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**Testimony to the House Committee on Water and Land**

**Friday, January 24, 2014**

**9:30 a.m.**

**State Capitol - Conference Room 325**

**RE: HOUSE BILL NO. 1582, RELATING TO APPLICATION PROCESSING**

Dear Chair Evans, Vice Chair Lowen, and members of the Committee:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-HAWAII supports H.B. 1582, which proposes to establish a maximum time period within which an application for permit, license, or approval shall be acted upon by the designated agency or else deemed granted; authorizes each county to contract with a third-party reviewer to streamline the processing of applications; clarifies that previously approved projects that do not impact historic properties are not subject to subsequent reviews by SHPD.

We understand that this bill is but one recommendation put forward by the Construction Industry Task Force, which was created in 2009 thru Senate Concurrent Resolution 132, S.D. 1. The purpose of the task force was to determine the economic value of the construction industry in Hawaii. The task force was charged with developing a series of recommendations to stimulate the construction industry and create new jobs in the local construction industry.

The proposed bill amends Chapter 91, HRS, by requiring each State or County agency to have their permits automatically approved within 30 days of submission of a completed application, unless a maximum processing time period is already provided for in their respective rules. It also allows the County agencies to use the "third party review" process to increase the efficiency and timeliness of their review of permits, licenses and applications.

The land use entitlement process in Hawaii is an extremely costly and lengthy process which is a major contributor to the median cost of a single family residence on Oahu being \$685,000.00. The proposed automatic approval process would remove the overlapping, and at times duplicative, permitting/approval processes at both the state and county levels.

Serious reforms are needed to the land use entitlement process to insure a consistent and sustainable supply of new construction (i.e. residential, commercial, industrial, resort, etc.) in our economy. Without additional hotel rooms, the visitor industry cannot expand and airline seats also become limited, driving the costs up for everyone. Without new residential construction, demand outstrips supply and drives prices beyond what is deemed affordable to middle class families in Hawaii.

If we cannot support two of the major economic drivers in Hawaii, tourism and

Honorable Cindy Evans, Chair  
House Committee on Water and Land  
January 24, 2014  
H.B. 1582  
Testimony of BIA-Hawaii

construction, what does the legislature believe will fill that void?

For the foregoing reasons, BIA-Hawaii **supports** H.B. 1582.

Thank you for the opportunity to express our views on this matter.

House Committee on Water and Land  
Hearing Scheduled for January 24, 2014 at 9:30 a.m.

Testimony in Opposition to HB 1582, "Relating to Application Processing"  
From Deborah Chang, Resident of Hawai'i Island

Aloha Chair Evans, Vice-Chair Lowen, and Members of the House Water and Land Committee:

I urge you to oppose HB 1582 for the following reasons:

- (1) The bill would authorize the counties to contract with third-party reviewers to certify that permit applications are in compliance with all federal, state and county laws, rules, ordinances, and codes. Public agencies already hire and train existing staff to review permit applications. If more permit reviewers are needed, more should be hired by the reviewing agencies rather than creating another privately funded bureaucracy. How will consistent interpretations of county laws, rules, ordinances, and codes be assured with the addition of third-party reviewers? Are we opening up the permit review process to corruption? Unlike public employees, the third-party reviewers would be serving the interests of the people paying them: the property owners, as specified in the bill.
- (2) Not only does the bill establish a maximum of 45 days for a historic preservation review by the State Historic Preservation Division (SHPD), but it also bars SHPD from subsequent reviews should new information come to light after initial approvals are given. This would be a serious mistake! There are a number of recent examples where heiau, ancient trails, and sugar plantation-era cultural sites have been missed by archaeological surveys, and subsequent reviews by SHPD have prevented their destruction. Sometimes archaeological reports miss historic and cultural sites, especially when there is a failure to identify and consult with kupuna and other knowledgeable people of the area early in the process. Only through "subsequent department reviews" (that the bill seeks to prohibit) have such important historic and cultural sites been protected for the public's benefit.
- (3) The bill goes further to say that any state or county "agency" that does not already have a maximum time period to grant or deny any permit, license, certificate or other form of approval, shall have a 30 calendar day maximum time period. Should that maximum time period pass without agency action, the application will be automatically approved. Such time limits and automatic approvals should be justified and agency-specific, rather than established as a standard rule for any and all agencies and any and all permits.

