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# 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 maintain cultural connections to  
4 the aina, amid increasing development and other land uses that  
5 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 from the aina, including the  
9 perpetuation of native Hawaiian traditional and customary  
10 practices, has resulted and continues to result in the loss of  
11 traditional ecological knowledge and values that could otherwise  
12 serve to increase the sustainability and self-sufficiency of our  
13 islands, and all who call Hawaii 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 "kipuka" 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, including sugarcane cultivation and cattle ranching,  
9 combined with a drastic decline in the native Hawaiian  
10 population, resulted in the large-scale devastation of natural  
11 and cultural resources and a multi-generational disconnect  
12 between many native Hawaiians and place. Native Hawaiians'  
13 ability to maintain connections to and steward the aina  
14 continued to decline throughout the twentieth century, as  
15 development, military activity, and other land uses further  
16 disrupted native ecosystems and destroyed natural and cultural  
17 resources integral to native Hawaiian cultural practices and  
18 subsistence lifestyles. Property owners also sought and  
19 continue to seek to exclude native Hawaiians and others from  
20 accessing or transiting through their lands, further  
21 disconnecting native Hawaiians from 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 Hawaii supreme court  
7 established the "Ka Paakai" 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,  
15 community groups, and others are seeking to restore and maintain  
16 native ecosystems and perpetuate associated native Hawaiian  
17 traditional and customary practices, including the stewardship  
18 practice of malama aina. These efforts are of particular  
19 interest not only to native Hawaiians, but also to resource  
20 managers and others who understand the potential of traditional  
21 ecological knowledge and community-based stewardship approaches



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

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

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



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

3 "§46-6 [~~Parks and playgrounds for subdivisions.] Hawaiian  
4 cultural reserves and parks and playgrounds for subdivisions.~~

5 (a) Except as hereinafter provided, each county shall adopt  
6 ordinances to require a subdivider, as a condition to approval  
7 of a subdivision to provide land in perpetuity or to dedicate  
8 land for [~~park~~]:

9 (1) Park and playground purposes [~~-~~]; and

10 (2) Hawaiian cultural reserve purposes,  
11 for the use of purchasers or occupants of lots or units in  
12 subdivisions [~~-~~]; provided that land set aside for Hawaiian  
13 cultural reserve purposes shall also be made available for the  
14 use of cultural practitioners and the perpetuation of native  
15 Hawaiian traditional and customary practices, cultural  
16 resources, or cultural connections to place.

17 In developing ordinances pursuant to this section, each  
18 county shall consider how to best ensure that the requirement to  
19 provide or dedicate land for a Hawaiian cultural reserve will be  
20 roughly proportional to the impact from that new subdivision.  
21 The considerations shall also account for how previous



1 developments or changes to land access have impacted Native  
2 Hawaiian traditional and customary practices in the region. The  
3 ordinances may prescribe the instances when land shall be  
4 provided in perpetuity or dedicated, the area, location, grade,  
5 and other state of the sites so required to be provided or  
6 dedicated. In addition thereto, [~~such~~] the ordinances may  
7 prescribe penalties or other remedies for violation of [~~such~~]  
8 the ordinances.

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

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

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



1           The method of determining such full or partial payment  
2 shall be prescribed by the ordinances. The ordinances shall  
3 also provide that [~~such~~] the money shall be used for the purpose  
4 of providing parks and playgrounds for the use of purchasers or  
5 occupants of lots or units in the subdivision. Each county may  
6 establish by ordinance a time limit within which it must spend  
7 the park dedication fees it has collected. This section shall  
8 not satisfy the requirement for land provided in perpetuity or  
9 dedicated for Hawaiian cultural reserve purposes.

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

- 12           (1) For privately-owned and maintained parks and  
13                 playgrounds;
- 14           (2) For lands dedicated or provided for park and  
15                 playground purposes prior to the effective date of the  
16                 ordinances.

17           No credit for private parks and playgrounds shall be  
18 credited against the land that would be provided in perpetuity  
19 or dedicated for Hawaiian cultural reserve purposes.



1 (d) Upon the provision of land in perpetuity or the  
2 dedication of land by the subdivider as may be required under  
3 this section~~[, the]~~:

4 (1) The county concerned shall thereafter assume the cost  
5 of improvements and their maintenance~~[, and the]~~; or

6 (2) With regards to a Hawaiian cultural reserve, the  
7 county concerned may assume the costs of improvements  
8 and their maintenance, or may transfer management to  
9 an organization that will assume the cost of  
10 improvements and their maintenance.

11 The subdivider shall accordingly be relieved from ~~[such]~~ the  
12 costs.

13 (e) The ordinances adopted pursuant to this section may  
14 provide, where special circumstances, conditions, and needs  
15 within the respective counties so warrant, for ~~[such]~~ any  
16 exemptions and exclusions as the councils of the respective  
17 counties may deem necessary or appropriate and may also  
18 prescribe the extent to and the circumstances under which the  
19 requirements therein shall or shall not be applicable to  
20 subdivisions.



