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

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SUZANNE D. CASE
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

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

**Tuesday, March 15, 2022
8:30AM**

State Capitol, Conference Room 430, Via Videoconference

**In consideration of
SENATE BILL 570 SENATE DRAFT 1
RELATING TO HISTORIC PRESERVATION**

Senate Bill 570 Senate Draft 1 proposes to amend the definition of “historic property” in Section 6E-2, Hawaii Revised Statutes (HRS), by adding the requirement that properties must be eligible for inclusion in the Hawaii register of historic places. **The Department of Land and Natural Resources (Department) supports this measure.**

Chapter 6E, HRS, currently defines a historic property as “any building, structure, object, district, area, or site, including heiau and under water site, which is over fifty years old...” Senate Bill 570, Senate Draft 1 proposes to amend this definition by requiring that the property also be eligible for inclusion in the Hawaii register of historic places. To be eligible for inclusion in the Hawaii register of historic places, a property must be at least 50-years old, and be “significant in the history, architecture, archaeology, or culture of this State, its communities, or the nation.” (Hawaii Administrative Rules 13-198-2). The Department believes that addition of the requirement that a property be significant in Hawaii’s history is reasonable and an important clarification that will make administration of the state’s historic preservation program more rational and effective. This amendment will allow state and county agencies, including agencies issuing permits, and the Department to focus efforts on places that are demonstrably historic rather than attempting to attend to all places that are 50-years old. The Department fully supports this measure.

Thank you for the opportunity to comment on this measure.



SB570 SD1
RELATING TO HISTORIC PRESERVATION
House Committee on Water & Land

March 15, 2022

8:30 a.m.

Room 430

The Administration of the Office of Hawaiian Affairs (OHA) will recommend that the Board of Trustees **COMMENT** on SB570 SD1, which would amend the definition of “historic property” to require that any building, structure, object, district, area, or site, including heiau and underwater sites, in addition to being over fifty years old, must meet the criteria for being entered into the Hawai‘i Register of Historic Places (HRHP). While OHA appreciates the apparent desire to better manage the growing number of buildings over 50 years old that would currently be subject to historic preservation review, OHA notes that there is a vast distinction between historic buildings and Native Hawaiian cultural sites, and that a proposed amendment to the definition of historic property should take into account possible impacts to both site types; **accordingly, should the Committee choose to move this measure forward, OHA respectfully offers language to ensure that Native Hawaiian cultural sites remain appropriately protected under Hawai‘i Revised Statutes (HRS) Chapter 6E.**

To be eligible for the HRHP, historic properties must 1) possess integrity of location, design, setting, materials, workmanship, feeling, and association, and, 2) be considered significant per one of four criteria: a) associated with events that have made a significant contribution to broad patterns of our American or Hawaiian history, b) associated with the lives of persons significant in our past, c) embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or d) has yielded, or may be likely to yield information in prehistory or history. These requirements are also included in SHPD rules to determine whether a historic property is “significant” and merits additional protection. However, there is no HRHP eligibility criteria that would recognize sites that may have “important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity” – a criteria also included in these SHPD rules concerning “significance.”

By limiting the definition of “historic property” to only those sites that may be eligible for the HRHP, this measure may remove any and all historic property protection from Native Hawaiian cultural sites that SHPD’s rules themselves would consider so significant as to merit particularly heightened scrutiny and protection – including consultation with OHA and Native Hawaiians.

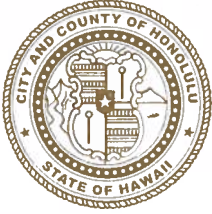
OHA acknowledges that as we move forward in time, the number of buildings eligible for consideration under HRS 6E review will keep increasing since any building over fifty years can be considered historic. In some instances, this has caused problems for homeowners and organizations that must comply with the HRS Chapter 6E historic preservation review process when permits are sought for various improvements. From an administrative standpoint, this can place a greater burden on the State Historic Preservation Division (SHPD) since the number of projects they review will likely increase. The current historic preservation review process can also make it difficult to demolish or repair dilapidated buildings that do not obviously meet the standards of historic integrity or significance criteria simply due to the fact that they are fifty years old. In that sense, OHA could see relief being granted to homeowners, organizations, and SHPD by adding additional qualifications, such as those described for the HRHP, for buildings to be considered subject to historic preservation review.

