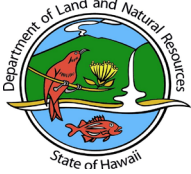


DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Monday, March 29, 2021
2:00 PM**

State Capitol, Via Videoconference, Conference Room 325

**In consideration of
HOUSE CONCURRENT RESOLUTION 131, HOUSE DRAFT 1
REQUESTING THE ESTABLISHMENT OF A BURIAL SITES WORKING GROUP TO
REVIEW AND RECOMMEND IMPROVEMENTS TO THE BURIAL SITES
PROGRAM WITHIN THE STATE HISTORIC PRESERVATION DIVISION**

House Concurrent Resolution 131, House Draft 1 requests that a Burial Sites Working Group (BSWG) be established to review and recommend improvements to the Burial Sites Program within the Department of Natural Resources' (Department) State Historic Preservation Division (SHPD). **The Department acknowledges the intent of this resolution and offers comments.**

The Department believes that it is always possible to improve the operations of the divisions and programs within it, including SHPD's Burial Sites Program. However, the Department believes that House Concurrent Resolution 131, House Draft 1 is based on a misunderstanding of the authorities and duties of the Island Burial Councils (IBCs), the Burial Sites Program as established by statute and rule, as well as the relationship between SHPD and the IBCs established by statute. The Department provides the following comments to clarify these authorities and relationships.

Section 6E-43.5, Hawaii Revised Statutes (HRS), establishes five island burial councils, one each for Hawai'i, Maui/Lāna'i, Moloka'i, O'ahu, and Kaua'i/Ni'ihau, and attaches them to the Department for administrative purposes. It is important to emphasize that the IBCs are not programs of the Department or SHPD. They are independent entities to which SHPD provides administrative support as specified in statute and rule.

Sections 6E-43, 6E-43.5 6E 43.6, HRS, tasks the IBCs to: (1) determine whether previously identified native Hawaiian burial sites that appear to be over 50 years old should be preserved in place or relocated; (2) be consulted by SHPD with respect to burial treatment and preservation plans, and make recommendations to the SHPD regarding the appropriate management,

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
ACTING 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

treatment, and protection of native Hawaiian burial sites; (3) determine whether to recognize a claimant to native Hawaiian burials as a lineal or cultural descendant; (4) assist the SHPD with the inventory and identification of native Hawaiian burial sites by providing information from families and other sources; and (5) maintain a list of appropriate Hawaiian organizations, agencies and offices to notify regarding the discovery of native Hawaiian burial sites.

Section 13-300-28, Hawai'i Administrative Rules (HAR,) details SHPD's responsibility to provide administrative support to the IBCs including: (1) posting notices of the various IBC meeting agendas; (2) (in a non-pandemic world) making arrangements for meeting locations, and site visits; (3) recording meeting minutes; (3) providing the applicants written notification of the IBCs' determinations; and (5) other administrative duties. In accordance with Section 6E-43.6, HRS, and Section 13-300-40(b), HAR, in addition to providing administrative support to the IBC, SHPD has jurisdiction over any inadvertent discovery (unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity) of human skeletal remains and any burial goods over fifty years old, regardless of ethnicity.

Regarding the appointment of IBC members, the Department notes that despite the fact the Office of Hawaiian Affairs provides a list of potential nominees to the Governor for consideration, the nominations are made the Governor. Neither the Department nor SHPD have the authority make nominations.

The Department notes that SHPD, like all state agencies, is subject to a financial audit annually. As far as the Department is aware, SHPD was subject to a single performance audit over a decade ago. Further, while the resolution correctly notes that SHPD was required by the National Park Service (NPS) to develop corrective action plans to improve operations of the federally funded activities, the final corrective action plan was accepted by the NPS in June 2014. The NPS program review did not find problems with the Burials Sites Program and, accordingly, did not impose conditions relating to it in the corrective action plan.

This Resolution also appears to be predicated on the assumption that SHPD is failing to support the Councils to the extent possible with currently available resources, and that is failing to comply with the statutes and administrative rules, to the extent that it has become necessary to form a working group. The Department does not concur with this assumption.

The Hawai'i, Maui/Lāna'i, and O'ahu Burial Councils are supported by two burial sites specialist each. The History and Culture Branch Chief, who oversees the Burial Sites Program, frequently attends IBC meetings, and when not in attendance at a Council meeting, is available by cell phone to consult with staff or the IBC, as necessary. With a few exceptions, the questions that the Councils may have regarding statute, regulation, and procedures can be answered by referring to the council member manual given to each council member at the first meeting of their term. All staff are properly trained in the applicable statutes, administrative rules, and procedures. It is probably the case that more Sunshine Law and Ethics Law training is needed for the IBC members, as compliance with these statutes, with the exception of posting meeting agendas and producing minutes, are Council rather than SHPD administrative responsibilities.

Having heard that some IBC members feel the need for training, SHPD, in consultation with the Attorney General, is currently working on training material that is currently targeted for presentation at the May or June 2021 IBC meetings.

Staff assignments within the Department of the Attorney General are made by the Attorney General (AG). Whether or not to assign a deputy attorney general to attend Council meetings is a decision of the AG, not SHPD. Each month there are between 4-7 meetings of the various IBCs. As the Committee is no doubt aware, the Department of the Attorney General must provide support to the State of Hawaii's over 150 boards and commissions. Deputy Attorney Generals cannot be physically present at the meetings of all those boards and commissions. Nevertheless, the Deputy Attorney Generals regularly provide support via cell phone during IBC meetings when they cannot be physically in attendance at a meeting. All of the individual IBCs have utilized that method to obtain Department of the Attorney General support and advice for at least a year now. In addition, Deputy Attorney Generals do attend meetings to provide guidance and advice when, prior to the meeting, SHPD is able to provide them with specific matters on which the IBC will likely need legal advice.

Every allegation of burial disturbance reported to SHPD is investigated by SHPD staff. When SHPD staff feel their observations warrant, allegations are forwarded to the Department's Division of Conservation and Resources Enforcement (DOCARE) for investigation, as well as the Deputy Attorney Generals for advice. When the result of the DOCARE investigation appears to support it, the decision to pursue civil and criminal charges is made by SHPD in consultation with the AG's office.

SHPD has a burial sites inventory. That inventory includes all burials identified during archaeological inventories and surveys, identified by descendants, and those inadvertently discovered. SHPD does not have the resources to carry on an active survey to identify burial sites throughout the state. In addition, there is a cultural belief and practice in a large segment of the native Hawaiian community that burials should not be identified, even though it may put the burials at risk of harm. This belief makes it difficult, and perhaps not entirely appropriate, for SHPD to implement a systematic survey effort, even if it had the resources to do so.

The Department believes that the proposed BSWG may bring clarity as to what the real issues are, and propose solutions, whether it will be an increase in resources for SHPD, the need to amend statutes, or to recommend amendments to administrative rules. But the Department notes that support for such a working group is not provided for in the Governor's proposed Fiscal Year 2022 budget for either the Department or SHPD. Under the budget currently making its way through the Legislature, SHPD could not support and staff such a working group without seriously degrading support for other critical duties.

In closing, the Department notes that Senate Concurrent Resolution 206 is closely related to House Concurrent Resolution 131, House Draft 1, requesting that a BSWG be established by the University of Hawaii Richardson School of Law. Although the Senate Draft 1 has not been posted, the Department understands that it will call for the working group to be housed by Hui ola na iwi instead of the Richardson Law School. The Department has a strong preference for Senate Concurrent Resolution 206, as the Department believes that having the host independent of the Department and SHPD is likely to increase confidence in the results of the BRWG's efforts. The Department also believes that the BSWG must have representation from developers

and from the archaeological firms which are often the “first responders” in burial site encounters. Both groups have significant business before the IBCs.

Thank you for the opportunity to comment on this resolution.


