

LINDA LINGLE
GOVERNOR OF HAWAII



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

STATE HISTORIC PRESEERVATION DIVISION
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on House Bill 3429, House Draft 1 – Relating To Historic Preservation

**BEFORE THE HOUSE COMMITTEE ON
JUDICIARY**

February 22, 2008

House Bill 3429, House Draft 1, expands the definition section of Chapter 6E, Hawaii Revised Statutes (HRS), regarding “burial site” to include “burial cave”. While the Department of Land and Natural Resources (Department) recognizes that the House Committee on Water, Land, Ocean Resources and Hawaiian Affairs attempted to address the Department’s concerns with the original measure by way of the House Draft 1, the Department still has concerns and respectfully continues to oppose the bill for the following reasons.

- (1) This bill attempts to have cave burials treated in a traditional Hawaiian sense, i.e. the entrance to the burial(s) is the burial site. However, there are complications with this definition, which would hamper enforcement efforts. For example, how would boundaries or portions of a cave be defined? There could potentially be multiple owners of a cave, if there are multiple entrances on multiple properties. There is already a state cave law (Chapter 6D, HRS), which clarifies that ownership of a cave site is at the cave’s entrances. Thus, the state cave law would need to be changed as well;
- (2) Another issue is that lava tubes collapse all the time, which creates new openings. All openings would need to be identified and a determination made as to which ones are the “real” openings. Mapping would need to be done for all caves in the state inventory to determine where opening are currently;
- (3) Additionally, caves have multiple uses, like other historic properties the Department deals with. For example, there are burials in agricultural/residence complexes, however the Department does not treat the whole complex as a burial site;
- (4) Furthermore, the law currently defines a burial site as where human skeletal remains are interred. This bill expands it to also include where skeletal remains once were interred. This definition would make the law very difficult to enforce, as the Department would need to know not only where skeletal remains are currently interred but also where skeletal remains have been interred in the past.

000157



HB 3429, HD1 RELATING TO HISTORIC PRESERVATION
House Committee on Judiciary

February 22, 2008
Room: 325

2:00 p.m.

The Office of Hawaiian Affairs (OHA) SUPPORTS H.B. 3429, H.D. 1, which would ensure the proper care, management and protection of ancestral burial sites located in a cave or lava tube context.

Ancestral Native Hawaiians buried their loved ones in many different types of places and under varying conditions. A common method of interment was in natural voids including caves and lava tubes. These special places then acquired the additional sacredness of a place of final rest for beloved kūpuna and other 'ohana members.

Often the intent of such cave or lava tube interment was to ensure the least disruption to the eternal sleep of these family members, and to allow perpetual care to maintain the familial relationships acquired in life, in accordance with beliefs, traditions and practices prevalent throughout the Hawaiian culture.

Lava tubes present unique challenges as places of interment with issues ranging from different landowner jurisdiction across the length of the tube system, to issues regarding protective surface buffers and discreet looting.

OHA urges the Committee to support H.B. 3429, H.D. 1, as it begins to address the unique status of cave and lava tube burial sites to provide them with equal care, management and protection afforded other traditional burial sites. Thank you for the opportunity to testify.

Harry Kim
Mayor



Dixie Kaetsu
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawaii

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February 20, 2008

The Honorable Tommy Waters
Chair, Committee on Judiciary
Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Waters and Committee Members:

Re: HB 3429, HD1

I regret that I must submit testimony in opposition to HB 3429, HD1, and ask that the bill be held.

While I am sympathetic to the importance of historical sites in general, and burial sites in particular, the bill before you would provide that an entire lava tube will be considered a burial site, no matter where the burial is located or how long the lava tube might be. In addition, an area would be considered a "burial site" even if the remains are removed and reinterred elsewhere in accordance with appropriate and authorized procedures. Either of these provisions could greatly complicate road building in Hawai'i County, and I assume statewide.

Please hold HB 3429.

