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November 30, 2018

Yuki Lei K. Sugimura, Chair
Via email yukilei.sugimura@mauicounty.us
Policy, Economic Development, and
Agriculture Committee
Maui County Council
200 S. High Street
Wailuku, HI 96793

Subject: Maui County Legislative Package (2019 Maui County
Legislative Package) (PEA-4(2))

Dear Committee Chair Sugimura and Committee Members:

This letter is written in opposition to the proposed resolution entitled
“Approving for Inclusion in the 2019 Maui County Legislative Package a State
Bill to Allow Pre-Contact Native Hawaiian Burial Sites to Be Dedicated as
Cemeteries.”

HRS Section 6E-43 versus HRS Chapter 441

The resolution proposes to introduce an ill-advised bill that ignores the
circumstances behind the establishment of HRS §6E-43, an expansion of
Hawai'i's historic preservation law, with specific regard to the protection of
unmarked Native Hawaiian burial sites.

§6E-43 notably begins with the unequivocal statement that

(b) All burial sites are significant and shall be preserved
in place until compliance with this section is met...

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Similarly, the Purpose section of the burial administrative rules, HAR §13-300-1 contains the following statement:

The legislature finds that Native Hawaiian burial sites are especially vulnerable and often not afforded the protection of law which assures dignity and freedom from unnecessary disturbance (e.g. Honokahua).

Arising directly out of the Honokahua Burial Site controversy, the adoption of §6E-43 led to the formation of the island burial councils, and invested primary jurisdiction and decision-making power over the treatment of previously identified burials in the councils--the majority of whose members are themselves Native Hawaiian. Each council member is appointed by the governor and approved by the State senate.

HAR §13-300, Rules of Practice and Procedure Relating to Burial Sites and Human Remains, provide comprehensive guidance for dealing with Native Hawaiian burials, including many opportunities for consultation with the relevant council(s), Native Hawaiian organizations and interested persons, as well as recognized cultural and lineal descendants.

A further note: lineal descendant means:

...a claimant who has established to the satisfaction of the council, direct or collateral genealogical connection to certain Native Hawaiian skeletal remains....

The Maui/ Lānaʻi Island Burial Council has recognized very few lineal descendants, and these descendants have all been linked to historic period burials. There have been no recognized lineal descendants to precontact burials (precontact is defined as prehistoric, meaning prior to and including 1778) for the reason that in order to establish lineal descendancy, a claimant

must be able to name the particular ancestor and indicate the specific location of the ancestral remains. In the absence of recognized descendants, the island burial councils fulfill that familial role.

Finally, the island burial councils are under the department of land and natural resources with administrative staff provided by the state historic preservation division. This arrangement makes sense since Native Hawaiian burial sites are considered to be a special class of historic sites.

Alternatively, the proposed bill would place Native Hawaiian precontact burials under the department of commerce and consumer affairs. This proposal makes no sense since Hawai'i's historic preservation law Chapter 6E, was expanded in 1990 by a new section, 6E-43, for prehistoric and historic burial sites. The proposed bill, on the other hand, creates more problems than the perceived ones it attempts to solve.

First and foremost, this bill, which proposes to move the disposition of precontact Native Hawaiian burial sites to the department of commerce and consumer affairs, and other momentous changes on a state-wide basis, has not been reviewed and commented upon by the island burial councils, the state historic preservation division, the Office of Hawaiian Affairs and other interested individuals and organizations. Changes of this magnitude need to be widely vetted.

Second, and equally important, this bill makes no effort to resolve the obvious conflict with §6E-43. This conflict alone should be enough to disqualify the proposed bill from further consideration. Jurisdiction over prehistoric and historic Native Hawaiian burials would be bifurcated if this bill is passed by the legislature.

There has been no credible showing that the burial law is insufficient when it comes to the protection of Native Hawaiian burial sites. As the first Chair of the Maui/Lana'i Island Burial Council, during its interim and formal phases, and then as its Vice Chair, for a total of 16 years, I am very familiar with the way Section 6E-43 and its implementing regulations work. I can see no compelling reason for the changes being proposed by this bill and request that it not be included in the 2019 Maui County Legislative Package.

If you have any questions, please do not hesitate to contact me at 244-9017.

Ola na iwi,

A handwritten signature in black ink that reads "Dana Naone Hall". The signature is written in a cursive, flowing style.

Dana Naone Hall

Cc: Mike White, County Council Chair - via email
Dr. Alan Downer, SHPD Administrator - via email
Hinano Rodrigues, SHPD - via email
Andrew Kealana Phillips, SHPD - via email
Chris Ikaika Nakahashi, SHPD - via email
Kapulani Antonio, MLIBC Chair - via email
Kai Markell, OHA - via email
Edward Halealoha Ayau - via email