

LATE**testimony**

From: Jeannine Johnson [jeannine@hawaii.rr.com]
Sent: Sunday, February 17, 2008 8:59 PM
To: testimony
Subject: Testimony in strong support of SB2557 (burial sites) and SB2644 (SHPD)
Attachments: image001.jpg

Jeannine Johnson
 5648 Pia Street, Honolulu, Hawai'i 96821
 Phone: 373-2874 (h) / 523-5030 (w)
 February 17, 2008

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair
 Senator J. Kalani English, Vice Chair

COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION

Senator Carol Fukunaga, Chair
 Senator Will Espero, Vice Chair

Re: SB 2557 - RELATING TO BURIAL SITES
SB 2644 - RELATING TO THE STATE HISTORIC PRESERVATION OFFICER
Hearing: Tuesday, February 19, 2008, at 2 pm in Conference Room 224

Aloha Chairs Tokuda and Fukunaga and Vice Chairs English and Espero,

I strongly support SB2557 which transfers jurisdiction of inadvertently discovered native Hawaiian burial sites from the department of land and natural resources to the appropriate island burial council; provides 60 days for burial council to make a determination on burial site treatment or removal; and allows state historic preservation officer to make a determination if council is unable after 60 days.

I also strongly support SB2644 which specifies the required qualifications for a state historic preservation officer and have professional experience with relation to historic preservation in Hawai'i.

On November 2, 2007, I attended an important discussion where the speakers were Tom Dye, President of the Society for Hawaiian Archaeology, and Moses Haia, of the Native Hawaiian Legal Corporation. Mr. Haia represents the descendents in the Ward Villages case where 53 sets of iwi kupuna were found *after* the historic preservation review process was substantially completed. Both pointed out serious problems in the State's Historic Preservation Division (SHPD):

- There have been 4 heads of the Department of Land and Natural Resources who have deferred their responsibility of "preserving, restoring, and maintaining historic and cultural property" to the Administration.
- In the Kuilima development, SHPD called for the developer to redesign the project to avoid areas with a high likelihood of burials, but seven months later did an about-face with the Ward Villages case.
- SHPD Administrator Melanie Chinen, a former auditor, had no historic preservation background

whatsoever, so she didn't grasp the issues.

- SHPD had lost all of its qualified archeologists, except one (21 highly trained professionals) and some positions had been turned over twice.
- Ms. Chinen rewrote the positions ("dumbing them down") so that the state and lead archeologists do not have to even have the minimum qualifications to write a report that they review, and those that are hired have very little experience here in Hawai'i.
- Ms. Chinen pulled the plug on the State's geographic information system (GIS) which has not been maintained for the last 3 years and refused anyone access to it.
- SHPD has not maintained the computerized index of cultural and historic properties, a crucial resource needed to prepare a background search, since 2004.
- Hundreds of iwi kupuna lie in SHPD's care, often for years, waiting to be reinterred. The 64 sets of iwi kupuna retrieved from the Wal-Mart property are still being held hostage in storage and have even been tampered with.

Why was this allowed to happen? Mr. Dye said he thinks SHPD does not want information which would "constrain" their decision on cases. Mr. Haia believed it was a concerted effort for the disinterment of iwi kupuna so development can proceed. **He called it another "mahele" where Hawaiian ancestors are again dispossessed of their land/resting places.**

Since the establishment of the island burial councils in 1990 following the outrage of Hawaiians over the massive excavation of bones at Honokahua, all burial sites are deemed significant and shall be preserved in place until the appropriate island burial council determines whether to preserve in place or relocate (HRS 6E-43(b)). However, after construction has started, SHPD is the agency responsible to decide either to preserve in place or relocate iwi and must make that decision within one day after discovery.

When Wal-Mart started building, no archaeological inventory was required because the Department of Planning and Permitting made that determination even though they don't even have an archeologist on staff. In the Ward case, HCDA gave General Growth Properties (GGP) its permit so SHPD was not even required to review it. Later, GGP did voluntarily have a contract archeologist prepare a survey who found 11 sets of iwi in 3% of the area. This Cultural Surveys of Hawai'i archeologist:

- ignored the fact that 300+ sets of iwi were found in Kaka'ako during the Queen Street extension,
- did not properly conclude that if 11 sets were found in 3% of the land surveyed there were at least 320 in the other 97%, and
- even found a coffin but described it only as a box with nails with bones in it.

