

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



DEAN MINAKAMI
EXECUTIVE DIRECTOR

Statement of
DEAN MINAKAMI
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

March 27, 2025 at 2:00 p.m.

State Capitol, Room 325

In consideration of
S.B. 79 SD1 HD1
RELATING TO HISTORIC PRESERVATION REVIEWS.

Chair Tarnas, Vice Chair Poepoe, and members of the Committee.

HHFDC **supports with amendment** SB 79 SD1 HD1, which requires the Department of Land and Natural Resources to determine the effect of any proposed housing projects that may affect a historical property, an aviation artifact, or a burial site within ninety days of a request for determination. It establishes historic review requirements based on the project area's known historic, cultural, and archaeological resources, and establishes procedures and notification requirements if previously unidentified human remains or previously unidentified historic or cultural resources are discovered.

Lengthy and backlogged historic preservation reviews historically prevent the timely development of affordable housing and increase their costs. The goal of the bill is to streamline the historic review process while avoiding or minimizing any effect on significant historic properties. We are hopeful that this bill will accelerate the historic review process, especially for projects that likely will not have significant effects.

The SD1 version of the bill changed the protocol for "Moderately sensitive areas" (on page 2) to require an archaeological inventory survey (AIS). The time for preparation and approval of an AIS can be well over a year which marginalizes the effectiveness of this proposal. Under the protocol as first proposed, developers would already commit to perform archaeological monitoring during construction in moderately sensitive areas.

We therefore question the need for an AIS and request that the bill be **amended** by reverting to the bill's original language for "Moderately sensitive areas."

Thank you for the opportunity to testify on this bill.

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
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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 House Committee on
JUDICIARY & HAWAIIAN AFFAIRS
Thursday, March 27, 2025
2:00 PM

State Capitol Conference Room 325 & Videoconference

In consideration of
SENATE BILL 79, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO HISTORIC PRESERVATION REVIEWS

Senate Bill 79, Senate Draft 1, House Draft 1 would amend Chapter 6E, Hawaii Revised Statutes (HRS) to require the Department of Land and Natural Resources to determine the effect of any proposed State housing project within ninety days of a request for determination and sets forth the historic review requirements based on the project area's known historic, cultural, and archaeological resources. **The Department of Land and Natural Resources (Department) supports this measure and offers the following comments.**

Chapter 6E, HRS, provides the framework for a comprehensive statewide historic preservation program in Hawai'i. A key part of that program is the review of projects as required by sections 6E-8, 6E-10, 6E-42, and 6E-43 HRS. These statutory provisions reflect the Legislature's intent to require project proponents to consider the impact of their projects on iwi kūpuna, as well as historic and cultural resources.

The Department recognizes the need to streamline the historic preservation review process in order to help address the current housing crisis in Hawai'i and support the State's efforts to provide affordable housing. This bill will allow affordable housing project to proceed in an expedited manner while establishing measures that will support the identification, documentation, and avoidance of iwi kūpuna, as well as historic and cultural resources during planning and construction of affordable housing projects. The amendments and additions to Chapter 6E, HRS and alternative approaches established within this bill are both reasonable and feasible.

Mahalo for the opportunity to provide testimony on this measure.



COMMENTS ON SB79_SD1_HD1
RELATING TO HISTORIC PRESERVATION

House Committee on Judiciary & Hawaiian Affairs

March 27, 2025 2:00 p.m. Room 324

Aloha e Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on Judiciary and Hawaiian Affairs:

The Office of Hawaiian Affairs (OHA) provides **COMMENTS** on SB79 SD1_HD1, raising serious concerns with the changes proposed to Hawai'i Revised Statutes (HRS) Chapter 6E in this bill. While OHA is not opposed in concept to a risk inventory system to help focus review and expedite review where appropriate to facilitate the construction of affordable housing, SB79_SD1_HD1 would greatly alter the existing regulatory system without sufficient safeguards.

