



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 640, S.D. 1, RELATING TO HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Wednesday, March 1, 2017                      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):**     **WRITTEN TESTIMONY ONLY.**  
(For more information, contact David D. Day,  
Deputy Attorney General, at 587-2990)

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Chair Tokuda and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill. However, we oppose this bill as written due to potential constitutional concerns. Specifically, the bill may be subject to challenge as a special law concerning lands owned by the State in violation of article XI, section 5 of the Hawai'i Constitution.

The bill requires the Department of Land and Natural Resources (DLNR) to establish a model project regarding traditional and customary gathering practices at Makua Beach located in Ka'ena Point State Park. The bill directs the DLNR to take specific actions with respect to Makua Beach.

Article XI, section 3 of the Hawai'i Constitution states: "The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof." A general law must apply uniformly. *Sierra Club v. Dep't of Transp.*, 120 Hawai'i 181, 214, 202 P.3d 1226, 1259 (2009). There is a potential that the bill could be subject to challenge as an exercise of legislative power over State lands by special law because it only concerns Makua Beach.

We recommend that this bill be amended to provide for a pilot program to be established at a location chosen by the Department of Land and Natural Resources. This should cure any constitutional concern.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

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  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the Senate Committee on  
WAYS AND MEANS

Wednesday, March 1, 2017  
9:30 AM  
State Capitol, Conference Room 211

In consideration of  
SENATE BILL 640, SENATE DRAFT 1  
RELATING TO HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES

Senate Bill 640, Senate Draft 1 proposes to establish a pilot project at Makua Beach, O'ahu and Hawai'i Island to designate areas in public parks for planting and growing coconut trees for Hawaiian traditional and customary gathering practices and appropriate funds for the pilot project. **The Department of Land and Natural Resources (Department) supports this measure as drafted and offers the following comments.**

The Department recognizes the potential value in conducting a pilot project at Makua Beach which is a portion of the Keawaula section of Ka'ena Point State Park on the island of O'ahu.

Ka'ena Point State Park - Makua Beach Section has been subjected to years of informal and unauthorized camping that had escalated to over 900 people camping on certain weekends and illegally driving on the beach, having pallet bonfires and leaving both the charcoal and nails in the sand, in addition to campers leaving large amount of rubbish that on every Monday, the Division of State Parks' (State Parks) sole employee for that side of O'ahu had to collect and haul away. Makua does not have a comfort station, and the years of human waste accumulation and associated public health issues and aesthetic degradation of one of Oahu's most beautiful beaches made it imperative to close the beach for nighttime public use.

Makua is significant to the Hawaiian community, and State Parks has been in close coordination with community members including the Waianae Neighborhood Board and Aha Moku representatives, both of whom support the closure, on the most appropriate management protocols. Currently, the Protectors of Paradise, which is headed by a lineal descendent of Makua, has an Adopt-A-Park agreement with State Parks, and has been instrumental in

providing volunteer services to help remove rubbish and clear non-native vegetation so the area can be restored. The Department has prioritized these restoration efforts over further impacts.

The appropriation of \$75,000 will be applied to site preparation, vehicle barricade installation, other fencing and signage, and additional unforeseen costs associated with establishing this pilot project.

The Department supports this bill provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget request.

Thank you for the opportunity to comment on this measure.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2017 4:13 PM  
**To:** WAM Testimony  
**Cc:** blawaiianlvr@icloud.com  
**Subject:** Submitted testimony for SB640 on Mar 1, 2017 09:30AM

**SB640**

Submitted on: 2/27/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Support	Yes

Comments: We continue to STRONGLY SUPPORT this bill.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 28, 2017 10:49 AM  
**To:** WAM Testimony  
**Cc:** nwalshjones@aol.com  
**Subject:** Submitted testimony for SB640 on Mar 1, 2017 09:30AM

**SB640**

Submitted on: 2/28/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Jones	Hydroponics Alternatives LLC	Support	No

