

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

**Before the House Committee on  
FINANCE**

**Monday April 01, 2013  
2:00 p.m.  
State Capitol, Conference Room 308**

**In consideration of  
SENATE BILL 1171, SENATE DRAFT 1, HOUSE DRAFT 1  
RELATING TO REVIEW OF HISTORIC PRESERVATION PROJECTS**

Senate Bill 1171, Senate Draft 1, House Draft 1 proposes to allow the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (Department) to provide approval on relevant state permits based on phased reviews of archaeological inventory surveys (AIS). **The Department is in strong support of this Administration measure.**

The Department notes that this bill is in response to the Hawaii Supreme Court ruling in *Kaleikini v Yoshioka* which stated that SHPD improperly allowed for a phased review of the Honolulu Rapid Transit Corridor (rail). SHPD based its approval of the project on Federal regulations that allow for a phased review of linear projects in 36 CFR 800 ("Section 106"). SHPD rules are silent on phasing and the Supreme Court suggested that SHPD specifically state in its rules that phasing is allowed. A review of statutes suggested that the best strategy would be to change both the rules and statute to allow for phasing. Ultimately, approval of this bill will align state and federal laws and rules.

The inability to phase archaeological inventory surveys will negatively affect some projects, particularly those done by the Hawaii Department of Transportation (HDOT), which regularly phases archaeological inventory surveys for their projects which can take upwards of ten years to complete. The crux of the problem for linear projects is that later stages of the project may change, and when they do, a supplemental AIS needs to be done, because the original AIS is no longer valid. Sometimes a supplemental AIS needs to be done just because the first AIS is so old the practices used then are no longer accepted. In addition, requiring an AIS for an entire project up front may require unnecessary condemnation of property if the alignment changes over time.

This law limits phasing to federal projects since it includes the definition of a "programmatic agreement . . . which establishes a process for consultation, review, and compliance with one or

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

**ESTHER KIA'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  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

more federal laws.” The law also requires that SHPD promulgate rules for the purposes of this section.

HDOT uses federal funds, and is the state agency most impacted by the Supreme Court Ruling. Examples of impacted HDOT projects include:

1. Queen Kaahumanu Highway Widening (Palani Street to Kawaihae) **\$580M total** (\$130M for Phase I & II + \$450M for Keahole to Kawaihae)
2. Keaau-Pahoa Road Widening, Keaau to Pahoa **\$140M total** (Environment Impact Statement preferred alternative)
3. Saddle Road, Hilo to Queen Kaahumanu Highway **\$249M total**
4. Lahaina By-Pass **\$210M total**
5. Paia By-Pass **\$110M total (excluding land acquisition)**
6. Leeward Bikeway (Pearl Harbor to Nanakuli) **\$32M total**
7. Kualakai Parkway (H-1 to Roosevelt Road) **\$141M total** (2004 FEA)
8. Kapolei Parkway, Makakilo to Ewa **\$20.4M total** (Statewide Transportation Improvement Program figure)
9. Lydgate Bikeway **\$60M total** (Nawiliwili to Anahola, Kauai)
10. Kapaa By-Pass (Lihue to Kapaa) **\$150M - \$310 range** (no alternative selected yet - 2006 DEA)

**NEIL ABERCROMBIE**  
Governor



**RUSSELL S. KOKUBUN**  
Chairperson, Board of Agriculture

**SCOTT E. ENRIGHT**  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF RUSSELL S. KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON FINANCE  
MONDAY, APRIL 1, 2013  
2:00 P.M.  
Room 308**

**SENATE BILL NO. 1171, SD 1 HD 1  
RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS**

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 1171, Senate Draft 1 House Draft 1 which is an Administration measure. The Department of Agriculture supports this measure that seeks to grant the State Historic Preservation Division (SHPD) the ability to accommodate a phased review of complex, multi-year and multi-phase projects and makes Hawaii's historic preservation laws consistent with that of the federal government.

The Department has readily complied with environmental assessment, environmental impact statement, and National Environmental Policy Act requirements as necessary when addressing the full extent of a proposed project. However, this does not preclude any large future projects that may come before the Department from requiring a phased review. As an example, the 1,723 acres of former Galbraith Trust lands being developed into a major agricultural production area by the Agribusiness Development Corporation and its partners, will incorporate significant multi-phased projects such as a new irrigation system. Without the amendments proposed in this



measure, there could be delays and project cost increases, both of which will delay the establishment of agricultural production.

Thank you, again, for the opportunity to testify on this measure.





**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

**NEIL ABERCROMBIE**  
GOVERNOR

**RICHARD C. LIM**  
DIRECTOR

**MARY ALICE EVANS**  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
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Statement of  
**RICHARD C. LIM**  
Director

Department of Business, Economic Development, and Tourism  
before the

**HOUSE COMMITTEE ON FINANCE**

Monday, April 1, 2013  
2:00 p.m.  
State Capitol, Conference Room 308

in consideration of

**SB 1171, SD1, HD1  
RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.**

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee.

The Department of Business, Economic Development & Tourism (DBEDT) **supports** SB 1171, SD1, HD1, which authorizes the State Historic Preservation Division of DLNR to give its approval of archaeological inventory surveys and preservation plans based on a phased review of a project that consists of corridors or large areas, or where access is restricted or construction needs to be done in phases, and also allows for placement of a programmatic agreement between the department and the project applicant that will identify each phase and estimated timeline for each phase.

This bill does not change the state or county's obligation to consult with the State Historic Preservation Division (SHPD) on "the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43." See HRS § 6E-8. Instead, the bill makes two procedural changes.

First, this bill would make state historic preservation laws consistent with federal historic preservation laws which allow phased reviews. Second, the bill removes redundancy in agency appeals.

Thank you for the opportunity to testify on SB 1171, SD1, HD1.



**OFFICE OF PLANNING  
STATE OF HAWAII**

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**NEIL ABERCROMBIE**  
GOVERNOR

**JESSE K. SOUKI**  
DIRECTOR  
OFFICE OF PLANNING

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Statement of  
**JESSE K. SOUKI**  
Director, Office of Planning  
before the  
**HOUSE COMMITTEE ON FINANCE**  
Monday, April 1, 2013  
2:00 PM  
State Capitol, Conference Room 308

in consideration of  
**SB 1171 SD1 HD1**  
**RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.**

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the House Committee on Finance.

The Office of Planning supports SB 1171 SD1 HD1, which allows for the phased review of certain projects by the State Historic Preservation Division (SHPD).

This is a streamlining bill that does not change the state or county's obligation to consult with the SHPD on "the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43." See HRS § 6E-8. Instead, the bill makes two procedural changes.

First, the bill authorizes the phased review of projects that consist of corridors or large land areas, where access to properties is restricted, or where circumstances dictate that construction be done in stages. Following the Hawaii Supreme Court's decision in Kaleikini v. Yoshioka, 128 Haw. 53 (2012), which invalidated the Honolulu Rail Transit Project's phased archeological inventory survey approach, all linear projects could be at risk. However, the Court

noted that "regulations implementing the National Historic Preservation Act of 1966 (NHPA) explicitly permit the phased identification and evaluation of historic properties." Id. This bill would make state historic preservation laws consistent with federal historic preservation laws.

Second, the bill removes redundancy in agency appeals. Under the current law, if an agency or any person does not agree with SHPD's determination, they may appeal to the Hawaii Historic Places Review Board (HPRB). If an agency or any person does not agree with the HPRB's decision, they may petition the governor. At that point, the governor may (1) decide the matter based on the record of the HPRB, or (2) ask the Hawaii Advisory Council on Historic Preservation (ACHP) to prepare a report and then decide. This bill removes the option for the governor to ask ACHP for a report. Consequently, duplication of review by the HPRB is removed from the current process, and the governor is required to act more expeditiously in these matters.

Furthermore, there is no such organization as the "Hawaii" ACHP. There is only a "federal" ACHP. The federal ACHP has no jurisdiction over state decisions made under state law.

Thank you for the opportunity to provide testimony on this measure.



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

April 1, 2013  
2:00 p.m.  
State Capitol, Room 308

**S.B. 1171, S.D. 1 H.D. 1  
RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS**

House Committee(s) on Finance

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The Department of Transportation (DOT) understands the need to preserve the historic and cultural heritage of Hawaii, and recognizes that the Department of Land and Natural Resources' State Historic Preservation Division bears a heavy responsibility in ensuring its protection. For this reason, the DOT **strongly supports** S.B. 1171, S.D. 1 H.D.1, because it would give the State Historic Preservation Division (SHPD) greater flexibility to address preservation plans and measures in alignment with federal laws.

S.B. 1171, S.D.1 H.D.1 would grant SHPD the option of fashioning customized and adaptable preservation plans and measures when dealing with complex multi-year, multi-phase projects. Having the authority to take this approach will allow for the effective use of resources and more precise protection protocols and standards. S.B. 1171, S.D. 1 H.D.1, makes Hawaii's historic preservation law Section 6E-8 consistent with the federal historic preservation law, and minimizes conflicts and duplication when projects involve both State and federal reviews.

The inability to utilize phased review will negatively affect projects, particularly those done by the DOT, which are complex and span large distances and take upwards of ten years to complete. Requiring an AIS for an entire project done before construction can begin, creates significant delays, increased costs, and possibly unnecessary disturbance of potential burial sites and historic properties. As noted, our multi-year duration of the typical highway project, unanticipated changes can occur that can alter the alignment. Thus, AIS's conducted well before the start of the final design might be rendered unnecessary, and additional AIS's may be required. Whereas phasing allows AIS's to be conducted at the start of final design of a portion of the project that is intended to be built, thereby minimizing the amount of area disturbed. If burial sites are found, there is still opportunity to make changes to avoid the sites.

Examples of potential impacted DOT projects include:

1. Queen Kaahumanu Highway Widening (Palani Street to Kawaihae) **\$580M total** (\$130M for Ph I & II + \$450M for Keahole to Kawaihae)

2. Keaau-Pahoa Road Widening, Keaau to Pahoa **\$140M total** (EIS preferred alternative)
3. Saddle Road, Hilo to Queen Kaahumanu Highway **\$249M total**
4. Lahaina By-Pass **\$210M total**
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6. Leeward Bikeway (Pearl Harbor to Nanakuli) **\$32M total**
7. Kualakai Parkway (H-1 to Roosevelt Road) **\$141M total** (2004 FEA)
8. Kapolei Parkway, Makakilo to Ewa **\$20.4M total** (STIP figure)
9. Lydgate Bikeway **\$60M total** (Nawiliwili to Anahola)
10. Kapaa By-Pass (Lihue to Kapaa) **\$150M - \$310 range** (no alternative selected yet - 2006 DEA)

This bill will provide SHPD the option of giving its written concurrence based on the phased review of the project and make state law consistent with federal law.

We also appreciate the consideration of the Transportation and Water and Land Committee's House Draft amendments which provide for transparency on the proposed intent of the bill.