In short, HB 1582 is special-interest legislation to benefit the construction industry by fast-tracking the permit approval process to facilitate construction projects at the expense of historic preservation and other public interests. It prohibits State Historic Preservation Division from considering any new information after historic preservation approvals have been granted. HB 1582 will not improve the land use permitting process.

Mahalo for considering these concerns.

Deborah Chang

TO: Representative Cindy Evans, Chair  
Representative Nicole E. Lowen, Vice Chair  
House Committee on Water & Land

FROM: Sara L. Collins, Ph.D., Legislative Chair  
Society for Hawaiian Archaeology  
sara.l.collins.sha@gmail.com

HEARING: Friday, January 24, 2014 at 9:30 AM in Conference Room 325

SUBJECT: Testimony in STRONG OPPOSTION to HB 1582, Relating to Application Processing

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. HB 1582 proposes to establish a maximum time period within which an application for permit, license, or approval shall be acted upon by the designated agency or else it will be deemed granted. HB 1582 further proposes to authorize each county to contract with a third-party reviewer to streamline the processing of applications. Finally HB 1582 proposes to amend Chapter 6E-42, Hawaii Revised Statutes (HRS) to provide that previously approved projects that do not impact historic properties are not subject to subsequent reviews by SHPD. Many of our members have serious concerns with this bill and believe that it will have a harmful effect on irreplaceable historic and cultural resources. On behalf of SHA, I am providing testimony in STRONG OPPOSITION TO HB 1582. The following comments provide detailed reasons for our concerns.

**SECTION 1.** It is worth noting that the mention of “workforce housing” on p. 2, line 12, is a red herring as nothing in the bill, as currently worded, would be limited in effect to workforce housing projects.

**SECTION 2.** Section 2 would create a new section to Chapter 46, subsection (a) of which would allow counties to delegate review of various requirements of permitting an licensing regulatory functions to “licensed architects and engineers” hired by the project proponent to “certify compliance with various building, electrical, mechanical, plumbing, and structural codes, as well as land use ordinances, in reviewing an application for a permit, license, or approval.” The proposed subsection (c) would provide that the authority of these third parties would extend to “certifying that the proposed plans and specifications are in compliance with any applicable federal, state, or county laws, rules, ordinances, and codes.”

*Comment:* We find the language underlined above to be extremely disturbing. Licensed architects and engineers are certainly qualified to certify compliance with building, mechanical, plumbing, and structural codes, but their expertise does not extend to the determination as to whether or not a particular proposal is in compliance with “federal, state, or county “land use ordinances.” That is a *legal* determination, and in some circumstances a *policy* decision, that must be made by public officials, and must include the independent evaluation by those public officials of customary and traditional practices protected in Article XII, section 7, of the Hawaii State Constitution as set forth by the Hawaii Supreme Court in *Public Access Shoreline Hawaii v. Hawaii County Planning Commission* (Hawaii 1995). Furthermore, as the Hawaii Supreme Court determined in *Ka Pa’a Kai o ka Aina v. Land Use Commission* (Hawaii 2000), that

determination *must* be made by the relevant public officials and cannot be delegated to project proponents.

**SECTION 3.** Section 3 would amend §6E-42(c), HRS (regarding historic review of private projects) to provide that SHPD would have a maximum of 45 days to review a proposal “beginning from the time the department is advised of the proposed project,” and further provides that if SHPD fails to “complete a review and comment on the effect of a proposed project within forty-five days, the proposed project shall be deemed to be approved.” Furthermore, “Projects previously reviewed by the department pursuant to this section and found to have no impact on historic properties, aviation artifacts, or burial sites shall not be subject to subsequent department review.”

