
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 majority-residential mixed-use transit-oriented
12 development or residential transit-oriented
13 development on certain parcels and rights-of-way
14 within county-designated transit-oriented development
15 zones that have a low risk of affecting historically
16 significant resources;



- 1 (2) Further empower lead agencies, including county
- 2 agencies, to make determinations on the potential
- 3 effects of a project;
- 4 (3) Create a ninety-day limit, or thirty-calendar-day
- 5 limit if no historic properties are affected, for the
- 6 department of land and natural resources to concur or
- 7 not concur with project effect determinations; and
- 8 (4) Ensure that projects with written concurrence are
- 9 exempt from further review unless there is a
- 10 significant change to the project or additional
- 11 historic properties, aviation artifacts, or burial
- 12 sites are identified within the project area.

13 SECTION 2. Section 6E-2, Hawaii Revised Statutes, is
14 amended by adding a new definition to be appropriately inserted
15 and to read as follows:

16 "Majority-residential mixed-use transit-oriented
17 development" means a mixed-use transit-oriented development
18 project where the majority of the project is residential and
19 supports off-site infrastructure."

20 SECTION 3. Section 6E-8, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



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

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

16 (2) Access to properties is restricted; or

17 (3) Circumstances dictate that construction be done in
18 stages,

19 the department may give its written concurrence based on a
20 phased review of the project; provided that there shall be [a]
21 an executed programmatic agreement in place between the



1 department and the project applicant that identifies each
2 construction phase and the estimated timelines for each
3 phase[-], and any agreed upon mitigation measures.

4 The department shall provide written concurrence or non-
5 concurrence within ninety days, or within thirty calendar days
6 if no historic properties are to be affected, after the filing
7 of a request with the department. [~~The~~] If the department fails
8 to provide written concurrence or non-concurrence with a project
9 effect determination within ninety days, or within thirty
10 calendar days if no historic properties are to be affected, of
11 receiving a complete and true project submittal, the lead agency
12 may assume the department's concurrence and the project may move
13 to the next step in the compliance process.

14 The agency or officer seeking to proceed with the project,
15 or any person, may appeal the department's concurrence or non-
16 concurrence, or failure to provide written concurrence or non-
17 concurrence within the applicable review period to the Hawaii
18 historic places review board. An agency, officer, or other
19 person who is dissatisfied with the decision of the review board
20 may apply to the governor, who may take action as the governor
21 deems best in overruling or sustaining the department.



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

11 (1) If there is a change in the project's physical scope
12 of work or project area or if additional historic
13 properties or aviation artifacts are identified within
14 the project area post-review, the appropriate agency
15 or officer of the State or its political subdivisions
16 shall notify the department within forty-eight hours
17 of the discovery. The notification shall include a
18 description of the historic property or aviation
19 artifact and propose actions to avoid, minimize, or
20 mitigate adverse effects. The department shall
21 respond within five business days of the notification



1 with an assessment of the historic property or
2 aviation artifact and shall provide concurrence or
3 non-concurrence with the actions proposed to avoid,
4 minimize, or mitigate adverse effects. The
5 appropriate agency or officer of the State or its
6 political subdivisions shall provide the department
7 with a report of the agreed upon actions when they are
8 completed; and

9 (2) If a burial site is inadvertently discovered, the lead
10 agency shall proceed pursuant to section 6E-43 or 6E-
11 43.6, or both, as appropriate.

12 For purposes of this subsection:

13 "Lead agency" means the entity with the designated
14 responsibility for compliance with this section. The lead
15 agency shall be decided by the agencies involved; provided that
16 priority shall be given to the agency with the greater degree of
17 involvement with the project.

18 "Physical scope of work" means the size, location, and
19 depth of ground disturbance."

20 SECTION 4. Section 6E-10, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Before any construction, alteration, disposition or
2 improvement of any nature, by, for, or permitted by a private
3 landowner may be commenced [~~which~~] that will affect an historic
4 property on the Hawaii register of historic places, the
5 landowner shall notify the department of the construction,
6 alteration, disposition, or improvement of any nature and allow
7 the department opportunity for review of the effect of the
8 proposed construction, alteration, disposition, or improvement
9 of any nature on the historic property. The proposed
10 construction, alteration, disposition, or improvement of any
11 nature shall not be commenced, or in the event it has already
12 begun, continue, until the department shall have given its
13 concurrence or ninety days have elapsed. Within ninety days
14 after notification, the department shall:

15 (1) Commence condemnation proceedings for the purchase of
16 the historic property if the department and property
17 owner do not agree upon an appropriate course of
18 action;

19 (2) Permit the owner to proceed with the owner's
20 construction, alteration, or improvement; or



1 (3) In coordination with the owner, undertake or permit
2 the investigation, recording, preservation, and
3 salvage of any historical information deemed necessary
4 to preserve Hawaiian history, by any qualified agency
5 for this purpose.

