



April 8, 2013

Senate Donna Mercado Kim, President
Hawaii State Capitol, Room 409
Honolulu, HI 96813

Representative Joseph Souki, Speaker
Hawaii State Capitol, Room 431
Honolulu, HI 96813

Dear President Kim and Speaker Souki,

The Society For Historical Archaeology writes in **opposition** to SB1171, which authorizes the phased review of projects by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD).

Formed in 1967 and with more than 2,300 members, SHA is the world's leading scholarly society devoted to the archaeology and material culture of the modern world (A.D. 1400-present). Members come from a dozen countries, and most are professional archaeologists who teach, work in museums, consulting firms, or who have government posts. Through our close relationship with the Advisory Council for Underwater Archaeology, our members also include many of the world's underwater archaeologists.

SB1171 is in response to the recent Hawaii Supreme Court ruling in *Kalekini v. Yoshioka*, where the Court ruled that 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.

SB1171 would amend Hawaiian state law (HRS §6E-8 and §6E-42), which currently requires that, prior to any state, county or public project commencing, the proposed project must be referred to the SHPD for its review of *entire* 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, and the analysis of the full project's impact must be completed before any construction may begin.

SB1171 proposes to amend the statute to provide a mechanism by which SHPD can provide its review, comments and concurrence based on a phased approach, intending to more closely parallel the process for a federal undertaking. This proposed law would permit the construction of a project to begin without having the entire project area surveyed for historic sites.

Our major concern is that the legislation is unnecessary, because the issue of a phased project review should be addressed in administrative rules and not in the

statute. To amend the law without a full consideration of this overarching context is risky and unnecessary, in contrast to simply changing the administrative rules, which will ensure that these amendments are placed within a procedural context and that safeguards are included. 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. **Please note also that the Federal provision for a phased review of projects is in regulations and not in the statute.**

SHA is not opposed to a phased approach in principle; however, any such process needs to be clearly defined and explained in an administrative rule. **If put into place, such a phased process must also be open and transparent, and must guarantee accountability and public participation and consultation—particularly early and full participation and consultation with Native Hawaiian organizations who are the most knowledgeable about the state’s rich history.** As it stands, there are too few safeguards in the proposed bill, and it appears to give the SHPD unilateral powers to decide if a phased review or a programmatic agreement is needed.

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

Sincerely,

Paul R. Mullins, Ph.D.
President
Society for Historical Archaeology