*Comment:* We have several objections to the proposed amendment:

- (1) We recognize that SHPD has been slow in acting on proposals sent to it for review. We believe, however, that the remedy for this problem is to provide SHPD with adequate numbers of fully qualified staff to allow it to fulfill its duties in a timely manner. A new SHPD administrator has recently come on board, and we are optimistic that with adequate staffing and continued support he will be able to resolve existing problems with the historic preservation program, including the timeliness of regulatory reviews.
- (2) As we noted above, under *PASH* state and county officials have a *constitutionally mandated* obligation to fully analyze the effects of proposed projects on customary and traditional practices, a category we are sure includes protection of burial sites and historic properties. Furthermore, as the Court found in *Ka Pa'a Kai*, that constitutionally imposed duty cannot be delegated away by state and county officials. If it is unlawful for an agency or public official to delegate that obligation, it would obviously be similarly unlawful for an official, or the Legislature through the enactment of a measure such as this “automatic approval” provision, to allow that obligation to be waived or evaded through sloth and/or inaction.
- (3) While the ‘no second review’ provision might seem superficially reasonable, the language of the bill would effectively eliminate SHPD (and public) review of “inadvertently” discovered burial sites and would reward project proponents for having done an inadequate initial archaeological survey in the past. Furthermore, as the Hawaii Supreme Court recognized in the “Turtle Bay” case, *Unite Here! Local 5 v. City & County of Honolulu* (Hawaii 2009), environmental disclosure documents can become stale with the passage of time and may well need to be reviewed again and supplemented to reflect changes in conditions, new information about discoveries of burial sites and historic properties on nearby parcels, etc.
- (4) We also note that SHPD often requires “archaeological monitoring” during a project’s construction phase. The monitoring is done in accordance with approved archaeological mitigation plans, which are often implemented after an archaeological inventory survey of the project area has been completed. This function would become meaningless if SHPD would have no opportunity to review the results of the prior survey or monitoring even if it led to the unanticipated discovery of historic resources, including human burials. Indeed, this might well cause SHPD to substantially increase the extent of pre-approval archaeological inventory surveys required before subsequent mitigation plans could be approved by them. The SHPD would be forced to take this step in order to minimize the possibility of inadvertent discoveries during monitoring. Expanded requirements for archaeological inventory

surveys would substantially increase the expense to project proponents and undoubtedly increase the time needed to complete such studies.

**SECTION 4.** Section 4 would amend the “automatic approval” provisions of §91-13.5, HRS, to expand its reach to “any permit, license, certificate, or other form of approval for any county land use, subdivision, grading, grubbing, building, or plan approval,” language broad enough to include SHPD historic preservation review under Chapter 6E.

*Comment.* As with our objections to language in Sections 2 and 3 of the subject bill, we believe the *constitutionally mandated* obligations of public officials considering land use changes can neither be delegated nor abdicated through the action of such an “automatic approval” provision.

Thank you for the opportunity to provide testimony in strong opposition to HB 1582. It is a poorly worded bill that would create many more problems than it would solve. We respectfully ask that you hold this bill in committee and not pass it on further.

Should you have any questions, please feel free to contact me at the above email address.

## lowen2-Lanaly

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 23, 2014 9:56 AM  
**To:** waltestimony  
**Cc:** teresa.parsons@hawaii.edu  
**Subject:** Submitted testimony for HB1582 on Jan 24, 2014 09:30AM

### HB1582

Submitted on: 1/23/2014

Testimony for WAL on Jan 24, 2014 09:30AM in Conference Room 325

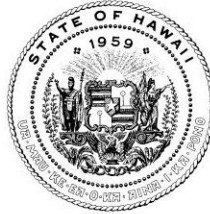
Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Oppose	No

Comments: Representatives, I thank you for your time. I urge you to OPPOSE this measure regarding the permitting process for construction. While I agree, the Department of Permitting and Processing "process" can be long and tedious, I have two primary concerns: 1. Contracting is typically more expensive than hiring the correct numbers of permit processors and those with skills to certify. I question why the counties will be given the latitude to contract with various agents rather than directing them to hire appropriate numbers of engineers and architects. 2. And more importantly, I have grave concerns regarding the "automatic" approval on page 5, lines 18-21 and page 6, lines 14-19. In recent history, various entities wanting to build in Hawai'i attempt (and at times succeed) in skirting the regulatory land use and building restrictions. The results include destruction of open space, overcrowding, and misuse of land for personal gain. If the permitting process allows an "automatic" approval based on time limits, I fear unscrupulous developers and contractors will use this to their advantage. I agree, the length of time it takes to navigate the permitting process is difficult, the answer is more regulation within DPP, not a free pass for those who would damage the land forever. Mahalo for accepting this testimony.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ESTHER KLA'AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
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

