
A BILL FOR AN ACT

RELATING TO HAWAIIAN CULTURAL RESERVES.

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

1 SECTION 1. The legislature finds that Native Hawaiians
2 struggle to perpetuate their traditional and customary cultural
3 and subsistence practices and to maintain cultural connections
4 to the 'āina amid increasing development and other land uses
5 that impact the abundance of and access to natural and cultural
6 resources and sites.

7 The legislature further finds that the continued
8 disconnection of Native Hawaiians with the 'āina, including
9 through the disconnection with Native Hawaiian traditional and
10 customary practices, has resulted and continues to result in the
11 loss of traditional ecological knowledge and values that could
12 otherwise serve to increase the sustainability and self-
13 sufficiency of the islands and all who call Hawai'i home.

14 Native Hawaiian culture is both interconnected with and
15 interdependent on the maintained integrity of the natural
16 environment. Native Hawaiian models of self-governance serve to
17 bolster natural ecosystems for communal self-sufficiency and



1 sustainability, based in part on communities' intimate knowledge
2 of and connection to their place and local resources. This is
3 reflected in modern-day kīpuka communities, where Native
4 Hawaiian traditional and customary practices and subsistence
5 lifestyles continue to coexist with high levels of resource
6 abundance.

7 Unfortunately, soon after western contact, shifts in land
8 use, specifically sugar cane and cattle ranching, combined with
9 a drastic decline in the Native Hawaiian population, resulted in
10 the large-scale devastation of natural and cultural resources
11 and a multi-generational disconnect between many Native
12 Hawaiians and place. Native Hawaiians' ability to maintain
13 connections to and steward the 'āina continued to decline
14 throughout the twentieth century, as development, military
15 activity, and other land uses further disrupted native
16 ecosystems and destroyed natural and cultural resources integral
17 to Native Hawaiian cultural practices and subsistence
18 lifestyles. Property owners also sought and continue to seek to
19 exclude Native Hawaiians and others from accessing or transiting
20 through their lands, further disconnecting Native Hawaiians from
21 land and culture.



1 In recognition of the disconnection of Native Hawaiians
2 from their ancestral lands and the critical need to protect the
3 living vestiges of Native Hawaiian culture, the State
4 Constitution was amended in 1978 to, among other things,
5 "protect all rights, customarily and traditionally exercised" by
6 Native Hawaiians. Two decades later, the Hawai'i Supreme Court
7 established the Ka Pa'akai analytical framework, which required
8 state decision making to identify and mitigate impacts to
9 natural and cultural resources and associated Native Hawaiian
10 traditional and customary practices. However, these legal
11 protections do not necessarily address, much less reverse, the
12 loss of resources and disconnection that have already occurred
13 through prior land uses.

14 Today, many Native Hawaiian cultural practitioners and
15 others are seeking to restore and maintain native ecosystems and
16 perpetuate associated Native Hawaiian traditional and customary
17 practices, including the stewardship practice of mālama 'āina.
18 Such efforts are of particular interest not only to Native
19 Hawaiians, but also to resource managers and others who
20 understand the potential of traditional ecological knowledge and
21 community-based stewardship approaches to more effectively



1 restore and perpetuate ecosystems and environmental resources
2 necessary for long-term sustainability and self-sufficiency.
3 However, practitioners' efforts are hampered not only by the
4 lack of mechanisms to restore resources and connections to 'āina
5 that have already been lost, but also by the growing trend of
6 subdivisions and condominium property regimes proposed for
7 largely undeveloped agricultural lands, where such resources and
8 connections could otherwise be restored and maintained.

9 The legislature finds that there is a need for mechanisms
10 to affirmatively reconnect Native Hawaiians and Native Hawaiian
11 traditional and customary practices with places as a means of
12 more meaningfully perpetuating Native Hawaiian culture and as a
13 first step towards reviving and perpetuating the cultural
14 knowledge and values that can most effectively ensure the
15 sustainability and self-sufficiency of the Hawaiian islands.

