
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 Hawai'i'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 shortage and create more housing opportunities in close
8 proximity 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, under certain conditions;



1 (3) Create a ninety-day calendar limit for the department
2 of land and natural resources to concur or not concur
3 with project effect determinations, under certain
4 conditions; and

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

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

10 "(a) Before any agency or officer of the State or its
11 political subdivisions commences any project [~~which~~] that may
12 affect historic property, an aviation artifact, or a burial
13 site, the lead agency [~~or officer~~] shall [~~advise the department~~]
14 render a determination on the potential effect of the project
15 and allow the department an opportunity for review of the effect
16 of the proposed project on historic properties, aviation
17 artifacts, or burial sites, consistent with section 6E-43,
18 especially those listed on the Hawaii register of historic
19 places. The lead agency shall be the entity with designated
20 responsibility for compliance with this section. The decision
21 as to which agency serves as the lead agency shall be made by



1 the agencies involved, typically the agency with the greater
2 degree of involvement with the project. The proposed project
3 shall not be commenced, or if it has already begun, continued,
4 until the department has [~~given its written concurrence.~~] been
5 afforded the opportunity to review the project in compliance
6 with this subsection. If:

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

12 the department may give its written concurrence based on a
13 phased review of the project; provided that there shall be [a]
14 an executed programmatic agreement in place between the
15 department and the project applicant that identifies the
16 entirety of the project scope, project area, and each
17 construction phase and the estimated timelines for each
18 phase[-], and any agreed upon mitigation measures. The lead
19 agency shall submit documentation of the project to the state
20 historic preservation division's Hawaii cultural resource



1 information system, its successor, or an equivalent means of
2 submission to initiate the ninety-calendar-day review period.

3 The department shall provide written concurrence or
4 non-concurrence within ninety calendar days after the filing of
5 a request with the department. The department's
6 ninety-calendar-day review period shall encompass any requests
7 for additional information; provided that the review period
8 shall not reset upon the request for additional information;
9 provided further that if the department requests additional
10 information from a project, the department shall have one
11 hundred eighty calendar days to provide written concurrence or
12 non-concurrence.

13 If the department fails to provide written concurrence or
14 non-concurrence with a project effect determination within
15 ninety calendar days, or within thirty calendar days if no
16 historic properties are to be affected, of receiving a complete
17 and true project submittal, the lead agency may assume the
18 department's concurrence and the project may move to the next
19 step in the compliance process; provided that the lead agency
20 notifies the department of the action in writing and provides
21 documentation of the historic preservation review that complies



1 with section 6E-1, including the evaluation of the effects to
2 historic properties and any mitigation or other measures to
3 resolve the effects.

4 The agency or officer seeking to proceed with the project,
5 or any person, may appeal the department's concurrence or
6 non-concurrence, or failure to provide written concurrence or
7 non-concurrence within the ninety-calendar-day review period, to
8 the Hawaii historic places review board. An agency, officer, or
9 other person who is dissatisfied with the decision of the review
10 board may apply to the governor, who may take action as the
11 governor deems best in overruling or sustaining the department.

12 Once the department has provided written concurrence on the
13 project effect determination and any necessary mitigation
14 measures have been identified and agreed upon for a proposed
15 project, the appropriate agency or officer of the State or any
16 of its political subdivisions may commence the project, and the
17 project shall be exempt from further review by the department
18 unless there is a change to the project's physical scope of work
19 or project area or unless an additional historic property,
20 aviation artifact, or burial site is identified within the
21 project area; provided that, for the purposes of this



1 subsection, "physical scope of work" means the size, location,
2 and depth or ground disturbances. The notification process
3 shall conform to section 106 of the National Historic
4 Preservation Act and the department's mitigation process."

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

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



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

12 The lead agency shall submit documentation of the project to the
13 state historic preservation division's Hawaii cultural resource
14 information system or its successor, or perform an equivalent
15 means of submission to initiate the ninety-calendar-day review
16 period.

17 The department's ninety-calendar-day review period shall
18 encompass any requests for additional information; provided that
19 the review period shall not reset upon the request for
20 additional information; provided further that if the department
21 requests additional information from a project, the department



1 shall have one hundred eighty calendar days to provide written
2 concurrence or non-concurrence.

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 property owner may commence the project, and the
7 project shall be exempt from further review by the department
8 unless there is a change to the project's physical scope of work
9 or project area or unless an additional historic property,
10 aviation artifact, or burial site is identified within the
11 project area; provided that, for the purposes of this
12 subsection, "physical scope of work" means the size, location,
13 and depth of ground disturbances.

14 If the department does not provide written concurrence or
15 non-concurrence within ninety calendar days, or within thirty
16 calendar days if no historic properties are to be affected, then
17 the department shall be presumed to concur with the agency or
18 officer's submittal. The agency or officer may then proceed
19 with the project; provided that the agency or officer notifies
20 the department of the action in writing and provides
21 documentation of the historic preservation review that complies



1 with section 6E-1, including the evaluation of the effects to
2 historic properties and any mitigation or other measures to
3 resolve the effects."

