

**SB-2590**

Submitted on: 2/6/2024 11:54:36 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michele Hoopii	Testifying for Maui-Lanai Island Burial Council Member-Wailuku Rep	Oppose	Written Testimony Only

Comments:

I OPPOSE for the following reason - the authors of the proposed legislative changes DOES NOT represent the community's views nor the current Maui-Lana'i Island Burial Council as a whole but rather past council representation of a select few.

**SB-2590**

Submitted on: 2/7/2024 12:55:55 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Vernon	Testifying for Maui Lana'i Island Burial Council	Oppose	Written Testimony Only

Comments:

Aloha e Chair Shimabukuru,

I'm providing testimony as Vice-Chair of the MLIBC to oppose SB2590.

Many concerns should be vetted from the Report of the Burials Sites Working Group.

[- Page 10, Table 2 - Testimonies. These testimonies should be reviewed thoroughly to see if it is truthful, creditable and the whole story is given.

- Preventing Housing, smart growth, creating contested cases and settlements will broaden more opportunities in this Bill from Iwi advocates

Sorry I'm running out of time to add more of my concerns.

Mahalos,

Vice-Chair MLIBC

Vernon Kalanikau

February 8, 2024  
Senate Committee on Hawaiian Affairs  
Senate Committee on Water and Land  
Thursday, February 8, 2024 at 1:15 pm

Aloha Chairs Shimabukuro and Inouye, Vice Chairs Fevella and Elefante, and members of the Committees:

For the bills on the agenda for February 8, 2024, I respectfully provide the following testimony based on my experience as a community housing developer for the last 30+ years and serving on the Maui Lanaʻi Island Burial Council.

SB 2590: I **oppose** this bill since it allows anyone with genealogical ties to an island to provide testimony on burial sites when greater deference should be afforded to lineal descendants and other revered cultural descendants who have genealogical ties to the area.

Thank you for your consideration.

Best regards,

Everett Dowling  
Member of the Maui Lanai Islands Burial Council



**SB2590**

**RELATING TO BURIAL SITES**

Senate Committee on Hawaiian Affairs

Senate Committee on Water & Land

February 8, 2024

1:15 p.m.

Room 224

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The Office of Hawaiian Affairs **SUPPORTS** SB2590, which would require the Department of Land and Natural Resources to amend the definitions of “inadvertent discovery” and “previously identified” in the Hawai‘i Administrative Rules (HAR) to better protect burial sites. **OHA supports this clarification in the rules as we’ve witnessed too many times sideb-y-side iwi kupuna being designated with different classifications (inadvertent versus previously identified) and subsequently having their final dispositions placed under different jurisdictions (that of the State Historic Preservation Division for inadvertently discovered iwi versus the Island Burial Council for previously identified iwi).** Too often have these matters ended up in costly litigation, when really the problem could be solved through a clarification in the rules and a greater adherence to the original intent of the law.

As you may be aware, a Burial Sites Working Group (BSWG) was formed by OHA in 2021 in response to House Resolution 113 (HR 113) and Senate Resolution 171 (SR 171) to look at the systemic issues surrounding the island burial councils and State Historic Preservation Division (SHPD). Although a Joint Resolution between the Senate and House was never achieved, OHA decided to underwrite and establish the BSWG in reflection of OHA's historic preservation responsibilities in both rule and statute. The BSWG held their inaugural meeting on Thursday, September 23, 2021. It was envisioned that a report would be made to the 2022 Legislature. However, given the volunteer nature of the group, unforeseen obstacles, and the sheer enormity of the issues presented across all islands, substantial delays ensued. Nevertheless the BSWG report was finished by the dedicated members of the group in 2023 and subsequently provided to the legislature. The measure presented before you now is one of the recommendations from the report.

As stated within Appendix B of the BSWG report: “The current definition of an **‘inadvertent discovery’** of a burial has been far too broadly applied and subject to unreasonable misinterpretation, allowing for burials to receive a lesser degree of protection than they should be afforded under professional standards for the identification of human skeletal remains in areas targeted for ground disturbance. Given the recurring misuse of the

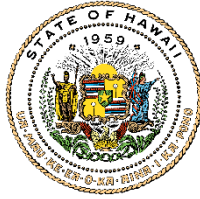
definition of **'inadvertent discovery'** by [the State Historic Preservation Division] SHPD, and the substandard application of professional archaeological standards in the preparation of inventory reports and mitigation plans, including the application of subsurface testing protocols and sampling techniques, both the current definition of **'inadvertent discovery'** and the current definition of **'previously identified'** burial site requires a more expansive, detailed meaning for each term.