OHA asks that the Committee hold SB79_SD1_HD1 and instead advance SB1263_SD2_HD2 which also proposes implementing a risk inventory system for affordable housing projects in the more limited transit-oriented development (TOD) corridors. TOD corridors are an appropriately focused area in which to test out whether such a risk system can be implemented consistent with one of the primary underlying purposes and goals of Hawai'i Revised Statutes (HRS) chapter 6E: to afford unmarked burials equal respect and dignity with marked burials and to uphold Native Hawaiian constitutional rights and practices related to mālama iwi. Additionally, SB1263_SD2_HD2 has language which would preserve in place important existing regulatory requirements, including consultation with lineal and cultural descendants on the treatment and disposition of Native Hawaiian burials (page 7 lines 7-8, page 12 lines 8-9 and page 16 line 19 specifically citing HRS sections 6E-43, -43.6).

OHA is the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians.¹ As part of our constitutional and statutory mandate, OHA has been intimately involved with historic preservation related advocacy for decades and is granted specific kuleana under the Hawai'i Historic Preservation law, Hawai'i Revised Statutes (HRS) Chapter 6E, and implementing regulations.² Thus, we are well aware of the pitfalls within the current laws and rules, and where amendments to these laws and rules would improve the state's historic preservation process. While OHA has multiple concerns with SB79_SD2_HD2, we highlight the following:

First, subsection (d) states that if any adverse effect cannot be avoided, the "agency

¹ Haw. Const. Art. XII sec. 5

² See HRS 6E-3, 43, -43.5, 43.6; and, HAR 13-284-6(c) and HAR 13-275-6(c).

or officer shall mitigate the adverse effect . . . pursuant to terms approved by the department.” (Page 4, line 8-13). The subsection goes on to specifically list “burial treatment” as a form of mitigation. **However, HRS Chapter 6E-43 and implementing rules specifically vest the Island Burial Councils (IBCs) with the authority to decide the disposition of previously identified Native Hawaiian burials and make recommendations on mitigation measures in consultation with lineal and cultural descendants.** As noted in the implementing legislation for this subsection, this is in recognition of recognized descendants’ role as the “next of kin” consistent with common law rights of families to their deceased. Thus, agencies should consult with the appropriate IBC and allow them to make mitigation decisions regarding previously identified burial sites located within the project area, as currently enshrined in the statute and implementing administrative rules. **If adopted, page 4 lines 12-13 should be amended to read:**

Mitigation shall be implemented pursuant to terms approved by the department or the relevant island burial council pursuant to HRS section 6E-43.

Second, OHA is concerned that SB79_SD1_HD1 would completely foreclose any archaeological monitoring in “nominally sensitive areas.” In contrast, SB1263_SD2_HD2 would provide for a case-by-case assessment of how to best monitor and identify archaeological and cultural resources on a case-by-case basis using project specific memoranda. Further, while the bill requires chapter 91 rulemaking to implement the new statutory section, the risk categories identified in the bill are without any statutory guardrails. **If this bill were to advance, OHA asks that the language from SB1263_SD1_HD1 (page 19 lines 6-19) identifying factors to be used developing a categorization system, including consultation with OHA, be added into SB79_SD1_HD1 as a new subsection (4) at page 3 line 10.**

Mahalo for the opportunity to testify on this measure. We look forward to seeing our COMMENTS on SB79 SD1 carefully considered.



March 26, 2025

Representative David Tarnas, Chair
Representative Mahina Poepoe, Vice Chair
Committee on Judiciary and Hawaiian Affairs

RE: **SB 79 - Relating to Historic Preservation Reviews**
Hearing date: March 27, 2025 at 2:00 PM

Aloha Chair Tarnas, Vice Chair Poepoe, and members of the committee,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **SUPPORT** on **SB 79 SD1 HD1**. 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.

SB 79 SD1 HD1 is intended to promote more timely reviews of projects by requiring the Department of Land and Natural Resources to determine the effect of any proposed State affordable housing project within ninety days of a request for determination. Moreover, the measure sets forth the historic review requirements based on the project area's known historic, cultural, and archaeological resources.

Delays in the historic review process have been a persistent barrier to the timely development of housing in Hawaii, leading to increased project costs and prolonged housing shortages. SB 79 SD1 HD1 establishes clear and efficient guidelines for historic preservation reviews while maintaining protections for significant cultural and archaeological sites. By setting reasonable timelines and risk-based review criteria, this measure will provide much-needed certainty for developers and agencies working to deliver housing for local families.