OFFICE OF HAWAIIAN AFFAIRS
‘Ōlelo Hō‘ike ‘Aha Kau Kānāwai
Legislative Testimony

HCR131 HD1

Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
House Committee on Judiciary & Hawaiian Affairs

Malaki 29, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** HCR131 HD1, which requests the establishment of a burial sites working group to review and recommend improvements to the burial sites program within the State Historic Preservation Division (SHPD). The working group would be specifically urged to: review existing statutes and rules pertaining to the island burial councils (IBCs); discuss ways to fill current and future vacancies on each IBC; examine all SHPD staff duties and responsibilities, to better support IBCs; provide recommendations on the development of a statewide survey and inventory that documents where burial sites exist; and submit a report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the regular session of 2022. **OHA believes that this working group is necessary to specifically examine and address historic systemic issues regarding the care, management and protection of ancestral burial sites and the associated administration of the IBCs.**

Historically, state audits of SHPD have revealed chronic leadership dysfunction, employee discord, and a significant backlog of project reviews that has substantially undermined the historic preservation review process, particularly with respect to the protection of burial sites throughout the islands. Examples of SHPD’s systemic mismanagement of the IBCs and burial sites program include the division’s:

- Failure to adequately staff the IBCs and manage the terms of council members;
- Failure to provide training to its staff on the burial law and relevant administrative rules;
- Failure to provide training to IBC members regarding the burial law and relevant administrative rules;
- Failure to require the Department of the Attorney General to provide independent legal representation to the IBCs (separate from the interests of SHPD);
- Failure to implement administrative rules to develop a burial sites inventory;
- Failure to provide proper administrative support to the IBCs including the failure to: take timely actions on burial matters, prepare agenda

items, and provide the councils with proper guidance on the processes involving burial matters;

- Failure to comply with legal requirements applicable to the inadvertent discovery of human remains; and
- Failure to undertake enforcement actions of documented violations involving burial sites;
- Failure to properly notify OHA of inadvertent burial discoveries in a timely manner.

As evidenced by a recent January 19, 2021 press conference and press release by IBC leadership representing multiple islands and councils, serious concerns also exist regarding the systemic and chronic mismanagement of the IBCs by SHPD for the past 25 years, which continues to undermine the ability of the councils to exercise their legally established authorities, rights, and responsibilities, to the significant detriment of Hawaiian burial sites and cherished cultural properties.

On January 22, 2021, OHA issued its own press release in support of the position of the IBC leadership, given our agency's longstanding concerns regarding the functioning and efficacy of this very important program to preserve and protect the last vestiges of our collective history and culture in these islands. OHA urged state policymakers, including SHPD leadership, to heed the calls of our IBC leaders, and address issues that have long been raised by Native Hawaiian community members and cultural practitioners, archaeologists, the state auditor, and OHA itself.

On the matter of inadvertent burial discovery notification to OHA, the Hawai'i Administrative Rules (HAR) 13-300-40 requires OHA to be notified of any inadvertent burial discovery once an inadvertent discovery report is generated. However, OHA rarely receives notifications of inadvertently discovered burials in a timely matter, if at all. While OHA has even established an email address, burials@oha.org, to help facilitate the SHPD mandate, inadvertent discoveries discussed on IBC agendas or brought to OHA's attention via other means are often not transmitted to the agency as required. Notably, the timely provision of information regarding inadvertently discovered burials is not only required under the law, but is critical to allow OHA to address beneficiary concerns regarding iwi cases across the islands, as well as develop strategies and recommendations on the appropriate treatment of such burials.

A working group established to review and recommend improvements to the burial sites program within the SHPD will thus help to understand the source of these chronic issues and hopefully result in recommendations to improve the fulfillment of SHPD's legal responsibilities.

To the extent that an entity may still be needed to convene the working group, OHA does respectfully recommend that Hui Ola Nā Iwi be tasked with the convening of this group. The Hui Ola Nā Iwi is a newly formed hui of dedicated individuals with

experience in burial laws and IBC processes, and would have the experience, expertise, and commitment necessary to facilitate the working group's efforts. Naming Hui Ola Nā Iwi as the convener of the working groups would also be consistent with HCR133 HD1, a similar resolution that also seeks to convene a working group to evaluate SHPD's burial sites program and make recommendations for improvements. In that resolution, Hui Ola Nā Iwi would be tasked with convening the working group.

OHA does also respectfully suggest that OHA's membership on the working group be reduced to a single member to be selected by OHA's chief executive officer. OHA believes that this will still enable OHA to share its experiences and expertise in furtherance of the working group's efforts, while reducing the burden of requiring two OHA staff and a trustee to be members of the group.

Accordingly, OHA recommends that the language on page 3, lines 21-28, be amended to read as follows:

"(3) The chief executive officer of the Office of Hawaiian Affairs, or the chief executive officer's designee"

For the above reasons, OHA urges the Committee to **PASS WITH AMENDMENTS** HCR131 HD1. Mahalo for the opportunity to testify on this measure.



27 Malaki 2021

Aloha e Chair Mark Nakashima, e Vice-Chair Scot Matayoshi of the House committee on Judiciary & Hawaiian Affairs,

My name is Kelley Uyeoka, Executive Director of Huliauapa'a 501(c)(3), and **we strongly support the passage of HCR 131 HD 1** with amendments for consistency with SCR 206/SR 171.

Huliauapa'a

Huliauapa'a is a non-profit organization whose purpose is to educate and empower students, communities, and professionals in the stewardship of Hawai'i's wahi kūpuna (ancestral places). Huliauapa'a serves as the backbone organization of the Kali'uokapa'akai Collective which has been gathering since 2017 to identify and establish our common agenda for advancing wahi kūpuna stewardship.

An Opportunity for Meaningful Collaboration to Protect Iwi Kūpuna

One of the Collective's four current priority areas is identifying and supporting efforts to mālama iwi kūpuna. It has become increasingly evident that the current historic preservation system limits the Burial Sites Program's ability to protect iwi kūpuna (OHA letter to SHPD re Controversy at Kaua'ula, Lāhainā, Maui and Related Concerns Regarding the State Historic Preservation Division Statutory Compliance, dated Nov. 11, 2020). Many in the Native Hawaiian Community, especially recognized cultural and lineal descendants have expressed frustration in attempting to receive support from SHPD in the protection of ancestral burials.

Huliauapa'a supports this bill as an effort to create a meaningful and collaborative working relationship between descendants, the Native Hawaiian community, and SHPD to improve the capacity of the burial sites program to meet the needs of iwi kūpuna and of the descendants who 'auamo the kuleana to protect them.

We support Hui Ola Nā Iwi's position to support a transparent process for establishing a Working Group to investigate these concerns and identify solutions, and we also support Hui Ola Nā Iwi's proposed amendments to HCR HD1 as follows:

First, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include two representatives from large landowners/developers to reflect Chapter 6E's recognition of the two types of members on the island burial councils that establish: (1) regional representatives of the Hawaiian communities and (2) large landowners/developers.

Second, we recommend that the Office of Hawaiian Affairs (OHA) be named the lead to convene the burial sites working group

Third, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include a representative of Huliauapa'a/Kali'uokapa'akai Collective. This



organization would bring considerable expertise to the Working Group on historic preservation issues affecting SHPD and the island burial councils.

Fourth, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include a representative of the William S Richardson School of Law. This representative would bring considerable legal expertise to the Working Group on historic preservation laws.

Fifth, we urge this resolution mirror SCR 206 / SR 171 and add the name of the ad hoc group **Hui Ola Nā Iwi** to establish, manage and support the work of the Burial Sites Working Group, including raising funds to hold hearings to obtain sworn testimony of all interested witnesses to properly identify the scope of the need for improvements of the management of the island burial councils and so that a bona fide administrative record can be established of the Working Group's proceedings; and

Sixth, add to the language on page 4 of HCR 131 HD1: “BE IT FURTHER RESOLVED that the working group examine, consider and develop any other recommendations for improvement of the management of the island burial councils for consideration by the Legislature in its Regular Session of 2022.”.

In conclusion, we Huliauapa‘a, **strongly support the passage of HCR 131 HD 1** with amendments for consistency with SCR 206/ SR 171. The bones of our ancestors represent the core aspect of our native identity and relationship to homeland. We could not exist if it were not for our ancestors before us; as such, the bones of our ancestors deserve our utmost care and consideration as a part of the reciprocal relationship and kuleana we have to them. We look forward to the passage of this bill, and to the start of what can be a meaningful collaboration between the Native Hawaiian community, especially recognized descendants, SHPD, and other stakeholders to greatly improve the care afforded to our kūpuna.

Ola nā Iwi,

Kelley Uyeoka
Executive Director, Huliauapa‘a

HCR-131-HD-1

Submitted on: 3/28/2021 1:03:18 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Keeaumoku Kapu	Aha Moku O Maui Inc.	Support	No

Comments:

I strongly support this bill with amendments to include more lineal and cultural descendents.

HCR-131-HD-1

Submitted on: 3/28/2021 9:54:07 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Hanalei Fergerstrom	Na Kupuna Moku O Keawe	Support	No

Comments:

Aloha,

Please support this HCR 131 HD1. There are many problems with the Burials program that it warrants a serious examination. We support a separate independent burial program, separate from the State Historic Preservation division of the Department of Land and Natural Resources.

