WHEREAS, our State's cultural heritage is imbued in its historic and cultural resources; and

WHEREAS, preservation of irreplaceable historic properties and cultural resources as well as responsible stewardship of precious and sacred iwi kupuna is of utmost importance to Native Hawaiians and the State; and

WHEREAS, the State Historic Preservation Division of the Department of Land and Natural Resources is authorized to adopt rules to administer historic preservation review laws and regulate the treatment and protection of invaluable historic properties and resources throughout the State; and

WHEREAS, the current historic preservation rules adopted by the Department of Land and Natural Resources have not been updated in more than fifteen years; and

WHEREAS, the current historic preservation rules, in some respects, provide incomplete, ineffective, or inadequate guidance on historic preservation processes and protection for historic resources and iwi kupuna; and

WHEREAS, the current historic preservation rules contain no standards for professional responsibility in archaeology, no process to regulate archaeology permits, and no procedures to discipline archaeologists who engage in practices that cause harm to historical resources; and

WHEREAS, the current historic preservation rules fail to distinguish requirements for projects for the development of
land that may harm, displace, or destroy historic and cultural resources and those that will rehabilitate, restore, preserve, or steward historic or cultural resources; and

WHEREAS, the current historic preservation rules have failed to adequately effectuate statutory protections for burial sites, especially in areas with large concentrations of skeletal remains; and

WHEREAS, under current historic preservation rules, "previously identified" burials are burials identified during an archaeological inventory survey or burials previously registered with the State Historic Preservation Division; and

WHEREAS, "inadvertently discovered" burials are all other burials, including burials found during exploratory testing that may use the same methodologies as an archaeological inventory survey and that may occur prior to the commencement of work; and

WHEREAS, the current distinction between "previously identified" and "inadvertently discovered" burials leads to vastly different decision-making processes regarding their treatment, with determinations regarding the disposition of the former made by the appropriate Island Burial Council and determinations regarding disposition of the latter made by the State Historic Preservation Division; and

WHEREAS, each Island Burial Council possesses far more appropriate expertise to advise and make determinations regarding any disposition of burials and moepu, regardless of classification as "previously identified" or "inadvertently discovered"; and

WHEREAS, the distinction between "previously identified" burials and "inadvertently discovered" burials does not warrant such vastly different treatment; and

WHEREAS, specifically, it appears inconsistent for the respective Island Burial Councils to be completely left out of decision-making regarding burial dispositions for "inadvertently discovered" burials, especially when the "inadvertently
WHEREAS, the vastly different treatment between "previously identified" burials and "inadvertently discovered" burials has led to a patchwork of inconsistent burial treatment plans; and

WHEREAS, the different processes, treatments, and dispositions applied respectively to "previously identified" and "inadvertently discovered" burials has incentivized irresponsible archaeological testing practices that minimize the prior identification of burial sites, resulting in the disinterment of countless burials contrary to the intent of Hawaii's historic preservation laws; and

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

WHEREAS, the current historic preservation rules require consultation with descendants and knowledgeable individuals to inform determinations regarding the historic significance of these sites, but these consultation requirements are inconsistently effectuated and inadequately enforced; and

WHEREAS, the inadequacy of the current historic preservation rules has caused significant confusion, costly litigation, and the destruction of invaluable and irreplaceable historic resources and cultural sites, including iwi kupuna; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020, the Senate concurring, that the Department of Land and Natural Resources is requested to adopt administrative rules that strengthen historic resource protections by:

(1) Improving accountability for archaeologists responsible for surveying, recording, and making
recommendations for treatment of historic resources discovered on development sites;

(2) Establishing an alternative or streamlined historic preservation process to facilitate the approval of preservation plans and permits for projects specifically aimed at rehabilitating, preserving, or stewarding historic properties or cultural resources;

(3) Standardizing and formalizing the archaeological inventory survey sampling and reporting requirements to improve thoroughness and consistency;

(4) Creating a process to allow for the reclassification of "inadvertently discovered" burials as "previously identified", especially where burials are discovered during exploratory testing authorized or ordered by the Department of Land and Natural Resources or where burials are discovered in concentrations;

(5) Granting each Island Burial Council greater authority, responsibility, and deference to advise during the historic preservation review process and determine the treatment of Native Hawaiian burials;

(6) Providing to each Island Burial Council stronger and periodic training relating to relevant statutory and administrative authorities and responsibilities;

(7) Requiring landowners to record the metes and bounds of preservation sites with the Bureau of Conveyances to ensure perpetual protection of culturally significant and irreplaceable historic sites and resources;

(8) Clarifying the requirements for consultation with the Native Hawaiian community and organizations throughout the historic preservation review process when Native Hawaiian historic and cultural sites are threatened by development; and

(9) Providing for stricter fines, clearer enforcement processes, and a process by which citizens may report
the discovery and potential destruction of burials and other historic resources, to improve the effectuation of historic preservation review processes and the enforcement of protections for historic properties; and

BE IT FURTHER RESOLVED that the Department of Land and Natural Resources is requested to submit a report to the Legislature on the status and progress of its administrative rulemaking proceedings related to historic resource protections no later than twenty days before the convening of the regular session of 2021; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Chairperson of the Board of Land and Natural Resources, Chairperson of the Board of Trustees of the Office of Hawaiian Affairs, each member of the Hawaii Island Burial Council, each member of the Kauai and Niihau Islands Burial Council, each member of the Maui and Lanai Islands Burial Council, each member of the Oahu Island Burial Council, and each member of the Molokai Island Burial Council.

OFFERED BY: ______________________________
By Request
JAN 16 2020