We urge the Finance Committee to pass the current bill with the amendment to restore the bill's effective date to upon its approval.

Thank you for the opportunity to provide testimony.





# BIA-HAWAII

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## Testimony to the House Committees on Finance

Wednesday, March 20, 2013

10:30 a.m.

State Capitol - Conference Room 309

### RE: S.B. 1171, S.D. 1, RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS

Dear Chair Luke, Vice-Chairs Nishimoto and Johanson, 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, affiliated with the National Association of Home Builders.

BIA-Hawaii **strongly supports** S.B. 1171, S.D.1, H.D.1, which authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD) to ensure consistency between state and federal law. Removes language that provided the Governor with the option to request the Hawaii Advisory Council on Historic Preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii Historic Places Review Board.

This measure is in response to *Kaleikini v. Yoshioka*, where the Hawaii Supreme Court ruled that SHPD violated its own rules by allowing construction of the Honolulu Rapid Transit Corridor to start prior to the completion of an archeological survey (AIS) for the entire project. However, SHPD relied on Federal law, which allows for a phased review of linear projects, in making its determination. This measure aims to align State law with Federal law.

The current law would likely have a detrimental impact on many long-term, phased highway projects by the Department of Transportation, or the Department of Hawaiian Homeland's residential projects that are also phased over time. We understand the SHPD is not proposing to allow phasing for all projects, only specific types that are linear or may require doing an AIS over time.

Thank you for the opportunity to share with you our views.

# Hawai'i Construction Alliance

P.O. Box 179441  
Honolulu, HI 96817  
(808) 348-8885

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March 29, 2013

The Honorable Sylvia Luke, Chair  
The Honorable Scott Y. Nishimoto, Vice Chair  
The Honorable Aaron Ling Johanson, Vice Chair  
Committee on Finance  
Hawai'i State House of Representatives  
415 South Beretania Street  
Honolulu, Hawai'i 96813

Dear Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, and members of the committee:

The Hawai'i Construction Alliance **supports SB1171 SD1 HD1**, relating to the review of historic preservation projects.

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Hawai'i Masons Union, Local 1 and Local 630; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local 3. Together, the four member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the four basic crafts of Hawai'i's construction industry.

When dealing with complex projects that are subject to review by multiple agencies, it would be beneficial for state law and federal law to be aligned in order to minimize the possibility of conflict and duplication. Currently, alignment does not exist between federal regulations, which allow for phased review, and state rules, which call for projects to be reviewed in their entirety. As such, many complex multi-year projects encounter significant problems such as construction delays, difficulties in obtaining funding, and unnecessary land acquisition.

SB1171 SD1 HD1 would grant the State Historic Preservation Division more flexibility in crafting effective preservation plans for projects which are either linear in nature or otherwise lend themselves to phased review. Allowing such flexibility would enable government agencies deliver much-needed infrastructure improvements while continuing to respect our islands' precious cultural and historic heritage.

Mahalo for the opportunity to testify in **support of SB1171 SD1 HD1**.

Aloha,



Tyler Dos Santos-Tam  
Executive Director  
Hawai'i Construction Alliance  
execdir@hawaiiiconstructionalliance.org



HOUSE OF REPRESENTATIVES  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

TESTIMONY BY PETER LEE OF HAWAII LECET  
SENATE BILL NO. 1171, SD1 HD1

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair  
Rep. Scott Nishimoto, Vice Chair  
Rep. Aaron Ling Johanson, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, April 1, 2013  
TIME: 2:00pm  
PLACE: Conference Room 308  
State Capitol  
415 South Beretania Street

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE FINANCE COMMITTEE:

Good Afternoon,

My name is Peter Lee, and I am the Construction Compliance Officer for Hawaii Laborers Employers Cooperation and Education Trust (LECET). Hawaii LECET is the labor-management trust fund between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Hawaii LECET **STRONGLY SUPPORTS** Senate Bill No. 1171, SD1 HD1. This measure authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law. Without this authorization, large projects with multiple phases will be in jeopardy of delays. In addition, this measure would make state historic preservation laws consistent with federal historic preservation laws.

Secondly, this measure removes redundancy in agency appeals by deleting language that provided the governor with the option to request the Hawaii advisory council on historic preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii historic places review board. Consequently, duplication of review by the Hawaii Historic Places Review Board is removed from the current process.

Lastly, this measure defines "programmatic agreement" and requires such an agreement to be in place between the department and the project applicant that identifies each phase and the estimated timelines for each phase.

For these reasons, we **strongly support of SB 1171, SD1 HD1.**



## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 6:31 PM  
**To:** FINTestimony  
**Cc:** Lardizabal@local368.org  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Al Lardizabal	Hawaii Laborers' Union	Support	No

Comments: Chair Luke, Vice Chair Nishimoto and Vice Chair Johanson and members of the committee: The Hawaii Laborers' Union supports SB1171 SD1 HD1 which authorizes the phased review of certain projects by the DLNR State Historic Preservation Division to be consistent with federal law. Thank you for the opportunity to submit 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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House of Representatives  
Twenty-Seventh Legislature  
Committee on Finance  
April 1, 2013, 2:00 p.m.  
Room 308

Statement of the Hawaii Regional Council of Carpenters  
On SB 1171, HD 1, Authorizing Phased Historic Preservation Review of Certain Projects

SB 1171 should be enacted into law to ensure consistency with Federal law, and with reality. Long term, master planned projects, most notably for transportation and other infrastructure, are done in phases that often span many years. Conditions requiring phased development, and phased historic preservation review, are not limited to geographically linear or corridor-like projects.

While within the framework of a long term plan, funding/financing is generally not available except by phase. Funds are not available for phases that are years away, and there may be other, worthwhile, competing demands for funds.

Planning capacity, money, is seldom available for full and detailed plans prior to the start of multi-faceted projects. Access to lands, the need to adjust plans to public or market needs, additional knowledge over the years of a project, are among other conditions calling for phased reviews for multi-phased projects.

The Bill does not do away with the requirement for Historic Preservation Review. Such review is actually enhanced when in the framework of a master plan. Such master planning should be encouraged, not discouraged, which will happen if the best way to comply is to submit for historic preservation review with each phase as a “project” in itself. That will encourage short term planning.

Thank you for considering our support of SB 1171.

## FINTestimony

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**From:** Hawai'i Geographic Society [hawaiiigeographicsociety@gmail.com]  
**Sent:** Sunday, March 31, 2013 8:51 AM  
**To:** FINTestimony  
**Subject:** SB1171

As a Native American, who has lived in Hawai'i since 1962, I write in tentative SUPPORT of SB 1171. The concern over "iwi in Hawai'i exceeds anything envisioned by NAGPRA. The fact that one woman can stop the entire Rail Transit project over 'iwi is appalling. There has to be a better way to respect without "stopping a project dead in its tracks for an indeterminate time."

The fact of "finding one or more bones" does not necessarily a "sacred site make!" The Hawaiian before Captain Cook's arrival had a rather casual manner of burials for the maka'ainana - - the common folks - - 90% of the total. The current law as written AND as interpreted by the courts is proving detrimental and a hindrance. In my 50+ years in Hawai'i, I have seen virtual disregard for places, sites, and situations pertaining to pre-Cook Hawai'i move to the present situation of "just about any place gets called 'sacred', and must set in motion a long train of permits, procedures, and efforts.

Mahalo nui loa,  
Prof Willis H A Moore, Editor & Manager

--

Established in 1947 as ***KIWANIS WORLD ADVENTURE TOUR SOCIETY***,  
The **HAWAI'I GEOGRAPHIC SOCIETY** continues to fulfill its VISION:  
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HAWAI'I TRAILS: [www.alltrails.com](http://www.alltrails.com)

335 Merchant Street, #1698, HONOLULU, HAWAI'I 96806-0612  
1-800-538-3950 = USA/Canada / 1-808-538-3952 = O'ahu & worldwide



Testimony of Cindy McMillan  
The Pacific Resource Partnership

House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair

SB 1171, SD1, HD1 – Relating to the Review of Historic Preservation Projects  
Monday, April 1, 2013  
2:00 p.m.  
Conference Room 308

Aloha Chair Luke, Vice Chair Nishimoto 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 SB 1171, SD1, HD1 Relating to the Review of Historic Preservation Projects. This bill authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law.

PRP recognizes that the history and culture of Hawaii are unique, and this bill does not change the state or county's obligation to consult with the State Historic Preservation Division (SHPD) on "the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43." See HRS § 6E-8.

PRP supports the amendments that require a programmatic agreement to be in place, defines "programmatic agreement," and requires that DLNR adopt administrative rules regarding the phased review of proposed projects.

If this measure is not passed, essential government projects that are typically done in stages, like roadways and bikeways, will be at risk.

For these reasons, we respectfully request that the Committee pass this bill.

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



UNIVERSITY  
of HAWAII®  
MĀNOA

College of Social Sciences  
Department of Anthropology

TO: Rep. Sylvia Luke, Chair  
Rep. Scott Nishimoto, Vice Chair  
Rep. Aaron Ling Johanson, Vice Chair  
House Committee on Finance

FROM: Ty P. Kāwika Tengan  
Associate Professor of Anthropology and Ethnic Studies

HEARING: Monday April 1, 2013, 2:00 P.M., Conference Room 308

SUBJECT: Testimony in **STRONG OPPOSITION** to SB1171 SD1 HD1, Relating to the Review of Historic Preservation Projects

Aloha Members of the Committee on Finance. My name is Dr. Ty P. Kāwika Tengan. I am testifying in **STRONG OPPOSITION** to SB1171 SD1 HD1, which allows for the “phased review” of certain projects by the Department of Land and Natural Resources’ State Historic Preservation Division. As a Native Hawaiian professor of Anthropology and Ethnic Studies at the University of Hawai’i at Mānoa who has conducted research, teaching, and service on the legal and cultural treatment of burials and other sacred and historic sites, I can safely say that this is one of **the worst bills** to show up in the Legislature in a very long time. This bill will not only undermine the ability of Native Hawaiians to care for their ancestral remains and material culture, but it will also undermine the ability of the State Historic Preservation Division to fulfill its mandate to preserve, restore, and maintain historic and cultural properties for future generations. Though seen as a way of facilitating large and complex developments, this bill will actually prevent developers from adequately planning ahead. A “phased” review will result in projects being *phased out* by the economic and political costs incurred at the end of the day for engaging in lengthy legal battles. I urge you all to use better judgment in planning for the future than the authors of this bill and **DO NOT PASS SB1171 SD1 HD1**.