And the really sad part in all this is that **no one at SHPD properly concluded it was a burial area.**

When SHPD is dysfunctional and/or unable to perform its mandated duties by law or run by unqualified individuals with no experience in historic preservation, it is not the developers who suffer. It is my iwi kupuna who lived and died on sovereign land who suffer. Transferring the jurisdiction of inadvertently discovered native Hawaiian burial sites to the appropriate island burial council would mālama our iwi kupuna and is the pono thing to do.

Your support of these bills is respectfully requested.

Mahalo,

Nonima Johnson



Jeannine Johnson

cc via email: Sen. Sam Slom
Sen. Fred Hemmings
Rep. Lyla Berg
Rep. Barbara Marumoto
Tom Dye, President, Society for Hawaiian Archaeology
Christopher M. Monahan, Ph.D.
Van James
Chris Cramer
Hawai'i Thousand Friends

TO: Senator Jill Tokuda, Chair
Senator J. Kalani English, Vice Chair
Committee on Agriculture and Hawaiian Affairs

LATE

Senator Carol Fukunaga, Chair
Senator Will Espero, Vice Chair
Committee on Economic Development and Taxation

FROM: Ty P. Kāwika Tengan, Assistant Professor
Departments of Ethnic Studies and Anthropology, University of Hawai‘i-Mānoa

HEARING: Tuesday, February 19, 2008, 2:00 pm, Conference Room 224

SUBJECT: **Support of SB2557, Relating to Burial Sites**

Aloha. My name is Ty Tengan and I am an assistant professor in the Departments of Ethnic Studies and Anthropology at the University of Hawai‘i at Mānoa. Today I submit testimony in full support of SB2557.

I have been involved in matters dealing with archaeology, anthropology, and burial sites protection since 1996 when I was still an undergraduate. While a graduate student in anthropology at UH Mānoa, I received a Research Assistantship to support the efforts of community organizations working to repatriate human remains and burial objects from Mōkapu on O‘ahu. As an assistant professor of ethnic studies and anthropology here, my research, teaching and service have revolved around the practices and politics of anthropology, repatriation, and cultural sites, and I have been actively involved in the creation of an applied archaeology program. In the community I have worked with approximately forty-five other Native Hawaiians involved in archaeology and anthropology to form an organization called Nāki‘ikeaho, which has called for a greater level of Native Hawaiian participation in archaeology, anthropology, historic preservation, cultural resource management, land stewardship and burial sites protection. Through Nāki‘ikeaho and my affiliation with the Department of Anthropology, I have become a member of the Friends of the State Historic Preservation Division (SHPD), a coalition of archaeologists, Native Hawaiians, and other community members that have worked to resolve the present crisis at SHPD and to implement long term changes and improvements in the historic preservation community.

Presently, one of the major problems with the delegation of decision-making responsibilities regarding the treatment of burials is that the island burial councils only have authority over burials that have been “previously identified”; those considered “inadvertent discoveries” go to the SHPD. The distinction between “previously identified” and “inadvertent discovery” is a problematic one, for many sites that have turned up burials “inadvertently” in fact had characteristics that made the discovery of burials very likely to begin with (a most notable recent example is the Whole Foods project in Ward Villages). Burial councils are one of the only ways that Native Hawaiians have a direct say in what happens to their iwi (bones), and this needs to apply to all burials whether previously identified (that is, there was a study done) or not. I strongly urge the committees to pass SB2557. Mahalo.

