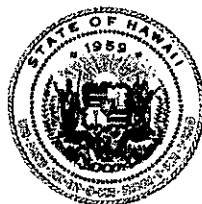


LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony Of
LAURA H. THIELEN
CHAIRPERSON**

**Before the House Committee on
ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS**

**Tuesday, January 26, 2010
8:30 AM
State Capitol, Conference Room 312**

**In Consideration Of
HOUSE BILL 1965
RELATING TO HISTORIC PRESERVATION**

House Bill 1965 proposes to require archaeological surveys be done at the point of sale or the long term lease of undeveloped property. The Department of Land and Natural Resources (Department) is opposed to this measure as the Department believes this would put an undue burden on its State Historic Preservation Division (SHPD) to review an unknown number of additional archaeological surveys at a time when no additional funding for increased workloads is being offered. The General Fund support for the Department has been cut over 32% in two years and it is not possible to take on additional responsibilities at this time.

A more efficient alternative is to require the seller to provide buyers or tenants with written notification of the requirements of Chapter 6E, Hawaii Revised Statutes (HRS), prior to consummating a sale or long term lease of undeveloped land. While the Department agrees that archaeological surveys should be done as early in the development process as possible, the Department believes this bill has the potential to cause more confusion because it does not clarify if an archaeological survey done prior to a sale effectively meets the landowners and state and county agencies requirements to protect historic sites under Section 6E-8, 6E-10 and 6E-42, HRS, or whether those statutes still require review at the point of development. This confusion is likely to substantially increase the workload of SHPD negatively impacting its ability to provide timely reviews, in the process, slowing land sales.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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
KAIROOLAWEE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



The REALTOR® Building
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Phone: (808) 733-7060
Fax: (808) 737-4977
Neighbor Islands: (888) 737-9070
Email: har@hawaiiirealtors.com

January 22, 2010

The Honorable Angus L.K. McKelvey, Chair

House Committee on Economic Revitalization, Business, & Military Affairs
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: H.B. 1965 Relating to Historic Preservation

HEARING: Tuesday, January 26, 2010 at 8:30 a.m.

Aloha Chair McKelvey, Vice Chair Choy and Members of the Committee:

I am Mihoko Ito, an attorney for Goodsill Anderson Quinn & Stifel, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,800 members in Hawai'i. HAR **opposes** H.B. 1965, which requires an archaeological inventory survey prior to the sale or offer of sale of any property in the State of undeveloped land.

This bill would require an archaeological inventory survey prior to the sale or lease of all real property with either no improvements, or where the infrastructure or improvements are subject to demolition and removal. The bill would create an additional requirement for many types of properties, including vacant land and tear-downs of private, state, and county lands, regardless of size and location.

Presently, the county planning and permitting agencies are required by rule to flag potential historic preservation issues to SHPD. This bill effectively shifts the burden of determining whether such issues exist to property owners, by placing the expense of an archaeological inventory survey upon them. Unfortunately, many owners of vacant land parcels may not be able to afford the added expense, and this would impact the economic viability of such properties.

As such, this bill proposes requirements on lessors that would create unintended consequences for the real estate industry, including the possibility of delays, additional costs for an archaeological survey, point-of-sale mandates, and other requirements.

Mahalo for the opportunity to testify.



HISTORIC HAWAII FOUNDATION

VIA EMAIL: EBMtestimony@capitol.hawaii.gov

To: Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair
Committee on Economic Revitalization, Business & Military Affairs

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

Committee Date: Tuesday, January 26, 2010
8:30 am
Conference Room 312

Subject: HB1965, Relating to Preservation

On behalf of Historic Hawai'i Foundation (HHF), I am writing with comments about HB1965, which requires an archaeology inventory survey prior to the sale or offer of sale or long-term lease of any undeveloped property in the state.

Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF's 850 members and numerous additional supporters work to preserve Hawai'i's unique architectural and cultural heritage and believe that historic preservation is an important element in the present and future quality of life, economic viability and environmental sustainability of the state.

Historic Hawai'i Foundation supports the intent of the bill, which appears to be an attempt to improve the process to identify and disclose the presence of potentially significant historic and cultural sites in a timely way, in order to allow the planning and development process to provide for their protection, and to provide for consumer protection by ensuring that property owners are informed about historic preservation responsibilities and restrictions. A process that provides for the discovery, documentation, evaluation and preservation of significant historic properties is in the best interest of all stakeholders, including property owners, developers, and the greater community. Providing for better knowledge of potential sites early in the planning process would help eliminate conflicts and misunderstandings prior to significant investment of time and money.

However, it is unclear how the new requirement to conduct an archaeology inventory survey at the time of sale or lease would be integrated with other planning and permitting functions of the state and county governments. The state historic preservation division (SHPD) already has a mandate to conduct historic surveys and inventories; the county governments should also be including that level of analysis in their general plans and community development plans. Both SHPD and county permitting departments are supposed to require and review archaeology inventory surveys (AIS) prior to issuing grubbing and grading permits. The bill appears either to add another level of analysis and review, or to shift the responsibility to the time of sale rather than the time of planning and/or development.



