

JAN 23 2025

A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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

1 SECTION 1. The legislature finds that it is critically
2 important to preserve Hawaii's cultural resources, including
3 historic properties and burial sites, as integral elements of
4 the State's heritage. The legislature also recognizes the
5 pressing need to expedite housing development, particularly in
6 transit-oriented development areas, to address the housing
7 crisis and create more housing opportunities in close proximity
8 to transportation.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Create a process for expediting the review of
11 residential transit-oriented development on certain
12 parcels within county-designated transit oriented
13 development zones that have a low risk of affecting
14 historically significant resources;
- 15 (2) Further empower lead agencies, including county
16 governments, to make determinations on the potential
17 effects of a project;



1 (3) Create a ninety-day limit to concur or not concur with
2 project effect determinations; and

3 (4) Ensure that projects with written concurrence are
4 exempt from further review unless there is a
5 significant change to the project.

6 SECTION 2. Section 6E-8, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) Before any agency or officer of the State or its
9 political subdivisions commences any project ~~[which]~~ that may
10 affect historic property, an aviation artifact, or a burial
11 site, the lead agency ~~[or officer]~~ shall ~~[advise the department]~~
12 render a determination on the potential effect of the project
13 and allow the department an opportunity for review of the effect
14 of the proposed project on historic properties, aviation
15 artifacts, or burial sites, consistent with section 6E-43,
16 especially those listed on the Hawaii register of historic
17 places. The proposed project shall not be commenced, or if it
18 has already begun, continued, until the department has ~~[given~~
19 ~~its written concurrence.]~~ been afforded the opportunity to
20 review the project in compliance with this subsection. If:



1 (1) The proposed project consists of corridors or large
2 land areas;
3 (2) Access to properties is restricted; or
4 (3) Circumstances dictate that construction be done in
5 stages,
6 the department may give its written concurrence based on a
7 phased review of the project; provided that there shall be a
8 programmatic agreement between the department and the project
9 applicant that identifies each phase and the estimated timelines
10 for each phase.

11 The department shall provide written concurrence or non-
12 concurrence within ninety days after the filing of a request
13 with the department. [The] If the department fails to provide
14 written concurrence or non-concurrence with a project effect
15 determination within ninety days, the project may move to the
16 next step in the compliance process.

17 The agency or officer seeking to proceed with the project,
18 or any person, may appeal the department's concurrence or non-
19 concurrence to the Hawaii historic places review board. An
20 agency, officer, or other person who is dissatisfied with the
21 decision of the review board may apply to the governor, who may



1 take action as the governor deems best in overruling or
2 sustaining the department.

3 Once the department has provided written concurrence on the
4 project effect determination and any necessary mitigation
5 measures have been identified and agreed upon for a proposed
6 project, the appropriate agency or officer of the State or any
7 of its political subdivisions may commence the project, and the
8 project shall be exempt from further review by the department
9 unless there is a significant change to the project's scope of
10 work or project area or unless additional historic properties,
11 aviation artifacts, or burial sites are identified within the
12 project area."

13 SECTION 3. Section 6E-10, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Before any construction, alteration, disposition or
16 improvement of any nature, by, for, or permitted by a private
17 landowner may be commenced [~~which~~] that will affect an historic
18 property on the Hawaii register of historic places, the
19 landowner shall notify the department of the construction,
20 alteration, disposition, or improvement of any nature and allow
21 the department opportunity for review of the effect of the



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1 proposed construction, alteration, disposition, or improvement
2 of any nature on the historic property. The proposed
3 construction, alteration, disposition, or improvement of any
4 nature shall not be commenced, or in the event it has already
5 begun, continue, until the department shall have given its
6 concurrence or ninety days have elapsed. Within ninety days
7 after notification, the department shall:

- 8 (1) Commence condemnation proceedings for the purchase of
9 the historic property if the department and property
10 owner do not agree upon an appropriate course of
11 action;
- 12 (2) Permit the owner to proceed with the owner's
13 construction, alteration, or improvement; or
- 14 (3) In coordination with the owner, undertake or permit
15 the investigation, recording, preservation, and
16 salvage of any historical information deemed necessary
17 to preserve Hawaiian history, by any qualified agency
18 for this purpose.

19 Once the department has provided written concurrence on the
20 project effect determination and any necessary mitigation
21 measures have been identified and agreed upon for a proposed



1 project, the property owner may commence the project, and the
2 project shall be exempt from further review by the department
3 unless there is a significant change to the project's scope of
4 work or project area or unless additional historic properties,
5 aviation artifacts, or burial sites are identified within the
6 project area."

7 SECTION 4. Section 6E-42, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§6E-42 Review of proposed projects.** (a) Except as
10 provided in section 6E-42.2, before any agency or officer of the
11 State or its political subdivisions approves any project
12 involving a permit, license, certificate, land use change,
13 subdivision, or other entitlement for use, which may affect
14 historic property, aviation artifacts, or a burial site, the
15 agency or office shall advise the department and prior to any
16 approval allow the department an opportunity for review and
17 comment on the effect of the proposed project on historic
18 properties, aviation artifacts, or burial sites, consistent with
19 section 6E-43, including those listed in the Hawaii register of
20 historic places. If:



1 (1) The proposed project consists of corridors or large
2 land areas;

3 (2) Access to properties is restricted; or

4 (3) Circumstances dictate that construction be done in
5 stages,

6 the department's review and comment may be based on a phased
7 review of the project; provided that there shall be a
8 programmatic agreement between the department and the project
9 applicant that identifies each phase and the estimated timelines
10 for each phase.

