

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. Box 621  
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CHAIRPERSON  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committee on  
JUDICIARY  
Friday, February 16, 2024  
10:00AM  
State Capitol Room 229 & Via Videoconference

In consideration of  
SENATE BILL 2129 SENATE DRAFT 1  
RELATING TO HISTORIC PRESERVATION

Senate Bill 2129 Senate Draft amends the definition of “historic property” in section 6E-2, Hawaii Revised Statutes (HRS) so require a historic property meet the one or more of the criteria for inclusion in the Hawaii Register of Historic Places (Hawaii Register). **The Department of Land and Natural Resources (Department) supports this measure.**

The Department agrees that the current definition of historic property in section 6E-8, HRS, which relies entirely on age alone to define what is or is not historic, is flawed. In prior sessions, the Department has supported measures to amend the definition. The Department appreciates that the Senate Committee on Water & Land amended this measure to include the requirement that a property be both 50-years old and eligible for inclusion in the Hawaii Register. The Department believes that this is entirely appropriate and will allow for appropriate consideration of properties that are truly historic rather than simply old. The Department believes that defining historic property by age alone is the problem. Historic value is a reflection of age *and* association with events, people, architectural distinction, or valuable historic, scientific, or cultural information. Senate Bill 2129, Senate Draft 1 proposes to define historic property based on both age historical association. The Department strongly supports this.

The Department believes that even properties that are 100-years old or older should still have to qualify for inclusion in the Hawaii Register to be considered historic. Reliance on age alone to define historic without the additional requirement of historic association results in referral of projects to the

Department's State Historic Preservation Division (SHPD) for review that do not have the potential to affect properties of historic importance. SHPD should only be reviewing projects that have the potential to affect properties of historic importance. Not requiring historic association in how Hawai'i defines what is historic could have unforeseen negative consequences as Hawai'i grapples with many other issues such as sea level rise, more frequent storm events and flooding, and the need for homeless, low-income and affordable housing.

The Department also appreciates the Senate Committee on Water and Land removed the language from Senate Bill 2129 waived section 6E-8 for State projects in State-owned buildings. Such a waiver, if adopted, would have relinquished the State's leadership in protecting and managing Hawai'i's historic and cultural resources.

Mahalo for the opportunity to provide testimony in support of this measure.

**RICHARD T. BISSEN, JR.**  
Mayor

**JOSIAH K. NISHITA**  
Managing Director



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February 15, 2024

TO: Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Committee on Judiciary

FROM: Richard T. Bissen, Jr., Mayor  
Kate L.K. Blystone, Acting Planning Director

DATE: February 15, 2024

SUBJECT: **OPPOSITION OF SB2129, SD1, RELATING TO HISTORIC PRESERVATION.**

Thank you for the opportunity to testify in **OPPOSITION** of this important measure. The Act expands the definition of "historic property" for purposes of the Historic Preservation Program.

We **OPPOSE** this measure for the following reasons:

The County of Maui Planning Department has reviewed SB2129, SD1, which would change the definition of "Historic property". Specifically, in section (1), it would maintain the requirement that a historic structure is over fifty years old, but add additional text related to meeting the criteria of the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State. Additionally, in section (2) a new provision is added that if not meeting the criteria of section (1), then a "historic property" would be limited to only those properties over "one hundred years old".

While the Planning Department supports section (1) of SB2129, SD1, it opposes section (2). Specifically, the Planning Department is concerned that section (2) sets an arbitrary "one hundred years old" threshold and as a result would include historic properties not meeting the criteria to be eligible for listing in the Hawaii register of historic places.

For the foregoing reasons, we **OPPOSE** this measure.



**HAWAII STATE SENATE  
COMMITTEE ON JUDICIARY  
Conference Room 016 & Videoconference  
10:00 AM**

February 14, 2024

Re: SB 2129 - RELATING TO HISTORIC PRESERVATION

Chair Rhoads, Vice-Chair Gabbard, and members of the Committee:

My name is Max Lindsey, Government Relations Committee Chair 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.

