

(g) Within thirty days of completion of the physical examination, a report shall be submitted to the department for review and acceptance. The report shall include the following:

- (1) Number of individuals represented; and
 - (2) The suggested ethnicity of each individual or a finding that ethnicity could not be suggested by reasonable belief.
- [Eff SEP 28 1996] (Auth: HRS §§6E-43.5, 91-2) (Imp: HRS §§6E-43, 6E-43.5, 6E-43.6)

§13-300-33 Request for council determination to preserve or relocate Native Hawaiian burial sites. (a) The council shall have jurisdiction over all requests to preserve or relocate previously identified Native Hawaiian burial sites.

(b) The applicant shall submit a request to preserve in place or relocate a Native Hawaiian burial site to the department in the form of a burial treatment plan. The department shall assure that the burial treatment plan includes the following information prior to any council determination:

- (1) Evidence of a good faith search for lineal and cultural descendants, including:
 - (A) Research of relevant land conveyance documents including identification of land commission awardees located at or near the burial site;
 - (B) An inquiry to any person who may have knowledge of families possibly affiliated with the Native Hawaiian remains;
 - (C) Publication of notice in a newspaper of general circulation in the county in which the burial site is located and a newspaper of statewide circulation for a minimum of three days, including Sunday and Wednesday. At a minimum, the notice shall contain:
 - (i) A general description of the property including any identifying features and the tax map key, ahupua`a, district, and island;
 - (ii) The names of individuals or families including land commission awardees possibly associated with the burial site or property where the burial site is located;
 - (iii) The name, address, and telephone number of the applicant and a contact person in the department;
 - (iv) A brief statement of the proposed treatment for the burial site; and
 - (v) A statement that interested persons shall respond within thirty days and provide information to the department adequately demonstrating descent from the Native Hawaiian remains, or descent from ancestors buried in the same ahupua`a or district where the Native Hawaiian skeletal remains are buried.

Notice may also be placed in the next issue of Ka Wai Ola O OHA, published by the Office of Hawaiian Affairs, or any other similar

- publication. The applicant shall append to the burial treatment plan proof of notice publication for each newspaper.
- (2) Names of any known lineal or cultural descendants recommended by the department and recognized by the council, and their respective positions regarding burial site treatment;
 - (3) A description of proposed treatment of all burial sites including a statement of preservation in place or relocation:
 - (A) In the event preservation in place is proposed, statements describing:
 - (i) Short term measures to immediately protect all burial sites including, but not limited to, fencing, buffers, and site restoration; and
 - (ii) Long term measures to properly manage and protect all burial sites including, but not limited to, buffers, landscaping, and access by known lineal or cultural descendants;
 - (B) In the event relocation is proposed, statements describing:
 - (i) Reasons that warrant relocation;
 - (ii) The methods to be utilized to conduct disinterment;
 - (iii) The location and manner by which Native Hawaiian skeletal remains and any burial goods will be curated where reburial will not occur immediately following disinterment;
 - (iv) The proposed reburial site location mutually agreed upon by the landowner and any recognized lineal descendant;
 - (v) The manner in which the reburial site will be prepared;
 - (vi) Short term measures to immediately protect the reburial site, including but not limited to fencing and buffers; and
 - (vii) Long term measures to properly manage and protect the reburial site including, but not limited, to buffers, landscaping, and access by known lineal or cultural descendants;
 - (4) Maps clearly indicating the location of all identified Native Hawaiian burial sites located at the property, including where applicable, the spatial relationship between Native Hawaiian burial sites and any proposed construction activities, drawn to scale;
 - (5) The name and mailing address of the applicant;
 - (6) The name and mailing address of the landowner if different from the applicant;
 - (7) The tax map key number for the property;
 - (8) The name of the ahupua`a, district, and island;
 - (9) A description of the present condition of all previously identified Native Hawaiian burial sites located at the property;
 - (10) Any project plans requested by the council including, but not limited to, construction and grading plans;
 - (11) A copy of the archaeological inventory survey report where requested by the council;

- (12) Where applicable, proof that the archaeological inventory survey report has been accepted by the department;
- (13) Where applicable, reports of any additional archaeological inventory level testing recommended by the council, reviewed and approved by the department; and
- (14) Any other information the council deems necessary in order to make a fully informed determination provided that all council requests for additional information shall be done in a timely manner.

