

HISTORIC HAWAII FOUNDATION

TO: Representative David A. Tarnas, Chair
Representative Patrick Pihana Branco, Vice Chair
Committee on Water & Land (WAL)

FROM: Kiersten Faulkner, Executive Director
Historic Hawai'i Foundation

Committee: Thursday, February 18, 2021
8:30 a.m.
Via Video Conference/Conference Room 430

RE: **HB 865, Relating to the State Historic Preservation Division**

On behalf of Historic Hawai'i Foundation (HHF), I am writing **in support of the intent of HB865**. The bill would direct the state auditor to conduct a performance and management audit of the state historic preservation division (SHPD) of the department of land and natural resources.

SHPD is responsible for providing leadership for the State in preserving, restoring, and maintaining historic and cultural properties in a spirit of stewardship and trusteeship for present and future generations, and to conduct activities, plans and programs for the preservation and enhancement of historic and cultural property.

The scope of responsibilities to safeguard and support Hawaii's heritage is immense. SHPD has a variety of tools, including review and comment on development proposals that have the potential to affect historic and cultural properties; consultation with stakeholders who have an interest in and concern for those properties; resolution of potential effects via avoiding, minimizing and mitigating effects; and providing incentives through grants, tax credits and technical assistance.

All of these responsibilities rely on adequate resources and staffing with both professional and administrative personnel. The level of staffing for the archaeology, architecture, culture and history and administrative functions is directly correlated to the quality and timeliness of the project reviews and response to inquiries.

Historic Hawai'i Foundation supports measures that will assist SHPD in meeting its purpose and goals. The proposed performance and management audit should be conducted in a spirit of cooperation and collaboration to identify areas that would benefit from additional resources, operating procedures, authorities and other actions or initiatives. It should not be approached as a punitive or undermining measure.

We hope such a review would assist both the legislature and the administration in directing resources to support this critical agency in its important work. Thank you for the opportunity to comment.



HB865
RELATING TO THE STATE HISTORIC PRESERVATION DIVISION
Ke Kōmike Hale o ka ‘Āina a me ka Wai

February 18, 2021

8:30 a.m.

Lumi 430

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB865, which directs the State Auditor to conduct a comprehensive performance and management audit of the State Historic Preservation Division (SHPD). **OHA believes that this audit is necessary to specifically examine and address 1) historic systemic issues regarding the care, management and protection of ancestral burial sites and the associated administration of the island burial councils; and 2) SHPD’s chronic failure to notify OHA of inadvertent discoveries of human skeletal remains.**

1. Historic systemic issues regarding the care and management of ancestral burial sites

Historically, state audits of SHPD have revealed chronic leadership dysfunction, employee discord, and a significant backlog of project reviews that has substantially undermined the historic preservation review process, particularly with respect to the protection of burial sites throughout the islands. Examples of SHPD’s systemic mismanagement of the burial councils and burial sites program include the division’s:

- Failure to adequately staff the island burial councils and manage the terms of council members (Moloka‘i);
- Failure to provide training to its staff in the burial law and relevant administrative rules;
- Failure to provide training to burial council members regarding the burial law and relevant administrative rules;
- Failure to require the Department of the Attorney General to provide independent legal representation to the island burial councils (apart from the interests of SHPD);
- Failure to implement administrative rules to develop a burial sites inventory;
- Failure to provide proper administrative support to the burial councils including the failure to: take timely actions on burial matters, prepare agenda items, and provide the councils proper guidance on the processes involving burial matters;

- Failure to comply with legal requirements applicable to the inadvertent discovery of human remains; and
- Failure to undertake enforcement actions of documented violations involving burial sites.

As evidenced by a recent January 19, 2021 press conference and press by island burial council leadership representing multiple islands, serious concerns also exist regarding the systemic and chronic mismanagement of the burial councils by SHPD for the past 25 years, which continues to undermine the ability of the councils to exercise their legally established authorities, rights, and responsibilities, to the significant detriment of Hawaiian burial sites and cherished cultural properties.

On January 22, 2021, OHA issued its own press release in support of the position of the island burial council leadership, given our agency's longstanding concerns regarding the functioning and efficacy of this very important program to preserve and protect the last vestiges of our collective history and culture in these islands. OHA urged state policymakers, including SHPD leadership, to heed the calls of our island burial council leaders, and address issues that have long been raised by Native Hawaiian community members and cultural practitioners, archaeologists, the state auditor, and OHA itself.

OHA believes that the audit proposed in this measure will help assess these longstanding issues and make critical recommendations for much-needed improvement.

