

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, March 25, 2009
9:30 AM
State Capitol, Conference Room 329**

**In consideration of
SENATE BILL 1083, SENATE DRAFT 1
RELATING TO BURIAL SITES**

Senate Bill 1083, Senate Draft 1 proposes to include, in addition to Alu Like, Inc., the Association of Hawaiian Civic Clubs, the Council for Native Hawaiian Advancement, and representatives of the Hawaiian Benevolent Societies and the Hawaiian Royal Orders, the Kanaka Council, that the Department of Land and Natural Resources (Department) shall consult with to develop rules and criteria to guide whether a burial site should be preserved in place or relocated, and to develop a list of candidates for the Island Burial Councils (Burial Councils). The Department supports this measure with amendments.

The intent of this bill is to ensure that Hawaiian organizations have more involvement in developing criteria for:

1. Burials with high preservation value, such as areas with a concentration of skeletal remains or prehistoric or historic burials associated with important individuals or events.
2. Developing lists of nominees to the Burials Councils
3. Adopting rules under which the burial councils should operate
4. Developing criteria for the removal of inadvertently discovered remains.

The bill also adds language to ensure that Burial Council members are reimbursed for their travel expenses.

The Department supports working with a broad spectrum of groups to develop lists of nominees for the Burial Councils. Furthermore, the Department already routinely consults with members of the groups listed. Based on community input, the Department also intends to review burial criteria within the next two years so in that respect, this bill is timely.

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

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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The Department however, is concerned that adding the language "including travel expenses" puts the Department at financial risk if the Department does not have clear authority over neighbor island or mainland travel approvals for the Burial Councils. For example, the Department currently pays mileage for Burial Council members who turn in travel reimbursements to attend meetings or go on site visits at the Department's request. This is especially important for members of the Hawaii Island Burial Council. However, should Burial Council members decide to attend an off-island conference or meeting as part of "the performance of their duties" does the Department have the authority to deny travel?

The Department suggests the following language to section 6E-43.5, Hawaii Revised Statutes:

(c) The department, in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, Alu Like, Inc., the Association of Hawaiian Civic Clubs, the Council for Native Hawaiian Advancement, the Kanaka Council, and representatives of the Hawaiian Benevolent Societies and the Hawaiian Royal Orders, shall adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section. The council members shall serve without compensation, but shall be reimbursed for necessary expenses, including mileage to and from meetings, incurred during the performance of their duties. The councils shall be a part of the department for administrative purposes."

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House Committee on Hawaiian Affairs (HAW)
Representative Mele Carol (Chair) / Representative Maile Shimabukuro (Vice Chair)

Notice of Hearing
Wednesday, March 25, 2009
9:30AM / Conference Room 329

March 23, 2009

RE: Testimony Support w/ Reservations for SB 1083 SD1 (Relating to Burial Sites)

Aloha Chair Carol, Vice Chair Shimabukuro & Committee Members,

As a recognized lineal descendant of *Kawaihapai Ahupua'a* by the *State Historic Preservation Division (SHPD)* for the care of *Iwi Kupuna*, I support SB 1083 SD1 with reservations. The recognition that I've been afforded is of a **SPECIFIC AHUPUA'A AND WITHIN THAT MOKU**. I'm also a lifetime resident of *Mokule'ia* which is located within *Waialua Moku* on *Oahu*. Therefore, nominations and recommendations should not be limited entities listed in SB 1083 SD1 but also be open to all applicable entities of that specific geographical area. Not all *Hawaiians* are members of the *Hawaiian Civic Club*. Where I'm from, they are members of entities including *The North Shore Neighborhood Board*, *Waialua Community Association*, *Mokuleia Community Association*, *Friends of Waialua Town*, ect. This is applicable statewide.

