
A BILL FOR AN ACT

RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 6E-8, Hawaii Revised Statutes is
2 amended by amending subsection (a) to read as follows:
3 "(a) Before any agency or officer of the State or its
4 political subdivisions commences any project which may affect
5 historic property, aviation artifact, or a burial site, the
6 agency or officer shall advise the department and allow the
7 department an opportunity for review of the effect of the
8 proposed project on historic properties, aviation artifacts, or
9 burial sites, consistent with section 6E-43, especially those
10 listed on the Hawaii register of historic places. The proposed
11 project shall not be commenced, or in the event it has already
12 begun, continued, until the department shall have given its
13 written concurrence. Where the proposed project consists of
14 corridors or large land areas, where access to properties is
15 restricted, or where circumstances dictate that construction be
16 done in stages, the department may give its written concurrence
17 based on a phased review of the project.



1 The department is to provide written concurrence or non-
2 concurrence within ninety days after the filing of a request
3 with the department. The agency or officer seeking to proceed
4 with the project, or any person, may appeal the department's
5 concurrence or non-concurrence to the Hawaii historic places
6 review board. An agency, officer, or other person who is
7 dissatisfied with the decision of the review board may apply to
8 the governor, ~~[who may request the Hawaii advisory council on~~
9 ~~historic preservation to report or]~~ who may take action as the
10 governor deems best in overruling or sustaining the department."

11 SECTION 2. Section 6E-42, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Before any agency or officer of the State or its
14 political subdivisions approves any project involving a permit,
15 license, certificate, land use change, subdivision, or other
16 entitlement for use, which may affect historic property,
17 aviation artifacts, or a burial site, the agency or office shall
18 advise the department and prior to any approval allow the
19 department an opportunity for review and comment on the effect
20 of the proposed project on historic properties, aviation
21 artifacts, or burial sites, consistent with section 6E-43,
22 including those listed in the Hawaii register of historic



1 places. Where the proposed project consists of corridors or
2 large land areas, where access to properties is restricted, or
3 where circumstances dictate that construction be done in stages,
4 the department's review and comment may be based on a phased
5 review of the project."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on January 1, 2050.

9



Report Title:

Historic Preservation Project Reviews

Description:

Authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law. Effective January 1, 2050. Deletes language that provided the governor with the option to request the Hawaii advisory council on historic preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii historic places review board. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 20, 2013
10:30 a.m.
State Capitol, Room 309

S.B. 1171, S.D. 1
RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS

House Committee(s) on Transportation & Water and Land

The Department of Transportation (DOT) understands the need to preserve the historic and cultural heritage of Hawaii, and recognizes that the Department of Land and Natural Resources' State Historic Preservation Division bears a heavy responsibility in ensuring its protection. For this reason, the DOT **strongly supports** S.B. 1171, S.D. 1, because it would give the State Historic Preservation Division (SHPD) greater flexibility to address preservation plans and measures in alignment with federal laws.

S.B. 1171, S.D. 1, would grant SHPD the option of fashioning customized and adaptable preservation plans and measures when dealing with complex multi-year, multi-phase projects. Having the authority to take this approach will allow for the effective use of resources and more precise protection protocols and standards. S.B. 1171, S.D. 1, makes Hawaii's historic preservation law Section 6E-8 consistent with the federal historic preservation law, and minimizes conflicts and duplication when projects involve both State and federal reviews.

The inability to utilize phased review will negatively affect projects, particularly those done by the DOT, which are complex and span large distances and take upwards of ten years to complete. Requiring an AIS for an entire project done before construction can begin, creates significant delays, increased costs, and possibly unnecessary disturbance of potential burial sites and historic properties. As noted, our multi-year duration of the typical highway project, unanticipated changes can occur that can alter the alignment. Thus, AIS's conducted well before the start of the final design might be rendered unnecessary, and additional AIS's may be required. Whereas phasing allows AIS's to be conducted at the start of final design of a portion of the project that is intended to be built, thereby minimizing the amount of area disturbed. If burial sites are found, there is still opportunity to make changes to avoid the sites.

Examples of potential impacted DOT projects include:

1. Queen Kaahumanu Highway Widening (Palani Street to Kawaihae) **\$580M total** (\$130M for Ph I & II + \$450M for Keahole to Kawaihae)

2. Keaau-Pahoa Road Widening, Keaau to Pahoa **\$140M total** (EIS preferred alternative)
3. Saddle Road, Hilo to Queen Kaahumanu Highway **\$249M total**
4. Lahaina By-Pass **\$210M total**
5. Paia By-Pass **\$110M total (excluding land acquisition)**
6. Leeward Bikeway (Pearl Harbor to Nanakuli) **\$32M total**
7. Kualakai Parkway (H-1 to Roosevelt Road) **\$141M total** (2004 FEA)
8. Kapolei Parkway, Makakilo to Ewa **\$20.4M total** (STIP figure)
9. Lydgate Bikeway **\$60M total** (Nawiliwili to Anahola)
10. Kapaa By-Pass (Lihue to Kapaa) **\$150M - \$310 range** (no alternative selected yet - 2006 DEA)

This bill will provide SHPD the option of giving its written concurrence based on the phased review of the project and make state law consistent with federal law.

To ensure the transparency of the proposed intent of the bill, we suggest additional language for consideration in Sections 1(a) and 2(a):

“Where the proposed project consists of corridors or large land areas, or where access to properties is restricted, or where circumstances dictate that construction be done in stages, the department may give its written concurrence based on a phased review of the project.” A Programmatic Agreement (“PA”) shall be in place between the Department of Land and Natural Resources and the project applicant that identifies each phase and the estimated timelines for each phase.

Thank you for the opportunity to provide testimony.



NEIL ABERCROMBIE
GOVERNOR



Dean H. Seki
Comptroller

Maria E. Zielinski
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DEAN H. SEKI, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEES
ON
TRANSPORTATION
AND
WATER & LAND
ON
March 20, 2013
S.B. 1171, S.D. 1

RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS

Chairs Yamane, Evans and members of the Committees, thank you for the opportunity to submit written testimony on S.B. 1171, S.D. 1.

The Department of Accounting and General Services (DAGS) supports S.B. 1171, S.D. 1, because it incorporates clarifying language on “phased project reviews” by the Department of Land and Natural Resources, State Historic Preservation Division (DLNR-SHPD). DAGS also provides the following comments:

1. S.B. 1171, S.D. 1, will:

- A. Grant DLNR-SHPD the option of fashioning customized and adaptable preservation plans and measures for complex, multi-year, multi-phased development projects. Having the authority to take that approach will allow DLNR-SHPD to implement precise project-phase specific preservation plans and measures in a timely and efficient manner.
 - B. Make section 6E-8, Hawaii Revised Statutes, consistent with Federal historic preservation law, and minimize future conflicts and duplication of efforts when projects involve both State and Federal agency reviews.
- 2. Requiring an “archaeological inventory survey” (AIS) for a State development project in its entirety prior to allowing any construction phase work to begin will result in significant delays, increased project costs, and possibly cause unnecessary disturbance of potential burial sites and historic properties.
- 3. “Phased project reviews” will allow an AIS to be conducted at the start of final design phase work for the portion of a State development project that is intended to be built, thereby minimizing the amount of area disturbed. Thereafter, if burial or preservation sites are found during design phase work, there is still an opportunity to make changes to avoid the burial or preservation sites.
- 4. S.B. 1171, S.D. 1 should have no detrimental impact on DLNR-SHPD’s and the burial council’s oversight of the handling of burial remains and cultural artifacts or the treatment of such items with the proper levels of care and respect.

Thank you for the opportunity to submit written testimony on this matter.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
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NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

**HOUSE COMMITTEES ON TRANSPORTATION
and WATER & LAND**

Wednesday, March 20, 2013
10:30 a.m.
State Capitol, Conference Room 309

in consideration of

**SB 1171, SD1
RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.**

Chairs Yamane and Evans, Vice Chairs Ichiyama and Lowen, and Members of the Committees.

The Department of Business, Economic Development & Tourism (DBEDT) **supports** SB 1171, SD1, which authorizes the State Historic Preservation Division of DLNR to give its approval of archaeological inventory surveys and preservation plans based on a phased review of a project that consists of corridors or large areas, or where access is restricted or construction needs to be done in phases.

This bill does not change the state or county's obligation to consult with the State Historic Preservation Division (SHPD) on "the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43." See HRS § 6E-8. Instead, the bill makes two procedural changes.

First, this bill would make state historic preservation laws consistent with federal historic preservation laws which allow phased reviews. Second, the bill removes redundancy in agency appeals.

Thank you for the opportunity to testify on SB 1171, SD1.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committees on
TRANSPORTATION
and
WATER & LAND**

**Wednesday March 20, 2013
10:30 a.m.
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 1171, SENATE DRAFT 1
RELATING TO REVIEW OF HISTORIC PRESERVATION PROJECTS**

Senate Bill 1171, Senate Draft 1 proposes to allow for the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (Department) to provide its approval on relevant state permits based on phased reviews of archaeological inventory surveys (AIS). The Department is in strong support of this Administration measure.