Your support is greatly appreciated. Hanalei Fergerstrom, spokesperson

Aloha Honorable Representative Mark Nakashina, Chair of the Committee on Judiciary and Hawaiian Affairs:

My name is Edward Halealoha Ayau and **I support the passage of HCR 131 HD 1** with amendments.

Ma Ka Hana, Ka 'Ike: Knowledge and Experience in the Care of Iwi Kūpuna and Moepū

I am a member of a volunteer group working to improve the care and protection of iwi kūpuna (ancestral Hawaiian skeletal remains) and their moepū (funerary possessions) and of unmarked Hawaiian and non-Hawaiian burial sites throughout Hawai'i.

In 1989, I was one of three principal authors of Act 306 (Session 1990) that established the island burial councils along with Dr Don Hibbard and Dr Davianna McGregor. A Hawaiian Burials Symposium was held on October 25, 1989 at the State Legislature to discuss amongst other things, the establishment of a Burial Sites Program and whether to house it at DLNR State Historic Preservation Division or the Office of Hawaiian Affairs.

I was the first Coordinator of the Burial Sites Program from 1990 to 1996 during which time I was the principal drafter of the administrative rules promulgated in 1996 as Hawai'i Administrative Rules Chapter 13-300.

In addition, I am the former Executive Director of Hui Mālama I Nā Kūpuna O Hawaii Nei (Hui Mālama), an organization named specifically in HRS Chapter 6E 43 and in the federal Native American Graves Protection and Repatriation Act (NAGPRA) to care for and protect iwi kūpuna and moepū. Before dissolving in 2015, Hui Mālama coordinated and carried out 120 national and international repatriation cases of iwi and moepū in the US and Australia, Canada, England, Germany, Sweden, and Switzerland, at times in coordination with the island burial councils.

Concerns with Burial Sites Program Mismanagement by SHPD

Along with Kai Markell of the Office of Hawaiian Affairs, we both have been tracking the progress and setbacks experienced by the island burial councils collectively for the past 25 years. We both have been part of past efforts by the Administration of past governors including the Honorable Ben Cayetano and the Honorable Linda Lingle (Friends of the Burial Sites Program), to address the problems created by the lack of proper management of the councils by the State Historic Preservation Division and the lack of consistent and independent legal representation by the Department of the Attorney General.

The concerns we raise currently is in fact the third iteration of protest against SHPD for mismanagement. Each time these concerns are raised DLNR/SHPD would respond that (1) there are no problems with the management of the island burial councils; (2) everything is fine; and (3) there is no need to look into these matters. Sound familiar?

Two words highlight our concerns with SHPD mismanagement: **systemic and chronic**. The concerns are **systemic** in that they are a result of SHPD administrative failures to follow the legal process laid out in HAR Chapter 13-300 and based upon the legal requirements of HRS Chapter

6E sections 43, 43.5 and 43.6. In addition, these concerns are **chronic** because they have been ongoing for the past quarter century. None of the concerns we raise are new, they are the same, recycled failures. Different personnel, same pattern of mismanagement.

Responses to Concerns Raised to Passage of HCR 131 HD 1 and SCR 206/ SR 171

Point 1: Chair Case states in her testimony, “These Resolutions appear to assume that SHPD is failing to support the Councils to the extent possible with **currently available resources**, and that it is failing to comply with the statutes and administrative rules to the extent that it has become necessary to form a working group. The Department does not concur with this assumption.”

Reply: Obviously, the State and concerned Hawaiians who have spent the past three decades monitoring the Burial Sites Program, differ whether SHPD is doing a good job to provide administrative support to the island burial councils.

Please know that if in fact there is no concern here, there would be no concerted voluntary effort to raise these significant concerns and to call for this involved inquiry. In fact, we have serious concerns about chronic and systemic mismanagement by SHPD.

It is important to **establish proper context** to the concerns we raise. We are not talking about the past few years, but instead the past 25 years.

This is about the Hawaiian value, *kūlia i ka nu‘u*, striving for the highest. These are the ancestors and the standard of care is the highest level. The application of this value and standard is not limited to Hawaiians, but is applicable to DLNR’s legal duties to support the island burial councils. That DLNR freely admits that this is the best effort they can muster given the current state of resources is unacceptable.

Cases including Maui Lani, Kawaiaha‘o, Brescia, Kawaihae and Hakipu‘u are a few examples where the SHPD support has failed. As living descendants, we have the responsibility to speak up when inadequate care for the ancestors is occurring and these resolutions afford us the ability to raise those concerns and affords the SHPD the ability to recognize the need for improvement.

Point 2: Chair Case states in her testimony, “All staff are properly trained in the statutes and administrative rules.”

Reply: The reality is staff including Dr. Downer are not well versed in the statutes or the administrative rules. Kawaiaha‘o and the other cases are proof positive of that. Why do SHPD staff inquire with myself and Kai Markell if this were in fact the case? Why would they ask for training from us?

Point 3: Chair Case states in her testimony, “It is probably the case that more Sunshine Law and Ethics training is needed for the councils as compliance with these statutes, with the exception of posting meeting agendas and producing minutes, are Council rather than SHPD administrative responsibilities. Having heard that some Council members feel the need for training, SHPD and the Deputy Attorney Generals (Deputy AG) from the Department of the Attorney General (AGs)

assigned to SHPD are currently working on training material that is currently targeted for presentation at the May or June 2021 council meetings.”

Reply: Training should not be an afterthought, but a requirement for all new Council members and staff. That SHPD would manage the Councils based on what they “heard” as compared to the highest standards of training is also concerning. Training must be provided as a best management practice for those serving on the burial councils and SHPD burials staff, and not only when attention is focused on SHPD. In other words, provide training when no one is looking.

Point 4: What is the harm in holding the department accountable and maximizing transparency? We are saying things need to significantly improve to support the burial council’s responsibility to care for and protect the iwi kūpuna and the State is refusing to hear the details and extent of our concerns.

Reply: Why? Why object to transparency? Wouldn’t this benefit the department by ensuring a more efficient and ethical process?

Point 5: Some in the community oppose the Working Group’s establishment opining that the group does not include **lineal and cultural descendants**.

Reply: Every Hawaiian who is eventually named to participate on the Burial Sites Working Group is a potential (and some are already) recognized lineal and cultural descendant. Are they suggesting that all recognized descendants (in the hundreds) serve on the Working Group? Is that a requirement for any other burial legislation or resolution? This perspective reflects a lack of understanding since the Working Group would engage recognized lineal and cultural descendants through hearings and other communication to encourage their participation.

Point 6: Chair Case raises the **burial site inventory**, claims her staff has been working on it and then questions whether it is proper cultural practice to perform this duty.

Reply: These views are troubling. First, she seems to be questioning the legitimacy of a legal requirement. Second, she questions the integrity of the inventory process in terms of Hawaiian cultural practice, which is **offensive to the practice of mālama iwi kūpuna**. The concerns of confidentiality or hūnā she raises is addressed in the administrative rules by exempting from the sunshine law, the disclosure of burial location and description during council meetings and in documentation provided by the descendants. Participation by the descendants is voluntary, but SHPD has a duty to facilitate this process. The admin rules provide the necessary protections for the value of hūnā.

Hui Ola Nā Iwi

We are a hui or group of concerned Hawaiians who volunteer our time to ensure the proper care and protection of our ancestor's burial sites so that the sensitivities of the living descendants are also cared for and protected. We are comprised of current island burial council chairs and vice chairs, experts in the field of burial sites care and protection, and concerned Hawaiians involved in current burial cases.

On January 19, 2021, O‘ahu Island Burial Council Chairwoman Hinalaimoana Wong-Kalu and myself highlighted our significant concerns with SHPD mismanagement of the island burial councils by holding a press conference to protest this ongoing mismanagement.

We stand by our positions and support a transparent process in which a Working Group is established to look into these concerns, allow SHPD the full opportunity to explain its actions, and most importantly to hold hearings with sworn testimony from witnesses to get to the truth so that a report with formal findings and recommendations for legislative action can be presented to the 2022 Legislature.

Proposed Amendments to HCR 131 HD 1

First, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include two representatives from large landowners/developers to reflect Chapter 6E’s recognition of the two types of members on the island burial councils that establish: (1) regional representatives of the Hawaiian communities and (2) large landowners/developers.