In some instances they've not participated actively however, now it seems like it's become a trend because members of some *State Boards and Commissions* such as *Island Burial Councils* are members of *Hawaiian Civic Clubs* or *Kumu Hula*. Another example is with *NAGPRA (Native Hawaiian Graves Protection Act)* only *Hui Malama I Na Kupuna O Hawaii Nei* is the only *Recognized Native Hawaiian Organization (NHO)* regarding that *kuleana*. However, the *Department of Interior (DOI)* was receptive to encouraging an opportunity for other *Native Hawaiian Organizations (NHO)* not recognized in *NAGPRA* for participation. Therefore, SB 1083 SD1 should be consistent here at the State level regarding *HRS Chapter 6E*. In both instances, it's paramount that a *Recognized Lineal Descendant* that went thru either process supercedes (have preference) a *Native Hawaiian Organization (NHO)* and be preserved. Attached is an article regarding this and note that I'm not a member of any entity listed in SB 1083 SD1.

Thank you for the opportunity to provide testimony of Support w/ Reservations (*kanalua*) for SB 1083 SD1. *Malama Iwi Kupuna*.

Thomas T Shirai Jr
Lineal Descendant of Kawaihapai Ahupua'a

Ancestral Iwi Returned to Mokuleia



By Andrew Pereira

Story Created: Dec 26, 2007 at 6:54 PM HST

Story Updated: Dec 26, 2007 at 6:54 PM HST

More than two years after ancestral bones were removed from Dillingham Airfield, a Mokuleia man who is a lineal descendant of the remains has put them back where they belong.

It's believed Thomas Shirai Jr. is the first person not affiliated with any native Hawaiian group to reinter his ancestor's iwi. "This is our Christmas present," said Shirai, "to put back our tutu."

Shirai believes the bones are from his great, great, great grandmother, Napuakau Kakulu who died September 13, 1896. She was buried in an area next to the airstrip at Dillingham.

Shirai, who kept meticulous records of his family's history in the area once known as Kawaihapai, says it was those records that convinced the Historic Preservation Division to return the iwi directly to him.

"The big kupuna had a house in the back," said Shirai. "There was a hill and had all these graves around. That's the way it was." In 1997 Shirai registered the unmarked burial ground with the Department of Land and Natural Resources, which oversees the State Historic Preservation Division, but the records were lost.

After receiving the iwi in a brown cardboard box, Shirai and two workers from the Office of Hawaiian Affairs wrapped them in kapa cloth and placed them inside two lauhala baskets for the car ride from Kapolei to Mokuleia.

Once at Dillingham Airfield the three men hiked past a row of palm trees and overgrown brush

to the site of the illegal sand mining. After digging a hole, Shirai carefully placed the lauhala baskets inside and covered them with sand.

"Okay tutu.," Shirai said as he completed the reburial. "Sorry we disturbed you but some people no like listen, so now you back at home."

The State Department of Transportation leases the land at Dillingham Airfield from the U.S. Army. In the fall of 2005 the airfield's supervisor allowed a local contractor to remove high quality sand in exchange for burying dead trees and brush.

DOT spokesman Scott Ishikawa says an investigation showed the supervisor did not profit from the sand mining. The supervisor was officially reprimanded by the DOT but was allowed to keep his job.

In May of 2007 Barry Fukunaga, the former director of the Department of Transportation sent a letter of apology to Shirai.

Andrew may be reached at apereira@khon2.com or ph. 591-4263.

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House Committee on Hawaiian Affairs (HAW)
Representative Mele Carol (Chair) / Representative Maile Shimabukuro (Vice Chair)
Notice of Hearing
Wednesday, March 25, 2009
9:30AM / Conference Room 329

February 10, 2009

RE: Testimony of Support w/ Reservations for SB 1083 SD1 (Relating to Burial Sites)

Aloha Chair Carol, Vice Chair Shimabukuro & Committee Members,

The *Kawaihapai Ohana* is a *Recognized Native Hawaiian Organization (NHO)* by the *Department of Interior (DOI)* and it's *Kuleana* has an emphasis on the *Northwest Coastline of Waiialua Moku* encompassing the *Ahupua'a of Kamananui, Mokule'ia, Kekahi, Auku'u, Kawaihapai, Kealia & Kaena*.