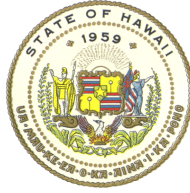
2. Failure to notify OHA of inadvertent discoveries of human skeletal remains

Hawai'i Administrative Rules (HAR) 13-300-40 requires OHA to be notified of any inadvertent burial discovery once an inadvertent discovery report is generated. However, OHA rarely receives notifications of inadvertently discovered burials in a timely matter, if at all. While OHA has even established an email address, burials@oha.org, to help facilitate the SHPD mandate, inadvertent discoveries discussed on island burial council agendas or brought to OHA's attention via other means are often not transmitted to the agency as required. **Notably, the timely provision of information regarding inadvertently discovered burials is not only required under the law, but is critical to allow OHA to address beneficiary concerns regarding iwi cases across the islands, as well as develop strategies and recommendations on the appropriate treatment of such burials.**

An audit of SHPD will help to understand the source of this chronic issue and hopefully result in recommendations to improve the implementation of SHPD's legal requirement.

For the above reasons, OHA urges the Committee to **PASS** HB865. Mahalo for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

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

**Wednesday, February 18, 2021
8:30 AM**

State Capitol, Via Videoconference, Conference Room 430

**In consideration of
HOUSE BILL 865
RELATING TO THE STATE HISTORIC PRESERVATION DIVISION**

House Bill 865 proposes to direct the State Auditor to conduct a comprehensive management and performance audit of the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (Department). **The Department appreciates the intent of this measure and offers comments.**

The Department notes that SHPD has made significant improvements in operations and management in recent years. It has met the requirements imposed on it by the National Park Service mandated "Corrective Action Plans" (CAP) and is no longer a "high risk recipient" of federal funds.

In addition, the final element of the National Park Service Corrective Action Plan was the establishment of a digital information management system for efficient and effective project tracking and review. The Hawaii Cultural Resource Information Management System (HICRIS), funded by the Legislature, was completed in 2020 and went live on December 17, 2020. HICRIS represents a significant advancement in the way SHPD operates and interacts with federal, state, and county agencies, project sponsors, and their technical consultants. SHPD staff as well as all public and private users are now getting oriented with HICRIS and its requirements. It will facilitate project submittal and processing, ensure that submittals are correctly and completely submitted, and make it possible for SHPD to readily track status and progress on project reviews. All of these will improve the efficiency and effectiveness of project review. The Department believes the operational impact on project reviews is already progressing and will be fully visible within a year or so.

Eventually HICRIS will also be the portal to SHPD's project technical reports, and decision documents. With the support of the Legislature SHPD has been able to make good progress on digitizing its records. Unfortunately, in response to the fiscal crisis, SHPD was forced to halt procurement on its digitization contracting last year, and is not seeking funding for a digitization

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

contract this year due to restricted general funds. SHPD staff will do a limited amount of digitization of its files and library, but other duties will limit the amount of scanning that can be done, significantly extending into the future the time when HICRIS is functioning completely as designed and planned.

With respect to specifics of House Bill 865, which directs the State Auditor is directed to conduct a management audit of SHPD, the audit is to include but not be limited to:

- (1) Whether the division has adequate staffing and resources to conduct timely project reviews.

The Department welcomes consideration of staffing needs. The Department believes that SHPD is understaffed and underfunded but is tightly constrained by current fiscal realities.

- (2) Staff response time to inquiries.

The Department requests clarification of what the State Auditor is being directed to examine. The Department notes that 65% of all submittals are completed and responded to within the time frames established by rule.

Further, the audit required by House Bill 865 will place considerable demands on SHPD staff time responding to the auditors. Staff time devoted to this activity will impact SHPD's ability to address existing performance requirements and shortfalls.

- (3) Current project management practices, including efforts to identify categorical exemptions, historic properties and districts that should have special protections or treatment, identification of types of sites that do not require permit review, filing systems, and efforts to streamline processes such as the inadvertent discovery process for burial sites.

It is unclear what "project management practices" refers to. SHPD does not manage projects. SHPD reviews projects when they are submitted to SHPD. The Department suggests that project review practices is what is intended. The Department also notes out that Chapter 6E, Hawai'i Revised Statutes (HRS), does not require that all projects be submitted to SHPD for review. Sections 6E-8 and 6E-42, HRS, give county and state agencies discretion to determine what projects to submit to SHPD for review and only send projects to SHPD if they have a potential to affect historic properties. Whether a project has such potential depends on the unique characteristics of the project and the location where it will occur. Establishing categorical exemptions on a statewide basis is likely to be very difficult.

