

HISTORIC PRESERVATION

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One small State agency—the State Historic Preservation Division—is at the nexus of historic preservation and development, both large and small. By statute, SHPD is responsible for providing “leadership in preserving, restoring, and maintaining historic and cultural property,” standards that are squarely in the public interest. The SHPD fulfills two mandates in historic preservation—State and federal—and though many of their requirements are parallel and even overlap, State law contains additional responsibilities.

The division’s mandates, however, bring it into direct conflict with development forces—both public and private—that view historic preservation as a hindrance, and the office as nothing but an obstacle to getting permits. These interests have essentially prevailed. Today, SHPD has ineffectual leaders and a greatly diminished professional staff. It is a crippled program. How did this office, once a major force for historic preservation in Hawai‘i, turn into a constantly undermined, unstable, and weakened government agency? Over a century and a half of government leadership in historic preservation seems to have withered away. What can be done to restore this important regulatory and advisory office, and the public’s confidence in the state’s historic preservation program?

WHAT DOES SHPD DO?

Among the most visible and contentious of SHPD’s duties under both State and federal law is the review of actions that may harm historic sites—everything from building a hotel, to repairing a sewer main, to replacing window frames on a historic house. When done well, the review and compliance program can identify historic sites before ground-disturbing work damages or destroys them, or can recommend ways to avoid or minimize harm. At its best, the review process also promotes the preservation of significant historic sites or landscapes, and ensures that the sites, and/or the scientific and cultural information from them, are accessible to the public.

Identifying historic sites is also at the heart of both the federal and State historic preservation mandates, because it is primarily through review and compliance work that new historic sites are found. In a recent year, the office conducted over 3,400 reviews. In all cases, the SHPD must work with landowners, the agencies that issue permits for their actions, and with the consultants landowners hire to advise them. All of this is done on strict, short timelines. When valued sites are not preserved, or when a development is delayed for months or years to complete historic preservation requirements, SHPD is rightly or wrongly blamed.

As comprehensive as SHPD's review mandates may seem, they are still limited—something the public does not always understand. The division's reviews of private sector applications are only recommendations to the County or State agency that actually issues the permit. While the permitting agency may include SHPD's recommendation as a permit condition, subsequent enforcement often falls between government offices, with too little being done too late about damage or destruction of historic sites.

My time at SHPD as a regulatory archaeologist was a dual exercise in satisfaction and frustration. Satisfaction came from working with historic preservation professionals and landowners to preserve historic sites, or a cultural landscape that gave a glimpse of past times. Frustration came from failing to save historic sites from damage or destruction, and from having to deal with scofflaw developers, or with government agencies that excused themselves from compliance. Small wonder that one of the agency's nicknames is the "historic mitigation division."

SHPD's regulatory and advisory role has never been an easy one, but it has become much harder. Over the last eight to ten years, the SHPD has deteriorated alarmingly. It can no longer do much of its basic work. Management problems have persisted despite efforts to address them. Those who have worked for or with the agency over the years say that its current state has been a long time coming, and that the combination of the recession and poor management has only aggravated serious problems left unsolved from one administration to the next. Most recently, the National Park Service, which provided about 40 percent of SHPD's funding for 2010, put the agency on "high risk grantee" status because of its lack of compliance with grant requirements. The SHPD has been given two years to address shortcomings, or face losing federal support altogether—something neither the office nor our state can afford.

A BRIEF ACCOUNT OF HISTORIC PRESERVATION IN HAWAI'I

From the founding of the Hawaii National Museum in 1872 by Kamehameha V, Hawai'i's citizens and their government have always valued the tangible

vestiges of the past. In the 1880s, King Kalākaua expanded the Museum's holdings, and revived and promoted Hawaiian culture through establishment of the Hale Nauā Society. In 1889, Bishop Museum was founded to honor the memory of Princess Bernice Pauahi Bishop, and to house priceless heirlooms of the Kamehameha dynasty. The Territory of Hawai'i created the Historical Sites Commission and empowered it to locate important historic sites, record them on tax maps, and conduct limited reviews of government construction projects, to be sure that sites weren't damaged or destroyed.

At Statehood, the Territorial commission became a government agency, and the Historic Sites Section was placed within the State Parks Division of the Department of Land and Natural Resources (DLNR). Several years later, the Historic Sites Section took on the duties of the State Historic Preservation Office under the National Historic Preservation Act of 1966, which established a national program and authorized the creation of individual state programs, allotting funding to Hawai'i for this purpose.

In 1976, the Hawai'i Legislature enacted the law now designated as Chapter 6E, Hawai'i Revised Statutes, which established a historic preservation program to be carried out by the State, in addition to participating in the national program. Though Chapter 6E parallels the National Historic Preservation Act, it is actually somewhat stronger. Among other things, the new statute included a strong review mandate for State and County projects, and required that the State Historic Preservation Officer be a historic preservation professional.