Second, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include a representative of Huliauapa‘a/Kali‘uopa‘akai Collective. This organization would bring considerable expertise to the Working Group on historic preservation issues affecting SHPD and the island burial councils.

Third, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include a representative of the William S Richardson School of Law. This representative would bring considerable legal expertise to the Working Group on historic preservation laws.

Fourth, we urge this resolution mirror SCR 206 / SR 171 and add the name of the ad hoc group **Hui Ola Nā Iwi** to establish, manage and support the work of the Burial Sites Working Group, including raising funds to hold hearings to obtain sworn testimony of all interested witnesses to properly identify the scope of the need for improvements of the management of the island burial councils and so that a bona fide administrative record can be established of the Working Group's proceedings; and

Fifth, add to the language on page 4 of HCR 131 HD1: “BE IT FURTHER RESOLVED that the working group examine, consider and develop any other recommendations for improvement of the management of the island burial councils for consideration by the Legislature in its Regular Session of 2022.”.

Conclusion

We are the sum of our ancestors--- their disturbance is our disturbance and their care and protection is our sacred duty. We support this resolution as an integral part of our ongoing responsibility to our Hawaiian humanity, which includes the interdependent relationship we have with our ancestors as ‘ohana, and respectfully request approval of this resolution with these proposed amendments, mahalo.

Ola nā iwi,

Edward H Ayau

Edward Halealoha Ayau

HCR-131-HD-1

Submitted on: 3/27/2021 7:33:49 AM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laa Poepoe	Individual	Support	No

Comments:

Chair Tarnas, Vice Chair Branco, and Members of the House Committee on Water and Land,

My name is La‘a Poepoe, member of the Molokai IBC, submitting testimony in support of HCR131-HD1.

I was appointed to a council position in June of 2018, to serve for a 3-year term (unsure why 3 years) that expires in June of 2021. As of this writing, we are 3 months away from ending my term without having held a single legitimate meeting of the Molokai IBC. Essentially, I have spent a full term without rendering a vote. I would like those years recovered and added to a subsequent term. The current 2-member council is unable to meet the minimum quorum necessary to elect officers or conduct official business, so we are limited to participating in burial matters/legislation as individuals rather than with the authority of a recognized burial council. The solution is to fill vacant positions. In 2019, there were 3 residents who had informed me that their applications were submitted to SHPD without follow-up. There should be candidates available for nomination, but an official applicant list is not something that is available to verify this claim. Our situation may be remedied by supporting HCR131. So here I am, as an individual, in support of HCR131. Thank you.

Aloha Honorable Representative Mark Namashima, Chair of the Committee on Judiciary and Hawaiian Affairs,

My name is Norman “Mana” Kaleilani Cáceres and **I support the passage of HCR 131 HD 1** with amendments.

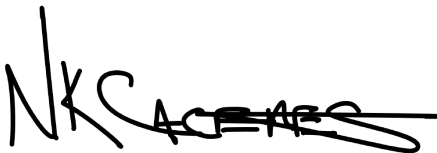
My family and I are state recognized lineal and cultural descendants to native Hawaiian human burials in Ewa and Kona on the island of O‘ahu and Kalaoa and Ka‘ohe on Hawai‘i island. We have been involved in the care and protection of iwi kupuna for the past 9 years and we have seen first hand how the systemic and chronic mismanagement of the burial sites program has affected and effected the ability to fulfill our commitment to properly treat the remains of our ancestor’s.

My family and I have been involved with and have consulted with the volunteer group that was formed to address the concerns highlighted during the January 19, 2021 press conference by O‘ahu Island Burial Council Chairwoman, Hinalimoana Wong-Kalu. We stand in full support of the statements made during this press conference and therefor **stand in support of HCR 131 HD 1** with the following amendments:

- 1) HCR 131 HD 1 should mirror SCR 206/SR 171 and include two representatives from large landowners/developers.
- 2) HCR 131 HD 1 should mirror SCR 206/SR 171 and include a representative of Huliaupa‘a/Kali‘uopa‘akai Collective.
- 3) HCR 131 HD 1 should mirror SCR 206/SR 171 and include a representative of the William S Richardson School of Law.
- 4) HCR 131 HD 1 should mirror SCR 206/SR 171 and add the name of the ad hoc group **Hui Ola Nā Iwi** to establish, manage and support the work of the Burial Sites Working Group.
- 5) Add the following language onto page 4 of HCR 131 HD 1: “BE IT FURTHER RESOLVED that the working group examine, consider and develop any other recommendations for the improvement of the management of the island burial councils for consideration by the Legislature in its regular session of 2022.”

Mahalo nui for your time and consideration.

Ola nā iwi,

A handwritten signature in black ink, appearing to read 'NKCACERES', with a long horizontal stroke extending to the right.

Norman “Mana” Kaleilani Cáceres

HCR-131-HD-1

Submitted on: 3/27/2021 8:20:45 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Support	No

Comments:

I support hcr131 hd1

27 Malaki 2021

Aloha e Chair Mark Nakashima, e Vice-Chair Scot Matayoshi of the House committee on Judiciary & Hawaiian Affairs,

My name is Kepo‘o Keli‘ipa‘akaua and **I strongly support the passage of HCR 131 HD 1** with amendments for consistency with SCR 206/ SR 171.

I am testifying as an individual who has been recognized as a cultural and lineal descendant to kūpuna disturbed on various projects since 2002 including the Walmart on Ke‘eaumoku St., numerous kūpuna within the Kālia and Kaka‘ako area, and kūpuna disturbed on the Kawaiiaha‘o Church grounds.

As many other descendants and Native Hawaiian organizations have pointed out, it has become increasingly evident that the current historic preservation system limits the Burial Sites Program’s ability to protect iwi kūpuna (OHA letter to SHPD re Controversy at Kaua‘ula, Lāhainā, Maui and Related Concerns Regarding the State Historic Preservation Division Statutory Compliance, dated Nov. 11, 2020). Many in the Native Hawaiian Community, especially recognized cultural and lineal descendants like myself have expressed frustration in attempting to receive support from SHPD in the protection of ancestral burials. From my own personal experience, it is apparent that despite admirable efforts of individuals within SHPD, and within the Burial Sites Program specifically, SHPD and the Burial Sites Program seem to lack the resources and personnel necessary to fulfill the important obligation that they have to protecting iwi kūpuna across the pae ‘āina.

I support this bill as an effort to create a meaningful and collaborative working relationship between descendants, the Native Hawaiian community, and SHPD to improve the capacity of the burial sites program to meet the needs of iwi kūpuna and of the descendants who ‘auamo the kuleana to protect them. I testify today, not to cast a critical eye upon SHPD and its staff, but rather to embrace them in what can be a great opportunity for us to examine the capacity of their Burial Sites Program and work together to identify and realize solutions that will ultimately ensure exponential increases in the protection of our ancestral burials.

I support Hui Ola Nā Iwi’s position to support a transparent process for establishing a Working Group to investigate these concerns and identify solutions, and we also support Hui Ola Nā Iwi’s proposed amendments to HCR HD1 as follows:

First, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include two representatives from large landowners/developers to reflect Chapter 6E’s recognition of the two types of members on the island burial councils that establish: (1) regional representatives of the Hawaiian communities and (2) large landowners/developers.

Second, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include a representative of Huliauapa‘a/Kali‘uopa‘akai Collective. This organization would bring considerable expertise to the Working Group on historic preservation issues affecting SHPD and the island burial councils.

Third, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include a representative of the William S Richardson School of Law. This representative would bring considerable legal expertise to the Working Group on historic preservation laws.

Fourth, we urge this resolution mirror SCR 206 / SR 171 and add the name of the ad hoc group **Hui Ola Nā Iwi** to establish, manage and support the work of the Burial Sites Working Group, including raising funds to hold hearings to obtain sworn testimony of all interested witnesses to properly identify the scope of the need for improvements of the management of the island burial councils and so that a bona fide administrative record can be established of the Working Group's proceedings; and

Fifth, add to the language on page 4 of HCR 131 HD1: “BE IT FURTHER RESOLVED that the working group examine, consider and develop any other recommendations for improvement of the management of the island burial councils for consideration by the Legislature in its Regular Session of 2022.”.

In conclusion, I **strongly support the passage of HCR 131 HD 1** with amendments for consistency with SCR 206/ SR 171. My own existence would not be possible if not for my ancestors before me; as such, the bones of our ancestors deserve our utmost care and consideration as a part of the reciprocal relationship and kuleana we have to them. I look forward to the passage of this bill, and to the start of what can be a meaningful collaboration between the Native Hawaiian community, especially recognized descendants, SHPD, and other stakeholders to greatly improve the care afforded to our kūpuna.

