criterion "c". Embody the distinctive characteristics of a type, period, or method of construction; represent the work of a master; or possess high artistic value;
- (4) Criterion "d". Have yielded, or is likely to yield, information important for research on prehistory or history; or

- (5) Criterion "e". Have an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.

A group of sites can be collectively argued to be significant under any of the criteria.

(c) Prior to submission of significance evaluations for properties other than architectural properties, the agency shall consult with ethnic organizations or members of the ethnic group for whom some of the historic properties may have significance under criterion "e", to seek their views on the significance evaluations. For native Hawaiian properties which may have significance under criterion "e", the Office of Hawaiian Affairs also shall be consulted.

(d) Significance assessments shall be submitted to the SHPD for review. The SHPD shall agree or disagree with the significance evaluations within forty five days of receipt of the significance evaluations.

- (1) The assessment shall:

- (A) Present a table which lists each historic property and identifies all applicable criteria of significance for each property; and
- (B) Provide justification for classifying the property within these criteria, it being allowable to make this justification general for similar types of archaeological sites. Supportive documentation shall be cited; and
- (C) Evidence of any consultation shall be submitted with the assessment, to include:
 - (i) A description of the consultation process used;
 - (ii) A list of the individuals or organizations contacted; and
 - (iii) A summary of the views and concerns expressed.

- (2) If the SHPD disagrees with the initial significance assessments or if it believes more information is needed to evaluate the

significance of a historic property, a letter shall be sent to the agency presenting the SHPD's findings. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the initial significance assessments.

- (3) If the SHPD agrees with the initial significance assessments, a letter of agreement shall be sent to the agency.
- (4) Once agreement is reached on significance of the properties, the SHPD shall enter all significance assessments in the Hawaii inventory of historic places, as consensus determinations.

(e) If there is an agreement that none of the historic properties are significant, then the historic preservation review ends and SHPD shall issue its written concurrence to the project in the form of a "no historic properties affected" determination. When significant historic properties are present, then impacts of the proposed action on these properties shall be assessed, and mitigation commitments shall be devised as needed. [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-7 Determining effects to significant historic properties. (a) The effects or impacts of a project on significant properties shall be determined by the agency. Effects include direct as well as indirect impacts. One of the following effect determinations must be established:

- (1) "No historic properties affected". The project will have no effect on significant historic properties; or
- (2) "Effect, with agreed upon mitigation commitments". The project will affect one or more significant historic properties, and the effects will potentially be harmful. However, the person has agreed to mitigation commitments involving one or more forms of mitigation to reasonably and acceptably mitigate the harmful effects.

(b) Effects include, but are not limited to, partial or total destruction or alteration of the historic property, detrimental alteration of the properties' surrounding environment, detrimental

visual, spatial, noise or atmospheric impingement, increasing access with the chances of resulting damage, and neglect resulting in deterioration or destruction. These effects are potentially harmful.

(c) Effect determinations shall be submitted to SHPD for review. These shall be submitted with the survey report, significance assessments, and mitigation commitments. The determinations shall include a map showing the location of the project and a general discussion of the project's scope of work, so the nature of possible effects can be understood.

(1) If the SHPD disagrees with the effect determinations, a letter that specifies the disagreements shall be sent within forty five days of receipt of the effect determinations. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the effect determinations.

(2) If the SHPD agrees with the effect determinations, the SHPD shall send a letter of agreement within forty five days of SHPD receipt of the effect determinations.

(d) No historic properties affected determinations for architectural properties shall be expedited when the SHPD agrees with the agency that minor changes to a building or structure will not affect its significant character. Because these changes are typically non-controversial and require prompt processing, the SHPD shall write its concurrence as a "no historic properties affected" letter.

(e) When the SHPD comments that the action shall not affect any significant historic properties, the historic preservation review ends. When the comment of the SHPD is that the project will have an "effect, with agreed upon mitigation commitments", then detailed mitigation plans shall be developed by the agency as discussed in the following section.

[Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-8 Mitigation. (a) If a project will have an "effect" (impact) on significant historic properties, then a mitigation commitment proposing the form of mitigation to be undertaken for each significant historic property shall be submitted by the

agency to the SHPD for review and approval. This proposed commitment shall be submitted concurrently with the survey report, significance evaluations, and effects determinations, if significant historic properties are present in the project area and will be affected.

- (1) Mitigation may occur in five forms.
 - (A) Preservation, which may include avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use.
 - (B) Architectural recordation, which involves the photographic documentation and possibly the measured drawing of a building, structure, or object prior to its alteration or destruction.
 - (C) Archaeological data recovery, which enables the recovery of an adequate and reasonable amount of the significant information from a significant historic property prior to its alteration or destruction. Data recovery may include archaeological mapping, surface collection, excavation, monitoring, laboratory analyses, and interpretive analyses.
 - (D) Historical data recovery, which involves researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
 - (E) Ethnographic documentation, which involves interviewing knowledgeable individuals and researching historical source materials to document an adequate and reasonable amount of information about the property when a property will be altered or destroyed.
- (2) If properties with significance, so evaluated under criterion "e", as defined in paragraph 13-284-6(b)(5) are involved, the agency shall initiate a consultation process with ethnic organizations or members of the ethnic group for whom the historic properties have

significance under criterion "e" to seek their views on the proposed forms of mitigation. For native Hawaiian properties which may be significant under criterion "e", the Office of Hawaiian Affairs also shall be consulted.

