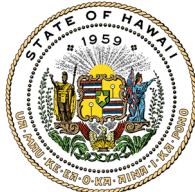


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
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
KAHOOLOWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
P.O. BOX 621
HONOLULU, HAWAII 96809

Testimony of
RYAN K.P. KANAKA'OLE
Acting Chairperson

Before the Senate Committees on
HAWAIIAN AFFAIRS
and
WATER, LAND, CULTURE AND THE ARTS

Tuesday, February 10, 2026
1:00 PM
State Capitol, Conference Room 224 and Via Videoconference

In consideration of
SENATE BILL 2443
RELATING TO HISTORIC PRESERVATION

Senate Bill 2443 would amend Hawaii Revised Statutes (HRS) Chapter 6E to update the definition of historic property and residential properties excluded from historic preservation review under HRS §6E-42.2. **The Department of Land and Natural Resources (Department) appreciates the amendments to HRS §6E proposed in this measure and submits the following comments for consideration.**

Pg. 1, Lines 4-6—defines “historic property” to include properties that have important value to Native Hawaiian or other ethnic groups of the state due to associations with cultural practices, traditional beliefs, events, or oral accounts that are important to history, traditional practices, and cultural identity. Proposals to amend the definition of “historic property” are addressed in several bills under consideration by the legislature this session, such as Senate Bill 1301. The definition proposed in this measure is reasonable and reflects the State’s site significance criteria “e” classification for sites included in the State Inventory of Historic Places. The inventory is a list of all historic sites identified within the State. It is similar to the Hawaii and National Registers of Historic Places, in terms of it being an inventory of historic properties that informs the Department’s statewide sensitivity maps. It does not, however, honorably designate a site as an historic property requiring consideration under HRS §6E-10; make a property eligible for federal historic preservation tax credits, county property tax reductions, or federal preservation grants.

Pg. 2, Lines 1-13—amends HRS §6E-42.2 and the types of residential project exempted from historic preservation review. The proposed amendments are appropriate and have the potential to resolve some of the discrepancies that currently exist between HRS §6E-42 exemptions and the HRS §6E-43 responsibilities of residential property owners and project proponents. The Department recommends the following edits:

“6E-42.2 Excluded activities for privately owned single-family detached dwelling units, and townhouses, and existing residential properties. (a) An application for a proposed project on an existing privately-owned single-family detached dwelling unit, or townhouse, or existing residential property shall be subject to the requirements of section 6E-42 only if the single-family detached dwelling unit, or townhouse, or existing residential property is over fifty years old and [is]:

- (1) Is listed in on the Hawaii or national registers of historic places, or both;
- (2) Is nominated for inclusion in on the Hawaii or national registers of historic places, or both; or
- (3) Is located in a local, state or nationally designated historic district;
- (4) The proposed permitted project includes ground disturbing activities; or
- (5) The proposed permitted project does not change the number or density of residential units or property classification.

Unless the department has executed a programmatic agreement with the permitting agency to establish a program alternative or has otherwise determined the property to not require review under this section due to the absence of historic properties or iwi kupuna.

Pg. 2, Lines 14-21—proposes reasonable edits to remove repetitive language regarding historic properties listed in the Hawaii Register of Historic Places.

Pg.3, Lines 19-2—proposes reasonable edits to remove HRS §6E-42 exemptions for nominally sensitive areas. The Department has been notified by descendants, counties, and the Office of Hawaiian Affairs of the difficulties that exist for classifying nominally sensitive areas in statute without having complete surveys of each county. Thus, the Department instead recommends developing programmatic agreements with each county to further identify geographic locations and project types that are appropriate for HRS §6E-42 exemptions or have been pre-reviewed by the Department and determined to not result in affects to historic properties or iwi kupuna.

Mahalo for the opportunity to comment on this measure.



February 10, 2026

Senator Chris Lee, Chair
Senator Lorraine Inouye, Vice Chair
Committee on Water, Land, Culture and the Arts

Senator Tim Richards, Chair
Senator Rachele Lamosao, Vice Chair
Committee on Hawaiian Affairs

**RE: SB 2443 - Relating to Historic Preservation
Hearing date: February 10, 2026 at 1:00 PM**

Aloha Chair Lee, Chair Richards, and members of the committees,

Mahalo for the opportunity to submit testimony on behalf of NAIOP Hawaii in **STRONG OPPOSITION to SB 2443 - RELATING TO HISTORIC PRESERVATION**. NAIOP Hawaii is the local chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders, and other professionals.