16 The purpose of this Act is to require the counties to
17 provide for the establishment of Hawaiian cultural reserves as a
18 condition for the approval and development of certain
19 subdivisions and of condominium property regimes on agricultural
20 and rural lands that include the construction of three or more
21 dwelling units.



SECTION 2. Section 46-6, Hawaii Revised Statutes, is amended to read as follows:

"§46-6 Parks ~~[and]~~, playgrounds, and Hawaiian cultural reserves for subdivisions. (a) Except as hereinafter provided, each county shall adopt ordinances to require a subdivider, as a condition to approval of a subdivision to provide land in perpetuity or to dedicate land for ~~[park]~~:

(1) Park and playground purposes~~[7]~~; and

(2) Hawaiian cultural reserve purposes;

for the use of purchasers or occupants of lots or units in subdivisions~~[-]~~; provided that land set aside for Hawaiian cultural reserve purposes shall also be made available for the use of cultural practitioners and the perpetuation of Native Hawaiian traditional and customary practices, cultural resources, or cultural connections to place. The ordinances may prescribe the instances when land shall be provided in perpetuity or dedicated, the area, location, grade, and other state of the sites so required to be provided or dedicated. In addition thereto, such ordinances may prescribe penalties or other remedies for violation of such ordinances.



(b) In lieu of providing land in perpetuity or dedicating land~~[7]~~ for park and playground purposes the ordinances may permit a subdivider pursuant to terms and conditions set forth therein to:

(1) Pay to the county a sum of money deemed adequate by the county to purchase the park land the subdivider would otherwise have had to provide or dedicate; or

(2) Combine the payment of money with land to be provided or dedicated, the value of such combination to be as deemed adequate by the county to purchase the total amount of land the subdivider would otherwise have had to provide or dedicate.

The method of determining such full or partial payment shall be prescribed by the ordinances. The ordinances shall also provide that such money shall be used for the purpose of providing parks and playgrounds for the use of purchasers or occupants of lots or units in the subdivision. Each county may establish by ordinance a time limit within which it must spend the park dedication fees it has collected. Payment in lieu of provision or dedication of land pursuant to this section shall not satisfy



1 the requirement for provision of land in perpetuity or
2 dedication of land for Hawaiian cultural reserve purposes.

3 (c) Pursuant to terms, conditions, and limitations
4 specified by the ordinances, a subdivider shall receive credit:

5 (1) For privately-owned and maintained parks and
6 playgrounds; and

7 (2) For lands dedicated or provided for park and
8 playground purposes prior to the effective date of the
9 ordinances.

10 No credit for private parks and playgrounds shall be
11 applied against the obligation to provide in perpetuity or
12 dedicate land for Hawaiian cultural reserve purposes.

13 (d) Upon the provision of land in perpetuity or the
14 dedication of land by the subdivider as may be required under
15 this section[~~, the county concerned shall thereafter assume the~~
16 ~~cost of improvements and their maintenance, and the subdivider~~
17 ~~shall accordingly be relieved from such costs]:~~

18 (1) The county concerned shall thereafter assume the cost
19 of improvements and their maintenance; or

20 (2) With regards to land provided or dedicated for
21 Hawaiian cultural reserve purposes, the county



1 concerned may assume the costs of improvements and
2 their maintenance or may transfer management to an
3 organization that will assume the cost of improvements
4 and their maintenance.

5 The subdivider shall accordingly be relieved from such
6 costs.

7 (e) The ordinances adopted pursuant to this section may
8 provide, where special circumstances, conditions, and needs
9 within the respective counties so warrant, for such exemptions
10 and exclusions as the councils of the respective counties may
11 deem necessary or appropriate and may also prescribe the extent
12 to and the circumstances under which the requirements therein
13 shall or shall not be applicable to subdivisions.

14 (f) Each county shall consult with the office of Hawaiian
15 affairs and potentially impacted Native Hawaiian communities
16 regarding the characteristics of any Hawaiian cultural reserve
17 for which land is required to be provided or dedicated pursuant
18 to this section.