March 19, 2013

The Honorable Ryan I. Yamane, Chair  
and Members  
House of Representatives Committee on Transportation  
State Capitol  
Honolulu, HI 96813

The Honorable Cindy Evans, Chair  
and Members  
House of Representatives Committee on Water and Land  
State Capitol  
Honolulu, HI 96814

Dear Chair Yamane, Chair Evans, and Members:

Subject: Senate Bill No. 1171, Relating to the Review of Historic Preservation Projects

We, students at the William S. Richardson School of the Law, respectfully **oppose** Senate Bill No. 1171, which authorizes the phased review of projects by the Department of Land and Natural Resources' ("DLNR") State Historic Preservation Division ("SHPD").

The legislature has recognized 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."<sup>1</sup> Allowing SHPD to give a written concurrence based on a phased review of the project puts Hawai'i's historic properties and iwi kūpuna at substantial risk for destruction and would limit the available alternatives for their protection and preservation.

We respectfully draw your attention to several projects in the Kaka'ako area, which serve as a testament to SHPD's inability to comply with current Hawai'i law. As a result of SHPD's failure to comply with its obligations under the law, countless burials and historic sites have been irreparably harmed. Significant harm to iwi kūpuna has already been sustained as evidenced by the construction of Walmart, Ward Village Shops and Kawaiaha'o church. In order to prevent further harm, the Hawai'i Supreme Court required a full AIS for the City and County of Honolulu's High-Capacity Transit Corridor Project, as held in *Kaleikini v. Yoshioka*.<sup>2</sup>

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<sup>1</sup> HAW. REV. STAT. § 6E-1 (2012).

<sup>2</sup> *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 128 P.3d 60 (2012).

Additionally, the performance of an AIS is the principal tool utilized to ensure that iwi are “previously identified.” Whether iwi kūpuna are classified as “previously identified” or “inadvertently discovered” tremendously affects their treatment. Previously identified iwi are those discovered *during* an AIS and data recording.<sup>3</sup> Iwi who are characterized as previously identified are generally more likely to be preserved in place and undisturbed as the decision to preserve in place or relocate previously identified iwi is within the jurisdiction of island burial councils.<sup>4</sup> On the converse, inadvertently discovered iwi result from “unintentional disturbance, erosion, or other ground disturbing activity.”<sup>5</sup> In comparison to previously identified iwi, the decision making process of inadvertently discovered iwi is expedited and the role of Native Hawaiians in the process is limited. The decision to preserve in place or relocate inadvertently discovered iwi is within the jurisdiction of DLNR.<sup>6</sup> The ruling in *Kaleikini* assures that AISs are to be performed at the beginning of every development project, so as to find as many “previously identified” iwi as possible. This ruling conforms with the purpose of the legal statutory framework protecting iwi kūpuna--to preserve Hawai‘i’s historic and cultural heritage.

Allowing SB 1171 to pass would encourage additional harm to iwi kūpuna and Hawai‘i’s historic sites, as it would foreclose project alternatives. Beyond attempting to justify the desecration of Hawai‘i’s history and cultural heritage for reducing construction costs and delays, no sound reason for SB 1171 exists. A blanket desire to align state law with federal law provides no insight to the quality of the proposed legislation and in no way indicates how the people of Hawai‘i will benefit from this change. Hawai‘i’s more restrictive law protects the public interest and should not be jeopardized for the sake of speedier development.

For the aforesaid reasons, we respectfully **oppose** Senate Bill 1171.

Thank you for the opportunity to testify.

Sincerely,

Pūlama Lima  
Kaunakakai, Moloka‘i

Dorothy P.H. Meisner  
Kailua-Kona, Hawai‘i

Lisa Yang  
Hilo, Hawai‘i

STUDENTS IN LWEV-527C NATIVE HAWAIIAN LAW: BURIALS AND HISTORIC  
SITES PRESERVATION  
WILLIAM S. RICHARDSON SCHOOL OF LAW

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<sup>3</sup> See HAW. ADMIN. R. § 13-300-2 (2012).

<sup>4</sup> See HAW. REV. STAT. § 13-300-38(a) (2012).

<sup>5</sup> See HAW. ADMIN. R. § 13-300-2 (2012).

<sup>6</sup> See HAW. ADMIN. R. § 13-300-40(k) (2012).

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [FINTestimony](#)  
**Cc:** [koalani@kahea.org](mailto:koalani@kahea.org)  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM  
**Date:** Sunday, March 31, 2013 1:47:01 PM

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**SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Koalani Kaulukukui	KAHEA: The Hawaiian-Environmental Allianca	Oppose	No

Comments: Please kill SB1171, which will eliminate full public disclosure and participation in future developments by allowing phased studies. Allowing developers to get permits in phases prevents the government from seeing the impacts of the project as a whole. That means we might not be aware of harms until its too late to stop them. This flies in the face our the state's constitutional trust obligations over Hawaii's natural and cultural resources. All projects deserve scrutiny before they begin, please kill SB1171.

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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**Testimony to the House Committees on Finance**  
**Wednesday, March 20, 2013**  
**10:30 a.m.**  
**State Capitol - Conference Room 309**

**RE: S.B. 1171, S.D. 1, RELATING TO THE REVIEW OF HISTORIC  
PRESERVATION PROJECTS**

Dear Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the Committee:

BKA Builders Inc. **strongly supports** S.B. 1171, S.D.1, H.D.1, which authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD) to ensure consistency between state and federal law. Removes language that provided the Governor with the option to request the Hawaii Advisory Council on Historic Preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii Historic Places Review Board.

This measure is in response to *Kaleikini v. Yoshioka*, where the Hawaii Supreme Court ruled that SHPD violated its own rules by allowing construction of the Honolulu Rapid Transit Corridor to start prior to the completion of an archeological survey (AIS) for the entire project. However, SHPD relied on Federal law, which allows for a phased review of linear projects, in making its determination. This measure aims to align State law with Federal law.

The current law would likely have a detrimental impact on many long-term, phased highway projects by the Department of Transportation, or the Department of Hawaiian Homeland's residential projects that are also phased over time. We understand the SHPD is not proposing to allow phasing for all projects, only specific types that are linear or may require doing an AIS over time.

Thank you for the opportunity to share with you our support for S.B. 1171, S.D. 1, H.D. 1.

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 3:24 PM  
**To:** FINTestimony  
**Cc:** back2daaina@live.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
joyclynn costa	aha moku o Maui Hamakuapoko rep,	Oppose	No

Comments: I see no clarification for the intent or justification for this action. What we presently have in place are not being followed in good faith currently. why is it now there is a need to reward this type of behavior with leniency and zero accountability. As the testimonies pleading for respect of our iwi kupuna as well as the cultural sites fall on deaf ears many evidence of our existence are omitted in reports to allow projects who profess to be accurate, really are navigating through the system on false and misleading information. What this action does is not hold them responsible for the law contrary it allows them to now legalize their illegal activity. By already allowing the reporting to be done in lots and sections the law by virtue of the sunshine law prevents us to prove continuity and connectivity to many sites on a single project. This action will further the confusion and better equip the one who should hold the burden of responsibility to be exempt. That is not what our gov. was charged to do. the fiduciary responsibility is to it's people not only in the present but even more so in the past.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

# UNIVERSAL CONSTRUCTION, INC.

1038 PU'UWAI STREET  
HONOLULU, HAWAII 96819  
Phone: (808) 845-3986 Fax: (808) 842-3881



March 29, 2013

**Testimony to the House Committees on Finance**  
**Monday, April 01, 2013**  
**2:00 pm**  
**State Capitol - Conference Room**

**RE: S.B. 1171, S.D. 1, RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS**

Dear Chair Luke, Vice-Chairs Nishimoto and Johanson, and members of the Committee:

We are Dean Asahina, President and Gene Asahina, Secretary/Treasurer of Universal Construction, Inc. We are members of both BIA-Hawaii and the General Contractors Association of Hawaii

Universal Construction, Inc. **strongly supports** S.B. 1171, S.D.1, H.D.1, which authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD) to ensure consistency between state and federal law. Removes language that provided the Governor with the option to request the Hawaii Advisory Council on Historic Preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii Historic Places Review Board.

This measure is in response to *Kaleikini v. Yoshioka*, where the Hawaii Supreme Court ruled that SHPD violated its own rules by allowing construction of the Honolulu Rapid Transit Corridor to start prior to the completion of an archeological survey (AIS) for the entire project. However, SHPD relied on Federal law, which allows for a phased review of linear projects, in making its determination. This measure aims to align State law with Federal law.

The current law would likely have a detrimental impact on many long-term, phased highway projects by the Department of Transportation, or the Department of Hawaiian Homeland's residential projects that are also phased over time. We understand the SHPD is not proposing to allow phasing for all projects, only specific types that are linear or may require doing an AIS over time.

Thank you for the opportunity to share with you our support for S.B. 1171, S.D. 1, H.D. 1.

Very truly yours,

**UNIVERSAL CONSTRUCTION, INC.**

A handwritten signature in black ink, appearing to read "Dean I. Asahina".

Dean I. Asahina  
President

A handwritten signature in black ink, appearing to read "Gene T. Asahina".

Gene T. Asahina, AIA  
Secretary/Treasurer

DA/gta





**'ILIO'ULAOKALANI  
COALITION**

To: State of Hawai'i, House of Representatives Committee on Finance (FIN)

Attention: Chairperson Sylvia Luke & Members of the FIN Committee

Re: **Opposition to SB No. 1171 SD1 HD1** - Relating to the Review of Historic Preservation Projects

Hearing: Monday, April 1, 2013 at 2 p.m. in CR308

Ke welina mai nei me ke aloha iā kākou apau:

My name is Kāwika McKeague, former Chair, Vice-Chair, and 'Ewa moku representative of the O'ahu Island Burial Council. I have over 20 years of cultural resource management experience, as an environmental planner and as an active Kanaka Maoli cultural practitioner. As its legislative liaison, my testimony represents the expressed interests of 'Ilio'ulaokalani Coalition, a Native Hawaiian watchdog organization that has been an advocate for the protection of Hawai'i's heritage since 1997.

We write in **OPPOSITION to SB1171 SD1 HD1** for the simple matter that allowing a phased approach as defined in the proposed legislation deters from the original intent of obligatory duties relative to cultural resource protection by the State, as set forth in historic preservation law in Hawai'i. We also contest the use of amending language in the proposed bill, which is a verbatim extraction from implementing regulations for the National Historic Preservation Act, as provided in 36 CFR Part 800 (as amended in 2004), § 800.4(b)(2). This reference is a gross misinterpretation and severe misappropriation within this proposed legislation. We conclude that the adoption of this bill will undermine, minimally, the goals of Hawai'i's historic preservation law and at maximum, become an implementing policy tool that leads to the irreparable and irreversible desecration, destruction, and defilement of our kupuna's legacy as preserved within our pae 'aina.