The list recommendations should not be limited to entities listed in SB 1083 SD1 but be open to all applicable entities of that specific geographical area. Not all *Hawaiians* are members of the *Hawaiian Civic Club*. Here in *Waiialua Moku*, they are members of entities like *The North Shore Neighborhood Board, Waiialua Community Association, Mokuleia Community Association, Friends of Waiialua Town, ect*. This is applicable statewide.

In some instances those listed in SB 1083 SD1 haven't participated actively in *Malama Aina* however, now it seems like it's become a trend because members of some *State Boards and Commissions* such as *Island Burial Councils* are members of *Hawaiian Civic Clubs* or *Kumu Hula*. An example of this is thru *Aha Kiole* and *Association of Hawaii Civic Clubs (AOHCC)* who suddenly participate in *Kaena Point* whereas they didn't (*foot printing*). The most active entity is the *Mokule'ia Community Association (MCA)* and has members of *Hawaiian Ancestry* and their *Kuleana* to *Malama Kaena* exceeds 30 years.

Another example is with *NAGPRA (Native Hawaiian Graves Protection Act)* only *Hui Malama I Na Kupuna O Hawaii Nei* is the only *Recognized Native Hawaiian Organization (NHO)* regarding that *kuleana*. However, the *Department of Interior (DOI)* was receptive to encouraging an opportunity for other *Native Hawaiian Organizations (NHO)* not recognized in *NAGPRA* for participation. Therefore, it's paramount that a *Recognized Lineal Descendant* status and preference be preserved superceding organizations listed in SB 1083 SD1 here at our state level in regards to *HRS Chapter 6E* for continuity purposes.

Thank you for the opportunity to provide testimony of support w/ reservations (*kanalua*) for SB 10832 SD1. *Malama Iwi Kupuna*.

Thomas T Shirai Jr
Kawaihapai Ohana – Po'o

TESTIMONY OF

KAHU CHARLES KAULUWEHI MAXWELL SR.
CHAIR – MAUI/LANAI ISLANDS BURIAL COUNCIL

Mr. Chairman, members of this committee, mahalo for given me the opportunity to testify on the below listed items.

SB 1083, SDI RELATING TO BURIAL SITES

It is my strong belief that the Burial Council on each island should be the entity that makes the final determination on whether a burial should be relocated or left in place, unless direct descendants are involved, and then they should be consulted. A list should be developed for candidates to the burial councils.

HCR 226 REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS
TO CONVENE A WORKING GROUP TO REVIEW THE
SYSTEM AND PROCEDURES FOR THE REVIEW OF
NATIVE HAWAIIAN BURIALS.

As the chair of the Maui/Lanai Islands Burial Council, HCR 226 covers a lot of the problems that is occurring with SHPD and the administration of the burial laws. Since the present administration took office, we have suffered in trying to implement 6E in making the law work. Numerous meetings occurred with Bob Awana and his staff with the promise that things would change but it has not. Like this Resolution contends a complete review of the systems and procedures has to occur if the proper respect will be afforded to the Iwi Kūpuna.

On Maui, we have several hundred remains which are cur rated at the State Historic Perseveration Office on Mahalani St., in Wailuku that have been there for 14 plus years. The staff is trying to inventory the Iwi but they are still kept in boxes on shelves and that is an insult to us all, but more so to the spirits of our Kūpuna

HOUSE BILL NO. 1662(2009)

Because of the past uses of caves for Burials, if there is any indication that the cave was used for burials, it should be treated as such. Here on Maui there are numerous cave burials and it's a battle to keep people out.

TOPICS FOR FOCUS

Being involved with burials since the late 60's and the Honokahua Burials, I would strongly recommend that Burial Councils on each island makes the determination on inadvertent discoveries along with determination on known burials.

* Restricting the SHPD from overruling any determination of an island burial council on previously identified burial sites.

- Clashes over whether multiple burials constitute one burial site.
- Allowing for independent legal counsel to advise the council when conflicts in interpretation occur.
- Making a review of archaeological inventory surveying more rigorous and objective.
- Requiring greater rigor in implementing the review and comment power of the SHPD.
- Training island burial council members on the powers of the council and rules governing burial sites as they applied to prior instances of conflict.