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DEPARTMENT OF LAND AND NATURAL RESOURCES
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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 1301
RELATING TO HISTORIC PRESERVATION

Senate Bill 1301 would amend Hawaii Revised Statutes (HRS) §6E to update and clarify the archaeological permitting process and requirements, archaeological investigations and reports, and the burial sites program. **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—recommend changing language from “shall” to “may” and clarify that Archaeological Inventory Surveys (AIS) may be required for projects including ground disturbance. This change recognizes that not all projects in the locations identified require an AIS. Such a change would read as:

“§6E- Archaeological inventory surveys. (a) Archaeological inventory surveys may [~~shall~~] be required for all projects resulting in ground disturbing activities:”

Pg. 1, Lines 12-13—recommend changing language from “shall” to “may” and clarify that all proponents of projects including or resulting in ground disturbance shall complete a literature review and field inspection (LRFI). This change recognizes that not all projects in the locations identified require an LRFI. Such a change would read as:

“(b) all proponents of projects including or resulting in ground disturbing activities other than those described in subsection (a) [~~shall~~] may be required to complete:”

Pg. 2, Line 3-5, clarify that if historic properties are identified during the completion of a literature review or field inspection the project proponent shall request a state inventory of historic places number and complete an archaeological inventory survey. To read as:

“If historic properties are identified during the completion of a literature review or field inspection, the project proponent shall request a state inventory of historic places number for each site identified and complete an archaeological inventory survey.

Pg. 2, Lines 6-14, it appears that this section should still be addressing the literature review and field inspection review process. If so, it would be appropriate to clarify that the department has ninety days to review any literature review or field inspection report submitted, instead of an archaeological survey. It would also be appropriate to edit language throughout to reflect the term complete submittal used or proposed to be used throughout HRS §6E-8, 10, and 42. To read as:

“~~[The archaeological inventory survey]~~ Any required literature review or field inspection shall be submitted to the department for review for ninety days, during which time the department may request a full archaeological inventory survey. If the department fails to request a full archaeological inventory survey within ninety days, the project may be implemented in accordance with the department’s approved archaeological monitoring provisions [~~the report shall be considered accepted, and no further work shall be required to identify historic properties within a project area~~]. A project proponent or property owner shall submit any additional information [~~complete any additional work~~] required, pursuant to this chapter, to satisfy the definition of a complete submittal.”

Page 2, Lines 15-21 and Page 3, Lines 1-2, it would be useful to identify the entity or entities eligible for an archaeological permit and to clarify that all archaeological fieldwork, field inspections, and reports must be completed under the direct, in-person, supervision of an individual who has been issued an archaeological permit. To read as:

“§6E- Archaeological permits. (a) Archaeological permits shall be issued at the discretion of the department.

(b) No individual shall perform any archaeological work in the state of Hawaii, independently or on behalf of an agency or organization, until the individual is assigned an annual permit by the department. Archaeology permits may not be shared. Any individual working for an archaeological firm, agency, or organization working as a principal investigator must be assigned their own individual archaeology permit.

(c) Archaeology permits shall only be issued to individuals who meet the minimal professional qualification standards for archaeology. Any individual who meets the minimal professional qualification standards for archaeology and is issued a permit may not allow another individual to complete archaeology fieldwork or reports on their behalf or assist with completing their fieldwork or reports unless they are directly supervised in-person by the permitted individual.

(d) Each permit shall be valid only for one calendar year, regardless of when it is issued in the calendar year.

~~[(b)]~~ (e) if an individual holding an archaeological permit [a principal investigator] fails to adhere to the department's rules for archaeological work, the department may suspend or revoke their archaeological permit.

~~[(e)]~~(f) any individual holding an archaeological permit or working under the direct in-person supervisor of an individual holding an archaeological permit [principal investigator] found to have violated any provision of this part may be subject to [fines]administrative or civil penalties identified under HRS chapter 6E and the loss of the right to engage in the practice of archaeology for up to five years."

Pg. 3, Lines 6-15

The proposed amended definition of "historic property" is being addressed in several bills under consideration by the legislature this session. This definition is reasonable and reflects the State's site significance criteria "e" classification for sites included in the State Inventory of Historic Places. The State 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, honorarily 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.10, Lines 3-10

The proposed measure amends HRS §6E-43.5 but does not take into consideration existing language within HRS §6E-43 that contradicts the proposed amendments. For example, the proposed measure adds language to create HRS §6E-43.5(h), *"A council shall have ninety days to make a determination as to the preservation or relocation of previously identified native Hawaiian burial sites from the date on which a completed burial treatment plan is submitted to the council for determination. If the council fails to make a determination within ninety days, the office of Hawaiian affairs shall have thirty days to make a determination. If the office of Hawaiian affairs fails to make a determination within thirty days, the recommended determination in the burial treatment plan shall be considered accepted, and the burial treatment plan may proceed to department review and acceptance."* However, HRS §6E-43(b) states, *"A council's determination shall be rendered within forty-five days of referral by the department unless otherwise extended by agreement between the landowner and the department."* Thus, the department recommends that any amendments made to HRS §6E-43.5(h) also be made to HRS §6E-43(b) to ensure clarity and continuity of implementation.