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

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

- 18 (1) The proposed project consists of corridors or large
19 land areas;
20 (2) Access to properties is restricted; or



1 (3) Circumstances dictate that construction be done in
2 stages,
3 the department's review and comment may be based on a phased
4 review of the project; provided that there shall be a
5 programmatic agreement between the department and the project
6 applicant that identifies each phase and the estimated timelines
7 for each phase.

8 The lead agency shall submit documentation of the project
9 to the state historic preservation division's Hawaii cultural
10 resource information system or its successor, or perform an
11 equivalent means of submission.

12 The department's ninety-calendar-day review period shall
13 encompass any requests for additional information; provided that
14 the review period shall not reset upon the request for
15 additional information; provided further that if the department
16 requests additional information from a project, the department
17 shall have one hundred eighty calendar days to provide written
18 concurrence or non-concurrence.

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, for the purposes of this
8 subsection, "physical scope of work" means the size, location,
9 and depth of ground disturbances.

10 If the department does not provide written concurrence or
11 non-concurrence within ninety calendar days, or within thirty
12 calendar days if no historic properties are to be affected, then
13 the department shall be presumed to concur with the agency or
14 officer's submittal. The agency or officer may then proceed
15 with the project; provided that the agency or officer notifies
16 the department of the action in writing and provides
17 documentation of the historic preservation review that complies
18 with section 6E-1, including the evaluation of the effects to
19 historic properties and any mitigation or other measures to
20 resolve the effects.



1 (b) The department shall inform the public of any project
2 proposals submitted to ~~[it]~~ the department under this section
3 that are not otherwise subject to the requirement of a public
4 hearing or 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
8 transit-oriented development where a permit, license,
9 certificate, land use change, subdivision, or other entitlement
10 may be required.

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

17 (1) The counties shall first consult with the department
18 and agree through a scoping memorandum on the
19 locations of any mass transit stations and specific
20 transit-oriented development parcels, scoping the



1 potential areas for initiating programmatic review;

2 and

3 (2) The counties shall then solicit requests and consent

4 from non-county landowners to have their parcels

5 within the scoped area of the memorandum initiating

6 programmatic review to proceed with the programmatic

7 review process.

8 (e) The department shall review all parcels submitted by

9 the counties pursuant to the scoping memorandum and classify

10 each parcel, within six months from the date the parcel was

11 submitted in accordance with the risk that the residential

12 transit-oriented development may pose to historic properties.

13 Each parcel shall be classified further in the order of the

14 parcel's potential effect level from high to low in the three

15 categories of architecture, archaeology, and history and

16 culture; provided that:

17 (1) All county and non-county parcels for programmatic

18 review shall include the county's assessment of

19 whether development on each parcel may affect historic

20 property, an aviation artifact, or a burial site; and

21 (2) The assessment is based on:



- 1 (A) The Hawaii or national register of historic
2 places;
- 3 (B) The age of above-surface structures;
- 4 (C) Any existing archaeological inventory surveys
5 previously accepted by the department;
- 6 (D) Any burial treatment plans accepted by the
7 department;
- 8 (E) The type of substrate known to typically contain
9 burials; and
- 10 (F) Any other literary review relevant to the area.
- 11 (f) The department shall work with each county that
12 submitted a parcel to develop and agree through a permitting
13 memoranda, within three months from the date that a parcel is
14 classified, regarding development best practices, including
15 continued identification and procedures for addressing levels of
16 risk for the lower two effect levels in each of the categories
17 classified under subsection (e); including but not limited to
18 creating photo inventories and conducting an archaeological
19 field survey, archaeological excavation, or onsite
20 archaeological monitoring, and consider these best practices as
21 standardized for activities conducted under this section.



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

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

12 (1) The project is only residential transit-oriented;
13 (2) The project has reached substantial construction by
14 June 30, 2036; and
15 (3) Development activities that have commenced are
16 consistent with best practices to address the
17 applicable level of risk.

18 (h) Any parcels classified as highest risk shall require
19 referral to the department pursuant to subsection (a).

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



1 (j) The Hawaii housing finance and development corporation
 2 may submit to the department any additional parcels and state or
 3 county housing developments for programmatic review if the
 4 counties do not provide a submittal pursuant to subsection (d);
 5 provided that the same analysis shall be conducted pursuant to
 6 subsection (e) and the department shall classify the parcels
 7 submitted within six months from the date of receipt.

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

- 18 (1) The project is only residential transit-oriented;
- 19 (2) The project has reached substantial construction by
 20 June 30, 2036;



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

4 (4) The department shall classify the parcels submitted
5 within six months from the date of receipt.

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

8 (m) For the purposes of this section, "residential" shall
9 include mixed-use projects where residential use is the majority
10 use."

11 SECTION 5. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on April 23, 2057.



Report Title:

DLNR; Historic Preservation; County-Designated Transit-Oriented Development; Historic Property; State or County Housing Projects; Community Development Districts

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-calendar-day limit for the Department of Land and Natural Resources to concur or not concur with project effect determinations, under certain conditions. Establishes certain requirements for the notification and submission of projects under historic preservation law. Provides that projects with written concurrence are exempt 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, under certain conditions. Requires community development districts and state or county housing projects to undergo a programmatic review. Effective 4/23/2057. (SD2)

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