However, OHA does have concerns regarding the application of the HRHP significance criteria to Hawaiian cultural sites as a prerequisite to their being considered “historic property” eligible for the protections of historic preservation review and consultation. **Amending the definition of historic property to now require HRHP eligibility could disqualify many cultural sites from being considered historic properties, including sites long considered particularly “significant” under SHPD rules, and thereby limit or remove any opportunity for mitigation options and consultation requirements for these sites.** Notably, many Native Hawaiian cultural sites have intangible and spiritual aspects that are often difficult to evaluate by Western archaeologists, in contrast to historic buildings that are often solely evaluated on their physical characteristics. Furthermore, sometimes sites that would appear to be natural geological features to Western archaeologists are in fact considered vitally important to Native Hawaiians. Such sites must remain subject to the protections of Chapter 6E, including with respect to its consultation requirements, in order to properly identify and protect of such sites. Should the definition of a historic property be altered to require eligibility under HRHP, cultural sites with intangible or spiritual aspects could be disqualified from the HRS Chapter 6E review process, thus eliminating a critical nexus for consultation and mitigation consideration.

If the intent of the current amendment is to target historic buildings, then the proposed amendment to the definition of historic property should be tailored to target historic buildings only. Otherwise, the current draft of this measure may have unintended consequences for Native Hawaiian cultural sites currently considered and protected as historic properties. In order to prevent the potential irrevocable loss or destruction of the last remaining vestiges of our cultural and historical heritage, OHA respectfully offers the following language to replace that found on page 1, lines 6-7 of this bill, to read as follows:

“~~which~~ that is over fifty years old~~[-]~~; provided that buildings, inclusive of privately owned homes, must also meet the criteria for being entered into the Hawaii register of historic places.”

Mahalo for the opportunity to comment on this measure.



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**Testimony of Councilmember Carol Fukunaga
Written Only**

**Before the House Committee on
Water and Land**

**Tuesday, March 15, 2022 – 8:30 AM
Via Videoconference**

Regarding Senate Bill 570, SD1

Senate Bill 570, SD1 proposes amendments to the definition of “historic property” that add the requirement that properties must be eligible for inclusion in the Hawaii register of historic places.

As your Committee considers clarifying the definition of ‘historic property’ to further strengthen State enforcement of Chapter 6E, Hawaii Revised Statutes, I encourage State Historic Preservation Division of the Department of Land and Natural Resources and the State Legislature to consider whether additional state guidance for the counties to interpret and enforce Chapter 6E, HRS, should be added to this measure.

More specifically, older urban Honolulu communities have experienced a disturbing surge in the number of ‘monster’ or excessively-large structures being built in older neighborhoods during the past decade. The Honolulu City Council attempted to address the growing problem of inadequate setbacks and on-street parking to accommodate excessively-large structures, or drainage issues associated with concrete foundations displacing mature trees and yard vegetation, by adopting *Ordinance 19-3* on May 1, 2019.

The purpose of this measure was to curb the proliferation of excessively-large structures – particularly those in older urban neighborhoods like Kaimuki, Wilhemina Rise, Kapahulu, Palolo Valley, Manoa valley, Punchbowl, Nuuanu-Pauoa Valley, Alewa and Kamehameha Heights, Kalihi Valley and Aiea/Halawa Heights. The purpose and findings of *Ordinance 19-3* are stated as follows:

SECTION 1. Purpose and Findings. The purpose of this ordinance is to address the problem of the illegal use of large residential structures in residential districts.

Today’s residential development standards have been in place and, for the most part, remained unchanged since the late 1960s.

The City Council finds that additional development standards that are consistent with the purpose and intent of the Land Use Ordinance are necessary to preserve and protect the character and livability of our residential areas, to conserve the beauty and historic character of our neighborhoods, to reduce storm water runoff into our coastal waters, to cool our communities, to address climate change, and to minimize impacts to existing infrastructure.

A select number of new regulations may also curb the growing problem of regulatory abuses and significant negative impacts to our neighborhoods, while leaving much of the existing

development standards in place to encourage orderly development. These amendments to the Land Use Ordinance are intended to allow for one-family and two-family households, but not negatively impact the ability of extended families or multigenerational households to build homes in the residential districts.