(3) This proposed mitigation commitment must include:

- (A) A table of the significant historic properties, indicating which form or forms of mitigation are proposed for each property--preservation, archaeological data recovery, architectural documentation, historical documentation, or ethnographic documentation;
- (B) Brief text justifying these proposed treatments; similar sites can be discussed together in this justification; and
- (C) If properties which may have significance under criterion "e" are involved, a description of the consultation process used, a list of the individuals and organizations contacted, and a summary of the views and concerns expressed.

(b) If the proposal is not adequate, SHPD shall send a letter outlining needed changes, within forty five days of receipt of the mitigation commitments. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the mitigation commitments.

(c) If the commitments are acceptable, the SHPD shall send a determination letter concurring with the proposed project within forty five days of receipt of the mitigation commitments.

(d) If identified unmarked burial sites are present, the relevant island burial council of the department must approve the proposed mitigation commitments for this type of historic property in the case of native Hawaiian burials, following chapter 6E-43, HRS, and section 13-300-33.

(e) After mitigation commitments are accepted the agency shall provide detailed plans for the mitigation work to the SHPD for review and approval. The approved plans shall serve as scopes of work for mitigation.

- (1) Archaeological data recovery plans shall meet the minimal standards for data recovery as provided in chapter 13-277. Qualifications of the archaeologist who is the principal investigator for this work shall comply with chapter 13-281. An archaeological permit from the SHPD is required to undertake this work as provided in chapter 13-282. Plans may include monitoring of construction by a professional archaeologist where further significant historic remains are likely to be found after data recovery. Minimal standards for the monitoring and report shall comply with chapter 13-279. Qualifications of the archaeologist who is the principal investigator for the monitoring shall comply with chapter 13-281.
- (2) Architectural recordation plans' photographic components shall meet the minimal standards as provided by historic American building survey (HABS) photographic specifications.
- (3) Historical data recovery plans shall conform to SHPD guidelines for historic documentation. Qualifications for the historian directing this work shall comply with chapter 13-281.
- (4) Ethnographic documentation plans shall conform to SHPD guidelines for ethnographic documentation. Qualifications for the ethnographer directing this work shall comply with chapter 13-281.
- (5) Preservation plans shall meet the minimal standards as provided in chapter 13-277 for archaeological properties and properties deemed significant under paragraph 13-284-6(b)(5) and the Secretary of the Interior's standards for historic preservation projects for architectural properties. If preservation plans involve historic properties deemed significant under criterion "e" as provided in paragraph 13-284-6(b)(5), the agency shall consult with interested individuals and organizations of the relevant cultural group with which the properties are associated. For native Hawaiian properties deemed significant under paragraph 13-284-6(b)(5), the Office of Hawaiian Affairs shall be consulted. The plans shall describe the

consultation process used, list the individuals and organizations consulted, and summarize the views and concerns expressed.

- (6) Any interested persons may comment on the detailed mitigation plans. Comments must be submitted in writing to the SHPD within thirty days of the SHPD posting notice of the receipt of the detailed mitigation plans. The SHPD shall take all comments into consideration when issuing its letter of acceptance or non-acceptance of the plans.
 - (7) If a detailed mitigation plan is not adequate, SHPD shall send a letter outlining needed changes, within forty five days of receipt of the plan. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the plan.
 - (8) If a detailed mitigation plan is adequate, the SHPD shall send a letter of agreement within forty five days of receipt of the plan. Once the plan is considered adequate, work can then proceed on the plan.
 - (9) If unmarked burials are involved, the detailed mitigation plan must be covered under a burial treatment plan, as specified in chapter 13-300. This treatment plan can serve as the burial site component of an archaeological data recovery plan (in cases of disinterment and reinterment elsewhere) or of a preservation plan.
- [Eff _____] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-9 Verification of completion of the detailed mitigation plan. (a) Once the detailed mitigation plans are carried out, a request for verification shall be submitted by the agency to the SHPD. This request shall document completion of the detailed mitigation plan's tasks--usually in the form of a completion report, with one copy submitted.

(b) If the SHPD disagrees that the work has been successfully completed, it shall send a letter noting uncompleted tasks or inadequately completed tasks within thirty days of receipt of the request. To proceed with the review process, the agency shall

consult with the SHPD as needed to resolve differences, and resubmit the completion report.