**Testimony of  
WILLIAM J. AILA, Jr.  
Chairperson**

**Before the House Committee on  
WATER & LAND**

**Friday, January 24, 2014  
9:30 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 1582  
RELATING TO APPLICATION PROCESSING**

House Bill 1582 proposes to grant authority to the counties to authorize, third-party, non-government officials to review and approve permits, licenses, and other approvals for workforce housing and other projects, and sets a 45 day deadline for review and comment on projects reviewed under Chapter 6E, Hawaii Revised Statutes (HRS). **The Department of Land and Natural Resources (Department) cannot support this measure.**

SECTION 2 of House Bill 1582 proposes to amend Chapter 46, HRS, by inserting new language authorizing the counties to delegate to a third-party non-governmental official authority to permit, license and approve project subject to county review. The new section would require that the "third party" be a licensed architect or engineer and that they be qualified by the county to certify compliance with building and land-use codes.

- An essential quality of reviews by State and county agencies is to ensure independent and disinterested review by a governmental entity whose duty lies solely to the public. Delegation of that independent governmental review to a non-governmental, third-party, retained by the project proponent, undermines this independent review.
- The fact that third party reviewers are to be retained and their fees and expenses paid by the project proponent will, at very least, create an appearance of a conflict of interest.
- Section 2 applies to both State and county permits, licenses, and approvals. The third-party reviewers are required to be professionally licensed and to meet the counties qualifications and their authority is delegated to them by the counties. Yet these county



qualified third-parties are also to be authorized to grant State permits, licenses, and approvals without any state delegation of authority or oversight.

SECTION 3 of House Bill 1582 proposes to amend Section 6E-42, HRS, by inserting a new subsection (c) imposing a maximum of 45 day time limit on for Chapter 6E, HRS, review and comment. If the Department fails to review and comment within the allotted 45 days the project is to be deemed approved.

- The review time begins when the Department is first advised of a project by a agency, State or county official. Such advice often comes long before the project proponent has submitted any of the documentation necessary to review and consider the effects the project may have on historic properties. Starting the clock before all the necessary documentation is submitted will result in projects hitting the 45 day limit before reviews can be completed.
- For small projects, Department comments already routinely take far less than 45 days.
- The outcome of the review process for larger projects is often the result of extensive discussions between the agency, project proponent, and the Department. Those discussions are aimed at balancing the preservation of Hawai'i's important heritage resources and the need to protect iwi with needed development. Balancing all interests can be a lengthy process. Setting a hard deadline, without respect to the size and complexity of a project or of the resources it might affect will result in incomplete consideration of important heritage resources and iwi during the review and approval of a project and their destruction during implementation.
- While some projects move smoothly from concept to design to review and approval to development, some do not. Projects often have long lag times between development stages. This is particularly true of phased projects. Reports that were acceptable 10, 15 or 20 years ago, and were the basis of "no effect" determinations, may not meet today's technical requirements.
- Approving projects based on outdated reports that do not meet today's technical standards will result in destruction of important historic resources and disturbance of iwi.

The Department appreciates the opportunity to present this testimony on this measure.



Testimony of Cindy McMillan  
The Pacific Resource Partnership

House Committee on Water and Land  
Representative Cindy Evans, Chair  
Representative Nicole E. Lowen, Vice Chair

HB 1582 – Relating to Application Processing  
Friday, January 24, 2014  
9:30 AM  
Conference Room 325

Aloha Chair Evans, Vice Chair Lowen and Members of the Committee:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP **supports** the intent and purpose of HB 1582 – Relating to Application Processing which expedites the review and granting of permits, licenses, and other approvals for construction projects.

As stated in SCR 132 (2009) Construction Industry Task Force report:

#### Recommendation

- Authorize the counties to provide third-party reviews for permit processing. Establish liability thresholds for third-party review services:
  - Authorize licensed architects and engineers that are qualified by a county to certify compliance for Building, Electrical, Mechanical/Plumbing, Land User Ordinance, and Structural Codes for building permit and other approvals.
  - Third-party reviewers shall be retained by an owner and all fees and costs for third-party review services shall be the responsibility of the owner.
  - Third-party reviewers shall conduct plan review services for the purpose of certifying that the proposed plans and specifications are in compliance with federal, state, and county laws, codes, ordinances, rules, and other requirements.