The Department notes that this bill is in response to the Hawaii Supreme Court ruling in *Kaleikini v Yoshioka* which stated that SHPD improperly allowed for a phased review of the Honolulu Rapid Transit Corridor (rail). SHPD based its approval of the project on Federal regulations that allow for a phased review of linear projects in 36 CFR 800 ("Section 106"). SHPD rules are silent on phasing and the Supreme Court suggested that SHPD specifically state in its rules that phasing is allowed. A review of statutes suggested that the best strategy would be to change both the rules and statute to allow for phasing. Ultimately, approval of this bill will align state and federal law.

The inability to phase archaeological inventory surveys will negatively affect some projects, particularly those done by the Hawaii Department of Transportation (HDOT), which regularly phases archaeological inventory surveys for their projects which can take upwards of ten years to complete. The crux of the problem for linear projects is that later stages of the project may change, and when they do, a supplemental AIS needs to be done, because the original AIS is no longer valid. Sometime a supplemental AIS needs to be done just because the first AIS is so old the practices used then are no longer accepted. In addition, requiring an AIS for an entire project up front may require unnecessary condemnation of property if the alignment changes over time.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

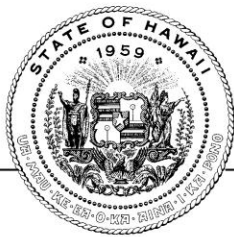
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Some small community projects may also be affected. Kaala Farms on Oahu is doing a project at Waianae Valley Ranch which has a significant number of archaeological sites so they will have to do an AIS before they use any of that land. Ideally they would provide SHPD with a master plan for phasing the archaeological studies which may be used as a planning tool, and so would not necessarily be tied to a specific “project.” As it is, they will probably have to submit each project separately and do an AIS for single “projects.”

SHPD is not proposing to allow phasing for all projects, only specific types that are linear or lend themselves to doing an AIS over time.

Examples of impacted HDOT projects include:

1. Queen Kaahumanu Highway Widening (Palani Street to Kawaihae) **\$580M total** (\$130M for Phase I & II + \$450M for Keahole to Kawaihae)
2. Keaau-Pahoa Road Widening, Keaau to Pahoa **\$140M total** (Environment Impact Statement preferred alternative)
3. Saddle Road, Hilo to Queen Kaahumanu Highway **\$249M total**
4. Lahaina By-Pass **\$210M total**
5. Paia By-Pass **\$110M total (excluding land acquisition)**
6. Leeward Bikeway (Pearl Harbor to Nanakuli) **\$32M total**
7. Kualakai Parkway (H-1 to Roosevelt Road) **\$141M total** (2004 FEA)
8. Kapolei Parkway, Makakilo to Ewa **\$20.4M total** (Statewide Transportation Improvement Program figure)
9. Lydgate Bikeway **\$60M total** (Nawiliwili to Anahola, Kauai)
10. Kapaa By-Pass (Lihue to Kapaa) **\$150M - \$310 range** (no alternative selected yet - 2006 DEA)



OFFICE OF PLANNING STATE OF HAWAII

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GOVERNOR

JESSE K. SOUKI
DIRECTOR
OFFICE OF PLANNING

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Statement of
JESSE K. SOUKI
Director, Office of Planning
before the
**HOUSE COMMITTEE ON TRANSPORTATION
AND
HOUSE COMMITTEE ON WATER AND LAND**
Wednesday, March 20, 2013
10:30 AM
State Capitol, Conference Room 309

in consideration of
SB 1171 SD 1
RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.

Chairs Yamane and Evans, Vice Chairs Ichiyama and Lowen, and Members of the House Committees on Transportation and Water and Land.

The Office of Planning supports SB 1171 SD 1, which allows for the phased review of certain projects by the State Historic Preservation Division.

This is a streamlining bill that does not change the state or county's obligation to consult with the State Historic Preservation Division (SHPD) on "the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43." See HRS § 6E-8. Instead, the bill makes two procedural changes.

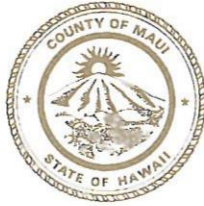
First, the bill authorizes the phased review of projects that consist of corridors or large land areas, where access to properties is restricted, or where circumstances dictate that construction be done in stages. Following the Hawaii Supreme Court's decision in Kaleikini v. Yoshioka, 128 Haw. 53 (2012), which invalidated the Honolulu Rail Transit Project's phased archeological inventory survey approach, all linear projects could be at risk. However, the Court

noted that "regulations implementing the National Historic Preservation Act of 1966 (NHPA) explicitly permit the phased identification and evaluation of historic properties." Id. This bill would make state historic preservation laws consistent with federal historic preservation laws.

Second, the bill removes redundancy in agency appeals. Under the current law, if an agency or any person does not agree with SHPD's determination, they may appeal to the Hawaii Historic Places Review Board (HPRB). If an agency or any person does not agree with the HPRB's decision, they may petition the governor. At that point, the governor may (1) decide the matter based on the record of the HPRB, or (2) ask the Hawaii Advisory Council on Historic Preservation (ACHP) to prepare a report and then decide. This bill removes the option for the governor to ask ACHP for a report. Consequently, duplication of review by the HPRB is removed from the current process, and the governor is required to act more expeditiously in these matters

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

ALAN M. ARAKAWA
MAYOR



200 South High Street
Wailuku, Hawai'i 96793-2155
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Fax (808) 270-7870
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OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

March 19, 2013

TESTIMONY OF ALAN M. ARAKAWA aa
Mayor
County of Maui

TO THE HOUSE COMMITTEES ON TRANSPORTATION
AND
WATER & LAND

SENATE BILL NO. 1171, SD1
RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS

The Honorable Representative Ryan I. Yamane, Chair
and Members of the Committee on Transportation

and

The Honorable Representative Cindy Evans, Chair
and Members of the Committee on Water & Land

The County of Maui SUPPORTS the subject bill as it represents a reasonable way to phase in archaeological inventory surveys (AIS) for large projects. We also understand this would be more in line with Federal processing regulations and guidelines.

For the County of Maui, we may have road, water, and sewer projects in the future that are large enough to warrant the phasing in of AISes. By engaging in the Environmental Assessment/Environmental Impact Statement (EA/EIS) process, we first determine the likely alignments of these larger projects, then proceed to design and construct as funding becomes available. If an AIS for the entire proposed alignment is required, as we understand the law of Hawaii to be following Kalekini vs. Yoshioka, the huge funding and time requirement to analyze all the potential alignments are not practical. We need the flexibility, and would use it judiciously.

Testimony of Alan M. Arakawa
Senate Bill No. 1171, SD1
March 19, 2013
Page 2 of 2

We are concerned about inadvertent finds. However, this bill will not increase the likelihood of inadvertent finds as an AIS is still required. If no AIS is done, then this concern over increased inadvertent finds would be justified.

Additionally, any alignment with Federal processes greatly increases the processing of design and permitting of projects.

Again, the County of Maui SUPPORTS Senate Bill No. 1171, SD1 as a means to provide realistic flexibility to large projects that better meets Federal processing guidelines, all without compromising historic and cultural properties.

Mahalo, Mayor Arakawa.

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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County of Hawai'i

PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 19, 2013

The Honorable Glenn Wakai, Chair
and Members of the Senate Committee on Technology and the Arts
State Capitol
Honolulu, Hawaii 96813

The Honorable Brickwood Galuteria, Chair
and Members of the Senate Committee on Tourism and Hawaiian Affairs
State Capitol
Honolulu, Hawaii 96813

Dear Chair Wakai, Chair Galuteria, and Members:

Subject: Senate Bill No. 1171, Relating to the Review of Historic Preservation Projects

The County of Hawai'i Planning Department wishes to extend its support for Senate Bill No. 1171, which seeks to streamline the historic review process by allowing the Department of Land and Natural Resources' (DLNR)-State Historic Preservation Division to conduct phased reviews and issue written concurrence of projects that, for certain specified reasons, are being implemented in phases. Approval of this bill to allow for phased review and approval would promote consistency between State and Federal historic preservation laws.

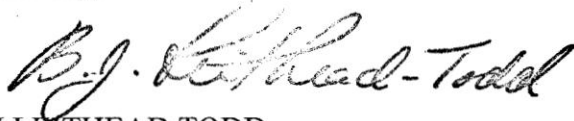
We clearly see the benefit of accommodating for the phased review of projects on this island, especially linear projects that carry long distances, such as improvements to the Queen Ka'ahumanu Highway in the North Kona District and to the Kea'au-Pāhoa Highway in the Puna District, and the construction of the Daniel K. Inouye Memorial Highway between East and West Hawai'i. Large projects like these should not be handled with an "all-or-nothing" approach. Phased review, approval and implementation provide a practical solution for certain larger projects.

The proposed bill, if adopted, will have no detrimental impact on the State DLNR and Burial Council oversight of the State's historic and cultural resources. It simply provides an option for the State DLNR to be able to consider a phased review and approval of projects. The fiduciary responsibility of the State DLNR to provide leadership in preserving, restoring, and maintaining the State's historic and cultural properties, will remain intact.

The Honorable Glenn Wakai, Chair
The Honorable Brickwood Galuteria, Chair
March 19, 2013
Page 2

For the reasons explained above, we respectfully offer our support for Senate Bill 1171.