(c) The applicant shall consult with the department in the development of the burial treatment plan. Once approved by the department, the applicant shall submit requisite copies of the completed burial treatment plan for distribution to the council, accompanied by a simple written request to be placed on the council agenda for a determination of burial site treatment.

(d) Prior to making a determination, the council may request site inspections of the property where the burial site is located.

(e) The applicant may, at any time prior to referral of the matter to the council for a determination, submit a simple written request to be placed on the council agenda to conduct an informational presentation of proposed burial treatment.

(f) The council shall render a determination to preserve in place or relocate previously identified Native Hawaiian burial sites in accordance with section 13-300-38 within forty-five days of referral by the department, unless otherwise extended by agreement between the landowner and the department. Referral shall mean the first date the council officially convenes following:

- (1) Acceptance by the department of a complete or revised burial treatment plan;
- (2) Receipt by the department of a written request to be placed on the council agenda for a determination of burial site treatment;
- (3) Placement of the matter on the council agenda; and
- (4) Posting of a notice of council meeting agenda with the lieutenant governor's office.

(g) At any time prior to a determination by the council, an applicant may revise the burial treatment or withdraw the burial treatment plan from consideration by the council. In the event a withdrawn burial treatment plan is re-submitted to the department, the forty five day period shall commence following referral to the council, as provided in subsection (f).

(h) Intentional removal of human skeletal remains or burial goods from a previously identified Native Hawaiian burial site is prohibited until a determination to relocate is made by the council pursuant to sections 6E-43 and 6E-43.5, HRS, and this chapter, except that the council shall be authorized to allow temporary removal of Native Hawaiian skeletal remains or any burial goods to protect from imminent harm, until a determination is made.

[Eff SEP 28 1996] (Auth: HRS §§6E-43.5, 91-2) (Imp: HRS §§6E-43, 6E-43.5)

§13-300-34 Request for department determination to preserve or relocate non Native Hawaiian burial sites. (a) The department shall have jurisdiction over all requests to preserve or relocate previously identified non Native Hawaiian burial sites.

(b) The applicant shall submit a request to preserve in place or relocate a previously identified non Native Hawaiian burial site to the department in the form of a burial treatment plan. The department shall assure that the burial treatment plan includes the following information prior to any determination of treatment:

- (1) Evidence of a good faith search for lineal and cultural descendants, including:
 - (A) Research of relevant land conveyance documents;
 - (B) An inquiry to any person who may have knowledge of families possibly affiliated with the non Native Hawaiian remains;
 - (C) Publication of notice in a newspaper of general circulation in the county in which the burial site is located and a newspaper of statewide circulation for a minimum of three days, including Sunday and Wednesday. At a minimum, the notice shall contain:
 - (i) A general description of the property including any identifying features and the tax map key, ahupua`a, district, and island;
 - (ii) The names of individuals or families possibly associated with the burial site or property where the burial site is located;
 - (iii) The name, address, and telephone number of the applicant and a contact person in the department;
 - (iv) A brief statement of the proposed treatment for the burial site; and
 - (v) A statement that interested persons shall respond within thirty days and provide information to the department adequately demonstrating descent from the non Native Hawaiian remains, or be the same ethnicity as the non Native Hawaiian skeletal remains.

Notice may also be placed in any publication which reaches a particular ethnic group. The applicant shall append to the burial treatment plan proof of notice publication for each newspaper.