6 Once the department has provided written concurrence on the
7 project effect determination and any necessary mitigation
8 measures have been identified and agreed upon for a proposed
9 project, the property owner may commence the project, and the
10 project shall be exempt from further review by the department
11 unless there is a change to the project's physical scope of work
12 or project area or unless additional historic properties,
13 aviation artifacts, or burial sites are identified within the
14 project area; provided that:

15 (1) If there is a change in the project's physical scope
16 of work or project area or if additional historic
17 properties or aviation artifacts are identified within
18 the project area post-review, the property owner shall
19 notify the department within forty-eight hours of the
20 discovery. The notification shall include a
21 description of the historic property or aviation



1 artifact and propose actions to avoid, minimize, or
 2 mitigate adverse effects. The department shall
 3 respond within five business days of the notification
 4 with an assessment of the historic property or
 5 aviation artifact and shall provide concurrence or
 6 non-concurrence with the actions proposed to avoid,
 7 minimize, or mitigate adverse effects. The property
 8 owner shall provide the department with a report of
 9 the agreed upon actions when they are completed; and

10 (2) If a burial site is inadvertently discovered, the
 11 property owner shall proceed pursuant to section 6E-43
 12 or 6E-43.6, or both, as appropriate.

13 For the purposes of this subsection, "physical scope of
 14 work" means the size, location, and depth of ground
 15 disturbance."

16 SECTION 5. Section 6E-42, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 **"§6E-42 Review of proposed projects.** (a) Except as
 19 provided in section 6E-42.2, before any agency or officer of the
 20 State or its political subdivisions approves any project
 21 involving a permit, license, certificate, land use change,



1 subdivision, or other entitlement for use, which may affect
2 historic property, aviation artifacts, or a burial site, the
3 agency or office shall advise the department and prior to any
4 approval allow the department an opportunity for review and
5 comment on the effect of the proposed project on historic
6 properties, aviation artifacts, or burial sites, consistent with
7 section 6E-43, including those listed in the Hawaii register of
8 historic places. If:

- 9 (1) The proposed project consists of corridors or large
10 land areas;
- 11 (2) Access to properties is restricted; or
- 12 (3) Circumstances dictate that construction be done in
13 stages,

14 the department's review and comment may be based on a phased
15 review of the project; provided that there shall be a
16 programmatic agreement between the department and the project
17 applicant that identifies each phase and the estimated timelines
18 for each phase.

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 appropriate agency or officer of the State or any
2 of its political subdivisions may commence the project, and the
3 project shall be exempt from further review by the department
4 unless there is a change to the project's physical scope of work
5 or project area or unless additional historic properties,
6 aviation artifacts, or burial sites are identified within the
7 project area; provided that:

8 (1) If there is a change in the project's physical scope
9 of work or project area or if additional historic
10 properties or aviation artifacts are identified within
11 the project area post-review, the appropriate agency
12 or officer of the State or any of its political
13 subdivisions shall notify the department within forty-
14 eight hours of the discovery. The notification shall
15 include a description of the historic property or
16 aviation artifact and propose actions to avoid,
17 minimize, or mitigate adverse effects. The department
18 shall respond within five business days of the
19 notification with an assessment of the historic
20 property or aviation artifact and shall provide
21 concurrence or non-concurrence with the actions



1 proposed to avoid, minimize, or mitigate adverse
2 effects. The appropriate agency or officer of the
3 State or any of its political subdivisions shall
4 provide the department with a report of the agreed
5 upon actions when they are completed; and

6 (2) If a burial site is inadvertently discovered, the
7 appropriate agency or officer of the State or any of
8 its political subdivisions shall proceed pursuant to
9 section 6E-43 or 6E-43.6, or both, as appropriate.

10 For the purposes of this subsection, "physical scope of
11 work" means the size, location, and depth of ground disturbance.

12 (b) The department shall inform the public of any project
13 proposals submitted to it under this section that are not
14 otherwise subject to the requirement of a public hearing or
15 other public notification.

16 (c) Counties deriving and expending revenues on mass
17 transit stations pursuant to section 46-16.8 may request
18 programmatic review by the department for majority-residential
19 mixed-use transit-oriented or residential transit-oriented
20 development where a permit, license, certificate, land use
21 change, subdivision, or other entitlement may be required.



