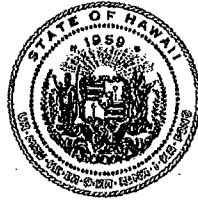
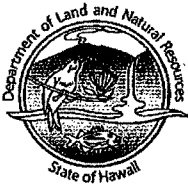


LINDA LINGLE
GOVERNOR OF HAWAII



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

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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
HAWAIIAN AFFAIRS**

**Wednesday, February 11, 2009
9:00 AM
State Capitol, Conference Room 329**

**In consideration of
HOUSE BILL 1662
RELATING TO HISTORIC PRESERVATION**

House Bill 1662 expands the definition section of section 6E, Hawaii Revised Statutes, regarding "burial site" to include "burial cave". While the Department of Land and Natural Resources (Department) understands the intent of this measure, the Department notes that the situation is much more complex than adding a new definition. As such, the Department does not support the measure as written, and prefers to work with affected partners to look at policies or revisions to the Hawaii Administrative Rules.

Lava tubes or caves are tube systems with long stretches, many with scattered burials at their entrances or in the middle or at the end of the systems. Some lava tube systems have no burials within them but have archaeological features. Lava caves are owned by whoever owns the surface land, therefore the burials may not be at the surface but in the lava tube and thus, the exact location may not be known or recorded. Therefore classifying the whole lava tube as a burial cave is not realistic. Lava caves frequently have collapses along their tube systems as well. This bill also has wording which is unclear, notably the definition of "Burial site" which specifies, "burial goods are or once were interred".

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL V. TSUJI
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AQUATIC RESOURCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Rep. Maile Shimabukuro

From: Sara Collins [sara.l.collins.sha@gmail.com]
Sent: Tuesday, February 10, 2009 6:45 AM
To: HAWtestimony
Cc: scollins@lava.net
Subject: Comments on HB 1662, Relating to Historic Preservation

TO: Representative Mele Carroll, Chair
Representative Maile S.L. Shimabukuro, Vice-Chair

House Committee on Hawaiian Affairs

HAWtestimony@Capitol.hawaii.gov

FROM: Sara L. Collins, Ph.D., Chair, Legislative Committee
Society for Hawaiian Archaeology
Email: sara.l.collins.sha@gmail.com
Phone: 808-348-2937

HEARING: February 11, 2009, 9:00 AM, House Conference Room 329

COPIES: 5

SUBJECT: Testimony Providing Comments on HB 1662, Relating to Historic Preservation

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 200 members that include professional archaeologists and advocates of historic preservation in general. We wish to provide comments on HB 1662, 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 had the opportunity during the 2008 Regular Session of the Legislature 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 but we are still uncertain that these goals will be achieved if the subject amendments are made to Chapter 6E.

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 are concerned, though, that vagueness in HB 1662 may make it difficult to implement the amended law, and to provide effective enforcement.

- We think that it could be problematic to consider a cave or lava tube as being only a burial site when it was demonstrably used for multiple purposes in one or more sections.
- 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. This makes it difficult for the department to apply and enforce the law consistently. In addition, we believe that any change to the existing definition should apply to ALL burials, not just one type of burial. While we understand the desire to furnish greater protection to burials in caves and lava tubes, we believe that mechanisms in existing law 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.

Sara L. Collins, Ph.D.
Chair, Legislative Committee
Society for Hawaiian Archaeology