19 [~~(f)~~] (g) For purposes of this section certain terms used
20 herein shall be defined as follows:



1 (1) "Approval" means the final approval granted to a
2 proposed subdivision where the actual division of land
3 into smaller parcels is sought, provided that where
4 construction of a building or buildings is proposed
5 without further subdividing an existing parcel of
6 land, the term "approval" shall refer to the issuance
7 of the building permit.

8 (2) "Dwelling unit" means a room or rooms connected
9 together, constituting an independent housekeeping
10 unit for a family and containing a single kitchen.

11 (3) "Hawaiian cultural reserve" means an area established
12 for the exercise of Native Hawaiian traditional and
13 customary practices, as a memorial of cultural-
14 historical significance, as a native Hawaiian plant
15 and animal habitat, or any combination thereof.

16 ~~[-(3)-]~~ (4) "Lodging unit" means a room or rooms connected
17 together, constituting an independent housekeeping
18 unit for a family which does not contain any kitchen.

19 ~~[-(4)-]~~ (5) "Parks and playgrounds" mean areas used for active
20 or passive recreational pursuits.



1 [~~(5)~~] (6) "Subdivider" means any person who divides land as
2 specified under the definition of subdivision or who
3 constructs a building or group of buildings containing
4 or divided into three or more dwelling units or
5 lodging units.

6 [~~(6)~~] (7) "Subdivision" means the division of improved or
7 unimproved land into two or more lots, parcels, sites,
8 or other divisions of land and for the purpose,
9 whether immediate or future, of sale, lease, rental,
10 transfer of title to, or interest in, any or all such
11 lots, parcels, sites, or division of land. The term
12 includes resubdivision, and when appropriate to the
13 context, shall relate to the land subdivided. The
14 term also includes a building or group of buildings,
15 other than a hotel, containing or divided into three
16 or more dwelling units or lodging units.

17 [~~(7)~~] (8) "Privately owned parks and playgrounds" mean parks
18 or playgrounds and their facilities which are not
19 provided in perpetuity or dedicated but which are
20 owned and maintained by or on behalf of the ultimate
21 users of the subdivision pursuant to recorded



1 restrictive covenants. Where the privately owned park
2 is a part of the lot or lots on which a building or
3 group of buildings containing or divided into three or
4 more dwelling units or lodging units is constructed,
5 it shall not be required that the private park or
6 playground meet county subdivision standards nor shall
7 the area of the private park or playground be deducted
8 from the area of the lot or lots for purposes of
9 zoning or building requirements."

10 SECTION 3. Section 514B-3, Hawaii Revised Statutes, is
11 amended by adding a definition of "Hawaiian cultural reserves"
12 to be appropriately inserted and to read as follows:

13 "Hawaiian cultural reserves" shall have the same meaning
14 as in section 46-6."

15 SECTION 4. Section 514B-6, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[~~§~~514B-6 ~~[+]~~ Supplemental county rules governing a
18 condominium property regime. (a) Whenever any county deems it
19 proper, the county may adopt supplemental rules governing
20 condominium property regimes established under this chapter in
21 order to implement this program; provided that any of the



1 supplemental rules adopted shall not conflict with this chapter
2 or with any of the rules adopted by the commission to implement
3 this chapter.

4 (b) For any condominium property regime established under
5 this chapter that:

6 (1) Will be located on agricultural or rural lands; and

7 (2) Will include three or more residential units;

8 each county shall adopt supplemental rules to require, as a
9 condition of approval, the dedication of land or provision of
10 land in perpetuity for Hawaiian cultural reserve purposes, for
11 the use of cultural practitioners and the perpetuation or
12 restoration of Native Hawaiian traditional and customary
13 practices, cultural resources, or cultural connections to place.