1 (d) No later than January 1, 2026, the counties and the
2 Hawaii community development authority shall work with the
3 department to identify and provide to the department specific
4 parcels and rights-of-way in proximity to mass transit stations
5 where majority-residential mixed-use transit-oriented
6 development, residential transit-oriented development, or
7 infrastructure is specifically consistent with a comprehensive
8 general plan adopted pursuant to section 46-4; provided that:

9 (1) The counties and the Hawaii community development
10 authority shall first consult with the department and
11 agree through memorandum on the mass transit stations,
12 and specific transit-oriented development parcels and
13 rights-of-way, scoping the potential area for
14 initiating programmatic review; and

15 (2) The counties and the Hawaii community development
16 authority shall then solicit requests and consent from
17 non-county landowners to have their parcels and
18 rights-of-way within the scoped area of the memorandum
19 initiating programmatic review to proceed with the
20 programmatic review process.



1 (e) The department shall review all parcels and rights-of-
2 way submitted by the counties and the Hawaii community
3 development authority pursuant to the scoping memorandum and
4 classify each parcel and right-of-way, within six months of
5 submittal, according to the risk that majority-residential
6 mixed-use transit-oriented development or residential transit-
7 oriented development may pose to historic properties into three
8 categories in order of potential effect level from high to low
9 in the categories of architecture, archaeology, and history and
10 culture; provided that:

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

18 (2) This assessment is based on:

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

21 (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;
- 7 (F) Consultation with the:
8 (i) Relevant island burial council; and
9 (ii) Office of Hawaiian affairs; and
- 10 (G) Any other literary review relevant to the area.
- 11 (f) The department shall work with the county that made
12 the submittal and the Hawaii community development authority to
13 develop and agree on permitting memoranda within three months of
14 classification regarding development best practices, including
15 continued identification, addressing levels of risk for the
16 lower two effect levels in each of the categories, including but
17 not limited to creating photo inventories, conducting an
18 archaeological field survey, archaeological excavation, or
19 onsite archaeological monitoring, and the presence of onsite
20 archaeological monitoring, and consider these best practices as
21 standardized for activities conducted under this section.



1 A county and the Hawaii community development authority
2 shall incorporate by reference these best practices as
3 conditions of approval for any project involving a permit,
4 license, certificate, land use change, subdivision, or other
5 entitlement for use.

6 (g) Parcels and rights-of-way identified by the department
7 where all categories are rated in the lower two effect levels
8 shall be considered to comply with subsection (a) or section 6E-
9 8 regarding state or county lands or projects, and any
10 subsequent permit, license, certificate, land use change,
11 subdivision, or other entitlement for use shall not require
12 referral to or written concurrence from the department on
13 project effect determination and mitigation measures; provided
14 that:

15 (1) The project is:
16 (A) Majority-residential mixed-use transit-oriented;
17 or
18 (B) Residential transit-oriented;
19 (2) The project has reached substantial construction by
20 June 30, 2036; and



1 (3) Development activities have commenced consistent with
2 best practices to address the applicable level of
3 risk.

4 (h) Any parcels or rights-of-way characterized as highest
5 risk shall require referral to the department pursuant to
6 subsection (a).

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

9 (j) The Hawaii housing finance and development corporation
10 may submit to the department any additional parcels or rights-
11 of-way for programmatic review if the counties do not provide a
12 submittal pursuant to subsection (d); provided that the same
13 analysis shall be conducted pursuant to subsection (e), and the
14 department shall classify the submittal within six months of
15 receipt.

16 (k) The Hawaii community development authority may submit
17 parcels or rights-of-way within its jurisdiction to the
18 department for review, and any parcels or rights-of-way
19 identified by the department for which all categories are rated
20 in the lower two effect levels shall be considered to comply
21 with subsection (a) or section 6E-8 regarding state or county



1 lands or projects, and any subsequent permit, license,
2 certificate, land use change, subdivision, or other entitlement
3 for use shall not require referral to the department; provided
4 that:

5 (1) The project is:

6 (A) Majority-residential mixed-use transit-oriented;

7 or

8 (B) Residential transit-oriented;

9 (2) The project has reached substantial construction by

10 June 30, 2036;

11 (3) Development activities have commenced consistent with

12 best practices to address the applicable level of

13 risk; and

14 (4) The department shall classify the submittal within six

15 months of receipt.

16 [~~e~~] (1) The department shall adopt rules in accordance
17 with chapter 91 to implement this section."

18 SECTION 6. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on July 1, 3000.



Report Title:

Historic Preservation; Majority-residential mixed-use transient-oriented development; County-designated Transit-oriented Development; SHPD Review; Historic Property

Description:

Creates a process for expediting the review of majority-residential mixed-use transit-oriented development or 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, or thirty-calendar-day limit if no historic property is to be affected, to concur or not concur with project effect determinations. Exempts projects with written concurrence from further review unless there is a change to the project or additional historic properties, aviation artifacts, or burial sites are identified within the project area. Establishes notice and reporting requirements if there is a change to the project or additional historic properties, aviation artifacts, or burial sites are identified within the project area after the initial written concurrence. Effective 7/1/3000. (HD1)

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