Over the years, important amendments to Chapter 6E expanded the State's role in protecting historic and cultural sites. In 1988, the Legislature added a provision that required giving historic properties due consideration in the review of private sector projects needing State or County permits. In 1990, following public outcry over the exhumation of nearly 1,000 Native Hawaiian burials at Honokahua, Maui, the statute was amended to include sections about the care and treatment of prehistoric and historic burials. Additional amendments have strengthened the penalty provisions for damaging or destroying historic sites, and clarified the definition of historic properties.

In 1990, historic preservation became a separate division—the SHPD—within DLNR, and during the next decade it grew to meet its regulatory responsibilities. By 2000, SHPD had sufficient archaeological, architectural, and cultural staff to conduct reviews of private, State, and federal actions, and provide technical assistance to the public. Neighbor island offices were established on Hawai'i, Maui, and Kaua'i. The History and Culture staff managed the Burial Sites Program, which included the island burial councils. Clerical and administrative personnel handled correspondence generated by professional staff, the island burial councils, and the Hawai'i Historic Places Review Board.

One archaeologist managed the Geographic Information System (GIS), an electronic mapping program used by most government agencies. The SHPD's system contained data on the tens of thousands of historic properties recorded throughout the state, with the sites' descriptions linked to their locations on maps. Federal, State, and County agencies relied on the GIS data when carrying out their own planning.

The division had problems during this time period. Nearly a quarter of the staff was laid off in 1995, and in 1998 more layoffs were threatened. At the same time, the main agency operations were moved to Kapolei, with a smaller office still maintained in Honolulu. The move itself caused temporary difficulties, but the split office made existing management and operational problems worse. More recently, the problems that led the Park Service to place SHPD on "high risk status" have come to threaten its very existence. It has lost most of its experienced staff from its middle supervisory level, and is plagued by high turnover when vacancies are filled. Subsequent budget cuts and the "freezing" of positions by the Executive Branch have made these problems worse, and the loss of knowledge and corporate memory has affected the office's most basic functions. The resulting turmoil has made it very difficult to attract qualified and experienced professionals to work at the division.

SOLUTIONS

How can the years of neglect and damage be reversed? If SHPD is to regain its former potential and move ahead, changes to core functions and structure in three areas are essential: (1) improving the quality of information the agency works with, and how it is gathered; (2) strengthening the staff; and (3) increasing public participation through greater transparency and more opportunities for involvement.

I. GOALS FOR INFORMATION GATHERING

The statewide inventory of historic places—a master list of all historic and cultural properties recorded over the past forty years or more—must be restored and updated. This information is crucial for many of SHPD's statutory duties, and the inventory should include such basic data as brief site descriptions, the Tax Map Key, and links to relevant correspondence, reports, or other documents. Once updated, the inventory must be made available, ideally online, with supervised access so that sensitive data are not released. A registration system would provide oversight, while permitting access to information for those who need it.

The GIS is a vital tool for SHPD, for professionals working with the agency, for other government offices, and for the public. It is unconscionable that the current administration has allowed SHPD's GIS to fall into disuse. Restoring the GIS will require updating the software, incorporating current data on historic sites and studies, providing the necessary hardware for all SHPD offices to have access, and developing a means of safe public access.

The SHPD also maintains the most comprehensive library of historic preservation reports and plans in the state. Historic preservation professionals, government agencies, private companies, and the public all use the library. In recent years, though, the library has become highly disorganized. Reports have gone missing, and the online library databases are only current to 2004 or 2005. Putting the library into order and updating the existing databases should be another high priority in restoring SHPD; these updated library databases should then be made available on the division's website.

The administrative rules for the historic preservation project review process need to be revised. Since their adoption in 2002, these rules have provided standards for both SHPD's project reviews, and for the work of historic preservation professionals, such as archaeological inventory surveys. Revision should take place in consultation with the relevant stakeholder groups to ensure that acceptable professional standards for archaeological, architectural, and ethnographic work are clearly presented for both the professional and public.

II. GOALS FOR IMPROVEMENTS IN PERSONNEL AND STAFFING

The core SHPD professional staff should be qualified historic preservation professionals who meet the Secretary of Interior's Standards for such staff in one of the four defined disciplines—architecture, history, historical architecture, or archaeology—or in a closely related field, such as Hawaiian Studies or Geography. These individuals should have considerable experience in historic preservation work in Hawai'i before coming to SHPD. Much of the work in review and compliance requires professional judgment that only comes through sufficient training and experience. Without this background, staff members are more likely to produce inadequate reviews, and are more vulnerable to outside pressure—especially when they lack a firm grounding in historic preservation. Currently, the division is woefully understaffed, and lacks enough qualified, experienced individuals to guide more junior colleagues.

The majority of professional positions at SHPD are classed as "exempt," meaning "exempt from civil service." It is high time that these positions be converted to civil service status. The Legislature required in 2000 that all exempt positions be reviewed, and either eliminated if unnecessary, or converted

to civil service. Even though they have existed since the program's founding in 1976, SHPD's exempt positions have never been seriously evaluated. Converting these positions to civil service—hardly a matter of rocket science—will result in greater fiscal responsibility, improved budget planning, and protection of these regulatory staff from inappropriate pressure and treatment. Civil service conversion will also require producing position descriptions that define qualified applicants. An established process for conversion is in place; there is no good reason for further delay.