Aloha,

Harry Kim
MAYOR

000159

JUDtestimony

From: Keonialvarez [REDACTED]
Sent: Wednesday, February 20, 2008 9:28 PM
To: JUDtestimony
Subject: KEONI ALAVREZ - SUPPORT HB3429 WITH AMENDMENT

February 20, 2008

TESTIMONY
BILL: HB3429 HD1
COMMITTEE: JUD

Aloha my name is Keoni Kealoha Alvarez I live on the Big Island of Hawai'i. I strongly **SUPPORT** Bill HB3429, with

AMENDMENT protecting the entire cave as a Hawaiian burial site and not to include portions of the burial cave to be protected.

As a Native a Hawaiian with family roots in taking care of Hawaiian burials sites I have been officially recognized as cultural descendant to several Native Hawaiian skeletal remains within a Hawaiian burial lava tube. The State Historic Preservation, OHA, Island Burial Council, Open Space Land Commission and the Hawai'i County Council has all recognized me as a descendant to these burials.

I engage in various traditional and customary practices that my parents and other ancestors have taught me. One of the critical tenets of my Native Hawaiian traditional and customary practices related to iwi (native Hawaiian human remains) is the obligation to ensure that they remain undisturbed; and that they receive proper care and respect. Protection of iwi in place to prevent their disturbance and the resulting desecration is a traditional and customary practice that I engage in with respect to the iwi which lay at rest in this lava tube.

On the islands of Hawai'i's burial lava tubes and burial caves are very important to our Hawaiian history, tradition and culture. To care for my ancestors is has been a great pleasure and honor that is carried down for thousands of years continues today. In our Hawaiian burial tradition the burial lava tube or cave should never be separated in sections but treated an entire burial site and not limited to its surroundings. These caves are Kapu (sacred) for it holds the remains of our families final resting place. It was Kapu to everyone, except the chosen few by the families or Ali'i to malama and care for these burial caves sites. Today as a living descendant I continue to malama our Hawaiian burial lava tube. In doing so we are faced with threats that effects our burial caves and burial lava tubes such as bulldozing, sewage lines, cess pools, and thefts etc.

I believe it is our responsibility to care for and protect these burial sites from being desecrated. Although burial sites are protected by law, there are many loopholes that do not make the law concrete in protecting Hawaiian burial lava tubes and burial caves. I ask for your help to protect our ancestors and this bill will to do that. This is a great effort that needs to be taken into consideration for the respect of our ancient Hawaiian people. We welcome your support on this matter. Feel free to contact me [REDACTED]
[REDACTED] Website: www.hawaiianislandproductions.org.

Sincerely,
Keoni Kealoha Alvarez
(Descendant)

Delicious ideas to please the pickiest eaters. [Watch the video on AOL Living.](#)

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2/21/2008

JUDtestimony

From: Thomas Dye [REDACTED]
Sent: Thursday, February 21, 2008 9:45 AM
To: JUDtestimony
Cc: Society for Hawaiian Archaeology
Subject: Testimony Providing Comments on HB 3429, HD1, Relating to Historic Preservation

TO: Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice Chair House Committee on Judiciary

FROM: Thomas S. Dye, Ph.D., President
Society for Hawaiian Archaeology
[REDACTED]

HEARING: February 22, 2008, 2:00 PM, House Conference Room 325
COPIES: 5
SUBJECT: Testimony Providing Comments on HB 3429, HD1, Relating to
Historic Preservation

I am Dr. Thomas Dye, President of the Society for Hawaiian Archaeology (SHA). We have over 200 members that include professional archaeologists and advocates of historic preservation in general. I am testifying to provide comments on HB 3429, HD1, a bill that proposes to amend Chapter 6E, Hawaii Revised Statutes (HRS) by defining "burial cave" and clarifying that a burial site may include a cave or lava tube or a portion of a cave or lava tube. I have had the opportunity to speak with a proponent of this amendment who believes that it will allow for better protection of caves or lava tubes with burials. We believe that the subject bill is well-intended and seeks to improve the protection of burials found in caves or lava tubes.

