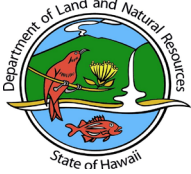


DAVID Y. IGE  
GOVERNOR OF HAWAII



**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  
WATER & LAND**

**Tuesday, March 23, 2021  
8:30 AM**

**State Capitol, Via Videoconference, Conference Room 403**

**In consideration of  
HOUSE CONCURRENT RESOLUTION 131  
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 requests that a Burial Sites Working Group (BSWG) be established to review and recommend improvements to the Burial Sites Program within the State Historic Preservation Division (SHPD). **The Department of Natural Resources (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 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, 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

**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

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.

If the Committee feels that it is appropriate to approve House Concurrent Resolution 131, the Department believes that the BSWG membership should also specifically include the SHPD's History and Culture branch chief, who oversees the burial sites program, and the DOCARE chief or designee.

In closing, 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 of 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.

Thank you for the opportunity to comment on this resolution.

# KA LĀHUI HAWAI‘I

## KŌMIKE KALAI‘ĀINA

BEFORE THE HOUSE COMMITTEE ON WATER AND LAND

February 23, 2021

HCR 131

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

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Committee,

Ka Lāhui Hawai‘i Kōmike Kalai‘āina submits testimony in SUPPORT with reservations for House Concurrent Resolution 131 requests a Burial Sites Working Group be established to review and recommend improvements to the Burial Sites Program within the State Historic Preservation Division.

After some years observing the Senate confirmations of problematic members of the Board of Land and Natural Resources Board like Christopher Yuen, Suzanne Case, and Samuel "Ohu" Gon III, I am not sure that this resolution would genuinely have the wanted effect because the issues at the DLNR are systemic and starts at the top. The failure of SHPD is the failure of the Board whose members the Senate keeps confirming despite many substantial testimonies in opposition.

Ka Lāhui Hawai‘i Kōmike Kalai‘āina supports the intent of this measure and adds the following suggestions for amendments to strengthen this working group with more community input:

1. Include a representative from Kia'i Kaua'ula to be chosen by that group.
2. Include a representative from Mālama Kakanilua chosen by that organization.
3. Include a representative from Ka Lāhui Hawai‘i to be chosen by that Hawaiian national entity.

The Kia'i Kaua'ula and Mālama Kakanilua are currently on the frontlines of protecting iwi kūpuna and Ka Lāhui Hawai‘i has had decades long standing and history on burial and repatriation issues. Having the Senate President and the House Speaker choose two Native Hawaiian cultural practitioners each is problematic because their criteria for "cultural practitioners" may differ greatly from the criteria of the Native Hawaiian community and iwi protectors. Any organization or group that have has shown history dealing with iwi kūpuna in a pono way should be provided an opportunity to choose a representative on this Working Group.

Me ka oiai'o,

**HCR-131**

Submitted on: 3/22/2021 12:37:17 PM

Testimony for WAL on 3/23/2021 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mana Kaleilani Cáceres	Individual	Support	No

Comments:

Aloha kākou,

My name is Norman "Mana" Kaleilani Cáceres and I support the passage of HCR 131.

My family and I are state recognized lineal and cultural descendants to native Hawaiian human burials in the districts of Ewa and Kona (Honolulu). We have been involved in the care and protection of iwi kāpuna for the past 9 years and we have seen first hand how the systematic and chronic mismanagement of the burial sites program has affected and effected the ability to properly fulfill our commitment to properly treat the remains of our ancestor's.

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 family and I stand in support of the statements made during this press conference and therefore stand in support of HCR 131.

We respectfully request approval of this measure, mahalo.

'Ohana Cáceres

Norman "Mana" Kaleilani Cáceres

**HCR-131**

Submitted on: 3/22/2021 5:24:41 PM

Testimony for WAL on 3/23/2021 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hinaleimoana Wong-Kalu	Individual	Support	No

Comments:

I strongly support HCR 131 in an effort towards ensuring greater support towards the burial sites program and all those whom engage this process. A comprehensive review of possible options towards this goal must be had in order to ensure greater respect, honor, and dignity afforded to malama iwi kupuna in Hawaii. Mahalo for your consideration. Please vote to support HCR 131. Aloha.

**HCR-131**

Submitted on: 3/22/2021 8:55:55 PM

Testimony for WAL on 3/23/2021 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Makalua-Yee	Individual	Support	No

Comments:

Aloha Kakou!

I SUPPORT HCR131 and humbly ask that the state fund the working group and those who will be tasked with examining the systemic and chronic mismanagement of the SHPD. I (we) have observed (along with other concerned citizens) the continued problems with DLNR & SHPD. The failure of SHPD is the failure of board members C.Yuen, S. Case and S. Gon III who continue to be confirmed despite many substantial testimonies in opposition.