Pg. 11, Lines 5-9—states that the Office of Hawaiian Affairs (OHA) shall be responsible for notifying recognized descendants in the moku or district where the iwi kupuna was found. However,

the current process is to notify descendants within the ahupuaa. Additionally, the Department recommends language requiring OHA publish descendant notifications of iwi kupuna, so as not to disclose the location and description of burial sites to prevent vandalism or theft of culturally sensitive sites. Thus, the Department recommends the following edit:

“(b) The office of Hawaiian affairs shall be responsible for notifying recognized descendants of the discovery from a current list that shall be provided by the department. The office of Hawaiian affairs shall notify known descendants in the [~~moku or district~~] ahupuaa of the finding within forty-eight hours of the department’s determination.~~[-The notification shall also be posted on the office of Hawaiian affairs’ public website.]”~~

Pg. 11, Lines 10-18

The proposed measure also amends 6E-43.6(b) to state, “*Any recognized lineal or cultural descendant may contest the department’s determination in writing to the island burial council of jurisdiction within fourteen days, after which the council may take jurisdiction over the discovery, at its discretion, within fourteen days of the written request by the descendant. Absent the contest from a recognized lineal or cultural descendant, the office of Hawaiian affairs may contest the department’s determination in writing to the island burial council of jurisdiction within fourteen days.*” However, the Department notes that regularly scheduled burial council meetings occur every thirty days. Therefore, fourteen days may occur before the respective island burial council is able to convene to receive or discuss the written contest.

Pg. 13, Lines 10-16

The proposed measure amends HRS §6E-43.6(e) to clarify that project proponents are responsible for developing the burial site component and establishes a thirty-day deadline upon which the burial site component must be submitted to the department for review and acceptance. The Department frequently encounters situations where an appropriate mitigation plan (e.g., burial site component of a preservation plan) was not submitted to the department for review and acceptance. This reduces or prevents the Department’s ability to protect burial sites by eliminating the Department’s ability to comment on appropriate preservation measures. This amendment will ensure that the Department receives the appropriate mitigation plan in a timely manner.

Mahalo for the opportunity to comment on this measure.



**TESTIMONY IN STRONG SUPPORT OF SB1301 WITH AMENDMENTS
RELATING TO HISTORIC PRESERVATION**

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

February 10, 2026

1:00 PM

Room 224

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

The leadership of the Office of Hawaiian Affairs (OHA) provides **STRONG SUPPORT with proposed amendments** for SB1301, which will frontload archaeological work in certain sensitive areas, establish conditions to revoke archaeological permits when necessary, reduce Island Burial Council (IBC) membership, designate OHA as the sole entity responsible for submitting IBC nominees to the Governor for appointment, and establish an appeals process for State Historic Preservation Division (SHPD) determinations for inadvertent discoveries.

OHA strongly supports this bill for its potential to improve the treatment of iwi kūpuna by reducing inadvertent discoveries through proactive methods and reinforcing the integrity of archaeological permitting and the historic preservation review process. To further build on the solutions advanced in this bill, OHA offers several modest amendments related to proactive archaeological recommendations and IBC composition and appointments.

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

First, front-loading archaeological work in sensitive areas with sandy soil matrices (e.g., Beaches Sand, Jaucas Sand) and on parcels with previously identified sites (including burials) provides proactive guidance to agencies, landowners, developers, and planners. Sandy soil matrices are known to contain Native Hawaiian burials. Accordingly, in its own

¹ Haw. Const. Art. XII Sec.5

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

project reviews, OHA always recommends heightened caution when sandy soils are encountered and subjected to ground disturbance activities. Typically, this results in either a recommendation to conduct an archaeological inventory survey (AIS) or archaeological monitoring to minimize impacts to iwi kūpuna and culturally significant sites of importance to Native Hawaiians. OHA understands that internal guidance within SHPD and the various County planning departments has flagged sandy soils as a key factor for archaeological review; however, application has been inconsistent due to leadership and training variations. OHA therefore appreciates and fully supports the bill's requirement for an AIS in sandy areas and an archaeological literature review for properties with previously identified sites.