January 24, 2014

Testimony supporting HB 1582 – Relating to Application Processing

Page 2

- Certifications by third-party reviewers shall be limited to only those areas approved by the county and in which the third-party reviewer is duly qualified.
- Third-party reviewers shall not have the authority to grant modifications, variances, waivers, exemptions, or other discretionary approvals.
- Private individuals or entities providing third-party review services shall be immune from liability, except for intentional misconduct, gross negligence, or malfeasance.

The cost of housing in Hawaii is rapidly becoming out of reach for many, especially young professionals and working families. Duplicative processes at the state and county levels contribute to the financial burden placed on the home buyer. HB 1582 will help streamline the approval process without compromising the necessary reviews. This will expedite the start of construction for workforce housing projects throughout the State and will result in the generation of construction and other related jobs that are much needed in our economy.

Thank you for the opportunity to share our opinion and we kindly ask for your support.



## HB1582

### RELATING TO APPLICATION PROCESSING

House Committees on Water and Land and Ocean Marine Resources & Hawaiian Affairs

January 24, 2014

9:45 a.m.

Room 325

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **OPPOSE** HB1582, which may severely undermine the ability of the state to protect important and irreplaceable cultural and historic sites, while compromising important county regulatory protections designed to safeguard human safety, health, and the environment.

The state historic review and planning process is intended to “conserv[e] and develop[] the historic and cultural property within the State,” with the recognition “that the historic and cultural heritage of the state is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage.” **Mandating a 45-day timeline for all historic review and planning processes would effectively preclude the proper protection of our most significant cultural and historic sites, as intended under the law.**

Current regulations outline state historic review as a series of up to six steps, each allowing a reasonable time for public, agency, and applicant review, comment, and response. The comprehensive review and dialogue facilitated by this multi-step process ensures the appropriate treatment of historic artifacts, iwi kūpuna, and other sites of cultural or historic significance, while also allowing project planners to anticipate and plan for the most cost-effective approach to addressing any such sites. It also ensures meaningful opportunities for public input and transparency.

For example, the review process for a project that may affect “significant” historic properties allows 30 days for public identification of historic properties, 30 days for agency review of a historic property inventory plan (if one is required), 45 days for agency review of a historic property “significance” evaluation, 45 days to review whether significant sites (if present) may be affected, and 45 days to review the project applicant’s mitigation commitments (if required). All projects do not need to go through all six steps, but for those projects that require a comprehensive historic review process, a single 45 day period is highly impracticable—particularly for the very type of large or complex projects that would most merit careful and deliberate review and planning. **Instead, truncated review or automatic approval of such projects could place at risk invaluable and irreplaceable historic and cultural assets, including iwi kūpuna, while also reducing the resources available for project planners to account for and appropriately plan around significant historic and cultural sites.**

On a similar note, the proposal to allow private third-parties to certify regulatory compliance and approve a broad range of county permit applications, while also requiring all county agencies to adopt automatic approval deadlines, again raises concerns regarding potential compromises to county regulations and safeguards. Competitive market incentives based on the speed and ease of obtaining approvals may encourage relaxed compliance standards and quicker, potentially cursory reviews by these private parties, which ultimately may risk public safety, health, and Hawai'i's environment.

Accordingly, the OHA Administration urges the committee to **HOLD** HB1582. Thank you for the opportunity to testify on this measure.



**Testimony to the House Committee on Water and Land and the House Committee on Ocean,  
Marine Resources, & Hawaiian Affairs  
Friday, January 24, 2014 at 9:45 a.m.  
State Capitol - Conference Room 325**

**RE: HOUSE BILL NO. 1582, RELATING TO APPLICATION PROCESSING**

Chairs Evans and Hanohano and Vice Chairs Lowen and Cullen, and members of the committees:

The Chamber **supports** H.B. 1582 as it proposes to establish a maximum time period within which an application for permit, license, or approval shall be acted upon by the designated agency or else deemed granted; authorizes each county to contract with a third-party reviewer to streamline the processing of applications; clarifies that previously approved projects that do not impact historic properties are not subject to subsequent reviews by SHPD.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

We understand that the bill comes from recommendations made by the Construction Industry Task Force which was created in 2009 thru senate concurrent resolution no. 132, S.D. 1. The purpose of the task force was to determine the economic value of the construction industry in Hawaii. The task force was charged with developing a series of recommendations to stimulate the construction industry and create new jobs in the local construction industry.