“To address these significant problems, the definition of **'previously identified'** burials should be expanded to more comprehensively encompass the broader range of situations that exist and by the same token the definition of **'inadvertent discovery'** should be clarified so that subsequent findings of burial sites in proximate location of an initial unanticipated finding of human skeletal remains must be classified properly as **'previously identified.'** In addition, the current practice by SHPD in misinterpreting 'inadvertent discovery' raises concerns over public trust protections under the Constitution, given that inadvertent burials are most threatened. Public trust doctrine requires a greater obligation on the part of SHPD to protect the unanticipated finding of human skeletal remains. A brief 1-3 day window for decision-making by SHPD that bypasses the Island Burial Councils fails this constitutional standard. After a while 'unanticipated' discovery no longer passes muster if you keep finding iwi there (e.g., Maui Lani, Ka'a'awa burials). In the Hokuli'a burials case, Judge Ibarra's opinion provides that archaeological sweeps are the same as an Archaeological Inventory Survey and therefore inadvertent burials will be treated as 'previously identified'. Furthermore, SHPD does not comply with the statutory and administrative requirement that when determining the treatment of inadvertently discovered human skeletal remains, it is required to apply the preservation criteria stated in the law. This analysis starts from the position of preservation in place and seeks to determine why that is not possible in this specific circumstance. In other words, the law never intended for high concentrations of human skeletal remains to be inadvertently discovered, as in the Maui Lani case. SHPD cannot justify having 100+ inadvertent discoveries, as this is a clear misapplication of the law.”

For the above reasons, OHA urges the Committee to **PASS** SB2590. Mahalo for the opportunity to testify on this measure.

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANGE  
Chairperson

Before the Senate Committee on  
HAWAIIAN AFFAIRS  
and  
WATER AND LAND

Thursday, February 08, 2024  
1:15 PM  
State Capitol Room 224 & Via Videoconference

In consideration of  
SENATE BILL 2590  
RELATING TO BURIAL SITES

Senate Bill 2590 would direct the Department of Land and Natural Resources (Department) to amend the definitions of “inadvertent discovery” and “previously identified” in Section 13-300-2 Hawai‘i Administrative Rules (HAR). **The Department acknowledges the intent of this measure and offers comments.**

Section 13-300-2, HAR, defines an “inadvertent discovery” as “the unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity.” Senate Bill 2590 proposes to expand that definition by adding:

“... subsequent human skeletal remains found in close proximity to inadvertently discovered human skeletal remains shall not be considered an unanticipated finding, given the initial discovery. These burial sites shall be classified as previously identified for which the Council shall have jurisdiction to consider treatment, if deemed Native Hawaiian, and the Department shall have jurisdiction to consider treatment if non-Native Hawaiian.”

This amendment would change the decision-making framework found in the Section 13-300-40, HAR, by taking the decision-making responsibility from the State Historic Preservation Division (SHPD) and placing the jurisdiction with the various Island Burial Councils (IBC).

The current definition in Section 13-300-3, HAR, recognizes that decisions about the treatment of inadvertent discoveries need to be made expeditiously. Inadvertently discovered burials have been exposed, sometimes as a result of construction activities, they are also often exposed as a result of natural actions, sea level rise, winter storms, king tides or extreme weather events. Under current administrative rules, SHPD assesses the discovery, determines if it human, more than 50-years old, and Native Hawaiian or non-Native. If the remains are Native Hawaiian, SHPD staff consults with recognized cultural descendants, the IBC member from the district in which the discovery occurred and then makes a decision on whether to leave in place or relocate. The rules require that this decision be made in a matter of days. If the Department is required to redefine inadvertent discovery as proposed in this measure, the decision will be made by the appropriate IBC. IBCs meet monthly - when they have a quorum. As proposed in this bill, decision making on an inadvertent discovery will be delayed, under the best of circumstances, by at least a month, quite possibly for much longer. Under the definition proposed in this amendment, treatment and final disposition of inadvertent discoveries would be significantly delayed. The Department believes that the current definite and distribution of responsibilities under Section 13-300-40, HAR, is appropriate.

Senate Bill 2590 also proposes to amend the definition of “previously identified” burials in Section 13-300-2, HAR. As currently defined in Section 13-300-2, HAR, a previously identified burial is a burial site “containing human skeletal remains and any burial goods identified during archaeological inventory survey and data recovery of possible burial sites, or known through oral or written testimony. Senate Bill 2590 proposes to add subparagraphs to this definition to include:

- (A) Sites known to contain burials through oral or written records, discoverable by diligent search of the applicable recorded literature and archaeological reports, subsurface investigation, or referenced generally or specifically in kama‘āina testimony;
- (B) Burial sites identified in proximity to other earlier discovered burials, whether inadvertently or previously discovered;
- (C) Burial sites discovered in a similar type of sedimentary matrix as other burials within the same project area; or
- (D) Burial sites discovered in sedimentary contexts, including sand and sand mixtures.