Second, in the case of properties with previously identified sites, front loading archaeological literature review streamlines the review process by making it easier to determine if further archaeological work is needed to mitigate possible adverse impacts. Too often, OHA and SHPD must request archaeological maps and parcel histories from project proponents because insufficient information is provided to make an informed determination, resulting in avoidable and sometimes costly project delays. The bill effectively addresses that issue.

However, to improve clarity and minimize possible confusion over the adequacy of older AISs and archaeological literature reviews conducted on a parcel, OHA recommends adding the following underscored language on page 1 at line 6 and 16:

“§6E- Archaeological inventory surveys. (a) Archaeological inventory surveys shall be required for all projects, unless the department determines that a previously completed survey is acceptable:”

“(b) All proponents of projects other than those described in subsection (a) shall complete:

(1) A literature review, including the full project area and a minimum of a one-mile radius from the project area unless the department determines that a previously completed literature review is acceptable; and”

This would allow SHPD to determine if an older AIS or archaeological literature review meets current archaeological standards and aligns with a project's scope of work. OHA has observed older AISs being applied to newer projects with different construction footprints or expanded project areas, where such materials are not always appropriate or sufficient.

Third, OHA notes that there is currently no means to suspend or revoke an archaeological permit in the State of Hawai'i even if an archaeologist commits a HRS section 6E-11 violation, repeatedly submits substandard reports, or even commits the act of desecration. This bill empowers SHPD to hold archaeologists accountable when they do not follow the administrative rules or commit historic preservation violations. (Page 2, line 15). Typically, professional licensure statutes or rules provide respective approving authorities with the ability to revoke or suspend licenses in appropriate circumstances to protect the general public and minimize or prevent possible harm. While archaeologists in the State of Hawai'i are not licensed, this should not preclude holding archaeological permit

holders accountable for repeat or severe infractions of professional or legal standards. Thus, OHA fully supports the bill's inclusion of provisions that allow for accountability and corrective action when warranted.

Fourth, OHA appreciates the bill's recognition of its enhanced role in the historic preservation review process for inadvertent discoveries of iwi kūpuna. (Page 11 at line 15). Inadvertent discoveries of iwi kūpuna are often deeply traumatic for our beneficiaries, particularly when multiple discoveries occur on the same parcel in close proximity. Repeatedly classifying clearly associated iwi kūpuna burial grounds as "inadvertent" simply because they were not identified during an AIS is offensive as it implies that our ancestors haphazardly buried their kūpuna. In these instances, OHA has to critically review a project and the steps that both SHPD and the archaeological contractor have taken to ensure accountability, prioritize preservation in place, and uphold protections recommended by recognized descendants. While this additional review can create uncertainty and added costs for project proponents, especially when determinations are revisited, the bill's proposed time-limited appeals process provides a clear and structured mechanism to address misapplied inadvertent discovery determinations and navigate these sensitive situations with greater fairness and clarity.

Lastly, if passed, OHA will assume the kuleana of providing all IBC candidates to the Governor for approval, consistent with our current process for recruiting candidates widely through existing communication channels with beneficiaries and the broader community. We note, however, that some beneficiaries have preferred to apply through SHPD rather than OHA. Further, additional organizational and process amendments are likely to emerge from the Burial Sites Working Group (BSWG) OHA is currently convening to evaluate whether some or all of SHPD's duties under HRS 6E related to the protection, care and disposition of iwi kūpuna should be transferred to OHA.³ The BSWG includes representatives from IBC, OHA, SHPD, and the community, and is expected to consider the IBC appointment process as part of its work, with informed recommendations to be reported to the legislature ahead of the 2027 session.⁴

Mahalo for the opportunity to testify on this measure. We strongly urge the committee to **PASS SB1301** with our proposed amendments. Please note this testimony represents a recommendation by OHA leadership that is subject to full Board approval.

³ Per 2025 House Resolution 186 and Senate Resolution 130.

⁴ With respect to quorum issues addressed at page 6, lines 13-17, OHA agrees that problems meeting quorum are severe and diminish the Native Hawaiian voice in decision making. OHA's package bill ([SB2538](#)) suggests leaving in statutory language relating to composition, but allowing quorum to consist of a majority of appointed members, to allow for the IBCs to operate when fewer people are available or appointed to serve.



KIA'I IWI ALAKA'I

James J K C Maioho

Kahu of Mauna Ala | Founder, Kiai Iwi Alakai

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SB1301 – Detailed Testimony Packet

TESTIMONY OF JAMES JAY KALEIMAMAHU CROWNINGBURG MAIOHO
Before the Senate Committees on Hawaiian Affairs & Water, Land, Culture and the Arts
February 10, 2026

RE: SB1301 – Relating to Historic Preservation, Burial Councils, and Archaeological Procedures

Aloha Chairs, Vice Chairs, and Honorable Committee Members,

I submit this testimony with deep concern and cultural obligation regarding SB1301, a measure that proposes structural changes to archaeological review processes, burial council composition, and inadvertent discovery protocols affecting Native Hawaiian burial sites.