Sincerely,

A handwritten signature in cursive script that reads "B.J. Leithhead-Todd".

BJ LEITHEAD TODD
Planning Director

DSA:
P:\wpwin60\dsa\2013\LTaiREZ09-114Inquiry.doc

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

"Building Better Communities"

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W. Bruce Barrett

Castle & Cooke Homes Hawaii, Inc.

Testimony to the House Committees on Transportation and Water and Land Wednesday, March 20, 2013

10:30 a.m.

State Capitol - Conference Room 309

RE: S.B. 1171, S.D. 1, RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS

Dear Chairs Yamane and Evans, Vice-Chairs Ichiyama and Lowen, and members of the Committees:

My name is Gladys Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii), the voice of the construction industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, affiliated with the National Association of Home Builders.

BIA-Hawaii **strongly supports** S.B. 1171, S.D.1, which authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD) to ensure consistency between state and federal law.

This measure is in response to *Kaleikini v. Yoshioka*, where the Hawaii Supreme Court ruled that SHPD violated its own rules by allowing construction of the Honolulu Rapid Transit Corridor to start prior to the completion of an archeological survey (AIS) for the entire project. However, SHPD relied on Federal law, which allows for a phased review of linear projects, in making its determination. This measure aims to align State law with Federal law.

The current law would likely have a detrimental impact on many long-term, phased highway projects by the Department of Transportation, or the Department of Hawaiian Homeland's residential projects that are also phased over time. We understand the SHPD is not proposing to allow phasing for all projects, only specific types that are linear or may require doing an AIS over time.

Thank you for the opportunity to share with you our views.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

March 18, 2013

The Honorable Ryan I. Yamane, Chair
The Honorable Linda Ichiyama, Vice Chair
and members
Committee on Transportation
Hawai'i State House of Representatives
415 South Beretania Street
Honolulu, Hawai'i 96813

The Honorable Cindy Evans, Chair
The Honorable Nicole E. Lowen, Vice Chair
and members
Committee on Water and Land
Hawai'i State House of Representatives
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: Testimony in **support of SB1171 SD1**, relating to the review of historic preservation projects.

Dear Chair Yamane, Chair Evans, Vice Chair Ichiyama, Vice Chair Lowen, and members of the committees:

The Hawai'i Construction Alliance **supports SB1171 SD1**, relating to the review of historic preservation projects.

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Hawai'i Masons Union, Local 1 and Local 630; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local 3. Together, the four member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the four basic crafts of Hawai'i's construction industry.

When dealing with complex projects that are subject to review by multiple agencies, it would be beneficial for state law and federal law to be aligned in order to minimize the possibility of conflict and duplication. Currently, alignment does not exist between federal regulations, which allow for phased review, and state rules, which call for projects to be reviewed in their entirety. As such, many complex multi-year projects encounter significant problems such as construction delays, difficulties in obtaining funding, and unnecessary land acquisition.

SB1171 SD1 would grant the State Historic Preservation Division more flexibility in crafting effective preservation plans for projects which are either linear in nature or otherwise lend themselves to phased review. Allowing such flexibility would enable government agencies deliver much-needed infrastructure improvements while continuing to respect our islands' precious cultural and historic heritage.

Mahalo for the opportunity to testify in **support of SB1171 SD1**.

Aloha,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org



Testimony to the House Committees on Transportation and Water and Land
Wednesday, March 20, 2013
10:30 a.m.
State Capitol - Conference Room 309

**RE: SENATE BILL NO. 1171, S.D. 1, RELATING TO THE REVIEW OF HISTORIC
PRESERVATION PROJECTS**

Chairs Yamane and Evans, Vice-Chairs Ichiyama and Lowen, and members of the Committees:

The Chamber of Commerce of Hawaii **supports S.B. No. 1171 SD1** which authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD) to ensure consistency between state and federal law.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure is in response to *Kaleikini v. Yoshioka*, where the Hawaii Supreme Court ruled that SHPD violated its own rules by allowing construction of the Honolulu Rapid Transit Corridor to start prior to the completion of an archeological survey (AIS) for the entire project. However, SHPD relied on Federal law, which allows for a phased review of linear projects, in making its determination. This measure aims to align State law with Federal law.

The current law would likely have a detrimental impact on many long-term, phased highway projects by the Department of Transportation, or the Department of Hawaiian Homeland's residential projects that are also phased over time. We understand the SHPD is not proposing to allow phasing for all projects, only specific types that are linear or may require doing an AIS over time.

Thank you for the opportunity to express our views on this matter.



Testimony of Cindy McMillan
The Pacific Resource Partnership

Committee on Transportation
Representative Ryan I. Yamane, Chair
Representative Linda E. Ichiyama, Vice Chair

Committee on Water and Land
Representative Cindy Evans, Chair
Representative Nicole E. Lowen, Vice Chair

SB 1171, SD1 – Relating to the Review of Historic Preservation Projects
Wednesday, March 20, 2013
10:30 a.m.
Conference Room 309

Aloha Chairs Yamane and Evans, Vice Chairs Ichiyama and Lowen, and Members of the Committee:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP supports SB 1171, SD1 Relating to the Review of Historic Preservation Projects. This bill authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law.

PRP recognizes that the history and culture of Hawaii are unique, and this bill does not change the state or county's obligation to consult with the State Historic Preservation Division (SHPD) on "the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43." See HRS § 6E-8. Instead, the bill makes two procedural changes.

First, this bill would make state historic preservation laws consistent with federal historic preservation laws. Following the Hawaii Supreme Court's decision in *Kaleikini v. Yoshioka*,

March 20, 2013

Testimony Supporting SB 1171, SD1 – Relating to the Review of Historic Preservation Projects

Page 2

128 Haw. 53 (2012), which invalidated the Honolulu Rail Transit Project's phased archeological inventory survey approach, all linear projects could be scrutinized. However, the Court noted that "regulations implementing the National Historic Preservation Act of 1966 (NHPA) explicitly permit the phased identification and evaluation of historic properties." Id. The bill authorizes the phased review of projects that consist of corridors or large land areas where access to properties is restricted or where circumstances dictate that construction be done in stages. Phasing would not be allowed for all projects, only specific types that are linear or lend themselves to conducting an Archeological Inventory Survey over time.

If this measure is not passed, essential government projects that are typically done in stages, like roadways and bikeways, will be at risk.

Second, the bill removes redundancy in agency appeals. Under the current law, if an agency or any person does not agree with SHPD's determination, they may appeal to the Hawaii Historic Places Review Board (HPRB). If an agency or any person does not agree with the HPRB's decision, they may petition the governor. At that point, the governor may (1) decide the matter based on the record of the HPRB, or (2) ask the Hawaii Advisory Council on Historic Preservation (ACHP) to prepare a report and then decide. This bill removes the option for the governor to ask ACHP for a report. Consequently, duplication of review by the HPRB is removed from the current process, and the governor is required to act more expeditiously in these matters.

For these reasons, we respectfully request that the Committee pass this bill.

Thank you for the opportunity to share our views on this matter with you.



West Maui Taxpayers Association

P.O. Box 10338 • Lahaina, HI 96761 • Office (808) 661-7990 • Fax (808) 661-7992 • Visit www.WestMaui.org

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TESTIMONY OF WEST MAUI TAXPAYERS ASSOCIATION

Before the House Committees on

TRANSPORTATION

and

WATER AND LAND

Wednesday, March 20, 2013

In Consideration of

Senate Bill 1171

Relating to Review of Historic Preservation Projects

West Maui Taxpayers Association (WMTA) STRONGLY SUPPORTS SB 1171, and urges the committees to pass this very important measure. SB 1171 allows 'phased review' of major DLNR and SHPD projects, which is consistent with federal law and very important to the successful implementation of a wide variety of projects. This is especially true in West Maui as it impacts a highway project known as the Lahaina Bypass.

WMTA has, for some thirty years, promoted a highway bypassing the severe congestion in Lahaina Town in West Maui. The first two phases of the bypass are finally nearing completion, but more than half of the total proposed project remains to be designed and constructed. Based on the tortured past of the bypass project, it is safe to assert that if the rest of the project cannot be built in phases, it never will be built. That will mean that some \$50 million dollars will have been invested in a project that will never bring the traffic relief originally envisioned.

Large and complex projects like the Lahaina bypass simply will never be started or completed unless they are done in phases as funding becomes available. Inconsistencies between state and federal laws can create unnecessary complications and delays, which SB 1171 can avoid.

In summary, SB 1171 is very important to communities such as West Maui. WMTA, representing a broad range of West Maui interests, STRONGLY SUPPORTS SB 1171 and asks the committees to pass this measure.

Thank you for considering this testimony.

Sincerely,

WMTA is a non profit 501 c 4. WMTA, as a dedicated Lobbyist organization, has a mission for our West Maui Community. The objectives of this Organization are to associate the interests, concerns, and efforts of residents and taxpayers of the West Maui area, and others interested in the orderly development and improvement of the area, in a cooperative effort. whether provided by, or to be provided by, the State or County governments, or by others.



HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

TESTIMONY BY PETER LEE OF HAWAII LECET
SENATE BILL NO. 1171, SD1

COMMITTEE ON TRANSPORTATION

Rep. Ryan I. Yamane, Chair
Rep. Linda Ichiyama, Vice Chair

COMMITTEE ON WATER AND LAND

Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, March 20, 2013
TIME: 10:30am
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

TO THE HONORABLE RYAN YAMANE, CHAIR, AND MEMBERS OF THE TRANSPORTATION COMMITTEE:
TO THE HONORABLE CINDY EVANS, CHAIR, AND MEMBERS OF THE WATER AND LAND COMMITTEE:

Good Morning,

My name is Peter Lee, and I am the Construction Compliance Officer for Hawaii Laborers Employers Cooperation and Education Trust (LECET). Hawaii LECET is the labor-management trust fund between the Hawaii Laborers Union, Local 368, and its unionized contractors.

Hawaii LECET **STRONGLY SUPPORTS** Senate Bill No. 1171, SD1. This measure authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law. Without this authorization, large projects with multiple phases will be in jeopardy of delays. In addition, this measure would make state historic preservation laws consistent with federal historic preservation laws.

Secondly, this measure removes redundancy in agency appeals by deleting language that provided the governor with the option to request the Hawaii advisory council on historic preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii historic places review board. Consequently, duplication of review by the Hawaii Historic Places Review Board is removed from the current process.

Mahalo for this opportunity to testify in **strong support of SB 1171, SD1.**

HISTORIC HAWAII FOUNDATION

To: Rep. Ryan I. Yamane, Chair
Rep. Linda Ichiyama, Vice Chair
Committee on Transportation

Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair
Committee on Water & Land

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

Committee Date: Wednesday, March 20, 2013
10:30 a.m.
Conference Room 309

Subject: **SB1171 SD1, Relating to Review of Historic Preservation Projects**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in opposition to SB1171 SD1, which authorizes the phased review of projects by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD). The bill also would delete a statutory reference to the "Hawai'i advisory council on historic preservation."

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 PRESERVATION REVIEWS

SB1171 SD1 would amend state law (HRS §6E-8), which currently requires that prior to any state, county or public project commencing, that the proposed project shall be referred to the State Historic Preservation Division (SHPD) for its review of the proposed project's potential effect on historic properties, aviation artifacts, or burial sites, especially those listed on the state register of historic places. The proposed project shall not commence until the department gives its written concurrence.

SHPD's review of proposed projects under the jurisdiction of state and county agencies is an important safeguard to ensure that historic properties are identified and appropriate treatment measures are in place during planning and design work, which also then limits surprises or delays during construction. The review and compliance process currently outlined in state law is substantially parallel to a similar process in federal law, which provides for the identification, review and agreement on treatment of historic properties in cases where federal funding, land, permits or other approvals apply.

SUBSTANTIVE DIFFERENCES IN STATE AND FEDERAL REVIEW PROCESSES

Despite the parallels between the state and federal review systems, there are differences:

- The federal process allows for phased review of projects (see 36 CFR 800.4(b)(2) – phased identification and evaluation of historic properties; 36 CFR 800.5(a)(3) – phased application of the criteria of adverse effect and 36 CFR 800.14(b) – federal agency program alternatives which allow for development of Programmatic Agreements), while state law currently does not.
- Federal law requires the agency or department to consult with other parties, including preservation organizations; other individuals or organizations those with an interest in the historic resource or the proposed project; and Native Hawaiian Organizations that ascribe religious or cultural significance to the historic property. State law does not contain a similar duty to consult outside of the department.
- Federal law also requires that review of projects include not only direct effects within the footprint of the project, both also indirect and cumulative effects, in which the entirety of the effect is identified and evaluated, and appropriate measures are taken. State law is primarily concerned only with direct effects and seldom looks beyond the immediate consequences to a larger picture.
- Another significant difference between state and federal regulations as they apply to historic resources is that state law is explicitly concerned with protection of Native Hawaiian burials, whereas federal law is much less direct. Early identification of other types of historic properties—buildings, structures, archaeological sites—is relatively simple in that they can almost always be seen. Only underground or submerged historic properties are usually not previously identified.

IMPACTS TO CULTURAL RESOURCES

The federal regulations related to phased review of proposed projects make it clear that the key to all of these provisions is that a conscious decision is made to phase the consultation, and the decision is made in coordination with the other consulting parties.

Without such a deliberative and inclusive process, the ability to offer phased approvals may lead to circumvention of the intent of completing an adequate investigation that well informs a project's impact prior to issuance of any permit/approval that allows a project to proceed.

HHF believes that the greatest concern regarding a phased approach is the impact to Native Hawaiian burials, which are a unique and distinct cultural resource. Decisions for effectual treatment and long-term care of burials is dictated by two distinct processes that are defined by whether or not a burial is identified as either previously identified (PI) or inadvertently discovered (IAD).

One concern regarding a phased approach is in a scenario in which the extent of a project's area of potential effect/footprint lies in highly sensitive cultural areas, creating direct and possibly indirect impacts to known and unknown cultural resources, including burials. A phased approach in said scenario would lead to the likely scenarios that latter-phased initiated studies and their role/relevance to the issuance of permits and approvals under HRS 6E will invariably and minimally limit the

decision options for burial treatment, or, at worst, simply “force” the option of burial relocation as the only “feasible” option, especially when construction of a project enters a latter-phased portion of the project footprint. So this would apply to rail and highway projects, utility projects, or mass urban renewal projects in sensitive core cultural areas.

Another concern is the justification within the professional archaeological community that under a phased approach, the testing and sampling strategy within the overall project area only needs to meet a certain affected area of coverage, typically within 3-5% typically. This has direct relevance to how burials will be mitigated as burial encounters outside of being identified under an Archaeology Inventory Survey, or where known through oral or written testimony are treated as IAD. Who makes the decisions under PI and IAD and the level of involvement of lineal/cultural descendants all comes into play.

In addition to the above concerns, the bill includes a list of circumstances under which a phased review could occur, such as when the project “consists of corridors or large land areas, where access to properties is restricted, or where circumstances dictate that construction be done in stages.” HHF feels that these conditions are vague, arbitrary and poorly defined. In order to apply the conditions in a fair and standardized way, the department would need to develop and promulgate rules to explain the applicability and processes for a phased review.

RECOMMENDATIONS

Therefore, HHF feels that a blanket proviso allowing for a phased review of projects could introduce unintended consequences that could lead to the detriment of historic properties and cultural resources. HHF’s preference would be to know the entire potential impact and then derive appropriate solutions to avoid, minimize or mitigate the effect, including those that may require design modifications or alteration prior to final approvals.

Alternatively, if a phased approval is needed, then we recommend that SB1171 also include a section that requires state law to be consistent with the related sections of the relevant federal regulations, especially those that address consultation with other parties and that include analysis and treatment for direct, indirect and cumulative effects, and to promulgate rules that define the terms, standards, procedures, decision-making process and other details that would include safeguards for historic and cultural properties.

HHF does not object to the section of the bill that would delete the reference to the “Hawai‘i council on historic preservation” as this is a fictitious entity that appears never to have been constituted.

Thank you for the opportunity to comment.

Historic Hawai‘i Foundation

680 Iwilei Road, Suite 690 • Honolulu, HI 96817 • Tel: 808-523-2900 • FAX: 808-523-0800 • www.historichawaii.org

Historic Hawai‘i Foundation was established in 1974 to encourage the preservation of historic buildings, sites and communities 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.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 20, 2013

TO: HONORABLE RYAN YAMANE, CHAIR, HONORABLE LINDA ICHiyAMA, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON TRANSPORTATION

HONORABLE CINDY EVANS, CHAIR, HONORABLE NICOLE LOWEN AND MEMBERS OF THE HOUSE COMMITTEE ON WATER AND LAND

SUBJECT: **SUPPORT OF S.B. 1171, SD1, RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS.** Authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law. Effective January 1, 2050. Deletes language that provided the governor with the option to request the Hawaii advisory council on historic preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii historic places review board. (SD1)

HEARING

DATE: Wednesday, March 20, 2013
TIME: 10:30 a.m.
PLACE: Room 309

Dear Chairs Yamane and Evans, Vice Chair Ichiyama and Lowen and Members of the Committees:

The General Contractors Association (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

GCA is in **support** of S.B. 1171, SD1, Relating to the Review of Historic Preservation Projects, which is proposing to allow the Department of Land and Natural Resources (DLNR) State Historic Preservation Division (SHPD) the ability to be consistent with federal law and authorize the phased review of projects under its jurisdiction. The bill also deletes language that provided the Governor with the option to request the Hawaii Advisory Council on Historic Preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii Historic Places Review Board.

This bill would make Hawaii's law consistent with federal law to allow such phased review of archeological inventory studies (AIS). The inability to phase review of AIS will negatively affect the progress of some projects and could act as a plague to the economic recovery our State.

This measure will make state law consistent with federal law, and leaves all the proper oversight in place by DLNR and SHPD. An AIS conducted in phases will not, in any way, jeopardize the protections of the State's important historical sites. Without allowing an AIS to be phased, worthwhile projects may be stymied as expressed by others who have concerns with this measure.

