

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

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§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: HRS §6E-1, 6E-3, 6E-42] (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 ^{DEC 1, 2003} §§6E-1, 6E-3, 6E-42] (Auth: HRS §6E-3) (Imp: HRS

§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 DEC 1 1 2003] (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 DEC 1 1 2003] (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 DEC 11 2003] (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 DEC 11 2003] (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 DEC 11 2003] (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 DEC 11 2003] (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 ^{DEC 1 1 2003}]
 (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 ^{DEC 1 1 2003} 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 DEC 1 1 2003]
 (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 DEC 1 1 2003] (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 DEC 1 1 2003] (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: NOV 25 2003

APPROVED AS TO FORM:


Deputy Attorney General

Filed

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OFFICE

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