SB 2129 is the companion to HB 1901, which proposes to exempt state projects on state-owned buildings from state historic preservation division review unless the affected property is more than one hundred years old or on or being added to the Hawaii register of historic places or the national register of historic places. It also proposes to expand the definition of "historic property" to mean any building, structure, object, district, area, or site, including a heiau and an underwater site, that is over:

- (1) Fifty years old and meets the criteria to be placed onto the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being carried out, at the property or due to associations with traditional beliefs, events, or oral accounts that are important to the group's history, traditional practices, and cultural identity; or
- (2) One hundred years old.

Section 6E-42 HRS requires review by the State Historic Preservation Division (SHPD) prior to any agency or officer of the State or its political subdivisions approves any project involving a permit (i.e. building permit), license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the SHPD and prior to any approval allow the SHPD an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites.

We **strongly support** the proposed revised definition of "Historic Property" as it will remove a time-consuming and costly Section 6E HRS SHPD review process on projects simply because the building or structure is fifty (50) years old. Without a time limit on the amount of time SHPD has to comment on a project, time delays waiting for SHPD's comments cause significant delays in construction, and also has resulted in projects losing financing or incurring higher interest rates.

We **strongly support** SB 2129 and appreciate the opportunity to provide our comments on this matter.



Celebrating 50 Years of Preserving Hawai'i's Places

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**TO:** Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Committee on Judiciary (JDC)

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

**Committee:** Friday, February 16, 2024  
10:00 a.m.  
Via Video Conference and Conference Room 016

**RE: SB 2129 SD1, Relating to Historic Preservation**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in **support for the intent of SB 2129 SD 1.**

The bill would amend Hawai'i Revised Statutes §6E to change the definition of historic property to add that properties 50 years or older shall meet the criteria to be placed onto the Hawai'i register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being carried out, at the property or due to associations with traditional beliefs, events, or oral accounts that are important to the group's history, traditional practices, and cultural identity; or properties that are 100 years old.

### **Legislative Intent and Public Policy Context**

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.

Any changes to this policy and public benefit need to demonstrate both how the substantive outcomes will be met—that is, to conserve and protect historic resources—and that the administration of the program is fair, clear, unbiased and consistent for all concerned.

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Historic Hawai'i Foundation is a statewide nonprofit organization established in 1974 to encourage the preservation of historic buildings, sites, structures, objects and districts on all the islands of Hawai'i. As the statewide leader for historic preservation, HHF works to preserve Hawai'i's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life, environmental sustainability and economic viability of the state.

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 supports amending HRS §6E-2 to include the requirement that properties meet the criteria for being entered into the state register of historic places, but is also concerned that some cultural sites or features may have been significantly altered over time, thus affecting their historic integrity. HHF agrees that the definition needs to include these sites and appreciates the explicit inclusion in the proposed definition.

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.

**HHF recommends that the department promulgate administrative rules to address the issue of who will make the determinations, based on established criteria and standards, subject to qualified personnel concurrence and at what stage of the process.**

Thank you for the opportunity to comment.



STANFORD CARR DEVELOPMENT, LLC

February 13, 2024

The Honorable Karl Rhoads, Chair  
The Honorable Mike Gabbard, Vice Chair  
and Members of the Senate Committee on Judiciary

Re: Testimony - SB 2129, SD1 Relating to Historic Preservation  
Hearing: February 16, 2024 at 10:00 AM  
Senate Conference Room 016 & Videoconference

Dear Chair Rhoads, Vice Chair Gabbard, and Committee Members:

Stanford Carr Development submits testimony in **support** of Senate Bill 2129, SD1, which proposes to broaden the HRS §6E-2 definition of "historic property" for purposes of the Historic Preservation Program.

While we appreciate the State's leadership role in the field of historic preservation, we greatly appreciate this effort to find a practical solution to trigger the required historic review that is based on historic and cultural characteristics rather than an arbitrary age. In the case where reviews are required, we encourage the legislature to provide sufficient staff funding for the State Historic Preservation Division to facilitate timely reviews.