I would suggest that a working group should include representation from Kia'i Kauaula, Malama Kakanilua, Ka Lahui Hawaii, Lineal/Cultural decedents of Iwi Kupuna, Burial Council Chairs/members and other community groups who can lend an UNBIASED report on SHPD leadership.

Mahalo,

Michelle Makalua-Yee

Before the House Committee on Water and Land

March 23, 2021

HCR 131

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

Aloha Chair Tarnas, Vice Chair Branco 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 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 descendants.

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 display a sample of the issues that seem to 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 committee and is obliged to follow its 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 its 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 it's blantent misreading of the statutes regarding inadvertant finds, the department is responsible for the desecration of my kūpuna and the ancestors of the kānaka māoli people.

Please support HCR131

Most Sincerely,

Jennifer Noelani Ahia

E Mālama I Nā Iwi Kūpuna

May 20, 2019 Governor David Ige

Dear Governont 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. They 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@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 AU DROITS DE L'HOMME OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS PALAIS DES NATIONS 1211 GENEVA 10, SWITZERLAND  
.. TEL: +41 22 917 9000 FA: +41 22 917 9008 E-MAIL: registry@ohchr.org

REFERENCE: CERD/EWUAP/  
98<sup>th</sup> session/USA (P S

Dunes Complex)/JP/ks

Excellency,

10 May 2019

I would like to inform you that in the course of its 98<sup>th</sup> 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 P 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 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](mailto:GenevaUSmission@state.gov)

---

**NATIONS UNIES**  
**DROITS DE L'HOMME**  
HAUT-COMMISSARIAT



**UNITED NATIONS**  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

With regard to the information received, the Committee would like to recall the S C G R N. 23 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 P S D C CI 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.

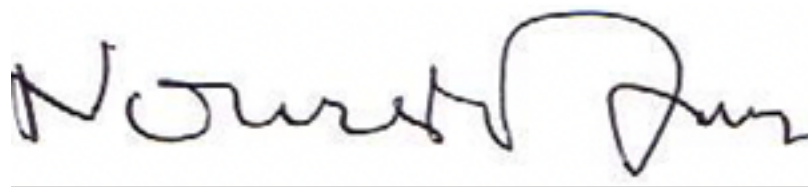
Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of United States of America, with a view to ensuring the effective implementation of the Convention.

Yours sincerely,

Noureddine Amir Chair

Committee on the Elimination of Racial Discrimination

PAGE 2

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

**HCR-131**

Submitted on: 3/22/2021 11:29:02 PM

Testimony for WAL on 3/23/2021 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dane K. U. Maxwell	Individual	Support	No

Comments:

**Aloha e Honorable Representative David A. Tarnas, Chair of the Committee on Water and Land & Representatives of the Committee:**

**My name is Dane Uluwehiokalani Maxwell and I support the passage of HCR131.**

**I comment here today in my personal capacity but speak from my experience serving as a Maui LÄ• na'i Island Burial Council member since 2014 and as the chair of this council since late 2019. At a press conference held on January 19, 2021, I along with my fellow Island Burial Council chairs expressed our concerns with the systemic mismanagement of SHPD's burial sites program. My critique of this program did not harbor malice or any ill will but was meant to highlight what I saw as being major hurdles in the way of upholding my obligations as a kanaka maoli and as a IBC member and that is to provide the greatest protections for iwi kÄ«puna.**

**My grandfather Kahu Charles Kauluwehi Maxwell Sr. served on MLIBC for almost 20 years. Growing up with him and while attending those meetings he echoed the same issues that we have here today. On behalf of myself and the Maxwell 'ohana, we strongly support the passage of HCR131 because it is critical to review programs that have such massive impacts on the identity of Native Hawaiians in this rapidly changing landscape of Hawai'i especially when there is discontent by the IBC's and Native Hawaiian community whose burials this program serves. It is my hope that this working group helps to shape a burial sites program that will lessen the burden for future generations.**

**Mahalo for your time and consideration,**

**Dane Uluwehiokalani Maxwell**

COMMITTEE ON WATER & LAND  
Rep. David A. Tarnas, Chair  
Rep. Patrick Pihana Branco, Vice Chair

DATE: Tuesday, March 23, 2021  
TIME: 8:30 a.m.  
PLACE: VIA VIDEOCONFERENCE  
Conference Room 430  
State Capitol  
415 South Beretania Street

#### TESTIMONY IN SUPPORT OF HCR 131

Chair Tarnas, Vice Chair Branco and members of the Committee on Water & Land, thank you for the opportunity to provide testimony in strong support of House Concurrent Resolution 131.

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.