February 19, 2008

Senator Jill Tokuda
Senator J. Kalani English
Senator Carol Fukunaga
Senator Will Espero

LATE

RE; SENATE BILL 2557 RELATING TO BURIAL SITES

Aloha Senators

My name is Jonathan K. Osorio. I am a professor and director of Kamakakūokalani Center for Hawaiian Studies and I am testifying in support of Senate Bill 2557. Recent controversies involving fairly large commercial development projects, particularly in Honolulu, have revealed major shortcomings in current laws and practices that are supposed to protect the ancestral remains of Native Hawaiians. It appears to many close observers that property developers have concluded that it is a better strategy to avoid doing a proper site study in the assessment stage of a development project and rely on the Department of Land and Natural Resources to take care of any inconvenient and "inadvertent discoveries" of Iwi Kūpuna (ancestral remains) after a project has commenced.

That this has happened several times in the past three years in major projects on O`ahu is simply unacceptable. We must protect our Iwi by making inadvertent discoveries a less acceptable outcome for developers and for our state regulatory and permitting agencies. This law will accomplish this placing a huge burden on the developer should Iwi be found after a development project has begun. I feel strongly that this is where the burden belongs and that it needs to be in the interest of the developer and the state to be sure that a proper site study is conducted and the risk of digging up our ancestors' bones are minimized.

I know that this will also encourage the Administration to be sure that appointments to the Burial Councils are expedited and that the State Historic Preservation Division is fully staffed, and I am certain that our legislators would concur that this would be a good thing.

I am sorry that I could not be here in person today. Please pass this bill through your committee.

Jonathan K. Osorio, Ph.D.
Kamakakūokalani Center for Hawaiian Studies
University of Hawai'i Mānoa

February 19, 2008

TO: Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair
Senate Committee on Agriculture and Hawaiian Affairs

LATE

Senator Carol Fukunaga, Chair
Senator Will Espero, Vice Chair
Senate Committee on Economic Development and Taxation

FROM: David Lawrence Brown, MA
Former Branch Chief Archaeologist/Hawaii State Archaeologist
Phone: (808) 696-9454
Email: david_lawrence_brown@yahoo.com

HEARING: February 19, 2008, 2:00pm, Senate Conference Room 224

SUBJECT: Testimony in Support of SB 2557, Relating to Burial Sites

I am David Lawrence Brown, a former Branch Chief Archaeologist of the Hawaii State Historic Preservation Division. I am testifying in support with reservations of SB 2557, a bill for an act that transfers jurisdiction of inadvertently discovered native Hawaiian burial sites from DLNR to the appropriate Island burial council, provides 60 days for burial council to make a determination on burial site treatment or removal, and allows SHPO to make a determination if council is unable after 60 days.

I support the intentions and purpose of SB 2557, with reservations.

1. Section 2(b)(1): (Section 6E-43, HRS) Areas with a concentration of skeletal remains;

The words "areas" and "concentration" are too broad and should be clearly defined to offer a more exact legal delineation to better define the loci, density, and frequency of such finds.

2. Emphasis on early detection (Previous Identification) of skeletal remains *should be* promoted via mandatory submission of and SHPD approval of archaeological inventory survey plans, according to §13-275-5(5)(c), Hawaii Administrative Rules, which should incorporate modern technological and methodological practices; culturally sensitive approaches, non-intrusive technologies, incremental testing, and probability modeling.

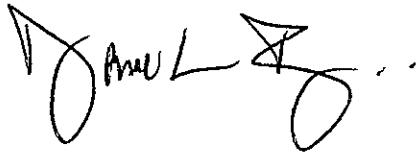
Please keep in mind: The use of a backhoe to indiscriminately excavate trenches should not be supported. Backhoes have legitimate archaeological applications (e.g., to remove introduced fill sediments or sterile over-burden); however, backhoes are not appropriate for "locating" (inadvertently destroying) human burials or other subsurface resources.

Use of a backhoe for archaeological excavation, without clearly stated methodology and evidence-based justification, is not a scientific or culturally sensitive approach.

3. Lineal and Cultural descendants should be consulted prior to the onset of any intrusive archaeological excavation or construction activities for any given project where SHPD or any other permitting party is allowed the opportunity to comment or provide permit approval, NOT *after-the-fact*.

Thank you for the opportunity to testify. If you have any questions or concerns, please let me know.

David Lawrence Brown, MA

A handwritten signature in black ink, appearing to read "David Lawrence Brown". The signature is stylized and cursive, with a large initial "D" and "B".