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

Respectfully,

A handwritten signature in black ink, appearing to read 'Stanford S. Carr', with a long horizontal flourish extending to the right.

Stanford S. Carr



COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION  
HAWAII CHAPTER

February 15, 2024

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Committee on Judiciary

RE: **SB 2129 SD1 - Relating to Historic Preservation**  
**Hearing date: February 16, 2024 at 10:00 AM**

Aloha Chair Rhoads, Vice Chair Gabbard, and members of the committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **OPPOSITION** to SB 2129 - RELATING TO HISTORIC PRESERVATION. NAIOP Hawaii is the local chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders, and other professionals.

As currently drafted, NAIOP opposes SB 2129 SD1 which amends the definition of "Historic Property" to include additional "criteria to be placed onto the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being carried out, at the property or due to associations with traditional beliefs, events, or oral accounts that are important to the group's history, traditional practices, and cultural identity." The measure increases the definition from 50 to 100 years.

Primarily, NAIOP Hawaii opposes this measure as the amended definition of "historic property" to include "meets the criteria to be placed on the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being carried out, at the property or due to associations with traditional beliefs, events, or oral accounts that are important to the group's history, traditional practices, and cultural identity" is overly broad and could exacerbate the current backlog of reviews. NAIOP is concerned that this amendment would continue to cast too broad of a net and will effectively nullify the primary intent of the measure to resolve the current backlog of permit reviews. The proposed criteria are ambiguous and the measure fails to clarify who will be making the determination, effectively meaning that SHPD will continue to have to review all projects over 50 years old.

Potentially expanding SHPD's scope of review is particularly concerning due to the department's limited staffing and resources for identifying and reviewing truly historic properties. This measure fails to promote more timely reviews of projects conducted the Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD).



Currently, the backlog of historic reviews is encumbering permits throughout the state. Reviews by SHPD are significantly slowing down the permitting process, adding costs and delays to a substantial number of projects across the State. Consequently, much needed housing, economic development, and critical infrastructure projects often face significant delays in permit approvals and project implementation. These delays result in decreased economic and construction activity and delivery of housing units.

Ultimately, the issue at hand is that far too many projects are being sent to SHPD for review that don't qualify as historic under any reasonable interpretation associated with historic importance. Nearly half of Oahu's housing stock is 50 years old including projects built in the 60s and 70's which should not be deemed historic based on age alone.

NAIOP understands the great importance that these reviews hold in preservation of Hawaii's historic sites, however, a balance needs to be found to: 1) reduce overwhelming volume of reviews placed on an understaffed department; and 2) allow SHPD staff to focus on properties of true historic significance.

NAIOP Hawaii would support an amendment a changing the definition of "historic property" and recommends an amendment to reflect the language of SB 2835 SD1 which would amend the definition to read as follows:

1. "'Historic property" means any building, structure, that is registered on the Hawaii register of historic places, or any object, district, area, or site, including heiau and underwater site, [which is over fifty years old.] that predates August 21, 1959."

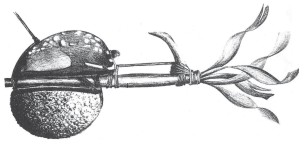
This amendment would resolve preserving specific types of historical properties, such as pre-WWII buildings and would be unambiguous, clear and prevent a future backlog of permit reviews similar to what we are experiencing. Moreover, the measure would still allow truly historic buildings to go through a review process with various criteria to be deemed historic prior to further review by SHPD.

NAIOP Hawaii looks forward to working together with stakeholders to find the right language to balance the concerns being addressed in this bill. **NAIOP Hawaii is concerned that the current version of the measure would potentially increase the review times of permit reviews and nullify the intent of the measure.** Ultimately, SB 2129 addresses a critical issue in the development of more affordable housing and critical infrastructure for Hawaii residents. NAIOP appreciates the Legislature's commitment to collaborating on this issue and look forward to working together.