Ola nā Iwi,

Kepo‘o Keli‘ipa‘akaua

Before the Judiciary and Hawaiian Affairs Committee

March 29, 2021

HCR 131 HD 1

Establishing the Burial Sites Working Group to Examine the Burial Sites Program Under DLNR

Aloha Chair Nakashima and Committee Members,

I am writing to you as a recognized descendent of burials in the pu‘uone sand dune complex on Maui, an area historically known to contain a high concentration of burials. I have been advocating for the care and protection of the burials for several years and have come up against many roadblocks with SHPD and the Burial Sites Program. I am in support of HCR 131 HD1 and the proposed working group with amendments. I would like to propose that the balance of participants be reconsidered to include a larger percentage of community members who are both kānaka maoli and cultural practitioners of mālama iwi. As the bill is written, there is a preponderance of institutional appointees, some of whom are part of the institutional dysfunction of the department and it would be prudent to make sure the voice of the people is included in such a group. It is also prudent to not allow the senate and house chairs to choose the cultural practitioners. It would be better to let the Burial Council Chairs or OHA’s compliance division choose members of the community who are active and have a working knowledge of the issues that play out in real time for the descendents.

The reasons for the working group are many due to the systemic dysfunction in the department. I will share a few examples of SHPD’s failures that I have personally dealt with. I am attaching a letter to Governor Ige that I wrote in 2019 that will displays a sample of the issues that seem to re occur time and time again on every island. I am also attaching a copy of the United Nations Committee On the Elimination of Racial Discrimination (CERD) letter that the committee sent to Mālama Kakanilua in response to a complaint letter we sent them in 2019. I am a board member of Mālama Kakanilua and we have been seeking remedy to our burial issues in multiple venues. The CERD letter is significant because the U.S. is a treaty partner in this committe and is

obliged to follow it's lead. The Federal government, the State and the local County government is responsible to investigate the findings and provide remedy. This proposed working group could possibly be a step towards fulfilling that obligation if its report leads to meaningful change.

The last example I will speak of is my current court case, Ahia vs. DLNR, which had it's preliminary injunction hearing in 2019. The full case has not yet been heard, but in the preliminary injunctions findings of facts and conclusions of law signed by the Honorable Joseph E. Cardoza on April 19, 2019 it states:

100. SHPD staff did not fill out departmental inadvertent discovery forms for every *iwi kupuna* encountered at Increment 4.

101. SHPD staff did not fill out departmental inadvertent discovery forms for any of the *iwi kupuna* that HBT's archaeology firm encountered and considered to be disarticulated.

And:

111. Hinano Rodrigues of SHPD History and Culture Branch stated that SHPD has not

followed proper procedures for inadvertent *iwi kupuna* because they are "short staffed."

112. Mr. Rodrigues testified that there are no posted vacancies for his division.

In conclusion, in times when SHPD is understaffed, and when it is fully staffed, it fails, as an agency to uphold it's responsibility to protect and preserve our ancestral burials. There are many good people working in the agency who's voices are drown out by the admininistrators. Whether it's SHPD'S failure to ensure the Archeology firms it permits are actually in compliance with the rules, it's failure to ensure monitoring reports are turned in, which leads to important data not being reported, it's failure to require projects sent for review have adequate

AIS, proper mitigation plans, or its blatant misreading of the statutes regarding inadvertent finds, the department is responsible for the desecration of my kūpuna and the ancestors of the kānaka māoli people.

Please support HCR131HD1

Most Sincerely,
Jennifer Noelani Ahia
E Mālama I Nā Iwi Kūpuna

May 20, 2019 Governor David Ige

Dear Governor Ige:

I am writing as a recognized cultural descendent of skeletal remains that were recently desecrated in Waihe'e, Maui. The grading and grubbing permit for TMK: (2) 3-2-010:017 was issued by the county after receiving a letter from SHPD (Log No. 2018.00443 & DOC. No. 1803LS03) that states "Our records indicate that NO ARCHEOLOGICAL INVENTORY SURVEY HAS BEEN CONDUCTED, AND THAT NO ARCHEOLOGICAL HISTORIC PROPERTIES HAVE BEEN IDENTIFIED WITHIN THE SUBJECT PARCEL OR NEARBY."

This is problematic because it is impossible to say no historic properties have been identified without doing an AIS (Archeological Inventory Survey) first. What is even more disturbing is that I was able to locate a letter found in SHPD's library from 2005 (LOG No.

2005.1529 & DOC No. 0507CD31), in regards to the same TMK, that states “In 1990, Cultural Surveys Hawaii (CHS) conducted an archeological inventory survey which *included* the subject property. During the survey a total of four historic sites were identified, three of which are located on the subject property (2704, historic cemetery; 2705, `auwai; and 2706, subsurface cultural deposit. The recommendation is archeological monitoring for all future ground disturbing work. Also in SHPD'S library were the original AIS as well as a letter of notification for two inadvertent finds in July of 2000.

On April 25, 2019 notification was sent from SHPD to the regional representative of the Maui Lanai Island Burial Council. Iwi kupuna were needlessly disturbed during grading work on said property because there was NO archeological monitor required or present. SHPD informed the county in their March 2018 letter that “The permit issuance process may continue” despite the subject property being in a highly sensitive area of the pu`uone sand dunes which is known to contain burials. Had SHPD done their due diligence and located their own records indicating the

past AIS, historic properties and recommendation for archeological monitoring, the iwi kupuna could have been protected.

For context, I would like to share with you about two other projects on Maui where we are dealing with similar struggles that involve SHPD being negligent and leaving our iwi kupuna vulnerable to desecration and destruction, causing irreparable harm.

In Kula Makai, we are witnessing grading and grubbing of the former Maui Lu site which is proceeding with an outdated AIS and NO monitoring plan. The contractors are working with multiple bulldozers, moving large amounts of sand and trenching deep into the earth and they are not required to have archeological monitors, despite the high sensitivity in the area. In a letter dated September 2015, SHPD states:

“An archaeological inventory survey report was accepted for the project area in 1999 (Log 24023, Doc 9908RC61). The report was acceptable 16 years ago, but our drafted rules have since become law. The report is outdated and archaeological inventory survey level documentation needs to meet with current standards. Since 1999, several studies have been

conducted in the general area providing potentially vital information for historic properties that may be located in the project area. In order to determine any potential effects to significant sites, we need updated data for the subject area, and immediately adjacent areas.

Significant archaeological sites located nearby include Kalepolepo Fishpond, heiau, habitation areas, fire hearths, sub surface pit features as well as displaced and in situ human burials. The proposed project is located in dune land and silty sand deposits, which are known to contain human burial features (SIHP 50-50-10-4962, and 5547 etc.). The area is known to contain marshy areas located amongst the coastal and alluvial sand deposits. Overflow areas from intermittent streams passing through the area created marshes that were commonly modified by traditional settlers. Marsh soils can also contain very important information on vegetation in the area prior to settlement.

Pursuant to Hawai'i Administrative Rule § 13-284, we request additional information regarding potential historic properties within the subject area, and strongly recommend an updated comprehensive

addendum archaeological inventory survey in order to assess the potential effect the proposed project may have on historic properties. Additional subsurface testing is warranted. Please contact Jenny Pickett at (808) 243-5169 or Jenn.L.Pickett@maui.co.hawaii.gov. if you have any questions or concerns about this letter. The updated survey work should be completed by a permitted contracted archaeological firm, and the resulting report submitted to our office for review and approval.”

However, later that year, SHPD retracted its former recommendation and states:

“SUBJECT: Chapter 6E-42 Historic Preservation Review – REVISED COMMENTS Maui County Permit Applications, Maui Bay Villas Project (WTP 2015/0042, G 2015/0082) Ahupua‘a, Wailuku District, Island of Maui TMK: (2) 3-9- 001:083 and 086

Thank you for the opportunity to comment on the aforementioned submittal originally received by our office on August 3, 2015. The applicant is proposing to initiate construction on a proposed redevelopment project at the location of the old Maui Lu Resort. We previously recommended a new archaeological

inventory survey for these parcels (Log No. 2015.03036, Doc. No. 1508JP23). This letter replaces our earlier correspondence dated August 28, 2015 and October 8, 2015 (Log No. 2015.03307, Doc. No. 1510JP03).