1        (f) Each county shall consult with the office of Hawaiian  
 2 affairs and potentially impacted native Hawaiian communities  
 3 regarding the characteristics of any Hawaiian cultural reserve  
 4 for which land is required to be provided or dedicated pursuant  
 5 to this section.

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

8        [~~1~~] "Approval" means the final approval granted to a  
 9        proposed subdivision where the actual division of land  
 10       into smaller parcels is sought, provided that where  
 11       construction of a building or buildings is proposed  
 12       without further subdividing an existing parcel of  
 13       land, the term "approval" shall refer to the issuance  
 14       of the building permit.

15       [~~2~~] "Dwelling unit" means a room or rooms connected  
 16       together, constituting an independent housekeeping  
 17       unit for a family and containing a single kitchen.

18       "Hawaiian cultural reserve" means an area established for  
 19 the exercise of native Hawaiian traditional and customary  
 20 practices, as a memorial of cultural-historical significance, as



1 a native Hawaiian plant and animal habitat, or any combination  
2 thereof.

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

6 [~~4~~] "Parks and playgrounds" [~~mean~~] means areas used for  
7 active or passive recreational pursuits.

8 [~~5~~] "Subdivider" means any person who divides land as  
9 specified under the definition of subdivision or who  
10 constructs a building or group of buildings containing  
11 or divided into three or more dwelling units or  
12 lodging units.

13 [~~6~~] "Subdivision" means the division of improved or  
14 unimproved land into two or more lots, parcels, sites,  
15 or other divisions of land and for the purpose,  
16 whether immediate or future, of sale, lease, rental,  
17 transfer of title to, or interest in, any or all such  
18 lots, parcels, sites, or division of land. The term  
19 includes resubdivision, and when appropriate to the  
20 context, shall relate to the land subdivided. The  
21 term also includes a building or group of buildings,



1 other than a hotel, containing or divided into three  
2 or more dwelling units or lodging units.

3 [~~(7)~~] "Privately owned parks and playgrounds" [~~mean~~] means  
4 parks or playgrounds and their facilities which are  
5 not provided in perpetuity or dedicated but which are  
6 owned and maintained by or on behalf of the ultimate  
7 users of the subdivision pursuant to recorded  
8 restrictive covenants. Where the privately owned park  
9 is a part of the lot or lots on which a building or  
10 group of buildings containing or divided into three or  
11 more dwelling units or lodging units is constructed,  
12 it shall not be required that the private park or  
13 playground meet county subdivision standards nor shall  
14 the area of the private park or playground be deducted  
15 from the area of the lot or lots for purposes of  
16 zoning or building requirements."

17 SECTION 3. Section 514B-3, Hawaii Revised Statutes, is  
18 amended by adding a new definition to be appropriately inserted  
19 and to read as follows:

20 ""Hawaiian cultural reserves" means the same as defined in  
21 section 46-6(g)."



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

3 "[~~f~~] §514B-6 [~~h~~] Supplemental county rules governing a  
4 condominium property regime. (a) Whenever any county deems it  
5 proper, the county may adopt supplemental rules governing  
6 condominium property regimes established under this chapter in  
7 order to implement this program; provided that any of the  
8 supplemental rules adopted shall not conflict with this chapter  
9 or with any of the rules adopted by the commission to implement  
10 this chapter.

11 (b) For any condominium property regime established under  
12 this chapter that will be located on agricultural or rural lands  
13 and will include three or more residential units, each county  
14 shall adopt supplemental rules to require, as a condition of  
15 approval, the provision or dedication of land in perpetuity for  
16 Hawaiian cultural reserve purposes, for the use of cultural  
17 practitioners and the perpetuation or restoration of native  
18 Hawaiian traditional and customary practices, cultural  
19 resources, or cultural connections to place.

20 In developing supplemental rules pursuant to this section,  
21 each county shall consider how to best ensure that the



1 requirement to provide or dedicate land for a Hawaiian cultural  
2 reserve will be roughly proportional to the impact from that new  
3 condominium property regime. The considerations shall also  
4 account for how previous developments or changes to land access  
5 have impacted Native Hawaiian traditional and customary  
6 practices in the region.

7 The supplemental rules may:

- 8 (1) Prescribe the instances when land shall be provided in  
9 perpetuity or dedicated and the area, location, grade,  
10 and other state of the sites so required to be  
11 provided or dedicated;
- 12 (2) Provide, where special circumstances, conditions, and  
13 needs within the respective counties so warrant, for  
14 any exemptions and exclusions as the councils of the  
15 respective counties may deem necessary or appropriate  
16 and may also prescribe the extent to and the  
17 circumstances under which the requirements therein  
18 shall or shall not be applicable to projects; and
- 19 (3) Prescribe penalties or other remedies for violation of  
20 the rules.