In short, State historic preservation law promulgates that the Constitution of the State of Hawai'i recognizes the value of conserving Hawai'i's historic and cultural assets for the public good. Further, said law also defines the kuleana of the State to protect the historic and cultural heritage of Hawai'i against rapid social and economic development of today's society and to ensure the remaining vestiges of our ancestral heritage are not destroyed. It has and continues to be the policy of the State to provide leadership in a spirit of stewardship and trusteeship for future generations yet unborn, with conduct befitting in an honorific and respectful manner to the preservation, protection, and perpetuation of our shared history and ancestral identity.

SB1171 allows a "phased investigation" of historic and cultural resources, sanctioning a large scale development or corridor project to conduct the elements of identification, evaluation of significance, and assessment of appropriate mitigation of said resources, in a potential sequential and piecemeal method. Fundamentally, this fails as an approach as it empowers the landowner or developer to move forward with their projects while increases an inevitable risk to permanent destruction of cultural resources that may lie in the wake of project development. A sequential phased approach does not provide the necessary information for the State Department of Land and Natural Resources in its required review of the cumulative and comprehensive impact of any proposed project on historic properties, including Native Hawaiian burials, prior to project commencement as required by law. Permitting a phased investigation, in short, will enable and authorize project construction to commence regardless of a latter-phased area's unknown potential yield and composition of historic and cultural resources.

SB1171 violates the basic tenets and responsibilities the State has to protecting Hawai'i's cultural heritage as part of its public trust resource responsibilities. For landowners and developers, this approach will cause delays due to possible work stoppages as a result of subsequent encounters with historic sites or burials during construction. These delays translate to increased project expenditures for design modifications;

increased project development costs; and limits preservation options for the landowner or developer. This also places an undue burden on the developer's interests, vilifies their project, and makes them culpable to probable legal scrutiny as willing participants in the destruction and desecration of our heritage resources. With this proposed course of action, Hawai'i will be seen as a hostile environment for business opportunities and financial investment.

For Kanaka Maoli, this approach by the State would place an unnecessary burden to acquiesce in the latter phases of project construction with either the removal or destruction of heritage resources for "progress" sake or to take litigation measures as the only stop gap solution- invariably being thrust into unfavorable light as radical activists with no vision, or as antidevelopment antagonists. To a stronger detriment, approval by this Committee of this legislation will enable the State's continued disenfranchisement of Kanaka Maoli, as the host people and culture, by sanctioning a would-be licit and tolerable act of potential violent, destructive, and abusive rape of our ancestral homeland.

We call for the immediate dismissal of SB1171 by this Committee. Greater scrutiny of how existing historic preservation laws are implemented at the departmental and division level with concomitant auditing and allocation of necessary budget and personnel support to the State Historic Preservation Division would be a better and more prudent use of this Committee's time and energy. An approval of SB1171 by this Committee would be seen as abandonment and complete negligence of the State's fiscal and trust protection obligation responsibilities in the most profane manner to our ancestral foundation. Please consider the fullest measure and impact of the matter before you.

Ola nā iwi,  
Mark Kawika McKeague  
ʻĪlioʻulaokalani Coalition, Legislative Liaison  
Email: [kmckeague87@gmail.com](mailto:kmckeague87@gmail.com) | Phone: 808-265-7901



**ʻĪLIOʻULAOKALANI**  
COALITION



March 30, 2013

House Committee on Transportation  
House Committee on Water and Land  
House Committee on Finance

RE: OPPOSITION TO SB 1171

Makawalu is a community organization comprised mostly of Kānaka Maoli, aka Native Hawaiians, and whose membership exceeds one thousand members. The mission of Makawalu is to preserve, protect, and perpetuate Kanaka Maoli cultures and ‘Āina, the natural environment.

Makawalu opposes SB 1171 as it is highly detrimental to the lives of Kānaka Maoli by way of negatively impacting iwi kūpuna (ancestral bones), wahi kapu (sacred places), wahi pana (legendary places), and numerous other cultural resources.

SB 1171 is an iniquitous attempt to circumvent regulations imposed to ensure the protection of Hawai‘i’s cultural resources.

E kū‘ē loa i ka hewa,

---

Z. ‘Aki  
CEO and Makakahi  
z.makawalu@gmail.com



1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 1, 2013

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HONORABLE AARON JOHANSON, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **SUPPORT OF S.B. 1171, SD1, HD1, RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.** Authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law. Removes language that provided the Governor with the option to request the Hawaii Advisory Council on Historic Preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii Historic Places Review Board. Effective January 1, 2050. (SB1171 HD1)

HEARING

DATE: Monday, April 1, 2013  
TIME: 2:00 p.m.  
PLACE: Room 308

Dear Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in **support** of S.B. 1171, SD1, HD1, Relating to the Review of Historic Preservation Projects. This bill ensures compliance with existing laws, while proposing to allow the Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD) the ability to be consistent with federal law and authorize the phased review of projects under its jurisdiction. The bill also deletes language that provided the Governor with the option to request the Hawaii Advisory Council on Historic Preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii Historic Places Review Board.

This bill would make Hawaii's law consistent with federal law to allow such phased review of archeological inventory studies (AIS). The inability to phase review of AIS will negatively affect the progress of some projects and could act as a plague to the economic recovery of our State.

This measure leaves all the proper oversight in place by DLNR and SHPD. An AIS conducted in phases will not, in any way, jeopardize the protections of the State's important historical sites. Without allowing an AIS to be phased, worthwhile projects may be stymied as expressed by others who have concerns with this measure.

For these reasons, GCA respectfully requests that this measure be passed by this Committee. Thank you for this opportunity to present our views on this measure.



TO: Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice-Chair &  
Representative Aaron Ling Johanson, Vice-Chair  
House Committee on Finance

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

HEARING: April 1, 2013, 2:00 PM, Conference Room 308, Agenda #1

SUBJECT: Testimony in OPPOSITION to SB 1171, SD1, HD1, Relating to the Review of  
Historic Preservation Projects

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. On behalf of SHA, I am providing testimony in opposition to SB 1171, SD1, HD1, which amends Chapters 6E-8 and 6E-42, Hawaii Revised Statutes (HRS) to clarify that the Department of Land and Natural Resources (Department) can issue its written concurrence to proceed (i.e., under §6E-8, HRS) or its review and comments (i.e., under §6E-42, HRS) based on a phased review of a project. The amendment is a response to the Hawaii Supreme Court ruling in *Kalekini v. Yoshioka* in which the court said the State Historic Preservation Division (SHPD), acting on behalf of the Department, had violated its own rules when it allowed the Honolulu Rapid Transit Corridor project to commence prior to completion of a full archaeological inventory survey.

We appreciate the efforts of prior Senate and House committees to respond to concerns raised over this measure by making a number of substantive and technical amendments that have resulted in the current draft. Unfortunately, we believe that the bill is still seriously flawed and, if passed, will increase confusion and uncertainty in the historic preservation review process that in turn will threaten significant and irreplaceable historic resources in Hawai'i. For the following reasons, we respectfully urge you to hold this bill and not pass it any further.

(1) These amendments to statute are unnecessary. We note that there is nothing currently in Chapter 6E, HRS, that prevents the Department from giving its written concurrence or its review and comment based on a phased project. The constraints on when concurrence or review and comment can be issued by the SHPD, on behalf of the Department, are in Hawaii Administrative Rules (HAR) Chapters 13-275 and 13-284 which implement Sections 6E-8 and 6E-42, HRS. This is where the issues should be clarified as suggested by the Court.

(2) The proponents of SB 1171, SD1, HD1 claim that these changes to Chapter 6E are needed in order to bring state law into conformity with Federal law. If the bill is passed, this will not happen because the applicable Federal law (Section 106 of the National Historic Preservation Act of 1966, As Amended) says nothing about "phased reviews." The language used in the subject bill actually comes from the regulations that implement Section 106 of the National Historic Preservation Act. Therefore, SB 1171, SD1, HD1, if passed, would not create any consistency at all but only add confusion and uncertainty to the historic preservation review process in State law.

(3) Our major concern is that the issue of a phased project review should be addressed in administrative rules and not in statute. It is particularly critical that this issue be addressed within the context of the administrative rules because it is the rules that establish the project review process and provide the context for when certain kinds of information are needed and when decisions are appropriately made. If this process is to be phased, it is critical to define, within the context of existing process, when it is appropriate and on what basis a phased review should be

considered. To amend the law without a full consideration of this overarching context is risky and unnecessary.

(4) We would like to note that SHPD has reviewed phased Federal projects for a number of years, such as those carried out by the State Department of Transportation when highways are built or by the Counties when they make roadway improvements like upgrading traffic signals. These reviews have been conducted largely without creating significant problems either for the agency doing the work or for the historic resources to be protected. Note that these reviews were conducted in accordance with federal regulations, which include mechanisms to address the problems that can arise when projects are phased.

(5) Although attempts have been made to address concerns that we and other parties have previously raised, SB 1171, SD1, HD1 is still very vague and unclear.

- We do not understand how, when or by whom a programmatic agreement will be initiated and implemented. The language amending §6E-2, HRS seems to imply that programmatic agreements only apply when the department is complying with “one or more federal laws”, but the amends proposed to §6E-8 and 42, HRS, apply to state-level reviews. Again we note that provisions for programmatic agreements are not in federal law, but in the **regulations** implementing federal law. If the department considers including programmatic agreements in the state-level historic preservation review process, then this provision should be in its administrative rules.
- The subject bill does not indicate when phased project reviews may begin, particularly whether implementing regulations need to be in place before SHPD begins such reviews.
- The bill still appears to give unilateral authority to SHPD to decide when a phased review and programmatic agreement are appropriate and at which step in the review process these decisions will be made.

In view of the foregoing facts, therefore, the proper way for the State to address the perceived issue of consistency is to amend the relevant sections of the Hawaii Administrative Rules (HAR), which implement §§6E-8, and -42; these HAR are found at §§13-275 and -284, respectively. The procedural safeguards contained in the established regulations are critical to the protection of historic properties and cultural resources.

We do concur with the proposed amendment §6E-8(a) that would delete reference to the “Hawaii advisory council of historic preservation.” This is a largely mythic entity that has never met or has been asked to meet. In fact, to our knowledge, it does not exist except for the reference to it in the subject statute. It would probably be a good idea to remove mention of it altogether.

Consequently, in view of the above points, we respectfully urge that the subject bill not be passed but be held in your committee. Thank you for considering our comments. Should you have any questions, please feel free to contact me at the above email address.



**Department of Anthropology**

4034 Smith Laboratory  
174 West 18th Avenue  
Columbus, OH 43210-1106

Phone (614) 292-4149  
Fax (614) 292-4155  
<http://anthropology.ohio-state.edu>

March 30<sup>th</sup>, 2013

Testimony in Opposition to Senate Bill 1171

Dear Committee Members,

I wish to submit testimony in opposition to senate bill 1171. I am an archaeologist who specializes in Hawaiian and Pacific Island archaeology and have been an active member of the Society for Hawaiian Archaeology and the Society for American Archaeology for over 20 years. I am horrified by what has been proposed by SB 1171; it does not uphold the clear intentions of culture resource management legislation that have been in place in Hawaii since the 1980s.