14 The rules may prescribe the instances when land shall be
15 provided in perpetuity or dedicated, the area, location, grade,
16 and other state of the sites so required to be provided or
17 dedicated. The rules adopted pursuant to this section may
18 provide, where special circumstances, conditions, and needs
19 within the respective counties so warrant, for such exemptions
20 and exclusions as the councils of the respective counties may
21 deem necessary or appropriate and may also prescribe the extent



1 to and the circumstances under which the requirements therein
2 shall or shall not be applicable to projects. In addition
3 thereto, such rules may prescribe penalties or other remedies
4 for violation of such rules.

5 (c) Upon the provision of land in perpetuity or the
6 dedication of land by the developer as required under this
7 section, the county concerned shall thereafter:

8 (1) Assume the cost of improvements and their maintenance;

9 or

10 (2) Transfer management of any Hawaiian cultural reserve
11 to an organization, which will assume the cost of
12 improvements and their maintenance for non-exclusive
13 use.

14 The developer shall accordingly be relieved from such costs.

15 (d) Each county shall consult with the office of Hawaiian
16 affairs and potentially impacted Native Hawaiian communities
17 regarding the characteristics of any Hawaiian cultural reserve
18 for which land is required to be provided or dedicated pursuant
19 to this section."

20 SECTION 5. Section 514B-32, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) A declaration shall describe or include the
2 following:

3 (1) The land submitted to the condominium property regime;

4 (2) The number of the condominium map filed concurrently
5 with the declaration;

6 (3) The number of units in the condominium property
7 regime;

8 (4) The unit number of each unit and common interest
9 appurtenant to each unit;

10 (5) The number of buildings and projects in the
11 condominium property regime, and the number of stories
12 and units in each building;

13 (6) The permitted and prohibited uses of each unit;

14 (7) To the extent not shown on the condominium map, a
15 description of the location and dimensions of the
16 horizontal and vertical boundaries of any unit. Unit
17 boundaries may be defined by physical structures or,
18 if a unit boundary is not defined by a physical
19 structure, by spatial coordinates;

20 (8) The condominium property regime's common elements;



- 1 (9) The condominium property regime's limited common
2 elements, if any, and the unit or units to which each
3 limited common element is appurtenant;
- 4 (10) The total percentage of the common interest that is
5 required to approve rebuilding, repairing, or
6 restoring the condominium property regime if it is
7 damaged or destroyed;
- 8 (11) The total percentage of the common interest, and any
9 other approvals or consents, that are required to
10 amend the declaration. Except as otherwise
11 specifically provided in this chapter, and except for
12 any amendments made pursuant to reservations set forth
13 in paragraph (12), the approval of the owners of at
14 least sixty-seven per cent of the common interest
15 shall be required for all amendments to the
16 declaration;
- 17 (12) Any rights that the developer or others reserve
18 regarding the condominium property regime, including,
19 without limitation, any development rights, and any
20 reservations to modify the declaration or condominium
21 map. An amendment to the declaration made pursuant to



1 the exercise of those reserved rights shall require
2 only the consent or approval, if any, specified in the
3 reservation; [~~and~~]

4 (13) A declaration, subject to the penalties set forth in
5 section 514B-69(b), that the condominium property
6 regime is in compliance with all zoning and building
7 ordinances and codes, and all other permitting and
8 other requirements pursuant to section 514B-5, section
9 514B-6, and chapter 205, including section 205-4.6
10 where applicable. In the case of a project in the
11 agricultural district classified pursuant to chapter
12 205, the declaration, subject to the penalties set
13 forth in section 514B-69(b), shall include an
14 additional statement that there are no private
15 restrictions limiting or prohibiting agricultural uses
16 or activities in compliance with section 205-4.6. In
17 the case of a property that includes one or more
18 existing structures being converted to condominium
19 property regime status, the declaration required by
20 this section shall specify:



1 (A) Any variances that have been granted to achieve
2 the compliance; and

3 (B) Whether, as the result of the adoption or
4 amendment of any ordinances or codes, the project
5 presently contains any legal nonconforming
6 conditions, uses, or structures.