The proposed bill amends Chapter 91 HRS by requiring each State or County agency to have their permits automatically approved within 30 days of submission of a complete application, unless a maximum processing time period is already provided for in their respective rules. It also allows the County agencies to use the "third party review" process to increase the efficiency and timeliness of their review of permits, licenses and applications.

The land use entitlement process in Hawaii is a costly and lengthy process which is a major reason why the median cost of a single family residence on Oahu is \$685,000.00. The proposed automatic approval process is probably the result of prior attempts to "streamline" the land use entitlement process by removing the overlapping and at times duplicative permitting/approval process at both the State and County levels.

Serious reforms are needed for the land use entitlement process to insure a consistent and sustainable supply of new construction (i.e. residential, commercial, industrial, resort, etc.) in our economy. Without additional hotel rooms, the visitor industry cannot expand and air lift is limited. Without new residential construction, demand outstrips supply and drives prices beyond what is deemed affordable to middle class families in Hawaii.

If we cannot support two of the major drivers of our economy, tourism and construction, what does the legislature believe will fill that void?

Thank you for the opportunity to express our views on this matter.



**TO:** Rep. Cindy Evans, Chair  
Rep. Nicole E. Lowen, Vice Chair  
Committee on Water & Land  
  
Rep. Faye P. Hanohano, Chair  
Rep. Ty J.K. Cullen, Vice Chair  
Committee on Ocean, Marine Resources & Hawaiian Affairs

**FROM:** Kiersten Faulkner, Executive Director  
Historic Hawaii Foundation

**Committee:** Friday, January 24, 2014  
9:45 a.m.  
Conference Room 325

**RE: HB1582, Relating to Application Processing**

On behalf of Historic Hawaii Foundation (HHF), I am writing in **opposition to HB1582**. The bill establishes maximum time periods for designated agencies to process permits and other applications before they are deemed granted if not acted upon; authorizes third-party review of applications; and eliminates subsequent reviews by the state historic preservation division (SHPD).

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF's 850 members and numerous additional supporters work to preserve Hawaii's unique architectural and cultural heritage and believe that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

The bill would mandate that once SHPD has provided one approval of a proposed project—whether by affirming a determination of no effect on historic properties or through inaction—subsequent reviews would not be allowed. The bill also provides for third party reviewers to certify that proposals are in compliance with applicable codes and standards.

HHF finds that the bill would remove an important safety net for the preservation and protection of the historic and cultural resources of Hawai'i, and would also introduce more uncertainty in the development process.

The professional staff of the historic preservation division has been steadily eroded over the past several years. Currently, there are only two staff members, one of whom is a temporary hire, to provide all architectural project reviews for the entire state, include federal undertakings. The division has lost its architectural branch chief, its preservation architect, its architectural historian and other professional, clerical and support positions. The lack of funding, staffing and support for the division make it difficult for it to meet its mandates for high quality and timely review of projects. This leads to frustration by those seeking approvals, as well as by those whose priority is the protection of the state's historic and cultural resources.



The bill attempts to address this impasse by setting a maximum number of reviews and a maximum number of days for those reviews. While the intent may be to provide greater timeliness and certainty to developers, it will come at the expense of protection for historic sites and cultural resources. The absolute deadline on taking action could also lead to a quick denial of projects rather than a slower and more thoughtful approval, simply in an attempt to meet the deadlines. The state's historic and cultural resources should not be penalized by removing protections at the local or the state level.

The provision limiting the number of SHPD reviews per undertaking disregards the reality that developments have multiple phases of design and construction and there is a need to check-in at key points, especially if the undertaking changes. In most development undertakings, there is a continuum of due diligence, planning, entitlements, design and construction. It is rare that all possible effects on historic properties are known at each stage of the development and design process. For example, the area of potential effect for historic sites is less defined at the time of a land use change or subdivision than it is at the time of construction. The certainty and specificity of SHPD's review is directly proportionate to the level of information provided to it, which can and does change as undertakings evolve.