As currently drafted, NAIOP opposes SB 2443 which seeks to undo much of the progress of SHPD review that passed just last year through SB 15 (Act 293). SB 2443 which amends the definition of "Historic Property" to include additional "criteria to be placed onto the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being carried out, at the property or due to associations with traditional beliefs, events, or oral accounts that are important to the group's history, traditional practices, and cultural identity." Further, the measure removes several exemptions that were included in Act 295 which were intended to help streamline historical reviews to assist in the development of housing.

Primarily, NAIOP Hawaii opposes this measure as the amended definition of "historic property" to include "meets the criteria to be placed on the Hawaii register of historic places or has important value to Native Hawaiians or other ethnic groups of the State due to associations with cultural practices once carried out, or still being carried out, at the property or due to associations with traditional beliefs, events, or oral accounts that

are important to the group's history, traditional practices, and cultural identity" is overly broad and could exacerbate the current backlog of reviews.

NAIOP is concerned that this amendment would continue to cast too broad of a net and will effectively nullify the primary intent of the measure to resolve the current backlog of permit reviews. The proposed criteria are ambiguous and the measure fails to clarify who will be making the determination, effectively meaning that SHPD will continue to have to review all projects over 50 years old.

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

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

Ultimately, the issue at hand is that far too many projects are being sent to SHPD for review that don't qualify as historic under any reasonable interpretation associated with historic importance. NAIOP understands the great importance that these reviews hold in preservation of Hawaii's historic sites, however, a balance needs to be found to:1) reduce overwhelming volume of reviews placed on an understaffed department; and 2) allow SHPD staff to focus on properties of true historic significance.

Unfortunately, this measure takes two steps backwards when just last year the legislature made substantial progress last year. **NAIOP Hawaii is concerned that the current version of the measure would potentially increase the review times of permit reviews and nullify the intent of the measure.**

Mahalo for your consideration,



Ken Hayashida, President
NAIOP Hawaii



TESTIMONY WITH COMMENTS ON SENATE BILL 2443
RELATING TO HISTORIC PRESERVATION

Senate Committee on Water, Land, Culture and the Arts
Senate Committee on Hawaiian Affairs
Hawai‘i State Capitol

February 10, 2026

1:00 PM

Room 224

Aloha e Chairs Lee and Richards, Vice Chairs Inouye and Lamosao, and Members of the Committees on Water, Land, Culture and the Arts, and Hawaiian Affairs:

The Office of Hawaiian Affairs (OHA) submits this testimony and provides **COMMENTS** on SB2443, which would revise the historic property definition of chapter 6E, Hawai‘i Revised Statutes (HRS) to include sites significant to Native Hawaiians and restore vital safeguards to the HRS chapter 6E framework.

OHA is the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians.¹ In fulfillment of our mandates, OHA has been deeply involved with protection of iwi kūpuna for decades. Under HRS Chapter 6E and implementing administrative rules, OHA is tasked with specific kuleana relating to iwi.² OHA also regularly receives calls and emails from beneficiaries about the desecration of iwi, difficulties exerting their rights as cultural and lineal descendants, and other issues related to proper implementation of HRS Chapter 6E. Thus, we have direct first-hand experience concerning the strengths and weaknesses of the current framework, and provide our comments based on that experience.

First, OHA strongly supports the changes proposed to HRS § 6E-42.2, which would restore the section to its original form, prior to the amendments made by Act 293 (2025). Under the State’s public trust doctrine and Hawai‘i Constitution Article XII, section 7, the state has a duty to protect Native Hawaiian burials and cultural practices related to mālama iwi. Despite these continuing constitutional obligations, the changes made by Act 293 (SB15) significantly weakened the historic preservation review framework under HRS Chapter 6E, reducing safeguards for iwi kūpuna and cultural and historic resources and increasing litigation risk.

¹ Haw. Const. Art. XII § 5

² See HRS §§ 6E-3, 6E-43, 6E-43.5, 6E-43.6; Hawai‘i Administrative Rules (HAR) §§ 13-284-6(c), 13-275-6(c).

Act 293 created exemptions from the historic review process for private projects on *existing residential properties* and in *nominally sensitive areas*. As written, these exemptions could be interpreted to cover large-scale developments, including apartments, condominiums, or even hotels, in high-risk areas (such as Jaucus sands or sand dunes).³ This creates the very risk that prompted the Legislature to enact burial protections in 1990—following the disinterment of over 1,100 men, women, and children in Kapalua, Maui during construction of the proposed Ritz-Carlton Hotel. These amendments, intended to reduce the load of historic review by excluding projects perceived as low risk, instead increase the likelihood of iwi disturbance or destruction and fail to achieve their intended goal to improve review timelines.

