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From: Thomas Dye [mailto:sha@tsdye2.com]
Sent: Tuesday, February 05, 2008 8:05 AM
To: WLHtestimony
Cc: Society for Hawaiian Archaeology
Subject: Testimony Providing Comments on HB 3429, Relating to Historic Preservation

TO: Representative Ken Ito, Chair
Representative Jon Riki Karamatsu, Vice Chair
House Committee on Water, Land, Ocean Resources, and Hawaiian Affairs

FROM: Thomas S. Dye, Ph.D., President
Society for Hawaiian Archaeology
Telephone: 808-529-0866, FAX: 808-529-0884
Email: sha@TSDYE2.com

HEARING: February 6, 2008, 8:30 AM, House Conference Room 312
COPIES: 5
SUBJECT: Testimony Providing Comments on HB 3429, 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, 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. 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.

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.

We believe that the subject bill is well-intended and seeks to improve the protection of burials found in caves or lava tubes. We are concerned, though, that its vagueness and lack of foundation may make it difficult to implement and prevent any effective enforcement.

A portion of the proposed amendments ("Burial site" means any specific unmarked location, including an entire cave or lava tube, ...) is problematic. We do not see how "an entire cave or lava tube" can be equated to a "specific unmarked location," particularly when lava tubes can extend for great distances, such as Kazumura Caverns on Hawaii Island, currently determined to be some 40 miles long.

We question whether the proposed amendments comport with the existing statute 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 and commercial

purposes, as well as cultural purposes. It is not clear how these amendments to Chapter 6E, HRS, would affect their access, 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?

We believe that the points listed raise legitimate concerns that should be addressed before adopting the amendments proposed in HB 3429.

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

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

From: Moses K Haia [mailto:mohaia@nhlchi.org]
Sent: Tuesday, February 05, 2008 11:13 AM
To: WLHtestimony
Cc: 'Keonialvarez@aol.com'
Subject:

TO: Rep. Ken Ito, Chair
Rep. Jon Riki Karamatsu, Vice-Chair
Committee on Water, Land, Ocean Resources, and Hawaiian Affairs

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

HEARING: Wednesday, February 6, 2008, 8:30 a.m., Conference Room 312

SUBJECT: Support of HB 3429, Relating to Historic Preservation

Aloha. My name is Moses Haia and I stand in full support of HB 3429, 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 may be considered a burial site and protected, in its entirety, as such. To be eligible for such treatment, sufficient physical or cultural evidence which tends to establish that the entire cave or lava tube 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 as Christian burial grounds. 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 who were, with similar intent, laid to rest in caves and lava tubes.

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