1        (c) Upon the provision of land in perpetuity or the  
2 dedication of land by the developer under this chapter as may be  
3 required under this section, the county concerned shall  
4 thereafter:

5        (1) Assume the cost of improvements and their maintenance;  
6                or

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

11 The developer shall accordingly be relieved from the costs.

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

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

19        "(a) A declaration shall describe or include the  
20 following:

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



- 1           (2) The number of the condominium map filed concurrently  
2           with the declaration;
- 3           (3) The number of units in the condominium property  
4           regime;
- 5           (4) The unit number of each unit and common interest  
6           appurtenant to each unit;
- 7           (5) The number of buildings and projects in the  
8           condominium property regime, and the number of stories  
9           and units in each building;
- 10          (6) The permitted and prohibited uses of each unit;
- 11          (7) To the extent not shown on the condominium map, a  
12          description of the location and dimensions of the  
13          horizontal and vertical boundaries of any unit. Unit  
14          boundaries may be defined by physical structures or,  
15          if a unit boundary is not defined by a physical  
16          structure, by spatial coordinates;
- 17          (8) The condominium property regime's common elements;
- 18          (9) The condominium property regime's limited common  
19          elements, if any, and the unit or units to which each  
20          limited common element is appurtenant;



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



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

18               (A) Any variances that have been granted to achieve  
19               the compliance; and

20               (B) Whether, as the result of the adoption or  
21               amendment of any ordinances or codes, the project



1                   presently contains any legal nonconforming  
2                   conditions, uses, or structures.

3                   A property that is registered pursuant to section  
4                   514B-51 shall instead provide the required declaration  
5                   pursuant to section 514B-54. If a developer is  
6                   converting a structure to condominium property regime  
7                   status and the structure is not in compliance with all  
8                   zoning and building ordinances and codes, and all  
9                   other permitting and other requirements pursuant to  
10                  ~~[section]~~ sections 514B-5~~[7]~~ and 514B-6, and the  
11                  developer intends to use purchaser's funds pursuant to  
12                  the requirements of section 514B-92 or 514B-93 to cure  
13                  the violation or violations, then the declaration  
14                  required by this paragraph may be qualified to  
15                  identify with specificity each violation and the  
16                  requirement to cure the violation by a date  
17                  certain~~[+]~~; and

18                  (14) If applicable, the land to be provided in perpetuity  
19                  or dedicated for any Hawaiian cultural reserve; and to  
20                  the extent not shown on the condominium map, a



1           description of the location and dimensions of the  
2           horizontal and vertical boundaries of any unit."

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

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

- 7           (1) A site plan for the condominium property regime,  
8           depicting the location, layout, and access to a public  
9           road of all buildings and projects included or  
10           anticipated to be included in the condominium property  
11           regime, and depicting access for the units to a public  
12           road or to a common element leading to a public road;
- 13           (2) Elevations and floor plans of all buildings in the  
14           condominium property regime;
- 15           (3) The layout, location, boundaries, unit numbers, and  
16           dimensions of the units;
- 17           (4) To the extent that there is parking in the condominium  
18           property regime, a parking plan for the regime,  
19           showing the location, layout, and stall numbers of all  
20           parking stalls included in the condominium property  
21           regime;



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

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

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

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

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

17 (1) Nonrefundable fees as provided in rules adopted by the  
18 director of commerce and consumer affairs pursuant to  
19 chapter 91;



- 1           (2) The developer's public report prepared by the  
2           developer disclosing the information specified in  
3           section 514B-83 and, if applicable, section 514B-84;
- 4           (3) A copy of the deed, master lease, agreement of sale,  
5           or sales contract evidencing either that the developer  
6           holds the fee or leasehold interest in the property or  
7           has a right to acquire the same;
- 8           (4) Copies of the executed declaration, bylaws, and  
9           condominium map that meet the requirements of sections  
10          514B-32, 514B-33, and 514B-108;
- 11          (5) A specimen copy of the proposed contract of sale for  
12          units;
- 13          (6) An executed copy of an escrow agreement with a third  
14          party depository for retention and disposition of  
15          purchasers' funds that meets the requirements of  
16          section 514B-91;
- 17          (7) As applicable, the documents and information required  
18          in section 514B-92 or 514B-93;
- 19          (8) A declaration by the developer, subject to the  
20          penalties set forth in section 514B-69(b), that the  
21          project is in compliance with all county zoning and



1 building ordinances and codes, and all other county  
2 permitting and other requirements applicable to the  
3 project, pursuant to chapter 205, including section  
4 205-4.6, where applicable, and sections 514B-5, 514B-  
5 6, and 514B-32(a)(13);

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

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

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

19 SECTION 9. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 10. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 11. This Act shall take effect upon its approval.

7



**Report Title:**

OHA Package; Counties; Hawaiian Cultural Reserves

**Description:**

Requires the counties to provide for the establishment of Hawaiian cultural reserves as a condition of approval and development of certain types of subdivisions and condominium property regimes on agricultural and rural lands that include the construction of dwellings. (SD1)

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