HISTORIC HAWAII FOUNDATION

HHF strongly supports all efforts to identify and protect significant historic properties, and to have full disclosure of the rights and responsibilities that come with ownership and management of historic properties. However, the mechanism offered by the bill raises several questions. Will the AIS be repeated each time the property changes hands or will the initial survey be sufficient? Will the AIS be repeated at the time of planning, development and permitting or does it replace that later review? If SHPD's recommendations for preservation and/or reclassification are not implemented, what is the remedy? How will these recommendations be integrated with other community plans and land use codes? How will the information be made available? How will the measure be enforced and which agency will carry out enforcement?

HHF is also concerned that the state historic preservation division would be charged with another mandate without commensurate staffing and financial support, and that the new mandate would be layered onto existing duties without being fully aligned or integrated with them. We believe that a comprehensive review of the state's historic preservation program, including the management and regulatory structure, is necessary. Rather than address these issues ad hoc, we would like to see a thoughtful and deliberate approach that includes recommendations for planning, regulations, incentives, education, integration with federal and county processes, and use of best practices in the preservation industry.

Therefore, HHF recommends that HB1965 be deferred, and that the legislature direct the department of land and natural resources to convene a review of best practices and models for good preservation systems that can be implemented comprehensively, with recommendations to be submitted to the legislature next year.



TO: Representative Angus McKelvey, Chair
House Committee on Economic Revitalization, Business and
Military Affairs

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

HEARING: January 26, 2010, 8:30 AM, Conference Room 312
SUBJECT: Support with Reservations on HB 1965 (Relating to Historic Preservation)

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 200 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am testifying in support of HB 1965 with reservation, which requires an archaeological inventory survey prior to the sale or offer of sale of undeveloped property in the State. We agree with the intent of this bill but believe some of its provisions and language need to be revised or reconsidered.

HB 1965 requires any undeveloped property to undergo an archaeological inventory survey prior to sale or the issuance of a long-term lease. Undeveloped property is defined as real property in the State of Hawaii that has no improvements or infrastructure subject to demolition and removal. The measure appears to apply to privately owned property and public lands. If the results of a survey document the presence of historic sites eligible for listing on the Hawai'i Register of Historic Places (HRHP) on a property, two actions are mandated: a plan recording the sites' locations must be filed with the Bureau of Conveyances and the State Historic Preservation Officer (SHPO) may recommend that portions of a property on which significant historic sites are located be reclassified conservation by the State or placed preservation zoning by the county.

We support the intent of this bill, which we believe to be the proactive discovery, documentation, evaluation, and protection of significant historic sites on lands that have not previously been surveyed or heavily developed in recent years. Land developers and advocates for historic preservation alike have long complained that historic properties are not identified early enough in the planning process. Land developers are frustrated when the late discovery of historic properties results in costly design changes or delays. Advocates for historic preservation are frustrated when projects and other land uses are not designed to avoid or appropriately accommodate significant historic properties or when significant sites are lost because landowners or agencies are reluctant to change development plans after a site is discovered late in the process. This bill attempts to address this fundamental issue.

We see several problems with the current wording and offer the following technical comments:

- Although the measure appears to be restricted to state and local jurisdictions, use of the term "State Historic Preservation Officer" incorrectly implies a Federal jurisdiction as well. The SHPO's role in historic preservation is only within the context of Federal actions, funding, or undertakings. In the case of HB 1965, it

would be more appropriate to refer to the Department of Land and Natural Resources (DLNR) as carrying out the mandated actions. This would be consistent with the language of chapter 6E which this bill amends.

- We recommend removing "eligible for listing on the Hawai'i Register of Historic Places (HRHP)" as this terminology is used in the federal historic preservation review process and not the state historic preservation review process. Under current Hawai'i administrative rules, comparable language might be "historic properties that are determined to be significant and meriting preservation."
- We question stipulating that long-term leases must exceed 10 years in length in order for mandatory inventory surveys to be performed. In most cases, historic properties on leased lands can be obliterated in a much shorter period and could be done incrementally to avoid county grading permits that might trigger historic preservation review under section 6E-42, H.R.S. The 10-year period might also encourage landowners to reduce the lease period to avoid survey requirement.
- Instead of the sale or lease of real property as a trigger for survey, we suggest that the granting by any state or county agency of any discretionary or non-discretionary (i.e., ministerial) permit affecting the property in question would be more appropriate and more closely track the applicability of HRS Chapter 6E.
- The term historic properties should be used instead of "sites" to be consistent with definitions in chapter 6E.
- How will this measure be enforced and what agency or agencies will carry out enforcement? Would the real estate laws be amended also to track compliance through disclosure requirements?
- It should be clear that real properties surveyed would still be subject to historic preservation review under section 6E-42 if the new owner or lessee applies for a permit or land use approval from a state or county agency. While the archaeological inventory required by this proposed amendment would identify and record sites identified as significant and meriting preservation, other historic properties of lesser significance on the parcel may require data recovery or portions of the parcel may need monitoring. These mitigation commitments would generally be required through state or county permit condition. Also, some sites initially thought to be insignificant may, overtime, become significant because they are the only remaining example of a type or we were previously unaware that subsurface cultural deposits occurred in these particular areas. The existing review process will provide a needed fall back if perspectives on significance change long after the survey is completed or if there are technical advances in our ability to identify historic properties.

Thank you for the opportunity to testify on the important issues raised by HB 1965. We look forward to working with the committee on these and other measures intended to strengthen the historic preservation review process. Should you have any questions, please feel free to contact me at the above email address.