(c) If the SHPD agrees that the work has been successfully concluded, SHPD shall send a verification letter within thirty days and the historic preservation process is concluded.

(d) In cases involving preservation, archaeological data recovery, or architectural recordation, the agency has the option to request an accelerated, 2-step verification, understanding that construction projects often need to proceed rapidly and that a completion report is often finished months after fieldwork is completed.

(1) Step 1. The agency shall submit documentation to the SHPD indicating that data recovery fieldwork, architectural recordation, or interim protection measures for properties to be preserved have been successfully completed. The SHPD writes a letter within thirty days to the agency agreeing and stating construction may proceed, with the understanding that Step 2 must be completed to conclude the historic preservation process. If the measures have not been successfully completed, the SHPD shall write a letter within thirty days to the agency indicating what needs to be completed. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the documentation.

(2) Step 2. The agency shall submit to the SHPD a completion report for the data recovery work, architectural recordation, or final preservation work. The SHPD shall write a letter to the agency within thirty days stating the completion report is adequate and that the historic preservation process is concluded. If the completion report is not adequate, the SHPD shall write a letter within thirty days to the agency indicating needed changes. To proceed with the review process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the completion report.

(e) In cases involving solely historic data recovery or ethnographic documentation where no field study of the historic properties is to occur, the

agency has the option to request an accelerated verification process to proceed with the construction project and to submit a completion report at a later date, agreed upon with the SHPD. The agency shall submit the request in writing to the SHPD with reasons and with a date for submittal of the completion report. If the SHPD agrees, it shall send a letter to the agency within thirty days to the agency stating construction may proceed, with the agreement that the report shall be submitted to the SHPD by the agreed upon date and shall then be reviewed in accordance with subsections 13-284-9(a-c). If the SHPD does not agree with the request, the SHPD shall write a letter within thirty days to the person indicating the SHPD's concerns. If the agency wishes to proceed with the accelerated verification process, the agency shall consult with the SHPD as needed to resolve differences, and resubmit the request.

(f) Once a final report is adequate, the agency shall ensure that seven copies are made available to the same repositories as the survey report noted in paragraph 13-284-5(c)(3). [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-10 Conclusion of the historic preservation review process. (a) The historic preservation review process ends when:

- (1) SHPD agrees that adequate procedures have been taken to determine if historic properties are likely to be present in the project area, and no historic properties are found to be present or historic properties are considered unlikely to be present;
- (2) SHPD agrees that the project shall have "no historic properties affected"; or
- (3) SHPD agrees to a detailed mitigation plan to handle an effect to significant historic properties that are present and this plan is verified by the SHPD to have been successfully executed. [Eff] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-11 Review of Findings Based on Agency Requests. (a) Upon the request of an agency the SHPD shall reconsider the findings under sections 13-284-5 (

adequate identification and inventory procedures), 13-284-6 (significance evaluations), 13-284-7 (determination of effects), and 13-284-8 (mitigation), should an agency believe new information has come forth regarding historic properties. To be considered, the inquiry must address specific problems in the findings with supportive new evidence presented. The person conducting the project shall be promptly notified by the SHPD of the request for reconsideration. An inquiry to the SHPD shall not suspend action on a project, but the person and agency shall take all measures to avoid adverse effects to significant historic properties while the SHPD is reviewing a request. Within 10 working days of receipt of the request at the SHPD office, the SHPD shall advise the person undertaking the project, and the agency involved, in writing of the SHPD conclusions.

(b) If the SHPD conclusions identify an inaccurate significance evaluation, an inappropriate general mitigation commitment, or a flaw in the detailed mitigation plan, then the SHPD, the person undertaking the project, and the agency responsible for the permit or action shall attempt to reach agreement on how to correct the problem. [Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-12 Discovery of previously unknown historic properties during implementation of a project. If a previously unknown historic property is found after the acceptance of an inventory report or during the implementation of a project, then the historic preservation review process shall be reopened. This action, however, applies only to the immediate area where a historic property is discovered, and the historic preservation review process shall be accelerated, following the procedures of 13-280.
[Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-42)

§13-284-13 Penalty. Failure to obtain the written comments of the SHPD in accordance with this chapter shall result in a SHPD comment to the agency not to proceed with the project. [Eff
] (Auth: HRS §6E-3) (Imp: HRS §§6E-1, 6E-3, 6E-10, 6E-11, 6E-42)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-284, Hawaii Administrative Rules, on the Summary Page dated October 31, 2002, was adopted November 15, 2002, following public hearings held on the islands of Kauai on August 20, 2002, Hawaii on August 21 and 22, 2002, Maui on August 26, 2002, Molokai on August 27, 2002, Oahu on August 28, 2002, and Lanai on August 29, 2002, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and the Garden Isle on July 21, 2002.

The adoption of chapter 13-284 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Peter T. Young, Chairperson
Board of Land and Natural
Resources

APPROVED:

Linda Lingle, Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