Since Hawai'i's historic preservation program began in the 1960s, the Director of DLNR has been the titular State Historic Preservation Officer. When the Legislature passed 6E-5 in 1976, they wisely included professional qualifications for this position. Nevertheless, the SHPO has never been a qualified historic preservation professional. Attorneys, business executives, and an engineer have served as the State's lead historic preservation official. Even if all of these individuals had managed DLNR well—which they haven't—historic preservation has received short shrift time and again, and especially when State and federal historic preservation law ran counter to DLNR's other interests. We would never accept a non-attorney being appointed as the State's Attorney General. Why then do we allow an attorney without any historic preservation experience to be appointed as State Historic Preservation Officer? It's time to separate these functions, and make the SHPO a stand-alone position with direct and sole oversight of the historic preservation program. The SHPO should not have divided loyalties, but instead carry out his or her duties without a conflict of interest.

The SHPD administrator should also be a qualified historic preservation professional with considerable experience *in Hawai'i*. Elsewhere in DLNR, qualified professionals serve as administrators in Engineering and Forestry and Wildlife. Historic preservation is not a hobby, but a profession, requiring training and experience. If we want the best for Hawai'i's historic and cultural heritage, we should demand that only a qualified and experienced individual should serve as the SHPD administrator.

III. BRING TRANSPARENCY AND SUNSHINE TO SHPD'S OPERATIONS

SHPD could make much better use of its web presence. At a time when agency funds and staff are being severely cut, SHPD should conduct a significant part of its business online, whether it be posting required documents, or providing public information.

According to its own regulations, SHPD must provide weekly postings of all reports and plans it has received for review, and a list of its determinations. The public has thirty days to review these materials and provide comments

or objections to SHPD. Since 2005, the online postings have been absent for months or years at a time. The weekly postings have resumed recently, but they are minimal, lack lists of incoming materials, and are very difficult for the public to interpret. SHPD needs to include all the required materials, and create an online list that clearly shows all relevant information.

SHPD has the technical ability to make electronic copies of entire reports and plans upon receipt; this should be done as part of reinstating the required weekly postings. In addition, the agency should post all review correspondence as it is sent out, including correspondence to agencies and to professional firms, such as archaeological contractors. Posting this correspondence would not only increase the transparency of the agency's activities, but would also allow the public to gauge the relative performance of archaeological contractors and other historic preservation professionals by seeing the letters that evaluate their work.

SHPD provides administrative support to the island burial councils and the Hawai'i Historic Places Review Board, which are important and autonomous public commissions. The timely posting of agendas and minutes—required by law to be available no more than thirty days after the commissions' meetings—is important for members of the public who want to participate in the commissions' work. SHPD now posts these documents online, but their appearance is very sporadic and unpredictable. It should be an SHPD priority to have these postings meet the law's standards for timeliness. What's more, the public should not have to guess when minutes might appear, or endlessly check SHPD's website for new additions. A Really Simple Syndication (RSS) feed on the SHPD website can alert subscribers to any changes to SHPD's website, such as new burial council minutes, or an updated weekly posting of reviews and incoming documents. At present, few if any executive agencies in Hawai'i State government use RSS feeds, but the Legislature has made great use of this simple web tool, to the public's benefit. The Executive Branch—including SHPD—should do the same.

Many state historic preservation offices post an annual report on their websites, which provide clear and concise summaries of accomplishments, such as grants-in-aid, historic sites listed on the state's register, or the number of compliance reviews done. SHPD's activities used to be included in DLNR's annual reports, published from 1960 to 1994, but since then, neither DLNR nor SHPD has provided regular updates of its work. To increase transparency, and as a form of public outreach, the SHPD should publish yearly reports on its website. The reports could also include the basic data that SHPD provides to the National Park Service for its required annual grant report for federal funding. These reports need not be elaborate or time-consuming; summary

statements with supporting statistics would be helpful to the public, and would increase accountability.

The State's historic preservation statute, Chapter 6E, should be amended to link to Chapter 343, the environmental law, to allow for public comment on historic and cultural resources during the environmental review process, when applicable. This would improve the public's ability to assess the potential effects of a project on historic sites, and increase the opportunity to participate in the review. If historic sites issues require changes to a development, the problems could be addressed earlier and for far less trouble and expense than if historic preservation concerns are raised separately from the environmental review process.

The preceding goals may seem to have little to do with heiau or burial sites, but if achieved, they would go far towards righting what is now so wrong at SHPD. If we can restore the division's ability to conduct the comprehensive reviews that federal and State historic preservation law call for, if we can protect SHPD from shortsighted and deliberately destructive attacks by large business and development forces outside and inside State government, we may again be able to have an SHPD that leads in "preserving, restoring, and maintaining historic and cultural property."