At its core, this bill will allow for the destruction and removal of historic and prehistoric remains before the completion of archaeological survey within the project area. One need only think of the analogy of going to the doctor and having a limb immediately amputated BEFORE anyone takes your pulse, your blood pressure, or even checks your weight! The goal of archaeological survey is to determine the extent, condition, and age of all historic properties within a proposed undertaking; these regulations are meant to allow for an accurate assessment to be made. 'Phasing', as it is proposed by SB1171, will remove our ability to make such an assessment. In its place will be destruction, and the public will lose the ONE AND ONLY CHANCE to preserve properties with historical and cultural significance.

There is a second repercussion to this bill, and that is the cost of project redesign, delays, salvage, and remediation in the event of the inadvertent "discovery" of historic and cultural properties that are missed during this new proposed 'phased' survey. If you require an example, please look up the case of the proposed graving dock site in the town of Port Angeles, in the state of Washington. The construction of this graving dock was abandoned by the State after the discovery (by construction workers) of an extensive cemetery. The State also paid for the salvage of the remains and then ultimately, for the remediation of the site.

I implore you to oppose this bill. It is poor legislation, and will have damaging repercussions to Hawai'i's citizens, history, and culture.

Kind regards and aloha,

A handwritten signature in black ink that reads "Julie Field". The signature is written in a cursive style with a large, prominent "J" and "F".

Dr. Julie Field  
Department of Anthropology  
The Ohio State University  
174 W. 18<sup>th</sup> Ave.  
Columbus, OH 43210  
(614) 292 6233 (phone)  
(614) 292 4155 (fax)  
field.59@osu.edu (E-mail)

## **FINTestimony**

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**From:** Lucienne de Naie [laluz@maui.net]  
**Sent:** Sunday, March 31, 2013 8:38 AM  
**To:** FINTestimony  
**Subject:** SB 1171 Oppose

Aloha Committee members

Please do not pass this misguided bill. Segmenting cultural review only results in one thing: cultural resources being discovered when it's late in the planning or construction process and too expensive to alter design. This means cultural resources are destroyed.

We have seen this play out again and again in Maui. We have often been told by our law makers, "its too late to do anything to preserve these burials, or cultural properties on projects that were approved long ago, but we have better laws now, so this won't happen again." If SB1171 passes, this destruction will keep happening.

Please respect our heritage

Mahalo

Lucienne de Naie  
PO B0x 610 Haiku, HI 96708

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 2:46 AM  
**To:** FINTestimony  
**Cc:** Aksavage@email.wm.edu  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amanda Lee Savage	Individual	Oppose	No

#### Comments:

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## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 7:02 AM  
**To:** FINTestimony  
**Cc:** Athurston@irmt.org  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anne Thurston	Individual	Oppose	No

#### Comments:

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**To:** FINTestimony  
**Cc:** bobdi@hawaii.rr.com  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bob Pure	Individual	Support	No

#### Comments:

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**Sent:** Saturday, March 30, 2013 5:41 AM  
**To:** FINTestimony  
**Cc:** mauibrad@hotmail.com  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brad Parsons	Individual	Oppose	No

#### Comments:

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## FINTestimony

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**Sent:** Saturday, March 30, 2013 1:30 PM  
**To:** FINTestimony  
**Cc:** daylinrose.gibson@gmail.com  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daylin Gibson	Individual	Oppose	No

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## FINTestimony

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**Sent:** Saturday, March 30, 2013 5:18 AM  
**To:** FINTestimony  
**Cc:** djp@kona.net  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Doug Phillips	Individual	Oppose	No

#### Comments:

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**Sent:** Sunday, March 31, 2013 9:18 AM  
**To:** FINTestimony  
**Cc:** palmtree7@earthlink.net  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
janice palma-glenie	Individual	Oppose	No

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**Sent:** Friday, March 29, 2013 10:44 PM  
**To:** FINTestimony  
**Cc:** oopu\_5@yahoo.com  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leimomi Wheeler	Individual	Oppose	No

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**To:** FINTestimony  
**Cc:** mzerbe808@gmail.com  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Margaret Zerbe	Individual	Oppose	No

#### Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 31, 2013 10:10 AM  
**To:** FINTestimony  
**Cc:** rkayelny@gmail.com  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robin Kaye	Individual	Oppose	No

#### Comments:

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## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 1:36 PM  
**To:** FINTestimony  
**Cc:** rstewart99489@hawaii.rr.com  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Roxane Stewart	Individual	Oppose	No

#### Comments:

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## **FINTestimony**

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**From:** icec002@hawaii.rr.com  
**Sent:** Sunday, March 31, 2013 11:10 AM  
**To:** FINTestimony  
**Subject:** SB1171

Let's not show any respect for this lame effort to undermine proper review for a project in full - the heart of a decent consideration of a project's impacts. Knock it off!

--

Charley Ice

The poorly educated believe that sincerity and certitude are substitutes for getting it right.

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 9:39 PM  
**To:** FINTestimony  
**Cc:** shannonkona@gmail.com  
**Subject:** \*Submitted testimony for SB1171 on Apr 1, 2013 14:00PM\*

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Oppose	No

#### Comments:

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## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 31, 2013 10:58 AM  
**To:** FINTestimony  
**Cc:** anthuriumz@hotmail.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wynnie Hee	Individual	Oppose	No

Comments: Please do NOT pass this bill. Do NOT make a law just to speed the progress of a railroad that is sure to run into 'iwi in the middle of the rail route. Without knowing where 'iwi are buried and cultural sites are located prior to beginning construction, the risk of destroying Hawaii's cultural history is great. Subsequent discovery (during construction) DELAYS projects and increases costs by requiring CHANGE ORDERS!!! The purpose of our historic review law is to "ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations . . ." The proper way for the state to allow for big projects to move forward is to amend our administrative rules, similar to how the federal government handles historic properties, rather than creating a very open-ended exception in the law. Please do NOT pass this bill.

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RE: SB 1171

Relating to the Review of Historic Preservation Projects

Position: **Opposed**

From: Sydney Iaukea, Ph.D.

Dear Committee,

This is testimony in **opposition** to SB 1171. A complete inventory of cultural artifacts for land slated for development should continue to be required. This bill hampers the complete analysis of and planning for cultural artifacts prior to development.



## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 31, 2013 12:12 PM  
**To:** FINTestimony  
**Cc:** skaye@runbox.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sally Kaye	Individual	Oppose	No

Comments: This is a really, really bad idea.

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Sabrina Kepaa  
91-2052 Luahoana Street  
Ewa Beach, HI 96706  
[skepaa@ymail.com](mailto:skepaa@ymail.com)

DATE: March 31, 2013

TO: **Senate Committees on TOURISM AND HAWAIIAN AFFAIRS and  
TECHNOLOGY AND THE ARTS**

FROM: Sabrina Kepaa

RE: SUPPORT of SB 1171 Historic Preservation Project Reviews  
Honorable Chairs and members of the Senate Committees on Tourism and Hawaiian  
Affairs and Technology and The Arts, I am testifying in **strong support** of SB 1171.

My name is Sabrina Kepaa, and I am currently in the Masters of Social Work program at Hawaii Pacific University with a desire to one day serve and protect the children/youth of Hawaii. I am also a strong supporter of Kamakako'i, for they have brought awareness of the crucial need to be education on what is taking place in our communities and the importance of making your voice heard on issues that may be affecting the people in our community.

The Native Hawaiians practice the mestizo perspective; cultural belief toward wholeness, harmony, and balance in one's relationship with self, family, community, and the physical and social environment. The two main components in the Hawaiian culture are the importance of ohana (family) and passing of traditions down to the next generation. The Native Hawaiians face many social problems including the stress of their ancestral remains being disturbed. As there continues to be economic growth, numerous unmarked burial sites are being excavated, disturbed and built over by businesses that are expanding in Hawaii. Native Hawaiians believe that caring for their ancestral remains ensure spiritual and family life as well as the preservation of their culture. The Native Hawaiian tradition belief is that these bones posses "mana", which is a life force that includes the traits of their living family member. Despite this custom, the Native Hawaiians beliefs and values continued to be ignored. The mishandling of the ancestral remains has caused suffering to the Native Hawaiian people. With support for SB 1171, Hawaii can continue to be a state that protects existing burials and historical sites.

As our lawmakers, I ask that you please support SB 1171, so that Hawaii can continue to move towards providing accurate and adequate services to this growing issue.

Thank you for the opportunity to testify.

Sincerely,  
/s/  
Sabrina Kepaa

## FINTestimony

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, March 31, 2013 10:45 AM  
**To:** FINTestimony  
**Cc:** Cleghorn@pacificlegacy.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul Cleghorn	Individual	Oppose	No

Comments: Aloha, My name is Paul Cleghorn and I was born and raised in Hawaii. I have been a professional archaeologist in Hawai'i for almost 40 years and I strongly oppose passage of SB 1171. Hawaii' cultural and historical resources are unique and valuable to the entire State of Hawaii. These resources are fragile and must be considered non-renewable resources. Once they are destroyed, they are destroyed forever and can never be replaced. SB 1171 does nothing to proceed these resources, and may infect make it easier for them to be impacted. It is in everyone's best interest to fully evaluate cultural and historical resources before any allowing any impact. SB 1171 does nothing to further this goal. SB1171 should not be passed without a more robust vetting of all ramifications and strong debate on the pros and cons of such legislation. I urge all member is the House and especially those member whee on the Finance Committee to vote agains this bill. If you have any questions or if I can be of any assistance on matters relating to Historic Preservation, please do not hesitate to contact me. Malama Pono Paul L. Cleghorn, Ph.D. Pacific Legacy, Inc. 30 Aulike Street, Suite 30 Kailua, HI. 96734 Ph. 808-263-4800

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Aloha Mai Kakou,

I am writing in opposition of SB 1171 which authorizes the phased review of certain projects by the Department of Land and Natural Resources. Native Hawaiian cultural sites and Ancestral burials are constantly being negatively impacted due to development. This bill will further compromises Hawai'i's historic preservation law, increasing the number of burials impacted and archaeological sites damaged or destroyed. Allowing phased archaeology would diminish the effectiveness of state historic preservation laws and needlessly put treasured Wahi pana (cultural sites) and Iwi kupuna (ancestral burials) in jeopardy of being irreparably harmed. The purpose for completing assessments prior to permitting and construction is to assess the potential impacts of a project in its entirety. If a phased approach is allowed, the cumulative impacts of a project cannot be considered during project development and design, which will restrict the potential mitigation measures for Wahi pana and Iwi kupuna during projects. This will lead to long project delays and increased costs due to extensive redesign and litigation

Me ka ha'aha'a,

Kamoa Quitevis

Aloha Mai Kakou,

I am writing in opposition of SB 1171 which authorizes the phased review of certain projects by the Department of Land and Natural Resources. Native Hawaiian cultural sites and Ancestral burials are constantly being negatively impacted due to development. This bill will further compromises Hawai'i's historic preservation law, increasing the number of burials impacted and archaeological sites damaged or destroyed. Allowing phased archaeology would diminish the effectiveness of state historic preservation laws and needlessly put treasured Wahi pana (cultural sites) and Iwi kupuna (ancestral burials) in jeopardy of being irreparably harmed. The purpose for completing assessments prior to permitting and construction is to assess the potential impacts of a project in its entirety. If a phased approach is allowed, the cumulative impacts of a project cannot be considered during project development and design, which will restrict the potential mitigation measures for Wahi pana and Iwi kupuna during projects. This will lead to long project delays and increased costs due to extensive redesign and litigation

Me ka ha'aha'a,

A.Leimaile Quitevis



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [FINTestimony](#)  
**Cc:** [tmeringolo@mac.com](mailto:tmeringolo@mac.com)  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM  
**Date:** Friday, March 29, 2013 7:47:07 PM

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Thomas Meringolo	Individual	Oppose	No

Comments: Please, please, please. In your hearts you know this is wrong. Stop the desecration, disrespect and disregard of 'Ua mau ke ea o ka 'āina i ka pono.