For these reasons, GCA respectfully requests that this measure be passed out by these Committees. Thank you for this opportunity to present our views on this measure.



25 Malunui Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

March 20, 2013

COMMITTEE ON TRANSPORTATION

Rep. Ryan I. Yamane, Chair
Rep. Linda Ichiyama, Vice Chair

COMMITTEE ON WATER & LAND

Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Chair

SB 1171 SD1
RELATING TO THE REVIEW OF HISTORIC PRESERVATION PROJECTS

Committee chairs and members;

Hawaii's Thousand Friends, a statewide land and water advocacy organization, *opposes* SB 1171 SD1 that authorizes the phased review of certain projects by the State Historic Preservation Division.

A phased review of proposed projects by SHPD threatens Native Hawaiian burials and historic sites by not requiring an archaeological inventory survey (AIS) for the entire project area before granting permits.

Without knowledge of where `iwi kupuna are buried and cultural sites identified prior to beginning construction then the risk of destroying `iwi and cultural sites is great. Such discovery will only delay a project and increase costs.

Chapter 6E-1 *Declaration of intent* states that "The legislature further declares that it **shall** be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of **stewardship** and **trusteeship** for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property." (Emphasis added)

Allowing projects to proceed without benefit of a completed AIS runs counter to existing State and legislative policy and permits the State to ignore stewardship and trustee responsibilities.

SB 1171 SD1 is truly a bad idea and if passed will be a law that we will all come to regret.

House of Representatives
Twenty-Seventh Legislature
Committees on Transportation and
Water and Land
March 20, 2013, 10:30 a.m.
Room 309

Statement of the Hawaii Regional Council of Carpenters
On SB 1171, SD 1, Authorizing Phased Historic Preservation Review of Certain Projects

SB 1171 should be enacted into law to ensure consistency with Federal law, and with reality. Long term, master planned projects, most notably for transportation and other infrastructure, are done in phases often spanning many years.

However, the conditions causing the need for phased development, and phased historic preservation review, are not limited to geographically linear or corridor-like projects, and SB 1171 should not be so limited. An amendment to this effect should make this clear.

While within the framework of a long term plan, funding/financing is generally not available except by phase. Funds are not available for phases that are years away, and there may be other, worthwhile, competing demands for funds.

Planning capacity, money, is seldom available for full and detailed plans prior to the start of multi-faceted projects. Access to lands, the need to adjust plans to public or market needs, additional knowledge over the years of a project, are among other conditions calling for phased reviews for multi-phased projects.

The Bill does not do away with the requirement for Historic Preservation Review. Such review is actually enhanced when in the framework of a master plan. Such master planning should be encouraged, not discouraged, which will happen if the best way to comply is to submit for historic preservation review with each phase as a “project” in itself. We’ve had enough short sighted planning.

Thank you for considering our support of SB 1171, and the need to address projects that may not be geographically linear or along a corridor.

TO: Representative Ryan I. Yamane, Chair
House Committee on Transportation

Representative Cindy Evans, Chair
House Committee on Water & Land

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

HEARING: March 20, 2013, 10:45 AM, Conference Room 309

SUBJECT: Testimony in OPPOSITION to SB 1171, SD1, Relating to the Review of Historic Preservation Projects

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am providing testimony in opposition to SB 1171, which amends Chapters 6E-8 and 6E-42, Hawaii Revised Statutes (HRS) to clarify that the Department of Land and Natural Resources (Department) can issue its written concurrence to proceed (i.e., under §6E-8, HRS) or its review and comments (i.e., under §6E-42, HRS) based on a phased review of a project. The amendment is a response to the Hawaii Supreme Court ruling in *Kalekini v. Yoshioka* in which the court said the State Historic Preservation Division (SHPD), acting on behalf of the Department, had violated its own rules when it allowed the Honolulu Rapid Transit Corridor project to commence prior to completion of a full archaeological inventory survey.

These amendments to statute are unnecessary. We note that there is nothing currently in Chapter 6E, HRS, that prevents the Department from giving its written concurrence or its review and comment based on a phased project. The constraints on when concurrence or review and comment can be issued by the SHPD, on behalf of the Department, are in Hawaii Administrative Rules (HAR) Chapters 13-275 and 13-284 which implement Sections 6E-8 and 6E-42, HRS. This is where the issues should be clarified as suggested by the Court.

The proponents of SB 1171, SD1 claim that these changes to Chapter 6E are needed in order to bring state law into conformity with Federal law. If the bill is passed, this will not happen because the applicable Federal law (Section 106 of the National Historic Preservation Act of 1966, As Amended) says nothing about "phased reviews." The language used in SB 1171, SD 1 actually comes from the regulations that implement Section 106 of the National Historic Preservation Act. Therefore, SB 1171, SD1, if passed, would not create any consistency at all but only add confusion and uncertainty to the historic preservation review process in State law.

Our major concern is that the issue of a phased project review should be addressed in administrative rules and not in statute. It is particularly critical that this issue be addressed within the context of the administrative rules because it is the rules that establish the project review process and provide the context for when certain kinds of information are needed and when decisions are appropriately made. If this process is to be phased, it is critical to define, within the context of existing process, when it is appropriate and on what basis a phased review should be considered. To amend the law without a full consideration of this overarching context is risky and unnecessary.

We would like to note that SHPD has reviewed phased Federal projects for a number of years, such as those carried out by the State Department of Transportation when highway are built or by the Counties when they make roadway improvements like upgrading traffic signals. These reviews have been conducted largely without creating significant problems either for the agency doing the work or for the historic resources to be protected.

In view of the foregoing facts, therefore, the proper way for the State to address the perceived issue of consistency is to amend the relevant sections of the Hawaii Administrative Rules (HAR), which implement §§6E-8, and -42; these HAR are found at §§13-275 and -284, respectively. The procedural safeguards contained in the established regulations are critical to the protection of historic properties and cultural resources.

We do concur with the proposed amendment §6E-8(a) that would delete reference to the "Hawaii advisory council of historic preservation." This is a largely mythic entity that has never met or has been asked to meet. In fact, to our knowledge, it does not exist except for the reference to it in the subject statute. It would probably be a good idea to remove mention of it altogether.

Consequently, in view of the above points, we respectfully urge that the subject bill not be passed. Thank you for considering our comments. Should you have any questions, please feel free to contact me at the above email address.

To: Rep. Ryan I. Yamane, Chair
Rep. Linda Ichiyama, Vice Chair
Committee on Transportation
And
Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair
Committee on Water & Land

From: J. Stephen Athens, Tim Rieth, and Jane Allen
International Archaeological Research Institute, Inc.
jsathens@iarii.org, trieth@iarii.org

Committee Date: March 20, 2013
10:30 am
Conference Room 309

Bill SB 1171, Relating to the Review of Historic Preservation Projects

Chairs and Vice Chairs,

Thank you for the opportunity to provide testimony on SB 1171, Relating to the Review of Historic Preservation Projects. International Archaeological Research Institute, Inc. (IARII), having 27 years of experience with historic preservation compliance services in Hawai'i, would like to express **opposition** to SB 1171. This bill runs contrary to the intent of historic preservation, as well as to the interests of the public, planners, developers, contractors, and government agencies. The phasing of archaeological inventory surveys (AIS) would build in poorly informed decision-making and planning regarding the protection of cultural resources. We do not see how anyone would benefit from this. A complete record of cultural resources at the outset, as provided by an AIS, is essential prior to project design because it allows maximum flexibility in planning and implementation of historic preservation measures.

A phased approach, on the other hand, may result in what would otherwise have been avoidable adverse effects to historic properties, with attendant construction delays and increased costs. Although recent projects such as Wal-Mart on Ke'eumoku Street, Whole Foods in Kaka'ako, Kawaiha'o Church, and Hokuli'a on the Big Island were not completed through a phased AIS approach, they illustrate the problems that can be expected with its implementation. All of these projects had major problems due to poor historic preservation planning (essentially faulty or incomplete AIS). In contrast, we would like to point out one example of the success of the current approach to AIS with regards to large projects. IARII completed an AIS for the proposed Kawaihae Bypass Road for the Dept. of Transportation (DOT) on the Big Island, which was conducted as a single, integrated project, including 19 proposed road alignments covering approximately 1,600 acres. With the data that we generated, planners and engineers at DOT, historic preservation specialists, and the public were able to assess each alternative and determine which routes or combination of routes would produce the least adverse effect to cultural resources. A phased approach to this project, as is the intent of SB 1171, would have been hard pressed to produce a similar outcome. The big problem is that each subsequent phase would be limited in alternative designs and mitigation by the preceding work and construction. The inevitable result is major conflicts and cost increases.

In conclusion, it is IARII's position that SB 1171 is misguided and detrimental to historic preservation in Hawai'i. The defeat of this bill is in the best interest of all who are concerned with efficient project planning and implementation. Thank you again for considering our testimony. If you should have any question, please feel free to contact either of us at the email addresses listed above.

ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 19, 2013 10:50 AM
To: TRNtestimony
Cc: 1mu630@gmail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Nolan Moriwaki	Masons Union Local 1 & 630	Support	No

Comments: The Masons Union Local 1 & 630 respectfully supports SB 1171, which authorizes the phased review of projects by the Department of Land and Natural Resources' (DLNR) State Historic Preservation Division to ensure consistency between State and federal law. The Masons Union Local 1 & 630 represents 1800 members of the following construction trades Bricklayers, Stone Masons, Ceramic Tile Setters, Marble Masons, Cement Finishers, Fire Proofers, and Plasterers. The inability to utilize phased review will negatively affect projects, particularly those done by the DOT, which are complex and span large distances and take upwards of ten years to complete. Requiring for a AIS for an entire project to be done before construction can begin, creates significant delays, increased costs, and possibly unnecessary disturbance of potential burial sites and historic properties. On a typical highway project, unanticipated changes can occur that can alter the alignment. Thus, AIS's conducted well before the start of the final design might be rendered unnecessary, and additional AIS's may be required, but whereas phasing allows AIS's to be conducted at the start of final design of a portion of the project that is intended to be built. There are a lot of high way projects being held up now because of the current AIS situation, high way projects that shall provide safer driving for all. The Masons Union ask for your support in passing of bill SB1171 Mahalo

Please note that testimony submitted less than 24 hours prior to the hearing , improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 19, 2013 12:32 PM
To: TRNtestimony
Cc: kaimi@lava.net
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Maria "Kaimi" Orr	Kaimipono Consulting Services LLC	Oppose	No

Comments:

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Elaine Dunbar
POB 861
Lihue, HI 96766
inunyabus@gmail.com

Sb1171 SD1

Historic
Preservation
Project Reviews

Description: Authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law. Effective January 1, 2050. Deletes language that provided the governor with the option to request the Hawaii advisory council on historic preservation to report an action to overrule or sustain a department when an agency, officer, or other person is dissatisfied with a decision of the Hawaii historic places review board.

SB1171 SD1 does nothing of the sort in the bill's description. The bill title must reflect the content, language, intent.

SB 1171 SD1 is in response to the Hawai'i Supreme Court's unanimous ruling, in *Kaleikini v. Yoshioka* (Honolulu's director of transportation), that *phasing* of archaeological studies is not allowed under HRS Chapter 6E - Historic Preservation.

Please be mindful of the THE CONSTITUTION OF THE STATE OF HAWAII in your deliberations as the people of Hawaii meaning, the Kanaka Maoli and the residents do not approve of this. And it is the Kanaka, the host culture that must have the most consideration from you to err on the side of caution.

ARTICLE I

BILL OF RIGHTS

POLITICAL POWER

Section 1. All political power of this State is inherent in the people and the responsibility for the exercise thereof rests with the people. All government is founded on this authority. [Am Const Con 1978 and election Nov 7, 1978]

DO NOT allow this to start before an inventory of all archaeological resources has been completed. When burial sites and historic properties are not identified before basic planning decisions are made, the many options that could protect those sites are effectively foreclosed.

SB 1171 SD1 is all about Oahu's rail project: without the high court's ruling, the `iwi kupuna would not have been discovered before the 4th and final phase of the 20-mile rail line, and then the argument could have been made that it was too late to stop the train to look for "bones."

ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 15, 2013 7:48 PM
To: TRNtestimony
Cc: jeannine@hawaii.rr.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/15/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson	Individual	Oppose	No

Comments: I strongly oppose SB 1171, SD 1 which would allow a phased review of certain projects. I find it absurd that Sen. Wakai, the Chair of the Committee on Technology and the Arts stated "Hawaii must preserve its historic and cultural heritage through adaptable preservation plans. The inability to phase review would negatively affect certain projects, particularly complex multi-year, multi-phase projects." He obviously does not want to preserve Hawai'i's historic and cultural heritage; he only wants to pave over them, even our iwi kūpuna. According to Patricia Price-Beggerly and J.R. McNeill, the "wholesale loss of cultural resources tends to accentuate the value of the few remaining sites in an area important to Hawaiian culture as reflected in its traditions and history. This makes it even more important that the cultural resources which are left be recovered or preserved." Please vote to oppose SB 1171, SD 1 because it is OUR kuleana to make sure that the few remaining cultural resources which are left be preserved and that our kūpuna do not get erased from the land.

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ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 16, 2013 11:17 AM
To: TRNtestimony
Cc: bobdi@hawaii.rr.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/16/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Pure	Individual	Support	No

Comments: this bill is just good common sense.....since projects often take many, many years to build out, doing the surveys in phases will allow them to be current and not obsolete as the project moves along.....

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Sent: Sunday, March 17, 2013 3:49 PM
To: TRNtestimony
Cc: sundownertoni@yahoo.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Toni Withington	Individual	Oppose	No

Comments: This is a bad bill. It takes a process that has perserved our culture and history for over a century and BENDS it to meet the needs of the rail system on Oahu, while putting all our cultural sites everywhere at risk by a "Phased" process. No. Just say NO.

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To: TRNtestimony
Cc: athurston@irmt.org
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Thurston	Individual	Oppose	No

Comments:

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Sent: Sunday, March 17, 2013 6:33 PM
To: TRNtestimony
Cc: kohala1@yahoo.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Joe Carvalho	Individual	Oppose	No

Comments: I oppose sb1171 as it still is a covert pldc!

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Sent: Sunday, March 17, 2013 8:59 PM
To: TRNtestimony
Cc: jemray@hawaii.rr.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Janet Murray	Individual	Oppose	No

Comments: OPPOSE SB1171 Mahalo!

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 17, 2013 9:16 PM
To: TRNtestimony
Cc: sherrianwitt@aol.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
sherrian witt	Individual	Oppose	No

Comments:

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To: TRNtestimony
Cc: OccupyHiloMedia@yahoo.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Oppose	No

Comments:

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To: TRNtestimony
Cc: brksilva@gmail.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Bronson K. Silva	Individual	Oppose	No

Comments:

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Sent: Sunday, March 17, 2013 10:13 PM
To: TRNtestimony
Cc: momishells@msn.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Anna Subiono	Individual	Oppose	No

Comments: I oppose everything in this bill to prevent reoccurrences of environmentally and culturally irresponsible projects at the hands of politicians.

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Sent: Sunday, March 17, 2013 10:14 PM
To: TRNtestimony
Cc: anthuriumz@hotmail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Wynnie Hee	Individual	Oppose	No

Comments: No, please do not pass this bill which would undermine the historic preservation review process by allowing a phased approach to archaeological inventory surveys, meaning that construction can begin on a project even if an archaeological inventory survey has NOT been completed for the entire project area. It would delete any review by the Hawaii advisory council on historic preservation -- a disgraceful move on the part of Gov. Abercrombie! SB 1171 SD1 is all about Oahu's rail project because, without the high court's ruling, `iwi kupuna would not have been discovered before the 4th and final phase of the 20-mile rail line and then the argument could have been made that it was too late to look for bones.

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To: TRNtestimony
Cc: momishells@msn.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Anna Subiono	Individual	Oppose	No

Comments: I oppose DLNR.

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From: Robert Petricci [nimo1767@gmail.com]
Sent: Sunday, March 17, 2013 10:53 PM
To: waltestimony; TRNtestimony
Subject: Testimony SB1171 TRN/WAL 309 Mar 20, 2013 10:30 AM

TRN/WAL 309 Mar 20, 2013 10:30 AM

RE: Testimony SB1171

Position: Strong Opposition

Robert Petricci

Aloha

Rep. Ryan I. Yamane, Chair TRN, Rep. Linda Ichiyama, Vice Chair, and committee members.

Rep. Cindy Evans, Chair WAL, Rep. Nicole E. Lowen, Vice Chair, and committee members.

I oppose SB1171 and phased reviews. Segmentation of projects is a bad idea and leaves the projects open to abuses and lack of public input.

Please hold SB1171.

Robert Petricci

ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 17, 2013 11:03 PM
To: TRNtestimony
Cc: shannonkona@gmail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/17/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Oppose	No

Comments: With all due respect, this bill is shameful. Who is coming up with such junk legislation?

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 12:00 AM
To: TRNtestimony
Cc: barbarapolk@hawaiiantel.net
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara B. Polk	Individual	Oppose	No

Comments: I oppose SB1171 because it would allow a phased environmental impact review for a project. To begin a project without a complete review of the impact on historic properties, aviation artifacts, or burial sites risks wasting state money on work that must be undone or redirected when the review of later phases discovers serious impacts. In addition, allowing a project to begin without full clearance tends to bias later decisions against careful protection of State historic artifacts and sites. I also object to removing the possibility for the governor to request and review and report from the Hawaii advisory council on historic preservation. The governor should be encouraged to consult this group, not prevented from doing so! I urge that you defeat this bill.

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Sent: Monday, March 18, 2013 12:27 AM
To: TRNtestimony
Cc: ewabond@gmail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
John Bond	Individual	Oppose	No

Comments: I oppose SB 1171 SD1 which undermines the historic preservation review process by allowing a phased approach to archaeological inventory surveys. When burial sites and historic properties are not identified before basic planning decisions are made, the many options that could protect the `iwi and cultural and historical sites are effectively foreclosed. SB 1171 also deletes any review by the Hawaii advisory council on historic preservation. This is a very dangerous bill. John Bond

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 3:03 AM
To: TRNtestimony
Cc: leiahi@me.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Wong	Individual	Oppose	No

Comments: I Strongly Oppose SB 1171 SD1 or any bill that compromises the protection of the 'iwi, cultural, burial and historic sites. These sites have to be identified before planning decisions are made.