NAIOP Hawaii appreciates the amendments made by the previous chairs and propose the following clarifying amendment consistent with the intent of the measure.

1. We recommend revising subsection (a) (Page 3) to read "The department shall provide written determination under subsection (a) within ninety days after the filing of a complete and accurate, **to the agency's or officer's actual knowledge at the time of filing**, project request with the department project request with the department."

Representative David Tarnas, Chair
Representative Mahina Poepoe, Vice Chair
Committee on Judiciary and Hawaiian Affairs
March 26, 2025
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This amendment will remove any potential concern of restarting the 90-day request for determination if the filing was complete and accurate to the agency's or officer's knowledge.

This bill ensures that housing projects move forward without unnecessary bureaucratic delays while upholding Hawaii's commitment to historic and cultural preservation. We urge the committee to pass SB 79 SD1 HD1 to support faster, more cost-effective housing development for our communities. Ultimately, the measure 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,

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

Reyn Tanaka, President
NAIOP Hawaii

Alan S. Downer
95-1049 Meanui Street
Mililani, Hawaii

26 March, 2025

RE: Testimony on Senate Bill 79, House Draft 1, before the HOUSE COMMITTEE on the JUDICIARY AND HAWAIIAN AFFAIRS, 27 March 2025, at 2:00 PM, Conference Room 325, State Capitol.

Aloha e Chair Tarnas and Members of the Committee:

Let me begin with my disclaimer: most of you know me as the Administrator of the State Historic Preservation Division, a position I left at the end of May 2024. I present testimony here on Senate Bill 79, House Draft 1, on my own behalf, solely as a private citizen. As explained below, I must respectfully oppose this measure.

Senate Bill 79, House Draft 1, would amend Section 6E-8, Hawaii Revised Statutes (HRS), to create an apparently expedited process for affordable housing projects constructed by the state or county, with state or county funding, or on state or county land. No reasonable person doubts that Hawaii has a severe affordable housing shortage. However, I question whether Senate Bill 79, House Draft 1, contributes in any meaningful way to expediting affordable housing development in our state.

I disagree with the premises that delays in development are largely due to regulatory requirements, or that these requirements add significantly to the cost of housing projects. Housing projects take years to plan, yet too often, project proponents leave the historic preservation review process until the very end of their planning process. Initiating the review process early on would eliminate this as a potential source of delay. The cost of compliance with historic preservation review requirements is only a minor—and often trivial—component of a housing project’s development costs.

I fully support the idea of creating what amounts to planning zones for the potential to affect significant historic properties. Such zoning would depend on much more complete historic property inventory information than the State Historic Preservation Division (SHPD) currently has available. Although Chapter 6E, HRS, envisions development of a comprehensive statewide inventory, such a survey has never been funded. Consequently, SHPD’s inventory primarily reflects areas where prior development has occurred, making it valuable for modeling those areas. However, for much of the state, there is insufficient data to predict the potential for encountering significant historic properties.

Furthermore, developing the potential “mapping” called for in this measure—even for areas where sufficient data exists—would require SHPD to conduct a formal analysis, detailed mapping, and

publication of results. SHPD currently has neither the funding nor the personnel necessary to carry out such activities without causing project reviews to lag even further.

Finally, Senate Bill 79, House Draft 1, calls for SHPD to draft rules to implement the expedited review process. The rulemaking process is time-consuming and, even if staff were available to write the rules, would take years to complete. Unfortunately, if rules are required, this delay cannot be avoided. To be clear, no one should be under the illusion that enactment of this measure will lead to any immediate change in the development timeline for affordable housing projects.

I recommend instead that the Legislature direct SHPD to develop the probability zoning contemplated in this measure and provide the necessary funding (and staffing, as needed) to conduct limited inventories in areas where survey data are currently insufficient and to carry out the analysis and modeling needed to establish the zones.

Mahalo for the opportunity to offer testimony on this measure.

Sincerely,

Alan S. Downer