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**To:** [FINTestimony](#)  
**Cc:** [teresamlee.51@gmail.com](mailto:teresamlee.51@gmail.com)  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM  
**Date:** Friday, March 29, 2013 4:40:18 PM

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teresa L. Nakama	Individual	Oppose	No

Comments: SB 1171 reneges State commitment to historic sites. I oppose this Bill....Teresa

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [FINTestimony](#)  
**Cc:** [makamae540@yahoo.com](mailto:makamae540@yahoo.com)  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM  
**Date:** Friday, March 29, 2013 10:28:34 PM

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sheila Valdez	Individual	Oppose	Yes

Comments: I oppose this bill. You have no right to destroy the Hawaiian culture.

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [FINTestimony](#)  
**Cc:** [rkmarble@msn.com](mailto:rkmarble@msn.com)  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM  
**Date:** Friday, March 29, 2013 3:59:30 PM

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Roger Marble	Individual	Oppose	No

Comments: A bad idea behind this bill. Too much developer preference, (again) wiping out and rolling over Hawaiian sites and burials. A culture, exposed like this in it's most fragile facets, should not be sacrificed in a bum's rush for the interests of a profit seeking contractor--looking only for expediency and a fat bottom line.

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**To:** [FINTestimony](#)  
**Cc:** [peterm@hawaii.edu](mailto:peterm@hawaii.edu)  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM  
**Date:** Friday, March 29, 2013 7:35:18 PM

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Peter Kalawaia Moore, Ph.D.	Individual	Oppose	Yes

Comments: Passing this bill will result in turmoil and people at worksites protesting even the possibility of grave sites and sacred sites. This bill will create enormous delays and public relations nightmares for businesses and the government of this State. Have the foresight to recognize this now and kill this bill. The problem we have had over the years is that businesses want to bypass protections of both cultural and environmental. Send the word that people must plan properly instead of trying to bypass things as part of their cost benefit analysis. Remember the Superferry, Brescia in Kaua'i, Hokulia? Send the right signal that development does have to follow the protective considerations we have in place.

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**To:** [FINTestimony](#)  
**Cc:** [Drtnoe@gmail.com](mailto:Drtnoe@gmail.com)  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM  
**Date:** Saturday, March 30, 2013 1:47:39 AM

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**SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
T. Noelani Perreira	Individual	Oppose	No

Comments: I am in STRONG OPPOSITION to this bill.

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Martha Noyes	Individual	Oppose	No

Comments: Please do not pass this bill. It promises to threaten, even harm, our critical historic and archaeological resources. We cannot afford this. Again, please do not pass this bill.

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**Cc:** [mariebro@hawaii.edu](mailto:mariebro@hawaii.edu)  
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**Date:** Friday, March 29, 2013 2:23:29 PM

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marie Alohalani Brown	Individual	Oppose	No

Comments: I would like to quote Kamakako'i's reasons why this bill should not pass: "SB1171 would threaten Native Hawaiian burials and historic sites and create uncertainty for land developers by allowing developers to receive permits prior to completing an archaeological inventory survey (AIS) of their entire project area. Without a completed AIS, developers could begin construction on development projects without knowing about—and adequately planning for—preservation of historic sites that might exist in their project areas. When historic sites or burials are found after construction has already begun, it can delay the project, cause costly changes to the project design, rush the preservation planning, and limit the remaining preservation options." Thank you.

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March 29, 2013

Laura H. E. Kaakua  
laurakaakua@gmail.com

House Committee on Finance  
Monday, April 1, 2013 @ 2pm  
House Conference Room 308

RE: Testimony in OPPOSITION to SB1171 SD1 HD1

Aloha Chair Luke, Vice-Chair Nishimoto, and Members of the Committee,

Please protect our Hawaiian cultural sites and burials by opposing SB1171 SD1 HD1. Planning decisions need to be made by informed decision makers, and if SB1171 SD1 HD1 is passed, decisions allowing construction projects, and sometimes the commencement of construction, will occur before historic sites and burials that will be impacted by that construction are discovered. SB1171 SD1 HD1 simply creates bad policy. Over 90% of the historic sites recorded in Archaeological Inventory Surveys are Native Hawaiian burials, or were created by Native Hawaiian kupuna (ancestors). These sites link Native Hawaiians to their ancestors and provide insight on how their ancestors functioned and viewed their world. These sites are important to all who live in Hawai'i, as they are the present tie to Hawai'i's past. A comprehensive AIS should always be required as it is now, so that decision makers are adequately informed, and so that all options will be available to appropriately treat such historic sites and burials. Please oppose SB1171 SD1 HD1.

Mahalo,

Laura H. E. Kaakua

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lana Ululani Robbins	Individual	Oppose	No

Comments: I oppose SB 1171 for several reasons and hope that you vote NO on it too: 1. SB1171 SD1 HD1 describes the role of the state and state agencies but the people are not a part of the process. In an open government, people should be a part of the process. 2. It looks like the words "Programmatic agreement" means a document that sets forth the terms of a formal, legally binding agreement" purposefully puts the people at a disadvantage in favor of developers and deprives the people of due process of law. 3. Concurrency is much better to control urban sprawl. Non-currency should NOT be an option. Instead of pushing for more development, a better solution would be to create a Growth Management Act that is mindful of the people and the environment instead of favoring developers who will be getting special treatment with SB1171 because they paid to play. Mahalo, Lana

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To Whom It May Concern:

Please do not pass this Bill 1171. The bones of the dead are real and pertinent to OUR "HUMANITY", meaning our spirit of compassion. If we can care for things that have died, especially if they died a long time ago. Then we more of an ability to care for things that are alive with us in the present. This action nourishes our emotion of sympathy and compassion, which is imperative to us as a species if we want to survive.

Martin Luther King said:

"All labor that uplifts humanity has dignity and importance and should be undertaken with painstaking excellence."

"Change does not roll in on the wheels of inevitability, but comes through continuous struggle. And so we must straighten our backs and work for our freedom.

You are our Leaders; please help us find a better way.

Kyle K. Nakanelua

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gale K. Perez	Individual	Comments Only	No

Comments: The protection as it is many times is not enough for what we need to protect our kuleana so an AIS should be completed at the outset of the project as is currently required.

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Erin Kahunawaikaala Wright	Individual	Oppose	No

Comments: I strongly oppose this bill as it undermines our ability to care for our wahi pana and iwi kupuna.

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**SB1171**

Submitted on: 3/29/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dr. Christine T. Lipat, DC	Individual	Oppose	No

Comments: SB1171 would threaten Native Hawaiian burials and historic sites and create uncertainty for land developers by allowing developers to receive permits prior to completing an archaeological inventory survey (AIS) of their entire project area. Without a completed AIS, developers could begin construction on development projects without knowing about—and adequately planning for—preservation of historic sites that might exist in their project areas. When historic sites or burials are found after construction has already begun, it can delay the project, cause costly changes to the project design, rush the preservation planning, and limit the remaining preservation options.

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House Committee on Transportation  
House Committee on Water & Land  
House Committee on Finance

RE: OPPOSITION OF SENATE BILL 1171

Aloha mai kākou,

I oppose of Senate Bill (SB) 1171 that authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division. By allowing developers the authorization of a phase reviews of project areas put Kānaka Maoli cultural resources like iwi kūpuna, wahi pana, and wahi kapu in danger of being destroyed and desecrated. The only way to protect these Kānaka Maoli cultural resources is by completing a full Archaeological Inventory Survey (AIS) of proposed project areas. SB 1171 is designed like the PLDC to help developers push their construction projects without having to submit themselves to regulations. Regulations like, AIS or environmental impact assessments (EIA).

SB 1171 will also create uncertainty for land developers by allowing developers to receive permits prior to completing an AIS of their entire project area. AIS are important because they protect these Kānaka Maoli cultural resources from being destroyed and desecrated by construction. When historic sites or iwi kūpuna burials are found after construction has already begun, it can delay the project, cause costly changes to the project design, rush the preservation planning, and limit the remaining preservation options.

Currently, developers are required at the start of a project to identify iwi kūpuna burials and historic sites in an AIS and to detail their plans to preserve these sites or minimize the development's negative impacts on them. A phased AIS process will allow historic sites and burials burials to remain undiscovered until after planning decisions are made or construction has already begun, leaving fewer and more expensive options remaining to appropriately treat such historic sites and iwi kūpuna burials. An excellent example of this is the Honolulu Rail Transit Project. The Honolulu Rail Transit Project tried completing the AIS process in phases, and we all already know the damage that cost the state.

Over 90% of the historic sites recorded in AISs are either created by iwi kūpuna burials, which hold tremendous significance for Kānaka Maoli. To ensure adequate protection for these sites, an AIS should be completed at the outset of the project as is currently required.

Mahalo,

Māhealani Traub

Dear Committee Members,

I am not able to testify in person, but wish to have noted my opposition to SB 1171. I am testifying as an individual and do not represent any organization.

I am opposed to SB 1171. This bill would permit a phased Archaeological Inventory Survey (AIS) process –this potentially a very dangerous process as it would allow historic sites and burials to remain undiscovered until after planning decisions are made or construction has already begun, leaving fewer and more expensive options remaining to appropriately treat such historic sites and burials. Over 90% of the historic sites recorded in AISs were either created by kūpuna (ancestors) of Native Hawaiians or are actual Native Hawaiian burials, which hold tremendous significance for Native Hawaiians. To ensure adequate protection for these sites, an AIS should be completed at the outset of the project as is currently required. If this bill goes through, our ability to care for and protect our iwi and wahi kupuna will be dramatically compromised. Thank you for your careful consideration of this critical issue!