Nevertheless, SHPD is already engaged in review of its internal processes and procedures to clarify and improve them. SHPD also is working on a comprehensive review and revision of the rules governing SHPD's procedures to make them clearer, wherever possible simpler, more effective and efficient.

- (4) Record retention methodologies.

As part of its response to the CAP, SHPD has hired a Librarian/Archivist to manage its records. Record and data management will also be facilitated by HICRIS, subject to availability of funding to digitize SHPD's files and library.

- (5) Standardization of monitoring protocols, including the establishment of cultural impact assessment guidance and policies.

As part of its review to clarify and streamline its operations and regulations, SHPD is examining all reasonable ways to standardize protocols, including project monitoring.

The Department is unclear on the reference to cultural impact assessment guidance and policies. Cultural impact assessments are part of the environmental review processes established by Chapter 343, HRS. SHPD is working on developing guidance for when cultural impact assessments are submitted to it to support and facilitate project reviews under Sections 6E-8 or 6E-42, HRS, but such guidance would have to be limited to Chapter 6E, HRS, as SHPD has no authority to adopt policies for Chapter 343, HRS.

- (6) The actions, initiatives, and performance of the state historic preservation division to address the existing project review backlog.

SHPD has a contract in place with an archaeological consulting firm to review make recommendations to SHPD on backlogged reports (other than those prepared by the firm). A request-for-proposals for a second contract is currently in the procurement process. These contracts are being funded with a specific appropriation from the Department's Special Land and Development Fund. The Department intends to continue to fund such contracts as long as funding is appropriated and until the backlog has been resolved. The Department notes SHPD has no general funding to pay for this kind of contract, which SHPD is depending on to reduce, and eventually eliminate the backlog.

- (7) Any recommended improvements, including proposed legislation, to update, redefine, or realign SHPD's mission and organization based on balancing cultural and historic preservation with the State's evolving land development needs.

The Department is acutely aware of the evolving needs of the people of Hawai'i. The current COVID-19 crisis has made the need for greater flexibility and for mechanisms that allow for flexible adaptive responses from the Department abundantly clear. The Department's view is that rapid, flexible response includes policy changes that must allow for delegation of responsibility for adaptive response by the Legislature to the Board of Land and Natural Resources (BLNR). One example of an amendment that would allow for a more timely and flexible response can be found in House Bill 821 House Draft 1, which amends Section 6E-42 HRS, authorizing the BLNR to adopt policies to govern implementation and exempts such from Chapter 91 HRS.

Thank you for the opportunity to comment on this measure.



**HOUSE COMMITTEE ON WATER AND LAND
Hawaii State Capitol
Via Videoconference
11:00 AM**

February 18, 2021

.RE: HB 865, RELATING TO THE STATE HISTORIC PRESERVATION DIVISION

Chair Tarnas, Vice-Chair Branco, and members of the Committee:

My name is Beau Nobmann, President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in support of HB 865, which would direct the auditor to perform a comprehensive performance and management audit of the State Historic Preservation Division.

This bill would assist SHPD and the public by helping to identify the problem areas within the Division. We understand the issue with SHPD has been the challenges of hiring and retaining qualified staff. Perhaps a more comprehensive picture of SHPD would help to eventually expedite the SHPD review process, allowing for the building of more housing to the people of Hawaii.

We are in support of HB 865 and appreciate the opportunity to express our views on the matter.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

Testimony of County of Kaua'i, Department of Planning Ka'āina Hull, Director of Planning

Before the
House Committee on Water & Land
February 18, 2021 at 8:30 AM
Conference Room 430 via Videoconference

In consideration of
HOUSE BILL 865
Relating to the State Historic Preservation Division

To the Honorable Chair David A. Tarnas, Vice Chair Patrick P. Branco, and members of the Committee:

The County of Kaua'i **SUPPORTS** House Bill 865. The State Historic Preservation Division (SHPD) provides agency comments to the Department and the County of Kaua'i Planning Commission that are critical to the review of land use projects. Over the last few years, the Department has acknowledged the current challenges of understaffing at SHPD and project management practices that have affected the timely receipt of agency comments on zoning permit reviews. The Planning Department recognizes the recent changes to improvement SHPD's review through the HICRIS intake system; however, the Department is concerned that the underlying challenge of staffing must be addressed in order to expedite project review in a timely manner pursuant to HRS 6E-8, HRS 6E-10, and HRS 6E-42. The Department **SUPPORTS** House Bill 865 in hopes that a comprehensive performance and management audit will address the current inefficiencies of the State Historic Preservation Division.