The residential exemptions have, in practice, created more uncertainty and confusion for applicants and agencies, rather than streamlining review. According to findings of the Simplifying Permitting for Enhanced Economic Development (SPEED) Task Force, while residential exemptions were intended to streamline smaller projects, they have instead generated confusion among applicants and county staff about when HRS Chapter 6E review is required. This confusion has led to construction stoppages, project redesign, and litigation when iwi or other significant historic properties are found mid-project.⁴

Additionally, the nominally sensitive area exemption was enacted without consultation with historic preservation professionals, creating an unworkable and high-risk framework. The definition was imported from a separate bill during the 2025 legislative session without accompanying guardrails or consultation requirements involving SHPD, OHA, or other historic preservation experts.⁵ As a result, areas presumed to be “nominally sensitive” may be in fact be highly likely to contain burial sites or cultural deposits, increasing the likelihood of unplanned discoveries during construction. Although tiered sensitivity approaches may be effective where comprehensive land inventories exist, the State is not currently positioned to implement statewide sensitivity categories when the majority of lands have not been surveyed. The SPEED Task Force likewise identified SHPD staffing and technical capacity constraints as issues requiring investments before such systems can be reliably implemented.⁶

In general, the SPEED Task Force found that early, planned historic review is more effective than relying on exemptions—and that exemptions or narrow readings of statutory triggers do not reliably speed up development when they increase the likelihood of inadvertent discoveries. It is often faster and less expensive to incorporate surveys, monitoring, and consultation with burial

³ “Nominally sensitive” is defined broadly to include previously disturbed areas where no significant historic properties have been previously identified. HRS § 6E-42.2(d). However, many disturbed areas were never surveyed prior to HRS 6E laws, used outdated methods, or did not comply with HRS Ch. 6E.

⁴ See *Final Report of the Permitted Interaction Groups for Chapter 6E/Historic Preservation, Individual Wastewater Systems, and Building Permits*, SPEED Task Force, p. 12 (Dec. 2025) [hereinafter *Final Report*]. The SPEED Task Force was established by Act 133 (2025) to identify challenges and measures needed to expedite development permit processes.

⁵ Act 311/SB79 (2025).

⁶ See SPEED Task Force, *Final Report*, *supra* note 5, at 10-15.

councils into the front end of project design than to halt work after ground disturbance.⁷ Early planned historic review also ensures that Native Hawaiian rights protected under Article XII, Section 7 are not curtailed by the time constraints of inadvertent discovery, when Island Burial Councils (IBCs) and descendants lose decision-making authority and have only a few days to respond regarding the treatment of discovered iwi kūpuna.⁸ Blanket exemptions in practice create controversy, conflict, and confusion for families, agencies, and developers alike.

Accordingly, we believe the amendments in Section 2 bring statutory law back into alignment with the State's constitutional obligations, improve clarity, and reduce litigation risk. As an alternative to blanket exemptions, OHA encourages the Legislature to instead focus on strengthening SHPD capacity as a more effective and responsible solution.

Lastly, the proposed amendments to the definition of “historic property” appropriately align the statute with existing administrative rules governing historic significance. The rules recognize the significance for historic properties that “[h]ave an important value to the native Hawaiian people or to another ethnic group of the state due to associations with cultural practices once carried out, or still carried out, at the property or due to associations with traditional beliefs, events or oral accounts--these associations being important to the group's history and cultural identity.”⁹ Codifying this standard in statute affirms the legitimacy of cultural and traditional significance and strengthens protections for places that matter deeply to Native Hawaiian communities. For these reasons, we believe this is an appropriate amendment.

Mahalo for the opportunity to testify on this measure. OHA respectfully urges the committee to carefully consider our **COMMENTS on SB2443**.

⁷ See *Id.* at 12-13.

⁸ IBCs have 45 days to consult with descendants and make determinations for iwi discovered prior to construction. See HRS § 6E-43. In contrast, when iwi are discovered during construction, the State has final authority, and IBC consultation is expedited to 2-3 days, limiting descendant input. See HRS § 6E-43.6.

⁹ HAR § 13-284-6(b)(5).

SB-2443

Submitted on: 2/7/2026 9:29:48 PM
Testimony for WLA on 2/10/2026 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Anela Higgins	Individual	Support	Written Testimony Only

Comments:

I support this measure because it modernizes the definition of “historic property” in a way that more accurately reflects Hawai‘i’s living cultural landscape. This measure affirms that history is not only what is written or formally registered, but also what is remembered, practiced, and passed down through generations. It aligns the law more closely with Native Hawaiian ways of knowing and acknowledges that cultural identity and continuity deserve protection equal to physical structures. Mahalo.