**Dr. LS Ka'opua (PhD, DCSW, LSW)**

Associate Professor, Chair of the MSW Program & Chair of the MSW Health Concentration  
University of Hawai'i, Myron B. Thompson School of Social Work  
1800 East-West Rd, Henke Hall #142/Honolulu, HI 96822  
FAX: 808 956-5964

**For most recent publication, see:**

<http://www.tandfonline.com/eprint/GEGhSYxFMUpKe8lifuZD/full>

**We build on foundations we did not lay and warm ourselves at fires we did not light. We sit in the shade of trees we did not plant, drink from wells we did not dig, and benefit from persons we did not know. We are ever bound in community.** (Deuteronomy 6 as paraphrased/used by Newark Mayor Cory Booker and others to acknowledge pioneers and freedom fighters in civil rights, health equity, and social justice)

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**SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sara steiner	Individual	Oppose	No

Comments: Dear Legislators, I strongly oppose this SB1171. This is another bill making it easier to ruin our archeological burial and cultural sites by bypassing the archeological inventory survey. How many sites have already been ruined by the military and other projects without oversight. Please stop this now, you are responsible to protect our aina, not desecrate it. Sincerely, Sara Steiner P.O. Box 1965 Pahoehoe, HI 96778

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## **SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Scott Kikiloi	Individual	Oppose	Yes

Comments: Chair Sylvia Luke, Vice Chair Scott Nishimoto, and Members of the Finance Committee, I strongly oppose the passage of SB 1171, which authorizes the phased review of projects by the Department of Land and Natural Resources State Historic Preservation Division. I am a concerned member of the public, a Native Hawaiian, and a practicing professional in the field of Archaeology in Hawai'i. Archaeological Inventory Surveys are an important component of the historic preservation review process that ensures responsible decisions are made in the development planning process. By allowing the phased review to occur simultaneously as the construction undermines the intent of these laws and any possibility that important sites, materials, or burials will be protected. Over the past decade we only need to look at the front page of the newspaper to realize that this "late" approach that does not follow the current prescribed process and results in numerous unforeseen findings, diminished public opinion and support of the projects, and ultimately law suits that tie it all up in litigation. The State of Hawaii Department of Transportation is inciting fear in the development community and to the island Counties, misleading them to make them believe that if this bill is not passed then all major construction works will not move forward. This is entirely untrue and founded on speculation, as I have yet to see the current historic preservation review process stop any major development projects in Hawai'i. If that was the case, then how did any of the highway projects get completed up until this point? In fact, the current rules are set up manner that is fair to both sides and ensures that responsible development will move forward in a reliable manner, while archaeological and cultural sites and resources will be accounted for and those of important value protected. To dismiss this process for one that is unclear and confusing is a mistake that will result in greater contention- as our historic sites and heritage is now at risk, and it also places greater uncertainty on whether these development projects will be completed because of the public and Native Hawaiian back lash against it. I urge you as representatives of the people of Hawai'i to hold this bill and to tell development interests and the State of Hawaii to reach out and work with historic preservation professionals and community members. The Historic Preservation community members not been consulted at all in the development of this bill and deserve a seat at the table to help plan any type of major changes as those attempting to be



implemented with this bill. There are a number of examples of responsible development in Hawai'i that can serve as models as to teach us how "early" archaeological work can lead to enhanced reliability and certainty in the development projects, and greater public support. Some examples that come to mind are the Kamehameha Schools Kaka'ako Redevelopment Project, their Punalu'u beach houses project some years ago, Kaneohe Ranches development in Kailua. My colleagues have also pointed out that the work done on the Hawaii Island Kawaihae Bypass road was done in this manner and had very successful outcomes. Please hold Senate Bill 1171. Mahalo, Dr. Kekuwa Kikilo Manoa Resident Native Hawaiian Scholar and Cultural Practitioner President of the Society for Hawaiian Archaeology

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## House Committee on Finance

### Testimony on SB1711 SD1 HB1 Relating to the Review of Historic Preservation Projects

Mahalo nui loa for the opportunity to submit testimony in **strong opposition to SB1171 SD1 HB1**.

I offer this testimony based on: 1) 22 years of volunteering as an archaeologist assisting Hawaiian communities encountering development projects, 2) 12 years of serving as a member of the O'ahu Island Burial Council, and 3) various instances of providing expert testimony in historic preservation cases (e.g., Hōkūlī'a, Ward Villages, the Honolulu Rapid Transit Project).

**To ensure informed planning, Chapter 343 does not allow for an EIS to be done in phases. For the same reason, Chapter 6E should not be amended by SB1171 to allow for an archaeological inventory survey (AIS) to be done in phases.**

The most important historic-preservation related step in development projects is an AIS. It informs decision making about historic properties in a project area, ideally allowing a project to incorporate them into the development to enhance the project. If developers do not see value in the historic properties, there are many ways they can mitigate impacts of their projects on such properties and still proceed with their developments.

However, **when an AIS is not conducted early in the process**—before architectural designs are drawn and construction begins—historic sites are encountered in the late stages of planning, often resulting in **costly redesign, debilitating delays, and litigious conflicts** among stakeholders, as with these cases:

- 1) H-3 traversing Kāne'ōhe and Hālawā
- 2) Hōkūlī'a in South Kona
- 3) Walmart on Ke'eaumoku Street
- 4) Ward Villages in Kaka'ako
- 5) Kawaiaha'ō Church Multi-Purpose Center in Kaka'ako

**SB1171 would legalize the harmful process that created such problematic outcomes for these projects.** By applying a phased AIS approach, SB1171 allows for permitting and construction to begin prior to an AIS being completed for an entire project area, resulting in **poor, irresponsible planning**.

Significant sites encountered in a **phased AIS would create havoc for projects**, as occurred with **Ward Villages** where, based on a series of errors, General Growth Properties (GGP) was given its permits to conduct construction absent an AIS. GGP developed its project designs, began pile driving, and even courted tenants before it found a concentration of burials during a **late-stage AIS** in the area where it planned to lease a space to Whole Foods, following **the same process that SB1171 would permit**. Later study determined that over 30 burials were present in that area, ultimately nixing the plan for the Whole Foods store. If GGP had been required to conduct an AIS early in its planning process, as Chapter 6E requires, GGP would have been spared the problematic outcome it experienced.

Kēhaunani Abad, PhD

91-1168 Kūhaimoana Pl., 'Ewa Beach, HI • (808) 685-1740 • [keabad@gmail.com](mailto:keabad@gmail.com)

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A further problem with SB1171 is that its key provision is poorly and vaguely framed, allowing for a phased AIS approach when:

- 1) The project “consists of corridors”
- 2) The project involves “large land areas”
- 3) “access to the property is restricted”
- 4) “circumstances dictate that construction be done in phases

Such lack of clarity would create problems for later rule-making and implementation and permit a wide-array of development projects to conduct phased AISs.

I urge you to withhold SB1171, maintain the integrity of the Chapter 6E planning process, and thereby honor the commitments to historic properties that the framers of Chapter 6E established in 1976.\*

Respectfully,



Kēhaunani Abad, PhD

\* “The legislature declares 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...The legislature further declares that it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property...in a spirit of stewardship and trusteeship for future generations...”

(Hawai'i Revised Statues, Chapter 6E-1, L 1976)

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**SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carolyn Knoll	Individual	Oppose	No

Comments: Without knowing where 'iwi are buried and cultural sites are located prior to beginning construction, then the risk of destroying Hawaii's cultural history is great. Subsequent discovery (during construction) delays projects and increases costs. The purpose of our historic review law is to "ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations . . . ." The proper way for the state to allow for big projects to move forward is to amend our administrative rules, similar to how the federal government handles historic properties, rather than creating a very open-ended exception in the law.

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**SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Noa Lincoln	Individual	Oppose	No

Comments: I strongly oppose this bill (SB 1171). This bill completely undermines the purpose of Hawaii's legal framework protecting our history, culture, and personal connections to place that have accumulated over hundreds of years. This bill contradicts the development process, for how can a plan be approved in the face of unknown findings in the Archeological Inventory Survey? This bill is written purely to provide additional benefits and loopholes for developers to ignore their duty to protect the cultural sites and in many cases the remains of our ancestors. It is clear that the state has a responsibility in "preserving, restoring, and maintaining historic and cultural property" for future generations (see Chapter 6E-1 of the Hawai'i Revised Statutes), and that this bill is a continued step in minimizing that responsibility and further allowing for the destruction of our history. I write this testimony as an individual citizen of Hawaii, a native Hawaiian with ancestral ties to the lands of Hawaii, and as a PhD archeologist. I strongly oppose Bill SB1171.

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**SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Al Lagunero	Individual	Oppose	No

Comments: Al Lagunero Kula, Maui Master Maoli Artist President, Olowalu Cultural Reserve President, Keomailani Hanapi Foundation IN OPPOSITION TO SB1171

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**SB1171**

Submitted on: 3/31/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
<a href="mailto:shawnjamesleavey@gmail.com">shawnjamesleavey@gmail.com</a>	Individual	Oppose	No

Comments: mahalo!

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*To: State of Hawai'i, House of Representatives Committee on Finance (FIN)*

*Attention: Chairperson Sylvia Luke & Members of the FIN Committee*

*Re: **Opposition to SB No. 1171 SD1 HD1** - Relating to the Review of Historic Preservation Projects*

*Hearing: Monday, April 1, 2013 at 2 p.m. in CR308*

*Aloha, my name is Summer Kaimalia Mullins. I am an educator and Kanaka Maoli cultural practitioner who is concerned about the continued protection of our cultural resources – our wahi pana & iwi kupuna, in order to safeguard our ties to this land for generations to come.*

*I am strongly opposed to SB1171 SD1 HD1 as it would further hinder our ability as native people to protect our iwi kupuna and our wahi pana, giving us few options for recourse & protection if developers are given permits prior to completing archaeological & cultural assessments of sites that have been targeted for development.*

*Allowing for phased archaeological surveying undermines historic preservation laws already in place - laws which clearly outline the State's kuleana to protect cultural resources. Giving developers the go ahead on large scale projects & allowing phased surveying not only puts our sacred places and our ancestral remains at risk, but will also create an overall sense of devaluation for places of cultural significance which will be detrimental to the well-being of all Kanaka Maoli, past, present & future.*

*SB1171 is detrimental to our well-being as Kanaka Maoli because it clearly favors development over the responsibility to protect that which is the center of our identity - our connection to this place. As an educator of native Hawaiians & a cultural practitioner, this concerns me – for what will future generations think of those who cast a blind eye to the continued destruction of their history? How will this impact our future generations' sense of identity, knowing that their physical ties to the land were allowed to be desecrated and destroyed?*

*We cannot sit idly by and watch our cultural heritage disappear. We cannot mitigate that which has been destroyed or desecrated. We have a kuleana is to protect that which came before: this kuleana has been made clear through existing historic preservation law.*

*For the sake of our future generations, and to ensure the protection of that which makes us who we are, I ask that this committee consider the irreparable harms to people and place that would be brought by the passing of such legislation & immediately dismiss SB1171.*

*Mālama Pono,*

-

*Summer Kaimalia Mullins*

*Email: [culturalpractice@gmail.com](mailto:culturalpractice@gmail.com) | Phone: 808-753-3917*

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [FINTestimony](#)  
**Cc:** [ulu.glass@yahoo.com](mailto:ulu.glass@yahoo.com)  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM  
**Date:** Saturday, March 30, 2013 7:15:21 PM

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**SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ululani Glass	Individual	Oppose	No

Comments: I do not support bill SB1171

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## FINTestimony

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**Sent:** Saturday, March 30, 2013 9:30 AM  
**To:** FINTestimony  
**Cc:** haha@hawaii.rr.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
C. Kong	Individual	Oppose	No

Comments: In all simplicity, SB 1171 was designed, like PLDC, to help "developers" push forward their construction projects without having to submit themselves to regulations. Regulations like, archaeological inventory surveys (AIS) or environmental impact assessments (EIA). SB 1171 allows these projects to continue without having to complete an AIS. AIS are important because they protect Kanaka Maoli cultural resources (iwi kūpuna, wahi pana/kapu/kūpuna, etc.) from being destroyed and desecrated by construction. Pleas do what is right: Take action for all those who came before, those here now, and all those who have yet to be born.