Moreover, this bill further provides that “without prior resort to the foregoing information sources, any subsequently discovered burials associated with other earlier discovered burials shall not be deemed "inadvertently discovered" nor an "unanticipated finding" of human skeletal remains.”

The effect of these amendments would make by definition virtually all burials discovered after the first discovery during, for example, project development “previously identified,” even though they were not identified either through oral testimony or an archaeological survey. Consequently, the presence of such burials could not reasonably be inferred during the project review process and could not be incorporated into planning through a burial treatment plan. As a result, such treatment plan would have to be developed, reviewed and, when approved by the IBC, before the burials could be treated. As is the case with the amending language proposed for “inadvertant discoveries,” this change would delay treatment and disposition of the subsequently discovered burials, this time by many months as the presence of multiple burials increases the time it takes to draft a burial treatment plan.

The proposed amending language shifts decision making away from the Department to the IBCs, imposes a planning regime after the fact, and does not improve the protection of burial sites. Chapter 13-300,

HAR, specifies the factors that both the IBC and the Department are required to apply in determining how burials will be treated, whether inadvertently discovered or previously identified. These factors are based on a powerful preference for reburial in place.

Mahalo for the opportunity to provide testimony on this measure.



# **PACIFIC RIM LAND INC.**

ESTABLISHED 1988

## **TESTIMONY**

Senate Committee on Hawaiian Affairs  
Senate Committee on Water and Land  
Thursday, February 8, 2024 at 1:15 pm  
Conference room 224 and Videoconference

Aloha Chairs Shimabukuro and Inouye, Vice Chairs Fevella and Elefante, and members of the Committees:

For the bills on the agenda for February 8, 2024, I respectfully provide the following testimony on behalf of Pacific Rim Land, Inc., a Goodfellow family company, which is a private real estate investment, development, and management company founded in 1988.

### **SB No. 2590**

I oppose this bill. Any subsequent Native Hawaiian human skeletal remains found would require the Council to determine the treatment of the iwi kupuna . In addition, based on kama'aina testimony, iwi kupuna would require the Council to determine the treatment. This could lead to malicious intentions to delay or stop a project from progressing forward . Practically speaking, the Council's and SHPD's workloads would increase. The Council only meets once a month while SHPD is understaffed, with no indication of acquiring staff to handle their current workload. The end result would not lead to a better outcome for the iwi kupuna.

Sincerely,  
Leilani Pulmano  
Vice President, Pacific Rim Land

**SB-2590**

Submitted on: 2/3/2024 4:04:41 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Bianca Isaki	Individual	Support	Written Testimony Only

Comments:

Aloha Senators - please support SB2590. The current interpretation and definition of term "inadvertent find" has allowed desecration of iwi kupuna that are located in areas that are well known to harbor iwi. DLNR/ SHPD needs to revisit this term in light of the ways it has been used to avoid reasonably scrutiny.

Yours,

Bianca Isaki

**SB-2590**

Submitted on: 2/4/2024 9:42:12 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
cindy freitas	Individual	Support	Written Testimony Only

Comments:

1. I'm in Support for SB2590

**SB-2590**

Submitted on: 2/6/2024 4:49:06 AM

Testimony for HWN on 2/8/2024 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Hannah K Anae	Individual	Support	Written Testimony Only

Comments:

The change should help expedite the process so iwi kūpuna could be better protected.

**SB-2590**

Submitted on: 2/6/2024 8:32:12 PM

Testimony for HWN on 2/8/2024 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Rona Ikehara-Quebral	Individual	Support	Written Testimony Only

Comments:

Aloha, I support SB2590, which seeks to amend the definitions of "inadvertent discovery" and "previously identified." This amendment covers broader situations that should be considered in order to better protect burial sites. Mahalo for supporting this bill.

**SB-2590**

Submitted on: 2/7/2024 6:03:05 AM

Testimony for HWN on 2/8/2024 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Foster Ampong	Individual	Oppose	Written Testimony Only

Comments:

I oppose SB2590 because If passed into law, this bill will undermine the integrity of existitng laws protecting burials.

**SB-2590**

Submitted on: 2/7/2024 9:53:48 AM

Testimony for HWN on 2/8/2024 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Keomailani Hanapi Hirata	Individual	Comments	In Person

Comments:

Aloha 'aina kakou,

My name is Keomailani Hanapi Hirata, I am a keiki o ka aina o Molokai.

I will be testifying, in person, to SB2590.

Mahalo