Comments: Aloha Honorable Committee Members: We submit this testimony in support of SD640, SD 1 (HB1342) -- as amended -- relative to appropriating \$75,000 to establish a pilot program at/near Makua Beach to further customary Hawaii practices of lua (warrior training) la'au lapa'au (medicinal practices), and lawai'a (fishing practices). This bill in its original form promoted the establishment of coconut groves in the area. However, the DLNR raised significant, valid concerns about the need for Makua Beach to first be restored and cleaned after years of illegal beach driving and unmanaged camping -- resulting in unacceptable, potentially hazardous accumulations of rubbish, human waste, charcoal, and nails from illegal bon fires. Additionally, this portion of Makua was previously used for military training, and as a result unexploded ordnance, which also requires removal and remediation. For these reasons, we ask that your committee please pass the amended version of SB 640, SD 1 to include the provisions relative to Hawaiian traditional practitioners and remove coconut groves at this particular site, BUT include funds to supplement the provisions of SB 640, SD 1 asking the DLNR to identify other proposed sites -- perhaps on O`ahu or the neighbor islands -- for coconut grove reintroduction. Coco palms, despite the myriad liability issues surrounding their cultivation on unregulated public lands, are indigenous the Hawai`i's landscape and should be reintroduced in areas other than private landscape nurseries or special event venues such as Lanikuhonua. Mahalo for this opportunity to present testimony supporting this measure.

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**SB640**

Submitted on: 2/27/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Vince Kana`i Dodge	`Ai Pohaku	Support	No

Comments: Aloha Senators! We support bill SB 640 because it creates a pathway for the recognized use of public space for traditional and customary Aina practice- growing food. We have planted food at beach parks in the past. They have all been removed because the State/County policy is based on the fear that people will fight over the fruits/harvest, and w coconut, the fear of falling nuts hurting people. The bill will also pressure the Army to keep their promise to clean up Aina they have contaminated , and that is a very good thing. Ultimately growing food in Makua Valley is one of our goals. This pilot can set precedent and show us the issues that will have to be considered/worked out to grow food there again. Also engages DLNR w community to plan common sense use of Aina- growing food, and provide some support. This collaboration is essential for the reestablishment of traditional and customary Aina practices on public land. In the past beaches were like ones backyard. They were cared for, not just used. They provided sustenance, not just recreation. There was a a reciprocal relationship. Those of us who frequent Makua Beach know that this reciprocal relationship is what we need to continue to cultivate. There is plenty of space at Makua to plant a coconut grove. There is water. There is community interest and commitment to Malama Aina. It is a low maintenance pilot. It does not require much from DLNR. It is a worthwhile and likely successful pilot. Plz support SB640 Aloha nui! Vince Kanai Dodge

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# PROTECTORS OF PARADISE

**LATE**

## Testimony of MICAH DOANE

Founder of PROTECTORS OF PARADISE,  
Hawai'i State Parks Adopt-A-Park Program, Adoption Coordinator for Ka'ena Point  
State Park – Makua & Keawa'ula Section,  
Aha Moku Makua Ahupua'a Representative

Before the Senate Committees on  
HAWAIIAN AFFAIRS and WATER AND LAND

Wednesday, March 1, 2017, 9:00am, State Capitol, Conference Room 211

In consideration of  
SENATE BILL 640, RELATING TO HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES

Senate Bill 640 (SB640) is proposed with the purpose and intent to establish a pilot project at Makua Beach and Hawai'i Island to designate areas in public parks for planting and growing coconut trees for Hawaiian traditional and customary gathering practices, and to appropriate funds for the pilot project. As the founder of Protectors of Paradise, Hawai'i State Parks Adopt-A-Park Program Adoption Coordinator for the Makua and Keawa'ula section of Ka'ena Point State Park, and the Aha Moku Makua Ahupua'a Representative, I would like to comment on the proposed bill.

Senate Bill 640 directly impacts the work we are currently performing at Makua, in collaboration with the State and Department of Land and Natural Resources.