A search of our records indicates that an archaeological survey has been conducted

for the Maui Lu Resort's two parcels; this survey was accepted in 1999 (Burgett, Humphrey and Spear 1998; Log No. 24023, Doc. No. 9908RC61). No historic properties were identified. SHPD subsequently reviewed and approved a Special Management Area Use permit for the redevelopment of the resort, with a determination of no historic properties affected (EA 2003/0008 and SM1 2003/0021; Log No. 2004.1304, Doc. No. 0404CD58). Redevelopment of the property as currently proposed is substantially the same as was earlier planned.

Therefore, SHPD's determination is **no historic properties affected** for the proposed project. In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, or lava tubes are identified during construction activities, please cease work in the immediate vicinity of the

find, protect the find from disturbance, and contact the State Historic Preservation Division at (808) 243-1285. Mahalo,

Alan S. Downer, Ph.D. Administrator, State Historic Preservation Division Deputy State Historic Preservation Officer

We as a community are dealing with similar issues in central Maui in the pu`uone sand dune complex where over 700 find sites have been disturbed. In some cases, each find site contains multiple burials. In Maui Lani Phase 6 increment 4, find site 5718 is known to contain 84 burials. Another site in the same burial complex but located in a different TMK has 72 burials. Looking at the desecration and irreparable harm of potentially a thousand burials in this project district is becoming too much to bear for our community. We have a new condominium project, TMK (2) 3-8-007:157 which sits in the middle of the pu`uone complex. They are working with an outdated AIS, but SHPD allowed the project to move forward without an addendum or further study. In addition, an AMR (archeological monitoring report) was due to be turned into SHPD after the previous sand mining project was completed years ago. SHPD has no such

report on record. How can they allow a project to move forward without having a report to indicate what may have been found during monitoring.

In addition, we have Maui Lani Phase 6, Increment 4 which is currently in litigation due to similar issues. I will refrain from commenting at this time.

The community is outraged and distressed. This is happening on a large scale in Maui County and we simply will not stand for it. The Iwi Kupuna are sacred, our collective mana, and they have a right to rest in peace. We, as descendents, have a kuleana to protect them.

I am humbly requesting intervention from you Governor Ige. I would like to first see a halt to the Waihe`e project until further non-invasive studies have been done. Iwi Kupuna have already been disturbed and the potential for further desecration is extremely high. I am also requesting a full audit of SHPD and their practices. I understand they are understaffed but it is no excuse for gross negligence. When our Iwi are irreparably harmed, we are harmed.

Sincerely,

Noelani Ahia



HAUT-COMMISSARIAT A DROITS DE L'HOMME OFFICE OF THE HIGH
COMMISSIONER FOR HUMAN RIGHTS PALAIS DES NATIONS 1211 GENEVA 10,
SUISSE

TEL: +41 22 917 9000 FAX: +41 22 917 9008 E-MAIL: registry@ohchr.org

REFERENCE: CERD/EWUAP/ 98th session/USA (1)

Dunes Complex)/JP/ks Excellency,
10 May 2019

I would like to inform you that in the course of its 98th Session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedures regarding the desecration of a burial site of the Kanaka Maoli indigenous peoples in the State of Hawaii of the United States of America.

The information received indicates that the Sand Dunes Complex in Central Maui is a traditional burial site of the Kanaka Maoli indigenous peoples. The site has been used for extractive activities without the free, prior and informed consent of Kanaka Maoli for at least a period of thirty years, resulting in the removing of innumerable burials in the area and traumatic and psychological distress for many Kanaka Maoli descendants.

Accordingly, the Committee is concerned about the lack of protection of the burial sites of Kanaka Maoli the indigenous peoples and the lack of recognition of and measures to address related psychological harm.

Furthermore, the legal framework over burials in Hawaii appears to be discriminatory towards the Kanaka Maoli, by establishing more complicated requirements for Native Hawaiians than the rest of the population in order to claim cultural descendancy to a burial. Moreover, the legal framework seems to be focusing on mitigating desecration rather than ensuring full protection of all burial sites.

Such situation would amount to the failure of ensuring that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs as well as a breach of the State party duty to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

Chief, Mr. Mark J. Cassayre

Chargé d'affaires a.i.

Permanent Representative of United States of America to
the United Nations Office

Geneva

Email: GenevaUSmission@state.gov

With regard to the information received, the Committee would like to recall the *Amann and others v. Switzerland* (1997) indigenous peoples (1997) as well as recommendations on the rights of indigenous peoples made in paragraph 24 of its concluding observations of September 2014 (CERD/C/USA/CO/7-9).

Accordingly, the Committee requests the State party to provide information on the steps taken to:

1. Ensure the right to consultation and free, prior and informed consent to Kanaka Maoli indigenous peoples regarding current and future projects on their traditional lands and territories, including their burial sites, in particular the *Maui*.
2. Consider adopting comprehensive reparations measures towards the Kanaka Maoli descendants regarding burial desecration of their relatives.
3. Consider reviewing the existing legislation regarding burial in order to ensure non-discrimination and the protection of the burial sites of



indigenous peoples, including the Kanaka Maoli.

In this regard, the Committee encourages the State party to consider seeking assistance from the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) that is mandated by the Human Rights Council (resolution 33/25, paragraph 2), to provide States with technical advice on the rights of indigenous peoples and facilitate dialogue between States, indigenous peoples and/or the private sector.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit its response by 8 July 2019. The Committee regrets that the State party has yet to submit its tenth to twelfth periodic reports that are overdue since 20 November 2017. In this regard, the Committee requests the State party to submit in a single document the overdue reports without further delay.

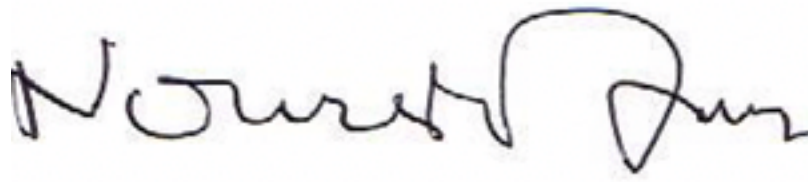
Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of United States of America, with a view to ensuring the effective implementation of the Convention.

Yours sincerely,

Noureddine Amir Chair

Committee on the Elimination of Racial Discrimination

PAGE 2

A handwritten signature in blue ink, appearing to read "Noureddine Amir", enclosed in a thin black rectangular border.

HCR-131-HD-1

Submitted on: 3/28/2021 12:20:22 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nana-Honua Manuela	Individual	Support	No

Comments:

Please begin to fulfill your Trust responsibilities to the beneficiaries & General Public. Reverse the dismal record Of Protection Of Iwi Kupuna. This Bill is a step in a better direction.

HCR-131-HD-1

Submitted on: 3/28/2021 12:56:31 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Clarence Ching	Individual	Support	No

Comments:

I am Clarence ku Ching, of Waimea, Hawai'i island, and I support this proposed resolution.

I believe that there are problems of mismanagement by agencies and their staff individuals. Some of these individuals who are appointed to their positions seem to have their own personal agenda - that sometimes result in violations of the law and/or spirit of the law. Unfortunately, the failure is in the "system" and those that the "system" enables.

There are too many who continue to violate the Hawai'i statute and rules of "desecration" - who continue to be ignored by the "system!"

I do not agree with the powers of appointment that are reserved to certain individuals.

However, it is hoped that, regardless of the faults involved, that this proposed working group is funded and assisted so that it may do its best to treat these most sacred activities in pono ways.

Part of the problems is the "designation" of the term - "inadvertent!" How can iwi be "inadvertantly" discovered when you're operating in a cemetery? Iwi occurs all over the place, some places more preferred than others. But wherever they are - they should be treated with utmost care and respect.

And, the legal protection s afforded iwi that is "proved" to be 50 or more years old - that's a disgraceful rule. ALL iwi should be respected and given utmost care and treatment, no matter how long or short they have been in place, as long as there are NO criminal activities involved.

Thank you

Aloha e Honorable Representative Mark Nakashima, Chair of the Committee on Judiciary and Hawaiian Affairs:

My name is Dane Uluwehiokalani Maxwell and I support the passage of HCR 131 H.D. 1 with amendments.

I comment here today in my personal capacity but speak from my experience serving as a Maui/Lānaʻi Islands Burial Council member and Vice Chair since 2014 and Chair since late 2019.

In 2014 four new members including myself entered into a council that was inactive for a long period of time and was devoid of any regional representatives able to provide guidance and leadership to determine the treatment of previously identified Hawaiian burial sites. This meant that having adequate training provided by the SHPD would be of the utmost importance. While there was training on how to navigate the provided manual and the HAR 13-300, we would come to find out that over the years, critical information we needed to function on the most basic of levels were missing.