11 Once the department has provided written concurrence on the
12 project effect determination and any necessary mitigation
13 measures have been identified and agreed upon for a proposed
14 project, the appropriate agency or officer of the State or any
15 of its political subdivisions may commence the project, and the
16 project shall be exempt from further review by the department
17 unless there is a significant change to the project's scope of
18 work or project area or unless additional historic properties,
19 aviation artifacts, or burial sites are identified within the
20 project area.



1 (b) The department shall inform the public of any project
2 proposals submitted to it under this section that are not
3 otherwise subject to the requirement of a public hearing or
4 other public notification.

5 (c) Counties deriving and expending revenues on mass
6 transit stations pursuant to section 46-16.8 may request
7 programmatic review by the department for residential transit-
8 oriented development where a permit, license, certificate, land
9 use change, subdivision, or other entitlement may be required.

10 (d) No later than January 1, 2026, the counties shall work
11 with the department to identify and provide to the department
12 specific parcels in proximity to mass transit stations where
13 residential transit-oriented development is specifically
14 consistent with a comprehensive general plan adopted pursuant to
15 section 46-4; provided that:

16 (1) The counties shall first consult with the department
17 and agree through memorandum on the mass transit
18 stations, and specific transit-oriented development
19 parcels, scoping the potential area for initiating
20 programmatic review; and



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1 (2) The counties shall then solicit requests and consent
2 from non-county landowners to have their parcels
3 within the scoped area of the memorandum initiating
4 programmatic review to proceed with the programmatic
5 review process.

6 (e) The department shall review all parcels submitted by
7 the counties pursuant to the scoping memorandum and classify
8 each parcel, within six months of submittal, according to the
9 risk that residential transit-oriented development may pose to
10 historic properties into three categories in order of potential
11 effect level from high to low in the categories of architecture,
12 archaeology, and history and culture; provided that:

13 (1) All county and non-county parcels for programmatic
14 review shall include the county's assessment of
15 whether development on each parcel may affect historic
16 property, aviation artifacts, or a burial site; and

17 (2) This assessment is based on:

18 (A) The Hawaii or national register of historic
19 places;

20 (B) The age of above-surface structures;



- 1 (C) Any existing archaeological inventory surveys
- 2 previously accepted by the department;
- 3 (D) Any burial treatment plans accepted by the
- 4 department;
- 5 (E) The type of substrate known to typically contain
- 6 burials; and
- 7 (F) Any other literary review relevant to the area.
- 8 (f) The department shall work with the county that made
- 9 the submittal to develop and agree on permitting memoranda
- 10 within three months of classification regarding development best
- 11 practices, including continued identification, addressing levels
- 12 of risk for the lower two effect levels in each of the
- 13 categories, including but not limited to creating photo
- 14 inventories and the presence of onsite archaeological
- 15 monitoring, and consider these best practices as standardized
- 16 for activities conducted under this section.
- 17 A county shall incorporate by reference these best
- 18 practices as conditions of approval for any project involving a
- 19 permit, license, certificate, land use change, subdivision, or
- 20 other entitlement for use.



1 (g) Parcels identified by the department where all
2 categories are rated in the lower two effect levels shall be
3 considered to comply with subsection (a) or section 6E-8
4 regarding state or county lands or projects, and any subsequent
5 permit, license, certificate, land use change, subdivision, or
6 other entitlement for use shall not require referral to the
7 department; provided that:

8 (1) The project is only residential transit-oriented;

9 (2) The project has reached substantial construction by
10 June 30, 2036; and

11 (3) Development activities have commenced consistent with
12 best practices to address the applicable level of
13 risk.

14 (h) Any parcels characterized as highest risk shall
15 require referral to the department pursuant to subsection (a).

16 (i) Section 6E-43.6 shall apply in the event of an
17 inadvertent discovery of a burial site.

18 (j) The Hawaii housing finance and development corporation
19 may submit to the department any additional parcels for
20 programmatic review if the counties do not provide a submittal
21 pursuant to subsection (d); provided that the same analysis



1 shall be conducted pursuant to subsection (e), and the
2 department shall classify the submittal within six months of
3 receipt.

4 (k) The Hawaii community development authority may submit
5 parcels within its jurisdiction to the department for review,
6 and any parcels identified by the department for which all
7 categories are rated in the lower two effect levels shall be
8 considered to comply with subsection (a) or section 6E-8
9 regarding state or county lands or projects, and any subsequent
10 permit, license, certificate, land use change, subdivision, or
11 other entitlement for use shall not require referral to the
12 department; provided that:

13 (1) The project is only residential transit-oriented;

14 (2) The project has reached substantial construction by
15 June 30, 2036;

16 (3) Development activities have commenced consistent with
17 best practices to address the applicable level of
18 risk; and

19 (4) The department shall classify the submittal within six
20 months of receipt.



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Report Title:

Historic Preservation; County-designated Transit-oriented Development; SHPD Review; Historic Property

Description:

Creates a process for expediting the review of residential transit-oriented development on certain parcels within county-designated transit oriented development zones that have a low risk of affecting historically significant resources. Authorizes lead agencies, including county governments, to make determinations on the potential effects of a project. Creates a ninety-day limit to concur or not concur with project effect determinations. Provides that projects with written concurrence are exempt from further review unless there is a significant change to the project or additional historic properties, aviation artifacts, or burial sites are identified within the project area.

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