At its core, SB1301 is not merely an administrative modernization bill. It is a governance bill that reshapes how iwi kūpuna are identified, protected, and stewarded across the State of Hawai‘i.

According to the hearing notice, SB1301 establishes conditions under which archaeological inventory surveys and reconnaissance surveys are required, modifies archaeological permitting procedures, alters the composition and operations of Island Burial Councils, and changes procedures upon the inadvertent discovery of burial sites.¹

Each of these elements carries significant cultural, legal, and spiritual implications.

I. ARCHAEOLOGICAL SURVEY THRESHOLDS

Archaeological Inventory Surveys (AIS) are the primary mechanism through which burial sites are identified prior to ground disturbance. Any statutory change that narrows the conditions requiring AIS in favor of reconnaissance-level review risks the underidentification of iwi.

Reconnaissance surveys, by design, are preliminary. They are not intended to provide the same depth of subsurface analysis as AIS studies. Reducing AIS triggers would inevitably lead to late discoveries during active construction phases, where preservation options become constrained by project momentum and financial pressure.

State law has long recognized that burial protection begins with identification. Weakening survey thresholds weakens burial protection itself.

II. ARCHAEOLOGICAL PERMITTING AUTHORITY

SB1301 proposes expanded authority regarding the issuance and revocation of archaeological permits and the temporary suspension of archaeological practice.¹

While accountability mechanisms are important, centralizing disciplinary authority also raises questions regarding political pressure, development timelines, and contractor influence.

Archaeologists serve as the first line of defense for iwi discovery. Regulatory changes must ensure independence rather than create environments where professional findings may be constrained by permitting risk.

III. BURIAL COUNCIL COMPOSITION & AUTHORITY

Island Burial Councils represent one of the last institutional structures where lineal descendants and cultural practitioners retain decision-making authority regarding the treatment of Native Hawaiian burials.

Any modification to council composition must be approached with extreme caution.

Burial councils are not advisory bodies — they are cultural governance bodies grounded

in ‘ike kūpuna, genealogical connection, and spiritual protocol.

Altering membership structures, appointment authority, or voting composition risks diluting descendant voice in determining whether burials are preserved in place or relocated.

Such decisions are not technical determinations. They are ancestral ones.

IV. INADVERTENT DISCOVERY PROCEDURES

The inadvertent discovery of iwi during construction is one of the most sensitive scenarios in burial protection law.

Stop-work timelines, consultation requirements, and treatment determinations form the protective buffer between development activity and ancestral disturbance.

Any procedural shortening of work stoppages or streamlining of review may accelerate construction at the expense of cultural due diligence.

In practice, once construction momentum resumes, preservation advocacy becomes exponentially more difficult.

V. TRUST RESPONSIBILITY & CULTURAL HARM

The State of Hawai‘i carries both a constitutional and moral trust responsibility to protect Native Hawaiian burial sites.

Iwi are not artifacts.

They are ancestors.

The cumulative impact of survey threshold changes, burial council restructuring, and discovery protocol revisions risks creating a regulatory environment where efficiency supersedes reverence.

For these reasons, I respectfully urge the Legislature to amend SB1301 to:

- Preserve or expand AIS survey triggers
- Protect cultural practitioner and descendant majority on Burial Councils
- Maintain robust inadvertent discovery work stoppage periods

- Require lineal descendant consultation prior to treatment determinations
- Ensure archaeological independence from development pressure

Proper burial protection policy must be built on precaution, not expediency.

Our ancestors deserve nothing less.

Mahalo for the opportunity to testify.

Respectfully,

James Jay Kaleimamahu Crowningburg Maioho

FOOTNOTES

1. Hawai‘i State Legislature, Senate Committee Hearing Notice, Feb. 10, 2026 – Measure SB1301 summary describing amendments to archaeological surveys, burial councils, and inadvertent discovery procedures.



COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
HAWAII CHAPTER



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 1301 - 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 1301 - 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 1301 which seeks to undo much of the progress of SHPD review that passed just last year through SB 15 (Act 293). SB 1301 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."

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,

A handwritten signature in black ink, appearing to read "Ken Hayashida". The signature is fluid and cursive, written in a professional style.

Ken Hayashida, President
NAIOP Hawaii

SB-1301

Submitted on: 2/7/2026 11:21:11 PM

Testimony for WLA on 2/10/2026 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
M. Leilani DeMello	Individual	Support	Written Testimony Only

Comments:

Aloha,

I KĀKO‘O this bill.

Mahalo,

M. Leilani DeMello

‘Ōla‘a, Puna, Hawai‘i