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## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 4:00 PM  
**To:** FINTestimony  
**Cc:** kanika.apa@live.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dennis EVANGELISTA	Individual	Oppose	No

Comments: WE the People Speak for ALL of hawai'i nei. DO NOT CONTINUE THIS Effort to Under Mine OUR WILL and RIGHTS to Protect OUR aina and OUR Ancestors Voice! BE WARE the pono of TRUTH AND LOVE \* akua sabe'

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## FINTestimony

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**Sent:** Saturday, March 30, 2013 8:41 AM  
**To:** FINTestimony  
**Cc:** dkanealii02@gmail.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diane Kanealii	Individual	Oppose	No

Comments: I oppose SB1171 as it seems to work AGAINST making sure that the cultural and historical sites are protected BEFORE development and not by incidental findings.

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Elaine Dunbar  
POB 861  
Lihue, HI 96766  
inunyabus@gmail.com

## **TESTIMONY IN OPPOSITION TO SB1171 SD1**

**It is this legislature's obligation under the Hawaii State Constitution to protect and preserve; SB 1171 is a departure from your obligation.**

Inventories of all archaeological resources must be completed before any development is started. Phasing of archaeological studies is not allowed under HRS Chapter 6E - Historic Preservation.

SB 1171 was designed, like PLDC, to help "developers" push forward their construction projects without having to submit to regulations. Regulations like, archaeological inventory surveys (AIS) or environmental impact assessments (EIA).

It is this legislature's obligation under the Hawaii State Constitution to protect and preserve and SB 1171 is a departure from your obligation.

SB 1171 allows these projects to continue without having to complete an AIS.

The AIS is important because it protects cultural resources (iwi kūpuna, wahi pana/kapu/kūpuna, etc.) from being destroyed and desecrated by construction.

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 3:51 PM  
**To:** FINTestimony  
**Cc:** wasteflakes@hotmail.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James Head	Individual	Oppose	No

Comments: SB1171 would endanger iwi kupuna and irreplaceable historic sites in order to save developers the time and expense of a proper Archaeological Inventory Survey. An AIS should be completed before final planning and beginning of construction. No exceptions.

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## FINTestimony

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**Sent:** Saturday, March 30, 2013 12:03 PM  
**To:** FINTestimony  
**Cc:** jeannine@hawaii.rr.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeannine Johnson	Individual	Oppose	No

Comments: I strongly oppose SB 1171, SD 1, HD1 which would allow a phased review of certain projects. I find it absurd that Sen. Wakai, the Chair of the Committee on Technology and the Arts stated "Hawaii must preserve its historic and cultural heritage through adaptable preservation plans. The inability to phase review would negatively affect certain projects, particularly complex multi-year, multi-phase projects." He obviously does not want to preserve Hawai'i's historic and cultural heritage; he only wants to pave over them, even our iwi kūpuna. According to Patricia Price-Beggerly and J.R. McNeill, the "wholesale loss of cultural resources tends to accentuate the value of the few remaining sites in an area important to Hawaiian culture as reflected in its traditions and history. This makes it even more important that the cultural resources which are left be recovered or preserved." Please vote to oppose SB 1171, SD 1, HD1 because it is OUR kuleana to make sure that the few remaining cultural resources which are left be preserved and that our kūpuna do not get erased from the land.

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## FINTestimony

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**Sent:** Saturday, March 30, 2013 8:06 AM  
**To:** FINTestimony  
**Cc:** joannatsuha@gmail.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
JoAnna Tsuha	Individual	Oppose	No

Comments: I oppose Senate bill 1171 because it's more government giving corporations leeway to cut corners instead of doing the right thing by making them follow protocol and procedures. By passing this bill you'll be allowing anyone to come in and destroy what's most scared to us. Destroying our surroundings is the same as destroying the people. It's the government's job to protect the people and what's most important to them and by passing this bill you'll be doing neither. Please kill SB1171.

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## FINTestimony

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**Sent:** Saturday, March 30, 2013 10:15 AM  
**To:** FINTestimony  
**Cc:** Karen@RedwoodGames.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

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

Comments: This bill is essentially removing the prohibition of "segmentation" in the EIS process. We need MORE protections. The protections - even EIS - are inadequate already and this bill weakens them further.

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## **FINTestimony**

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**To:** FINTestimony  
**Cc:** stokedbyroxy@yahoo.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Anderson	Individual	Oppose	No

Comments: Our hawaiian lands have been tampered with enough. What research and knowledge of the hawaiian archeological history will we get to provide for our generations to come if they are being ruined by development? It will be a culture that is history like the easter islanders. Barely any trace of their history. I support the AIS Kanaka Maoli. We need to start caring for our lands and their historical background. A slab of cement will not help provide knowledge it will not help with anything except income. Isn't O'ahu enough? Why ruin more of these sacred lands? As a Hawai'i born and raised resident I barely know the history of certain special sacred areas that have already been ruined by development. What a shame!!!! SAVE THE 'AINA NOT YOUR MONEY IN THE POCKET!!!

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MaryAnne Maigret  
P.O. Box 1654  
Kealahou, Hawaii 96750

Testimony in strong opposition to SB 1171  
Committee on Finance, Representative Sylvia Luke, Chair; Hearing April 1<sup>st</sup>, 2013, 2:00 p.m.

Dear Chairperson Luke,

I **strongly oppose** the passage of SB1171, which authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division.

I am an archeologist with 24 years of experience which has included producing and reviewing archeological inventory surveys and mitigation plans. I have worked in the private sector and for State and Federal agencies to comply with historic preservation laws and implement the related rules and regulations. I was a reviewer for the State Historic Preservation Division for four years. I have seen many archeological inventory surveys (AIS) and development projects from start to finish.

This bill is out of alignment with the intent of Hawaii's Chapter 6E historic preservation law. If passed it would allow projects to proceed without adequate information to evaluate the potential adverse effects of the project on historic properties. This would have a negative impact on the historic preservation review process and the historic preservation specialists, members of the public, planners, developers, contractors, and government agencies who participate. If passed it would increase the chance of unforeseen findings, complications, and more potential litigation. It would greatly complicate, rather than simplify, an already complex and challenging part of the planning and development process in Hawaii. Nobody will benefit.

Large projects radically alter the landscape and if done poorly can erase the archeological record and the cultural landscapes left by those who came before. Island communities and consulted Native Hawaiians and other affected cultural and ethnic groups deserve a complete archeological inventory survey of the Area of Effect for all projects to make informed decisions and recommendations during the consultation process mandated by law. Going forth into these critically important discussions without adequate information is risky and foolish at least, and at most unfair and repugnant to those whose hearts and histories are most likely to be affected by the changes brought by development.

Thousands of permit applicants in Hawaii have responsibly completed comprehensive AIS's of their project areas, and had them reviewed and approved before obtaining permits and starting their projects. This includes highway and corridor-type projects. Changing Hawaii's law to allow phased review would degrade the quality of historic preservation planning in the context of development. The outcome will create more problems than it purports to solve. Some things simply need to be done right in the first place.

I respectfully ask you not to pass SB 1171. Thank you so much for considering my testimony.

MaryAnne Maigret

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 9:23 AM  
**To:** FINTestimony  
**Cc:** jtrujill@hawaii.edu  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james trujillo	Individual	Oppose	No

Comments: please do not pass this bill. we need to protect our iwi kupuna and regulations should be observed for projects and not waived or exempt.

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## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 30, 2013 7:15 PM  
**To:** FINTestimony  
**Cc:** ulu.glass@yahoo.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ululani Glass	Individual	Oppose	No

Comments: I do not support bill SB1171

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Aloha Kakou-

I write in opposition to SB 1171 as a 15-year resident of the Hilo District of Hawai`i Island with over 30 years experience in cultural resources management, including service on the Hawaii Historic Places Review Board. In 1990-91, I saw first-hand the poor results of having the H-3 project archaeological inventory survey (AIS) take place simultaneously with construction of the highway just a little further down Halawa and Luluku Valleys. Many viable alternatives were lost due to the late completion of the AIS. The adverse effects of the project to highly significant cultural sites could have been avoided if the AIS had been completed earlier with better community consultation. Again with Hokuli`a, by not having an adequate AIS at the beginning of the project, many conflicts were created that could have been avoided if the AIS had been completed early and well. SB1171 would open the door to sanction the delayed completion of the AIS process. One only needs to look at the history of litigation and delays in development to see that the proposed "phasing" will not necessarily speed large projects along, but may well further delay them, erode public opinion in the projects, and unnecessarily destroy significant cultural sites.

One of the justifications for this bill is that it is supposedly needed to better comply with federal law, specifically the National Historic Preservation Act and NEPA. This is not the case, and in fact, some of the wording in the current proposed bill would further muddy the water. For example, a "programmatic agreement" in federal historic preservation review is made between federal agencies and the Advisory Council on Historic Preservation, and is not made between applicants/developers and regulatory agencies.

## FINTestimony

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**Sent:** Saturday, March 30, 2013 9:01 AM  
**To:** FINTestimony  
**Cc:** epyachts@aol.com  
**Subject:** Submitted testimony for SB1171 on Apr 1, 2013 14:00PM

### **SB1171**

Submitted on: 3/30/2013

Testimony for FIN on Apr 1, 2013 14:00PM in Conference Room 308

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

Comments: Please do not allow any developments to proceed without an EIS or Archaeological survey... donot pass this bill...SB1171 ..mahalo

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