Although I am in support of expansion of Hawaiian traditional and customary gathering practices, **I am primarily concerned about the implications that SB640 has in terms of what the State Legislature deems as *priority* at Makua.**

The Makua Beach Section of Ka'ena Point State Park has been abused by years of informal and unauthorized camping, resulting in illegal beach driving, pallet bonfires which litter the beach with nails in the sand, and immense amounts of rubbish, illegal dumping, and human feces left by campers and beachgoers. Each week, Protectors of Paradise *voluntarily* assists the sole state park worker collect and haul away all debris left by campers. Because of such desecration and with the support of the State and Department of Land and Natural Resources, Makua has been closed to overnight use since November 2016 and a deep cleaning/restoration period has commenced. The intent is to be able to clean/restore Makua Beach in order to reopen to the community for permitted camping. This plan has been formally presented to the Wai'anae Community at the Wai'anae Neighborhood Board Meetings on multiple occasions. Part of the proposed contingencies of reopening Makua included securing a plan for



adequate comfort stations, additional vehicle barricades to deter beach driving, and addressing the issue of unexploded ordinances (UXOs) due to the potential safety hazards.

Unfortunately, I was informed that the capital request for permitting and acquisition and construction of appropriate toilets and additional vehicle barricades was denied. Furthermore, the State has been unable to acquire a State compliant portable toilet vendor as an alternative option for effective human waste management for camping. Thus, Makua will likely not be available for general recreational camping for an extended time period.

However, with funds being appropriated for planting and gathering practices, I question what the State Legislature deems as *priority* at Makua. Logistically, I believe it makes sense to first continue and complete the cleaning process, removal of non-native plants, and begin clearing the UXOs in the areas of public use before approving a pilot program dedicated to planting coconut groves. When Makua closed to public night use, we made a commitment to the community that it would be the priority of the Department of State Parks and Protectors of Paradise to clean-up, restore, and implement facilities that would allow for permitted camping. ***It is unethical to deny funds to move forward on this project, but yet approve SB640, which would possibly appropriate \$75,000 to clear land and acquire and install vehicle barricades and other types of demarcations and signage, in addition to covering costs associated with acquisition of actual coconuts and other related expenses, as cited in the Committee Report [SB640 SD1 SSCR466](#).***

Mahalo for your consideration.

A handwritten signature in black ink, appearing to read "Micah Doane", is centered on the page. The signature is written in a cursive, flowing style.

Micah Doane  
Protectors of Paradise, Founder  
Hawai'i State Parks Adoption Coordinator – Ka'ena Point, Makua and Keawa'ula Section  
Aha Moku Makua Ahupua'a Representative

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2017 10:33 PM  
**To:** WAM Testimony  
**Cc:** nataliejeanf@gmail.com  
**Subject:** \*Submitted testimony for SB640 on Mar 1, 2017 09:30AM\*

**SB640**

Submitted on: 2/27/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
natalie	Individual	Support	No

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2017 11:18 PM  
**To:** WAM Testimony  
**Cc:** hawaiifishingfanatic@gmail.com  
**Subject:** \*Submitted testimony for SB640 on Mar 1, 2017 09:30AM\*

**SB640**

Submitted on: 2/27/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Don Aweau	Individual	Support	No

Comments:

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Aloha

I would like to submit my utmost for support for this amazing bill.

Hawaii currently has THE highest food costs in the nation.

Our reliance on imported food puts our islands at risk during storms & global events

Coconuts require virtually no maintenance (except picking up the food off ground) and can live over 100 years, producing thousands of pounds of food virtually free of costs.

This proposed grove could feed our children, grandchildren & great grandchildren!!

Hawaii also has an alarmingly high level of obesity & heart disease. Coconut known to prevent heart disease, stroke, and hardening of arteries. People living in tropics, who get nearly 50% of their calories from coconuts, have the lowest rates of heart disease in the world.