For example, while SHPD may determine that no historic properties are affected by a simple change in entitlements, that same undertaking could very well have an effect at the time of site planning and construction. This is especially true when the historic properties are unknown (such as from sub-surface archeological sites or native Hawaiian burials), undocumented (such as cultural landscapes or traditional cultural properties), when the project takes many years from concept to execution (in which time structures may become eligible for the historic register by virtue of increasing age or significance), or when the scope and scale of the undertaking changes.

It is also a rare development that does not change in its details from the time of concept, to schematic design, to design development, to construction. At any of these stages, a historic property that was not previously anticipated to be affected could become at risk. Therefore, an earlier determination of no adverse effect may not hold true when the undertaking becomes more specific and more information is provided, and vice versa.

The reliance on third-party reviewers could be a viable approach for matters such as building or zoning codes, but most architects and engineers do not possess the specialized technical training to allow them to make determinations of effect on historic properties, and very few have further expertise in Hawaiian cultural resources or values. HHF requests that this section be amended to require that any architects, engineers or other third parties that review an application for a permit, license or approval for a project that affects historic properties meet the education and experience standards and qualifications for preservation professionals as defined by the Secretary of the Interior's Standards. This will help ensure that reviewers are qualified to make the determinations entrusted to them when making decisions that impact the historic and cultural resources of the Islands and refers to industry standards in federal statute.

For these reasons, Historic Hawai'i Foundation respectfully asks the committee to hold the bill and not pass it on further. Thank you for the opportunity to comment.

## lowen2-Lanaly

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 24, 2014 8:40 AM  
**To:** waltestimony  
**Cc:** amybrinker@mac.com  
**Subject:** \*Submitted testimony for HB1582 on Jan 24, 2014 09:45AM\*

### HB1582

Submitted on: 1/24/2014

Testimony for WAL/OMH on Jan 24, 2014 09:45AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Brinker	Individual	Oppose	No

#### Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**HOUSE COMMITTEE ON WATER & LAND  
HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS**

January 24, 2014, 9:45 A.M.  
(*Testimony is 1 page long*)

**TESTIMONY IN OPPOSITION TO HB 1582**

Aloha Chair Evans, Chair Hanohano, and Members of the Committees:

The Sierra Club, Hawaii Chapter, with over 12,000 dues paying members and supporters statewide, *opposes* HB 1120. This measure (1) authorizes third-permit approval, (2) requires historic property review to be acted upon within forty-five days or be considered automatically approved, and (3) includes all county land use approvals into the automatic approval statute requirement of 30 days or less.

**Third-Party Approval**

Counties already have third-party approval processes. Accordingly, it is unclear whether this section is needed — plainly not from an statutory authorizing perspective.

**Automatic Approval of Historic Property Review**

The “automatic approval” of any project is simply poor policy. Permits should be granted on their merits, not by mistake or governmental inefficiency. No community should suffer because government failed to perform. It has been well-documented that the State Historic Preservation Office suffers from leadership problems. Rather than simply saying “so be it” and making the community suffer for it, we should roll up our sleeves and find ways to improve the situation.

**Automatic Approval of County Land Use Decisions**

This language would force a County to consider, say, a 10,000 home subdivision proposal — in its entirety — within 30 days. Including opportunities for public comment, agency review, and voting. If a planning commission, for example, fails to meet one month it is possible that all projects submitted would be automatically approved. This is simply ludicrous. Some projects deserve public input and review. This leads to better projects and better outcomes for our communities.

Mahalo for the opportunity to testify.

**lowen2-Lanaly**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, January 24, 2014 8:54 AM  
**To:** waltestimony  
**Cc:** Karen@RedwoodGames.com  
**Subject:** Submitted testimony for HB1582 on Jan 24, 2014 09:45AM

**HB1582**

Submitted on: 1/24/2014

Testimony for WAL/OMH on Jan 24, 2014 09:45AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Chun	Individual	Oppose	No

Comments: Fast-track under duress of automatic approval has proved a disaster so far. This bill is even worse. How can we possibly review a huge subdivision adequately in 30 days? To have these subdivision get automatically approved because they're too big to review is not going to make our islands intelligently planned and comfortable.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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