Residential zoning lots with large detached dwellings that are covered in concrete surfaces from property line to property line increase storm water runoff and raise ambient temperatures. These large structures are also incongruous with the historic and aesthetic integrity of established neighborhoods. The risks associated with large detached dwellings with many occupants include adverse effects on municipal sewage systems, street parking availability, and public safety.

Unfortunately, clever property owners and contractors soon found ways to bypass the stricter floor ratio/size and other prohibitions in **Ordinance 19-3**, and ‘monster home’ structures have proliferated in Honolulu as such builders saw opportunities to use them for short-term vacation rentals, and for longer-term rentals in which the number of residents exceed the limit of five unrelated individuals that are permitted to rent rooms in neighborhoods zoned for single-family residences.

The older urban subdivision of Pacific Heights in Council District 6 is one example of a neighborhood for which I have received complaints about 9 excessively-large structures now under construction that are adjacent to properties that are currently listed on the Hawaii Historic Register, or close to residential properties that meet the criteria for being entered into the Hawaii register of historic places.

On January 31, 2022, City Department of Planning and Permitting (DPP) revoked the building permit for one of the structures under construction on Pacific Heights Road, citing examples in which the construction was not in compliance with its building permit. The property owner has appealed the permit revocation, and is currently taking actions to comply with the building permit.

This project was also the subject of January 18, 2022 State Historic Preservation Division (SHPD) correspondence to Department of Planning and Permitting, in which SHPD advised DPP that the department should have submitted the application for building permit to SHPD before granting the building permit due to its proximity to residential properties that were on the Hawaii Historic Register or that met the criteria for being entered into the Hawaii register of historic places.

Department of Planning and Permitting’s February 14, 2022 response to SHPD pointed out:

However, to our knowledge, SHPD has never broadly interpreted Hawaii Revised Statutes (HRS) Section 6E-42 to include a property with a project that is adjacent to, across the street from and/or neighboring a historic property or properties, meaning a property with a project for which no historic property, burial and/or archaeologically significant site is on that property.

I therefore urge that your Committee consider amendments to **Senate Bill 570, SD1** or to **Senate Bill 3135, SD2**, that include SHPD review of a property that is adjacent to, and/or across from a historic property or properties. Thank you for the opportunity to submit written testimony on this measure.



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON WATER & LAND

March 15, 2022

8:30 AM

Conference Room 430

In **OPPOSITION** to **SB570 SD1**: Relating to Historic Preservation

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Water & Land Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **OPPOSES SB570 SD1**, which may inadvertently disqualify significant historic cultural sites from being protected as "historic properties" under the state Historic Preservation Law. **The Sierra Club does offer an amendment below that will both facilitate the intended purpose of this measure, while maintaining needed protections for the last physical vestiges of our islands' cultural heritage.**

Our Historic Preservation Law recognizes 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." Accordingly, the law provides for consultation, agency review, and other procedural and substantive protections for buildings, sites, and features considered "historic properties." These protections are particularly critical for historic Native Hawaiian cultural sites and features, which provide a physical connection to and reflection of our islands' cultural heritage, **and may also provide a physical and spiritual foundation for the restoration and perpetuation of Native Hawaiian traditional values, practices, and knowledge that enabled hundreds of thousands of people to live sustainably on our islands, for centuries before Westerners arrived on their shores.**

By restricting the definition of "historic properties" to only those properties eligible for inclusion in the Hawai'i Register of Historic Places, this measure may inadvertently remove protections for Hawaiian cultural sites and features appropriately considered "significant" and deserving of particular protection under existing historic preservation regulations. This may in turn result in the irreparable loss of sites and features that have been preserved for generations, forever cutting off present and future generations from the values, practices, and knowledge they currently embody. Should the Committee choose to move this measure forward, the Sierra Club accordingly urges the Committee to limit this new restriction only to buildings or other properties less than a century old, by amending the proposed amended definition of "historic property" to read as follows:

"Historic property" means any building, structure, object, district, area, or site, including heiau and

underwater site, [~~which~~]that is over [~~fifty~~] one hundred years old[-], or any building, structure, district, area, or site that is over fifty years old and that meets the criteria for being entered into the Hawaii register of historic places.”