Mahalo for your consideration,



Reyn Tanaka, President  
NAIOP Hawaii



## **SOCIETY FOR HAWAIIAN ARCHAEOLOGY**

P.O. BOX 22458 HONOLULU, HAWAII 96823

TO: Senator Lorraine Inouye, Chair  
Senator Brandon J.C. Elefante, Vice Chair  
Committee on Water and Land (WTL)

FROM: Mara Mulrooney, Ph.D.  
President, Society for Hawaiian Archaeology  
membership@hawaiianarchaeology.org

HEARING: February 16, 2024, 10:00 AM, Conference Room 016 & Videoconference

SUBJECT: Testimony regarding SB 2129, SD1, Relating to Historic Preservation

I am Mara Mulrooney, President of the Society for Hawaiian Archaeology (SHA). We have over 150 members including professional archaeologists and advocates of historic preservation. On behalf of SHA, we **oppose** and offer comments on SB 2129, SD1.

The intent of SB 2129, SD1 is to redefine a historic property as one which is (1) fifty years old **and** (2) meets the criteria to be placed onto the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being carried out, at the property or due to associations with traditional beliefs, events, or oral accounts that are important to the group's history, traditional practices, and cultural identity; **or** (3) One hundred years old."

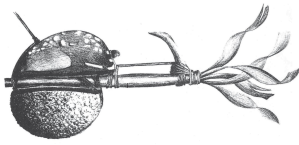
If this legislation were to be implemented as proposed, there would not be alignment with the definition of a historic property at the federal level if the definition of "historic property." At the federal level, a historic property uses the 50-year-old threshold. This legislation may cause confusion where some buildings, structures, objects, districts, or sites meet the criteria to be defined as historic properties at the federal level and not at the state level. This would create issues, especially for the many state projects that use federal funding or require a federal permit or approval.

In the past, Hawai'i has been a beacon for historic preservation, and this bill would be a step backward for the preservation of Hawai'i's past, as properties relating to Hawai'i's early to mid-20th century history would not be afforded any protection under Chapter 6E unless they were assessed as being eligible for listing on the HRHP. This includes many of our historic buildings relating to the Territory of Hawai'i, World War II, as well as Statehood. Although 50 years does not seem that long ago, we need to remain mindful that in another 50 years or 100 years, we will be longing for the portions of Hawai'i's history that would have been allowed to be lost as a result of this legislation.

Archaeological, architectural, and ethnographic inventory surveys would be necessary to determine whether a site meets the criteria to be placed on the HRHP. A critical aspect of HRS 6E is the triggering of historic preservation review if a project may have an effect on historic properties or burials. HRS 6E requires all historic properties to be identified and then assessed for significance, which may include consultation with Native Hawaiians or other ethnic groups. This bill redefines historic property and requires the presumption of significance. This presumption that a building, structure, object, site or district is not eligible to the HRHP in an assessment of whether HRS 6E would be triggered, could result in many historic properties being destroyed or damaged without proper assessment or review. Without

<https://hawaiianarchaeology.org/>

The Society for Hawaiian Archaeology is a registered tax-exempt organization established in 1980 to promote and stimulate interest and research in the archaeology of the Hawaiian Islands, encourage a more rational public appreciation of the aims and limitations of archaeological research, serve as a bond among those interested in Hawaiian archaeology, both professionals and non-professionals, and aid in directing their efforts into more scientific channels as well as encourage the publication of their results, advocate and assist in the conservation of archaeological data, discourage unethical commercialism in the archaeological field and work for its elimination.



## **SOCIETY FOR HAWAIIAN ARCHAEOLOGY**

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P.O. BOX 22458 HONOLULU, HAWAI'I 96823

undergoing historic preservation review with the State Historic Preservation Division, it would be impossible to assess whether a project may potentially impact these sites. In addition, there is no clarification in the bill regarding the professional qualifications to conduct such an analysis of eligibility, nor that any consultation with Native Hawaiians would be required.

Should SB 2129, SD1 pass out of this committee, we request to be consulted as a stakeholder in future deliberations on an amended bill. Should you have any questions, please feel free to contact me at the above email.

Mahalo for your consideration of our testimony.

<https://hawaiianarchaeology.org/>

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