We believe that the amendments made to the subject bill by the House Committee on Water, Land, Ocean Resources and Hawaiian Affairs have added some clarity to the proposed changes in the definition of "burial sites." As we noted previously, many of our members have considerable experience in recording and documenting caves and lava tubes in Hawaii. In pre-Contact times, the Hawaiian people used these geological features as places of refuge, habitation, food preparation and consumption, and burial. Archaeologists often find evidence of more than one type of activity at the same or adjacent locales within a cave or lava tube system. Consequently, we support the change in language that clarifies that only a portion of a lava tube or cave may be defined as a "burial site."

We are still concerned, though, that remaining vagueness in HB 3429, HD 1 may make it difficult to implement the amended law, and to provide effective enforcement.

We question whether the proposed amendments comport with the existing statutes governing caves: Chapter 6D, HRS, Protection of Caves. Under this statute, for example, various individuals have authorization to enter caves and lava tubes for specific educational, scientific, and commercial purposes, as well as cultural purposes. It is not clear how these amendments to Chapter 6E, HRS, would affect their access rights under Chapter 6D, HRS, if at all.

Most lava tubes or caves that are longer than a few hundred yards have multiple landowners, both private and public. Chapter 6D-1, HRS, states that: "Owner" means the persons who hold title to or are in possession of the land on or under which a cave is located, or the persons' lessee or agent. The term also includes an agency that holds title to, manages, or controls public land on or under which a cave is located." In view of this statutory definition, we wonder how the proposed amendment will affect enforcement of trespassing or unauthorized activities such as those listed in Chapter 6D-2, HRS.

If an archaeological survey of one property results in one or more burials being found in a lava tube or cave owned by multiple landowners, will all of the landowners have to agree on any proposed burial treatment plan and go before the relevant island burial council?

The proposed amendments appear to create a separate class of burial sites based on

context. The proposed amendments specifically expand the spatial definition of "immediate surrounding archaeological context" to a potentially much greater area for only one type of burial. This makes it difficult for the department to apply and enforce the law consistently. While we understand the desire to furnish greater protection to burials in caves and lava tubes, we believe that mechanisms in existing law and regulations can accommodate these situations.

Thank you for the opportunity to testify. Should you have any questions, please feel free to contact me at the above telephone number and email address.

Thomas S. Dye, Ph.D
President, Society for Hawaiian Archaeology

JUDtestimony

From: Moses K Haia [REDACTED]
Sent: Wednesday, February 20, 2008 8:08 AM
To: JUDtestimony
Subject: FW: February 22, 2008 JUD hearing on HB3429, HD 1

TO: Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice-Chair
Committee on Judiciary

FROM: Moses K. N. Haia III, Esq.

HEARING: Friday, February 22, 2008, 2:00 p.m., Conference Room 325

SUBJECT: Support of HB 3429, HD 1, Relating to Historic Preservation

Aloha. My name is Moses Haia and I stand in full and enthusiastic support of HB 3429, HD 1, Relating to Historic Preservation.

This bill clarifies that, for purposes of Hawai'i's Historic Preservation Program codified at Hawai'i Revised Statutes Chapter 6E, an entire cave or lava tube or a portion thereof may be considered a burial site and protected as such. To be treated as a burial site, sufficient physical or cultural evidence which tends to establish that the entire cave or lava tube or a portion thereof was used for or viewed as a burial site must be adduced.

History confirms that entire caves known as the catacombs were built by Christians to bury their dead. Under Roman law, the bodies of the Christian dead could be placed in catacombs without fear of being disturbed. This bill seeks the same protection for the remains of native Hawaiians laid to rest in a similar manner and with similar intent.

For these and many other reasons, I humbly urge this committee to pass HB 3429, HD 1. Mahalo for allowing me to testify in strong support of this very important piece of legislation.

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