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ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 6:11 AM
To: TRNtestimony
Cc: bmurphy420@mail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Murphy	Individual	Oppose	No

Comments: How dare you! this is not Pono!

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 7:59 AM
To: TRNtestimony
Cc: peacesubhadra@gmail.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
D. Corcoran	Individual	Oppose	No

Comments:

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Sent: Monday, March 18, 2013 9:33 AM
To: TRNtestimony
Cc: Lesliewingate7@gmail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Leslie Wingate	Individual	Oppose	No

Comments: Please do all you can to Keep us safe and healthy!

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Sent: Monday, March 18, 2013 2:04 PM
To: TRNtestimony
Cc: jhentz@crmhi.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Jim Hentz	Individual	Support	No

Comments: Dear members This is a no brainer. Given the length of time required for many phased linear highway projects and the probability of changes over the duration (years and decades) this bill is entirely logical. It will save time on the front end and a lot of money over the course of phased projects, especially those that are delayed over their life by unforeseen monetary or political factors. Please use this opportunity to support SB1171 as a logical alternative to inefficiency. Thanks Jim Hentz General Manager Soleil Management Hawaii

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Sent: Monday, March 18, 2013 3:39 PM
To: TRNtestimony
Cc: vsc@hawaiiantel.net
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Victoria Cannon	Individual	Oppose	No

Comments: Complete entire AIS prior to begin of construction, even prior to begin of planning. No deletion of any public review. No exemptions.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 6:44 PM
To: TRNtestimony
Cc: Alemorrier@gmail.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Alicia morrier	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 8:31 PM
To: TRNtestimony
Cc: MSMatson@hawaii.rr.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
MS Matson	Individual	Oppose	No

Comments: SB 1171 is the antithesis of comprehensive historic preservation review and protection. SB 1171 merely serves to escalate the ongoing failures and falterings of the State Historic Preservation Division, which has been under stringent Federal scrutiny and is in jeopardy of losing federal standing and funding. It is therefore incumbent upon the wisdom of the House Committees on Transportation and Water and Land to HOLD this Bill!

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Sent: Monday, March 18, 2013 9:30 PM
To: TRNtestimony
Cc: Jayah@hawaii.edu
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Jay Hopfensperger	Individual	Oppose	No

Comments:

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Sent: Monday, March 18, 2013 10:22 PM
To: TRNtestimony
Cc: mh@interpac.net
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Cory Harden	Individual	Oppose	No

Comments: Please oppose SB1171. It undermines the historic preservation review and deletes any review by the Hawai'i Advisory Council on Historic Preservation. Mahalo!

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Sent: Monday, March 18, 2013 10:25 PM
To: TRNtestimony
Cc: ljrinouye@gmail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Lorraine R. Inouye	Individual	Oppose	No

Comments: Allowing projects to start before a complete inventory of all archaeological resources undermines current statutes that protects burial sites and historic properties. Please respect the process that has been in place for many decades and the respect of our Hawaiian people and culture. Phasing reviews, which is the intent of SB1171, will lead to unintended consequences. You don't want to go there. Mahalo

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Sent: Monday, March 18, 2013 10:40 PM
To: TRNtestimony
Cc: ln421@msn.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Larson Noa	Individual	Oppose	No

Comments:

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Sent: Monday, March 18, 2013 10:40 PM
To: TRNtestimony
Cc: lztran@yahoo.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
L Tran	Individual	Oppose	No

Comments:

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ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 18, 2013 10:41 PM
To: TRNtestimony
Cc: lieu_q_nguyen@yahoo.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
lieu nguyen	Individual	Oppose	No

Comments:

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Sent: Monday, March 18, 2013 10:41 PM
To: TRNtestimony
Cc: ngattn0407@sbcglobal.net
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Nga Nitaman	Individual	Oppose	No

Comments:

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Sent: Monday, March 18, 2013 10:41 PM
To: TRNtestimony
Cc: Natewolford4@gmail.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Nate Wolford	Individual	Oppose	No

Comments:

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To: TRNtestimony
Cc: richard_michael_1420@yahoo.com
Subject: *Submitted testimony for SB1171 on Mar 20, 2013 10:30AM*

SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
richard michael	Individual	Oppose	No

Comments:

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To: TRNtestimony
Cc: tjsimms2000@hotmail.com
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SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
tj simms	Individual	Oppose	No

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To: TRNtestimony
Cc: 09jjjuu@hotmail.com
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SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Julian Jiman	Individual	Oppose	No

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Cc: pualehuafarm@hotmail.com
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SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Pua Kamaoa	Individual	Oppose	No

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Cc: johnrob@gmail.com
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Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
John connors	Individual	Oppose	No

Comments:

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SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Kirbin	Individual	Oppose	No

Comments:

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Cc: happynheber@yahoo.com
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SB1171

Submitted on: 3/18/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
happy heber	Individual	Oppose	No

Comments:

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Sent: Tuesday, March 19, 2013 6:43 AM
To: TRNtestimony
Cc: benjamin.thomas.barna@gmail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Benjamin Barna	Individual	Oppose	No

Comments: SB 1171 would significantly diminish the integrity of Hawai'i's historic preservation laws. While a "phased" approach to archaeological inventory surveys may sound pragmatic in its ability to get projects started more quickly, in the long term such an approach actually restricts planning options at later stages of a project and forces negative outcomes for all involved—stakeholders, developers, and the historic sites themselves. This is especially true for the kinds of projects vaguely described in the bill, because what gets completed in early phases of construction will limit how a project can proceed, and almost guarantees negative outcomes in the event of the discovery of significant historic sites—e.g., destruction of burials of na kūpuna, cost overruns, construction delays, and the further erosion of relations between the State and the Hawaiian people. This bill is nothing more than an attempt to decrease the accountability and responsibility of developers, and they have cloaked it in the language of "jobs" and "economic growth" to distract lawmakers and citizens from its real purpose: to increase their profits at the expense of Hawai'i's cultural heritage and the Hawaiian community. SB 1171 proposes to allow many developers—whether government sector or private businesses—to receive permits prior to completing an archaeological inventory survey (AIS) of the entire project area involved. Without a completed AIS, developers would lack information from archaeologists and community members consulted regarding the location, description, and significance of sites within a project area. Developers would also lack the ability to make informed planning decisions in concert with consulted community members. Such incomplete information would create uncertainty for land developers who may encounter historic sites or burials late in the planning process when needed changes may be very costly. Historic sites or burials found at this late stage would also be vulnerable to being poorly treated. Sites not accounted for in the planning process are especially at risk to be destroyed through archaeological mitigation when pressures to complete projects already begun trump the ethical and moral imperatives to protect these sites. Passage of SB 1171 will be antithetical to the State's responsibilities toward the historic and cultural sites under its jurisdiction. As noted in Chapter 6E -1 of the Hawai'i Revised Statutes, the State's role is significant: The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The legislature declares 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. The legislature further declares that it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property. SB 1171 would significantly diminish

the integrity of Hawai'i's historic preservation laws. The current laws require a developer at the start of a project to identify historic sites and burials in a project area via an AIS, which includes consultation with community members. The AIS is then used to develop plans to preserve or integrate historic sites and burials into a development or to minimize the negative impacts of a development on such sites. However, SB 1171 would allow government and private developers to conduct an AIS of a project area in phases so that permitting could occur before an AIS is conducted of the entire project area. The instances when an AIS may be phased (e.g., when the project "consists of corridors," involves "large land areas," "access to the property is restricted," and "circumstances dictate that construction be done in phases") are so vaguely defined that SB 1171 leaves open many opportunities for developers to claim they should be allowed to proceed without an AIS being done for the full project area, setting in motion events that will destroy Hawai'i's heritage sites. SB 1171 threatens Hawai'i's historic sites and burials—the places where history and people's lives have happened. SB 1171 takes away the ability of a developer and interested community members to make informed decisions. Without the information discovered via a thorough AIS, historic properties or will be discovered late in the planning process when fewer and poorer options may be available to appropriately preserve or integrate sites into a development. SB 1171 will negatively impact Native Hawaiians. Well over 90 percent of sites recorded in AISs were created by kūpuna (ancestors) of Native Hawaiians or are actual Native Hawaiian burials, which hold tremendous significance for Native Hawaiians. Imagine, for example, the graves of your grandparents being torn up because some foreign-owned company wants to make money off that land. SB 1171, which is intended to assist developers, will actually affect them negatively as well. The short-term gamble that developers take with a phased AIS will likely result in additional planning, cost overruns, and litigation if they find—late in the planning process—a significant historic site or burial in a part of the project area that was not surveyed at the outset. In such instances, the limited options for appropriately treating such historic sites and burials will be fewer options and more expensive.