- (2) Names of any known lineal or cultural descendants recognized by the department, and their respective positions regarding burial site treatment;
- (3) A description of proposed treatment of all burial sites including a statement of preservation in place or relocation:
 - (A) In the event preservation in place is proposed, statements describing:
 - (i) Short term measures to immediately protect all burial sites including, but not limited to, fencing, buffers, and site restoration; and
 - (ii) Long term measures to properly manage and protect all burial sites including, but not limited, to buffers, landscaping, and access by known lineal or cultural descendants;
 - (B) In the event relocation is proposed, statements describing:

- (i) Reasons that warrant relocation;
 - (ii) The methods to be utilized to conduct disinterment;
 - (iii) The location and manner by which non Native Hawaiian skeletal remains and any burial goods will be curated where reburial will not occur immediately following disinterment;
 - (iv) The proposed reburial site location mutually agreed upon by the landowner and any recognized lineal descendant;
 - (v) The manner in which the reburial site will be prepared;
 - (vi) Short term measures to immediately protect the reburial site including, but not limited to, fencing and buffers; and
 - (vii) Long term measures to properly manage and protect the reburial site including, but not limited to, buffers, landscaping, and access by known lineal or cultural descendants;
- (4) Maps clearly indicating the location of all identified non Native Hawaiian burial sites located at the property, including where applicable, the spatial relationship between burial sites and any proposed construction activities, drawn to scale;
- (5) The name and mailing address of the applicant;
- (6) The name and mailing address of the landowner if different from the applicant;
- (7) The tax map key number for the property;
- (8) The name of the ahupua`a, district, and island;
- (9) A description of the present condition of all previously identified non Native Hawaiian burial sites located at the property;
- (10) Any project plans requested by the department including, but not limited to, construction and grading plans;
- (11) Any other information the department deems necessary in order to make a fully informed determination provided that all department requests for additional information shall be done in a timely manner.
- (c) The applicant shall consult with the department in the development of the burial treatment plan. Once approved by the department, the applicant shall submit two copies of the completed burial treatment plan accompanied by a simple written request for a determination of burial site treatment.
- (d) Prior to making a determination, the department may request site inspections of the property where the burial site is located.
- (e) The applicant may, at any time prior to a determination, submit a simple written request to meet with the department to conduct an informational presentation of proposed burial treatment.
- (f) The department shall render a determination to preserve in place or relocate non Native Hawaiian burial sites in accordance with section 13-300-39 within thirty days of submittal of an acceptable burial treatment plan.
- (g) At any time prior to a determination by the department, an applicant may revise the burial treatment or withdraw the burial treatment plan from consideration. In

the event a withdrawn burial treatment plan is re-submitted to the department, the thirty day period shall commence following resubmittal.

(h) Intentional removal of human skeletal remains or burial goods from a previously identified non Native Hawaiian burial site is prohibited until a determination to relocate is made by the department pursuant to section 6E-43(e), HRS, and this chapter, except that the department shall be authorized to allow temporary removal of non Native Hawaiian skeletal remains or any burial goods to protect from imminent harm, until a determination is made.

[Eff SEP 28 1996] (Auth: HRS §§6E-43.5, 91-2) (Imp: HRS §6E-43)

§13-300-35 Recognition of lineal and cultural descendants. (a) In order to establish lineal or cultural descent to human skeletal remains, a person shall submit a claim to the department together with any of the following information:

- (1) The name of the deceased individual;
- (2) Family genealogy;
- (3) Birth certificates;
- (4) Death certificates;
- (5) Obituaries;
- (6) Marriage certificates;
- (7) Probate records;
- (8) Church records;
- (9) Census records;
- (10) Tax records;
- (11) Land conveyance documents including, but not limited to, deeds and land commission awards;
- (12) Oral family history; or
- (13) Any other applicable information or records that help establish a lineal connection between the claimant and the human skeletal remains.

(b) The department shall review all submitted information and assess whether direct or collateral genealogical connections can be demonstrated between the claimant and certain human skeletal remains.

(c) The department shall obtain a written statement from the claimant concerning the confidentiality of any information submitted. No information shall be duplicated by the department without prior written consent.

(d) Where possible, the department shall compare submitted information with records found at appropriate repositories including:

- (1) State archives;
- (2) State bureau of conveyances;
- (3) Office of health status monitoring, department of health;
- (4) Family History Centers of the Church of Jesus Christ of Latter-Day Saints;
or
- (5) Any other appropriate repository or source.

(e) The department shall have no longer than thirty days from receipt of a written claim to review and assess the information submitted. Upon completion, the department shall return all information, unless the claimant indicates otherwise.