Currently on Maui there is a project that has over 180 inadvertent discoveries of human skeletal remains. Under HAR 13-300-1 "Inadvertent discovery" means the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity.

I have been a burial council member since 2014 and this project has come before us numerous times as the Maul Lani development is being built in phases. We have challenged the 'inadvertent' designation of these Hawaiian remains because we believe that the actions of the project at each Phase to be intentional disturbances since it is known that these iwi are present. Due to oral and written history, overwhelming testimony by the public and cultural descendants, and the obvious fact that there is a significant concentration of Hawaiian burials we recognized a portion of this project as previously identified Hawaiian burial grounds.

This brings me to my point, the Council's access to independent legal counsel and representation. It has been the practice and recommendation by the department that the M/LIBC is to route all communication to the Department

of the Attorney General through SHPD. If we are expected as the council to enter into an executive session in our meetings to preserve our attorney and client privileges, then I believe that the same should be said for our communications with the AG external to our meetings. As stated by the department but never mentioned in training, the council is independent of the SHPD and in the project mentioned above, we have a major discrepancy in the current interpretation of how the language is being utilized in the situation described above. As of February 2021, as the Chair I have ONLY recently been given direct cell phone access to our deputy attorney general despite the statement made by Chair Case that we have had access over the years.

It has been my experience that the attorney general will ask the department if they have a concurrent understanding of a situation that they are actively consulting the council on during a closed meeting with the department the Deputy AG. This is highly troubling since at times the point of contention is the Council's difference on opinion of a legal interpretation by SHPD. I am not a lawyer but it seems like a conflict of interest if the lawyer we are asking for clarification because of a difference of opinion with SHPD, first asks SHPD for their view. We need independent legal representation otherwise, it's two against one.

Chair Case states that "The Hawai'i, Maui/Lāna'i, and O'ahu burial councils are supported by two burial sites specialist each." I wanted to clarify that since entering MLIBC I have only known SHPD Maui to have one burial site specialist and one cultural historian. With Maui having many topics of contention and a dramatic increase in coastal erosion and it's impact on iwi kūpuna I believe that there really should be two burial sites specialist for each.

Proposed Amendments to HCR 131 HD 1

First, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include two representatives from large landowners/developers to reflect Chapter 6E's recognition of the two types of members on the island burial councils that establish: (1) regional representatives of the Hawaiian communities and (2) large landowners/developers.

Second, in terms of the composition of the Working Group, we also urge this resolution to mirror SCR 206 / SR 171 and include a representative of Huliauapa'a/Kali'uopa'akai Collective. This organization would bring considerable expertise to the Working Group on historic preservation issues affecting SHPD and the island burial councils.

Third, in terms of the composition of the Working Group, we urge this resolution to mirror SCR 206 / SR 171 and include a representative of the William S Richardson School of Law. This representative would bring considerable legal expertise to the Working Group on historic preservation laws.

Fourth, we urge this resolution not include our ad hoc group Hui Ola Nā Iwi but rather insert **Office of Hawaiian Affairs** to establish, manage and support the work of the Burial Sites Working Group, including providing funds to hold hearings to obtain sworn testimony of all interested witnesses to properly identify the scope of the need for improvements of the management of the island burial councils and so that a bona fide administrative record can be established of the Working Group's proceedings; and

Fifth, add to the language on page 4 of HCR 131 HD1: "BE IT FURTHER RESOLVED that the working group examine, consider and develop any other recommendations for improvement of the management of the island burial councils for consideration by the Legislature in its Regular Session of 2022."

In conclusion, It is my hope that this working group helps to shape a burial sites program that will lessen the burden for future generations in the protection of Hawaiian skeletal remains.

Mahalo,

Dane Uluwehiokalani Maxwell

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

DATE: Monday, March 29, 2021

TIME: 2:00 PM

PLACE: VIA VIDEOCONFERENCE

Conference Room 325

State Capitol

415 South Beretania Street

TESTIMONY OF ADRIAN K. KAMALI'I IN SUPPORT OF HCR 131 HD 1

Chair Nakashima, Vice Chair Matayoshi and members of the Committee on Judiciary & Hawaiian Affairs, thank you for the opportunity to provide testimony in strong support of House Concurrent Resolution 131 HD1.

This concurrent resolution is a necessary step to call the Department of Land and Natural Resources and SHPD's management to task. We cannot return to days where developers and construction sites put the remains of kūpuna into rock grinders to make cement. SHPD's and the Department's languid response to infractions to 6E has empowered some to forgo necessary processes.

This resolution will help to pinpoint the Department's and SHPD's weaknesses and failures and allow for better rule and policy making.

Thank you for the opportunity to provide testimony.

Ola nā iwi.

Adrian K. Kamali'i

HCR-131-HD-1

Submitted on: 3/28/2021 2:42:29 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
CLARe Apana	Individual	Support	No

Comments:

I am in support of HCR 131

For the past 24years , I have advocated for the protection of our ancestral burials(Kanaka Maoli). There is a great need for an audit of the State Historic Preservation Department .

Malama Kakanilua, the organization I am head of, has 2 contested cases ongoing from 2018 and 2020, The cases are Malama Kakanilua v Grand Wailea Resort Expansion and Archeological services Hawaii applicant for, a contested case .

These legal actions would not have been necessary if the burials, iwi kupuna, were and are being protected and given the respectful treatment afforded them by laws of humanity, international human rights, federal laws, HRS (Hawaii laws) and most important the laws of the kingdom where these ancient burials are from. The the burials that are most in jepardy are not from the United States.

I stand in full support of finding a solution that holds all parties accountable for the care and protection of our precious iwi kupuna.

Clare H. Apana

Aloha Honorable Representative Mark Nakashima, Chair of the Committee on Judiciary and Hawaiian Affairs:

My name is Nalei Kahakalau and I support the passage of HCR 131 H.D. 1 with amendments.

I provide this testimony in my personal capacity. I am the current Chair of the Hawai'i Island Burial Council and have been serving on this council on and off for the past 25 years.

I would like to start off by stating that I am volunteering with a hui of supports and advocates of the care and protection of unmarked Hawaiian burial sites over fifty years old. My 'ohana and I have engaged in this work since the days of Honokahua on the island of Maui.

Press Conference Protest of SHPD Mismanagement

On January 19, 2021, O'ahu Island Burial Council Chairwoman Hinalaimoana Wong-Kalu and Halealoha Ayau highlighted our significant concerns with SHPD mismanagement of the island burial councils by holding a press conference to protest this ongoing mismanagement. The message of that protest was the need of the island burial councils to uphold our kuleana (duty, responsibility, privilege) to protect Hawaiian burial sites and care for iwi kūpuna (ancestral bones) and moepū (funerary possessions). The problem has been the systemic mismanagement by the State Historic Preservation Division (SHPD) to undermine the legal authorities, rights and responsibilities of the island burial councils for Kaua'i/Ni'ihau, O'ahu, Molokai, Maui/Lāna'i and Hawai'i to carry out their statutory, administrative and cultural responsibilities to protect Hawaiian burial sites and care for iwi kūpuna and moepū.

Examples of Systemic SHPD Mismanagement

- (1) Failure to adequately staff the island burial councils and manage the terms of council members.
- (2) Failure to provide training to its staff in the burial law and administrative rules (HAR 13-300).
- (3) Failure to provide training to burial council members re the burial law and administrative rules.
- (4) Failure to require the Department of the Attorney General to ensure independent legal representation of the island burial councils (apart from the interests of SHPD) either by Deputy AG's or independent legal counsel at burial council meetings.
- (5) Failure to implement the administrative rule to develop the burial sites inventory.
- (6) Failure to provide proper administrative support to the burial councils including (a) timely actions on burial matters, (b) preparation of agenda items and (c) failing to provide the councils proper guidance on the processes involving burial matters.
- (7) Failure to comply with legal requirements applicable to the inadvertent discovery of human remains.
- (8) Failure to undertake enforcement actions of documented violations involving burial sites.

DLNR's Response is Unacceptable

I take issue with DLNR Chair Case and SHPD Administrator Downer stating that there is nothing wrong with the SHPD management of the island burial councils. I have been fortunate enough to have been in a position to experience the chronic mismanagement of the councils by SHPD which continues since the beginning and this is the third time that we have had to challenge the State to implore change and improvements so that the island burial councils can fully engage in its sacred work to mālama iwi kūpuna.