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March 19, 2013

The Honorable Ryan I. Yamane, Chair
and Members
House of Representatives Committee on Transportation
State Capitol
Honolulu, HI 96813

The Honorable Cindy Evans, Chair
and Members
House of Representatives Committee on Water and Land
State Capitol
Honolulu, HI 96814

Dear Chair Yamane, Chair Evans, and Members:

Subject: Senate Bill No. 1171, Relating to the Review of Historic Preservation Projects

We, students at the William S. Richardson School of the Law, respectfully **oppose** Senate Bill No. 1171, which authorizes the phased review of projects by the Department of Land and Natural Resources' ("DLNR") State Historic Preservation Division ("SHPD").

The legislature has recognized 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."¹ Allowing SHPD to give a written concurrence based on a phased review of the project puts Hawai'i's historic properties and iwi kūpuna at substantial risk for destruction and would limit the available alternatives for their protection and preservation.

We respectfully draw your attention to several projects in the Kaka'ako area, which serve as a testament to SHPD's inability to comply with current Hawai'i law. As a result of SHPD's failure to comply with its obligations under the law, countless burials and historic sites have been irreparably harmed. Significant harm to iwi kūpuna has already been sustained as evidenced by the construction of Walmart, Ward Village Shops and Kawaiaha'o church. In order to prevent further harm, the Hawai'i Supreme Court required a full AIS for the City and County of Honolulu's High-Capacity Transit Corridor Project, as held in *Kaleikini v. Yoshioka*.²

¹ HAW. REV. STAT. § 6E-1 (2012).

² *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 128 P.3d 60 (2012).

Additionally, the performance of an AIS is the principal tool utilized to ensure that iwi are “previously identified.” Whether iwi kūpuna are classified as “previously identified” or “inadvertently discovered” tremendously affects their treatment. Previously identified iwi are those discovered *during* an AIS and data recording.³ Iwi who are characterized as previously identified are generally more likely to be preserved in place and undisturbed as the decision to preserve in place or relocate previously identified iwi is within the jurisdiction of island burial councils.⁴ On the converse, inadvertently discovered iwi result from “unintentional disturbance, erosion, or other ground disturbing activity.”⁵ In comparison to previously identified iwi, the decision making process of inadvertently discovered iwi is expedited and the role of Native Hawaiians in the process is limited. The decision to preserve in place or relocate inadvertently discovered iwi is within the jurisdiction of DLNR.⁶ The ruling in *Kaleikini* assures that AISs are to be performed at the beginning of every development project, so as to find as many “previously identified” iwi as possible. This ruling conforms with the purpose of the legal statutory framework protecting iwi kūpuna--to preserve Hawai‘i’s historic and cultural heritage.

Allowing SB 1171 to pass would encourage additional harm to iwi kūpuna and Hawai‘i’s historic sites, as it would foreclose project alternatives. Beyond attempting to justify the desecration of Hawai‘i’s history and cultural heritage for reducing construction costs and delays, no sound reason for SB 1171 exists. A blanket desire to align state law with federal law provides no insight to the quality of the proposed legislation and in no way indicates how the people of Hawai‘i will benefit from this change. Hawai‘i’s more restrictive law protects the public interest and should not be jeopardized for the sake of speedier development.

For the aforesaid reasons, we respectfully **oppose** Senate Bill 1171.

Thank you for the opportunity to testify.

Sincerely,

Pūlama Lima
Kaunakakai, Moloka‘i

Dorothy P.H. Meisner
Kailua-Kona, Hawai‘i

Lisa Yang
Hilo, Hawai‘i

STUDENTS IN LWEV-527C NATIVE HAWAIIAN LAW: BURIALS AND HISTORIC
SITES PRESERVATION
WILLIAM S. RICHARDSON SCHOOL OF LAW

³ See HAW. ADMIN. R. § 13-300-2 (2012).

⁴ See HAW. REV. STAT. § 13-300-38(a) (2012).

⁵ See HAW. ADMIN. R. § 13-300-2 (2012).

⁶ See HAW. ADMIN. R. § 13-300-40(k) (2012).

ichiyama1 - Tate

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 19, 2013 10:06 AM
To: TRNtestimony
Cc: ttengan@hawaii.edu
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Dr. Ty P. Kawika Tengan	Individual	Oppose	No

Comments: Aloha Members of the Committee on Water and Land and the Committee on Transportation, My name is Dr. Ty P. Kawika Tengan. I am testifying in opposition to S.B. 1171 S.D. 1, which, "authorizes the phased review of certain projects by the Department of Land and Natural Resources' State Historic Preservation Division to ensure consistency between state and federal law." I am an associate professor of ethnic studies and anthropology at the University of Hawaii at Manoa, and as a Native Hawaiian anthropologist I have been actively involved in community efforts to protect burials and other sacred and historic sites. This bill will not only undermine the ability of Native Hawaiians to care for their ancestral remains and material culture, but it will also undermine the ability of the State Historic Preservation Division to fulfill its mandate to preserve, restore, and maintain historic and cultural properties for future generations. Though seen as a way of facilitating large and complex developments, this bill will actually prevent developers from adequately planning ahead. A "phased" review will result in projects being phased out by the economic and political costs incurred at the end of the day for engaging in lengthy legal battles. I urge you all to use better judgement in planning for the future than the authors of this bill. Kill it here and now, and then at least you won't need to do an AIS to discover its final resting place. Aloha Aina, Ty P. Kawika Tengan

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To: TRNtestimony
Cc: lperalto@hawaii.edu
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Leon No'eau Peralto	Individual	Oppose	No

Comments: I, Leon No'eau Peralto, a Kanaka Maoli from Waiākea, Hilo, Hawai 'i, do categorically oppose Senate Bill No. 1171, which authorizes the phased review of projects by the State Historic Preservation Division, Department of Land and Natural Resources. I believe, if passed, SB 1171 would compromise the integrity of the Historic Preservation review process, and lead to further unjust harm to our iwi kūpuna.

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Cc: palmtree7@earthlink.net
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SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
janice palma-glenie	Individual	Oppose	No

Comments: of course we need historic preservation oversight!!! hawaiian cultural protections must go hand-in-hand with development. More PLDC stuff.

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My name is Dr. James M. Bayman and I offer testimony in opposition to S.B. 1171. I am a practicing archaeologist in Hawaii, as well as a professor of anthropology at the University of Hawaii-Manoa. My testimony in opposition to S.B. 1171 stems from my profound concern that it will weaken the capacity of the community to properly manage historic properties through the State Historic Preservation Division. The implementation of a "phased review" process would not provide the full range of information that is necessary for responsibly evaluating the impact of potential development projects. I urge you to refrain from passing S.B. 1171 so that the State of Hawaii can support and strengthen efforts by archaeologists and others in the community to engage in responsible stewardship and management of historic properties.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 19, 2013 11:05 AM
To: TRNtestimony
Cc: kaleopaik@yahoo.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kaleo Paik	Individual	Oppose	No

Comments: I strongly oppose this bill as it will diminish the community involvement on projects.

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To: TRNtestimony
Cc: steve.clark@pcsihawaii.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Clark	Individual	Oppose	No

Comments: While I see the importance of aligning Hawaii's laws regarding the phasing of construction projects with Federal laws, SB1171 as it now stands, will not only be inefficient, but will endanger Hawaii's important cultural resources. I ask the Senate members to heed the testimony of the Society for Hawaiian Archaeology and the Office of Hawaiian Affairs and rework this bill so it will do what it is intended to do. Please, govern smartly! Thank you.

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Cc: Mana@ibehawaiian.com
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Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Mana Kaleilani Caceres	Individual	Oppose	No

Comments: As a recognized descendant and one who carries the kuleana of protecting iwi kupuna (ancestral remains) I oppose SB1171. The law cannot and must not allow for phased AIS here in Hawai'i. To do so would be to allow construction projects to start without being forced to see the bigger picture and will lead to more desecrations than we've seen to date. You should learn from your mistakes and see what happens when an AIS is allowed to be done in phases. The Rail, done in phases, was allowed to prematurely start before the entire AIS was finished and look what has happened.... Lawsuit. Stalled construction. Costing the state +\$4 million a month to have Keiwi sit on tons of brand new equipment and at this rate the owners can retire before the construction even began. Protect iwi kupuna. Oppose sb1171.

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Cc: mahikeahi1@ymail.com
Subject: Submitted testimony for SB1171 on Mar 20, 2013 10:30AM

SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kalahikiola Keliinoi	Individual	Oppose	No

Comments: This bill attempts to authorize the State Historic Preservation Division (SHPD) to review and approve development projects in phases. Presently, the SHPD is dysfunctional and cannot do what they are already authorized to do. OPPOSE to place our iwi kupuna and irreplaceable historic sites at greater risk than they already are. SCRAP THIS BILL

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Cc: kaohe1@ymail.com
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SB1171

Submitted on: 3/19/2013

Testimony for TRN/WAL on Mar 20, 2013 10:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kaua Keawenui	Individual	Oppose	No

Comments: If developers and government entities followed the rules in the first place and didn't try to undermine and sidestep the law, there wouldn't be any delay in projects or rising penalty costs. The City pays out penalty costs at more than 7 million a month (and rising) for the rail. Is the community okay with this? Get the government to follow the rules. Theres nothing wrong with the rules addressing reviews of historic preservation projects. Government and developers just need to start following the rules and stop trying to circumvent it to address their needs. OPPOSE

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