7 A property that is registered pursuant to section
8 514B-51 shall instead provide the required declaration
9 pursuant to section 514B-54. If a developer is
10 converting a structure to condominium property regime
11 status and the structure is not in compliance with all
12 zoning and building ordinances and codes, and all
13 other permitting and other requirements pursuant to
14 ~~[section]~~ sections 514B-5 ~~[7]~~ and 514B-6, and the
15 developer intends to use purchaser's funds pursuant to
16 the requirements of section 514B-92 or 514B-93 to cure
17 the violation or violations, then the declaration
18 required by this paragraph may be qualified to
19 identify with specificity each violation and the
20 requirement to cure the violation by a date
21 certain[-]; and



1 (14) If applicable, the land to be provided in perpetuity
2 or dedicated for Hawaiian cultural reserve purposes
3 and, to the extent not shown on the condominium map, a
4 description of the location and dimensions of the
5 horizontal and vertical boundaries of any unit
6 included."

7 SECTION 6. Section 514B-33, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) A condominium map shall be recorded with the
10 declaration. The condominium map shall contain the following:

- 11 (1) A site plan for the condominium property regime,
12 depicting the location, layout, and access to a public
13 road of all buildings and projects included or
14 anticipated to be included in the condominium property
15 regime, and depicting access for the units to a public
16 road or to a common element leading to a public road;
- 17 (2) Elevations and floor plans of all buildings in the
18 condominium property regime;
- 19 (3) The layout, location, boundaries, unit numbers, and
20 dimensions of the units;



(4) To the extent that there is parking in the condominium property regime, a parking plan for the regime, showing the location, layout, and stall numbers of all parking stalls included in the condominium property regime;

(5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information of the limited common elements, if any; [and]

(6) A description in sufficient detail, as may be determined by the commission, to identify any land area that constitutes a limited common element[-]; and

(7) Unless specifically described in the declaration, the layout, location, and other identifying information of the land being provided in perpetuity or dedicated for Hawaiian cultural reserve purposes."

SECTION 7. Section 514B-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Prior to the issuance of an effective date for a developer's public report, the commission shall have received the following:



- (1) Nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;
- (2) The developer's public report prepared by the developer disclosing the information specified in section 514B-83 and, if applicable, section 514B-84;
- (3) A copy of the deed, master lease, agreement of sale, or sales contract evidencing either that the developer holds the fee or leasehold interest in the property or has a right to acquire the same;
- (4) Copies of the executed declaration, bylaws, and condominium map that meet the requirements of sections 514B-32, 514B-33, and 514B-108;
- (5) A specimen copy of the proposed contract of sale for units;
- (6) An executed copy of an escrow agreement with a third party depository for retention and disposition of purchasers' funds that meets the requirements of section 514B-91;
- (7) As applicable, the documents and information required in section 514B-92 or 514B-93;



(8) A declaration by the developer, subject to the penalties set forth in section 514B-69(b), that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting and other requirements applicable to the project, pursuant to chapter 205, including section 205-4.6, where applicable, and sections 514B-5, 514B-6, and 514B-32(a)(13);

(9) In the case of a project in the agricultural district classified pursuant to chapter 205, a verified statement signed by an appropriate county official that the project as described and set forth in the project's declaration, condominium map, bylaws, and house rules does not include any restrictions limiting or prohibiting agricultural uses or activities, in compliance with section 205-4.6; and

(10) Other documents and information that the commission may require."

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.



H.B. NO. 1998

1 SECTION 9. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 10. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect upon its approval.
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INTRODUCED BY:

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H.B. NO. 1998

Report Title:

Hawaiian Cultural Reserve; Traditional and Customary Practices;
Subdivisions; Condominium Property Regimes

Description:

Requires counties to provide for the establishment of Hawaiian cultural reserves as a condition for approval and development of subdivisions and of condominium property regimes on agricultural and rural lands that allow for construction of at least three dwelling units.

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