Planting a coconut tree is, without a doubt, the single greatest step a community can make towards sustainability. But we cannot reap these benefits without first sowing the seeds. Hawaiian tradition is to plant a coconut at the home of each newborn, thus ensuring the child would never go hungry. A simple and wise practice which stood the test of time for over 1000 years.

If health, wealth and food security are our community goals, then we have to start working closely with this valuable plant. Please pass this bill & allow this food producing idea to come into fruition. Because changing the world is not about what comes out of your mouth, it's about what goes into it.

Ryan Burden  
11 kane rd  
Haiku, HI 96709

808.344.8121  
coconutinformation@gmail.com

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2017 3:47 PM  
**To:** WAM Testimony  
**Cc:** rkailianu57@gmail.com  
**Subject:** Submitted testimony for SB640 on Mar 1, 2017 09:30AM

**SB640**

Submitted on: 2/27/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Support	Yes

Comments: Strongly Support!!!

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2017 3:24 PM  
**To:** WAM Testimony  
**Cc:** dkg1031@gmail.com  
**Subject:** Submitted testimony for SB640 on Mar 1, 2017 09:30AM

**SB640**

Submitted on: 2/27/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Debra Koonohiokala Norenberg	Individual	Support	No

Comments: For the preservation/health of the land and culture of the people, I hope this bill passes.

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**Sent:** Monday, February 27, 2017 4:21 PM  
**To:** WAM Testimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for SB640 on Mar 1, 2017 09:30AM\*

**SB640**

Submitted on: 2/27/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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**SB640**

Submitted on: 2/27/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kellen Smith	Individual	Support	No

Comments: Increase our island's food security! Yes to SB640.

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**Aloha,**

I wanted to formally email in my testimony in support of sb640! We need more coconut orchards.

Mahalo,  
Kailea Frederick  
808 866 0461

**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 1, 2017 7:19 AM  
**To:** WAM Testimony  
**Cc:** dkapua@gmail.com  
**Subject:** Submitted testimony for SB640 on Mar 1, 2017 09:30AM

**SB640**

Submitted on: 3/1/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Kapua Keliikoa-Kamai	Individual	Support	No

Comments: Aloha e Luna Ho'omalulu o ke Kōmike no ke Kumu Waiwai Tokuda, Aloha e na lālā komike, Aloha kakou,.... Kāko'o au (I SUPPORT) i ka pila SB 640 SD1 RELATING TO HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES. Establishes a pilot project at Makua beach and Hawaii island to designate areas in public parks for planting and growing coconut trees for Hawaiian traditional and customary gathering practices. Appropriates funds for the pilot project.... I fully appreciate this model project restoring and re-establishing a Hawaiian traditional and customary gathering practice program at Makua Beach. The replanting of native plants that are edible, medicinal, material, etc. in conjunction with reestablishing Hawaiian customary practices (lua, lawai'a, hukilau, etc.) will reflect the value of Hawaiian traditional knowledge and benefit all. The success of this model project will inspire its expansion and utilization.... Mahalo 'ia 'oukou no kou kāko'o no ka pila SB 640 SD1, ke 'olu'olu e holomua ia (thank you for your support and please pass SB 640 SD1).... Me ka ha'aha'a Kapua Keliikoa-Kamai, Makaala nei au mai ke kaiāulu Wai'anae, Concerned Waianae Community Member

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 1, 2017 6:11 AM  
**To:** WAM Testimony  
**Cc:** jsimpliciano@gmail.com  
**Subject:** \*Submitted testimony for SB640 on Mar 1, 2017 09:30AM\*

**LATE**

**SB640**

Submitted on: 3/1/2017

Testimony for WAM on Mar 1, 2017 09:30AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james simpliciano	WAM,Hfuu	Support	No

Comments:

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Aloha!

I'm writing to voice my support of SB640, I'd love to see more coconuts being planted in public spaces. I also hope you are able to pass SB272 SD1 to help combat rat lung worm.

Mahalo,  
Sage Warner  
152B Koula Street  
Hilo Hawaii 96720