We are saying things need to significantly improve to support the burial council's responsibility to care for and protect the iwi kūpuna and the State is refusing to hear the details and extent of our concerns. Why? Why object to transparency? Why object to improvement?

We stand by our positions and support a transparent process in which a Working Group is established to look into these concerns, allow SHPD the full opportunity to explain its actions, and most importantly to hold hearings with sworn testimony from witnesses to get to the truth so that a report with formal findings and recommendations for legislative action can be presented to the 2022 Legislature.

Proposed Amendments

These are the amendments I respectfully request to HCR 131 HD 1:

First, in terms of the composition of the Working Group, I urge this resolution mirror SCR 206 / SR 171 and include two representatives from large landowners/developers to reflect Chapter 6E's recognition of the two types of members on the island burial councils that establish: (1) regional representatives of the Hawaiian communities and (2) large landowners/developers.

Second, I urge this resolution mirror SCR 206 / SR 171 and include a representative of Huliauapa'a/Kali'uopa'akai Collective. This organization would bring considerable expertise to the Working Group on historic preservation issues affecting SHPD and the island burial councils.

Third, I urge this resolution mirror SCR 206 / SR 171 and include a representative of the William S Richardson School of Law. This representative would bring considerable legal expertise to the Working Group on historic preservation laws.

Fourth, I urge this resolution identify the Office of Hawaiian Affairs as the entity to establish, manage and support the work of the Burial Sites Working Group, including raising funds to hold hearings to obtain sworn testimony of all interested witnesses to properly identify the scope of the need for improvements of the management of the island burial councils and so that a bona fide administrative record can be established of the Working Group's proceedings; and

Fifth, I urge that you add to the language on page 4 of HCR 131 HD1: “BE IT FURTHER RESOLVED that the working group examine, consider and develop any other recommendations for improvement of the management of the island burial councils for consideration by the Legislature in its Regular Session of 2022.”.

Closing

In conclusion, I thank you for your consideration of our desire to uplift Hawaiian efforts to protect our ancestors as part of our Hawaiian humanity. Ola nā iwi!

HCR-131-HD-1

Submitted on: 3/28/2021 9:52:52 PM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas T Shirai Jr	Individual	Support	No

Comments:

Aloha Chair Nakashima & Committee Members,

My name is Thomas T Shirai Jr and I am recognized by SHPD as a Lineal Descendant of Kawaihapai Ahupua'a likewise with NAGPRA. I'm also testifying both as an individual and Po'o of The Kawaihapai Ohana which is recognized by the Department of Interior's Office of Hawaiian Relations as a Native Hawaiian Organization and listed since 2007.

I support HCR 131 HD! and it's long overdue with the many concerns that need to be addressed and improve and some include procedure and policy concerning applications for Lineal or Cultural Descendant Recognition, conducting an exhaustive background check of Burial Council Applicants not just based on academic criteria but practical experience requiring knowledge of HRS Chapter 6E and NAGPRA Chapter 106 of The National Historic Preservation Act (NHPA) / ARPA (Archeological Resources Protection Act). Current Residency of a specific geographical area they are applying to represent along with active participation in both Cultural and Community Affairs including participation at presentations given at Community Meetings which include Neighborhood Board Meetings. One of the most important concerns is dedication by attendance of which quorum is needed to conduct a meeting. There are many more but there has been much abuse regarding applicants to serve on The Burial Council and Descendant Recognition by Applicants. Control must be restored to SHPD regarding what I've shared. Lack of Funding for staffing and other things at SHPD is a yearly problem. There are much more but this is enough for now.

Mahalo for the opportunity to provide Testimony Supporting HCR 131 HD1 to better Malama Iwi Kupuna.

Thomas T Shirai Jr

Lineal Descendant of Kawaihapai Ahupua'a

HCR-131-HD-1

Submitted on: 3/29/2021 9:52:37 AM

Testimony for JHA on 3/29/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kolea Fukumitsu	Individual	Support	No

Comments:

Aloha Honorable Representative Mark Nakashina, Chair of the Committee on Judiciary and Hawaiian Affairs:

My name is Kolea Fukumitsu and **I strongly support the passage of HCR 131 HD 1 with amendments.**

My 'ohana and I are recognized lineal descendants to native Hawaiian human burials in Hakipu'u, O'ahu. Like many other Native Hawaiian 'ohana's throughout our pae'aina, my 'ohana for generations has committed to caring for and protecting our ancestral burials within our ahupua'a.

Yet, over the years I, along with my family, have witnessed firsthand and been impacted by the systemic and chronic mismanagement of the burial sites program by the State Historic Preservation Division (SHPD). This egregious mismanagement directly affects our ability as lineal descendants to properly carry out our kuleana to malama iwi kupuna, putting our iwi kupuna in constant danger of desecration which in turn has caused significant spiritual and emotional implications to us as descendants.

Despite the state and federal laws currently in place, ancestral burial sites across Hawai'i are constantly desecrated, Hakipu'u is only one example of this. We as an 'ohana have exhausted the SHPD's administrative process, following all of the SHPD's required steps as lineal descendants to protect our iwi kupuna and yet this current SHPD administrative process has failed us and our kupuna. We have provided oral testimony and documentation over and over again, we've done numerous SHPD site visits, attended every burial council meeting where we have been agendized for over a year, sent email after email to the SHPD's staff including Alan Downer and Hinano Rodrigues, in response to all of our efforts we have watched as the SHPD has neglected to follow or apply their own protocols and processes. My family

alone has waited over a year for the SHPD to make a formal determination regarding the OIBC's recommendation to recognize these burials in Hakipu'u as previously identified, this inaction and negligence by SHPD has prevented any progress in this deeply painful situation, further endangering the iwi kupuna that we are tasked with protecting.

Because of the constant inaction by the SHPD native Hawaiians, lineal and cultural descendants are being criminalized and arrested for upholding this sacred kuleana to our ancestors. Because exhausting the administrative process has just left us jumping through hoops with no movement forward, our lives are being put on the line as we are faced with having to use our bodies as road blocks to protect iwi kupuna during a national pandemic.

Last June I stood with my 'ohana in Hakipu'u to block machines from destroying yet another burial site in our ahupua'a, and my keiki had to watch as I and another resident of Hakipu'u was arrested for trying to prevent the desecration of iwi kupuna. The fact this is our only current option to stop the desecration is unacceptable.

This system that is in place is failing, leaving our iwi kupuna in constant danger which in turn also threatens the health and safety of descendants tasked with caring for and protecting them. This chronic mismanagement and systemic failure by the SHPD needs to be addressed and solutions need to be put into place to ensure that our iwi kupuna are safe and that our next generations do not inherit this issue along with all the emotional, mental and spiritual implications that come with it.

It is our hope as an 'ohana and as recognized descendants, that by passing this resolution, a working group will be established to look into this mismanagement and come up with real solutions for the future, because continued inaction at this point is completely unacceptable.

During a press conference on January 19, 2021, the O'ahu Island Burial Council Chairwoman Hinaleimoana Wong-Kalu highlighted significant concerns with SHPD mismanagement of the island burial councils. My 'ohana and I stand in support of the statements made during this press conference and we support the solutions presented in HCR 131 HD 1 with proposed amendments.

Proposed Amendments to HCR 131 HD 1:

First, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include two representatives from large landowners/developers to reflect Chapter 6E's recognition of the two types of members on the island burial councils that establish: (1) regional representatives of the Hawaiian communities and (2) large landowners/developers.

Second, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include a representative of Huliauapa`a/Kali`uopa`akai Collective. This organization would bring considerable expertise to the Working Group on historic preservation issues affecting SHPD and the island burial councils.

Third, in terms of the composition of the Working Group, we urge this resolution mirror SCR 206 / SR 171 and include a representative of the William S Richardson School of Law. This representative would bring considerable legal expertise to the Working Group on historic preservation laws.

Fourth, we urge this resolution mirror SCR 206 / SR 171 and add the name of OHA to establish, manage and support the work of the Burial Sites Working Group, including raising funds to hold hearings to obtain sworn testimony of all interested witnesses to properly identify the scope of the need for improvements of the management of the island burial councils and so that a bona fide administrative record can be established of the Working Group's proceedings; and

Fifth, add to the language on page 4 of HCR 131 HD1: "BE IT FURTHER RESOLVED that the working group examine, consider and develop any other recommendations for improvement of the management of the island burial councils for consideration by the Legislature in its Regular Session of 2022."

We respectfully request approval of these measures, mahalo.

Kolea Fukumitsu