This language will accomplish the apparent intent of this measure to prevent relatively modern buildings and structures from being subject to historic preservation requirements simply due to their age alone, while ensuring that Native Hawaiian cultural sites and features continue to be protected from irreparable impacts or permanent loss. Accordingly, the Sierra Club respectfully urges the Committee to **HOLD** this measure, or to adopt the amendment proposed above.

Mahalo nui for the opportunity to testify.

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: Tuesday, March 15, 2022
8:30 a.m.
Via Video Conference and Conference Room 430

RE: SB570 SD1, Relating to Historic Preservation

On behalf of Historic Hawaii Foundation (HHF), I am writing in **support for the intent of SB570 SD1, with additional comments.** The bill would amend Hawai'i Revised Statutes §6E-2 to revise the definition of "historic property" to include those properties that are 50 years of age and that meet the criteria for being entered into the Hawai'i register of historic places.

The Constitution of the State of Hawai'i recognizes the value of conserving and developing the historic and cultural property within the State for the public good, and the Legislature has declared that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of its citizens.

In order to meet this mandate and to ensure that the historic and cultural resources of Hawai'i are treated appropriately, it is necessary to have a framework based on criteria and standards to define and differentiate which properties are subject to the state's historic preservation program.

Currently, HRS §6E-2 defines historic properties as any building, structure, object, district, area, or site, including heiau and underwater site, which is over 50 years old. This definition has the advantage of being simple to understand and simple to evaluate, as it relies on a single piece of data: age of construction. However, that definition is also unnecessarily broad, and assumes that age is equivalent to historic importance.

Within the discipline and practice of historic preservation, there are two additional criteria used to screen properties: *historic significance* and *integrity*. The criteria for being entered into the State of Hawai'i Register of Historic Places address these additional aspects and are appropriate to add to the State's definition of "historic property."

Historic Hawai'i Foundation is aware of and sensitive to the concerns that were voiced from others, including the Office of Hawaiian Affairs, that the proposed amendment could have unintended consequences of removing protections for Native Hawaiian cultural sites that may have lost physical integrity while still retaining historic and cultural significance.

Currently, Hawai'i Administrative Rules acknowledge that historic significance is found in association with sites that have “important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts—these associations being important to the group’s historic and cultural identity.”

However, the criteria for listing on the Hawai'i Register of Historic Places does not parallel the language of historic significance for traditional cultural properties found in the definition above. If HRS §6E-2 is limited to include only those properties that meet the criteria for being entered into the state register of historic places, it could create a loophole that excludes sites associated with native Hawaiian or other cultural group of the state.

HHF notes that OHA has offered a possible amendment:

“Historic property means any building, structure, object, district, area, or site, including heiau and underwater site, ~~[which]~~ that is over fifty years old; provided that buildings, inclusive of privately owned homes, must also meet the criteria for being entered in the Hawai'i register of historic places.”

HHF does not object to this proposed amendment and thinks it strikes an appropriate balance of interests.

Although HHF supports the clarification in the definition of “historic property,” we also note that this amendment introduces a new requirement for the statewide preservation program: the task of determining whether or not a specific property meets the criteria based on more information than age of construction.

When making determinations regarding specific properties, preservation professionals with appropriate education and experience will need to apply the criteria for evaluating historic significance and integrity. Professional judgment is needed to understand and apply the criteria to different property types, including buildings, structures, objects, sites and districts, including those properties to which Native Hawaiians and other ethnic and cultural groups of the State attach religious and cultural significance.

By adding this additional layer of knowledge, skill and experience to the determining whether or not a property is “historic,” and not merely relying on age of construction, it will be more difficult for property owners, developers, permitting and planning agencies and the general public to know if a property will be subject to the State Historic Preservation Division’s requirement to identify, evaluate and resolve potential effects that may be caused by a proposed project.

HHF believes that the revised definition would make the assessment and resolution of effects more efficient and effective, but will complicate the initial step of knowing whether the statute applies at all. We caution about unintended consequences that could be caused by a seemingly straightforward change.

Thank you for the opportunity to comment.