
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 within county-
14 designated transit-oriented development zones that
15 have a low risk of affecting historically significant
16 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 or thirty-day limit for the
5 department of land and natural resources to concur or
6 not concur with project effect determinations; and
- 7 (4) Ensure that projects with written concurrence are
8 exempt from further review unless there is a
9 significant change to the project.

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

13 "Majority-residential mixed-use transit-oriented
14 development" means a mixed-use transit-oriented development
15 project where the majority of the project is residential."

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

18 "(a) Before any agency or officer of the State or its
19 political subdivisions commences any project ~~[which]~~ that may
20 affect historic property, an aviation artifact, or a burial
21 site, the lead agency ~~[or officer]~~ shall ~~[advise the department]~~



1 render a determination on the potential effect of the project
2 and allow the department an opportunity for review of the effect
3 of the proposed project on historic properties, aviation
4 artifacts, or burial sites, consistent with section 6E-43,
5 especially those listed on the Hawaii register of historic
6 places. The proposed project shall not be commenced, or if it
7 has already begun, continued, until the department has ~~[given~~
8 ~~its written concurrence.]~~ been afforded the opportunity to
9 review the project in compliance with this subsection. If:

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

12 (2) Access to properties is restricted; or

13 (3) Circumstances dictate that construction be done in
14 stages,

15 the department may give its written concurrence based on a
16 phased review of the project; provided that there shall be [a]
17 an executed programmatic agreement in place between the
18 department and the project applicant that identifies the
19 entirety of the project scope, project area, and each
20 construction phase and the estimated timelines for each
21 phase[-], and any agreed upon mitigation measures.



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

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

18 Once the department has provided written concurrence on the
19 project effect determination and any necessary mitigation
20 measures have been identified and agreed upon for a proposed
21 project, the appropriate agency or officer of the State or any



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

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



1 appropriate agency or officer of the State or its
2 political subdivisions shall provide the department
3 with a report of the agreed upon actions when they are
4 completed; and

5 (2) If a burial site is inadvertently discovered, the lead
6 agency shall proceed pursuant to section 6E-43 or 6E-
7 43.6, or both, as appropriate.

8 For purposes of this subsection:

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

14 "Physical scope of work" means the size, location, and
15 depth of ground disturbance."

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

18 "(a) Before any construction, alteration, disposition or
19 improvement of any nature, by, for, or permitted by a private
20 landowner may be commenced [~~which~~] that will affect an historic
21 property on the Hawaii register of historic places, the



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

11 (1) Commence condemnation proceedings for the purchase of
12 the historic property if the department and property
13 owner do not agree upon an appropriate course of
14 action;

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

17 (3) In coordination with the owner, undertake or permit
18 the investigation, recording, preservation, and
19 salvage of any historical information deemed necessary
20 to preserve Hawaiian history, by any qualified agency
21 for this purpose.



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 property owner may commence the project, and the
5 project shall be exempt from further review by the department
6 unless there is a change to the project's physical scope of work
7 or project area or unless additional historic properties,
8 aviation artifacts, or burial sites are identified within the
9 project area; provided that:

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



1 non-concurrence with the actions proposed to avoid,
2 minimize, or mitigate adverse effects. The property
3 owner shall provide the department with a report of
4 the agreed upon actions when they are completed; and

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

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

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

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



1 properties, aviation artifacts, or burial sites, consistent with
2 section 6E-43, including those listed in the Hawaii register of
3 historic places. If:

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

6 (2) Access to properties is restricted; or

7 (3) Circumstances dictate that construction be done in
8 stages,

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

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



1 aviation artifacts, or burial sites are identified within the
2 project area; provided that:

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



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

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

7 (b) The department shall inform the public of any project
8 proposals submitted to it under this section that are not
9 otherwise subject to the requirement of a public hearing or
10 other public notification.

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

17 (d) No later than January 1, 2026, the counties shall work
18 with the department to identify and provide to the department
19 specific parcels in proximity to mass transit stations where
20 majority-residential mixed-use transit-oriented development or
21 residential transit-oriented development is specifically



1 consistent with a comprehensive general plan adopted pursuant to
2 section 46-4; provided that:

3 (1) The counties shall first consult with the department
4 and agree through memorandum on the mass transit
5 stations, and specific transit-oriented development
6 parcels, scoping the potential area for initiating
7 programmatic review; and

8 (2) The counties shall then solicit requests and consent
9 from non-county landowners to have their parcels
10 within the scoped area of the memorandum initiating
11 programmatic review to proceed with the programmatic
12 review process.

13 (e) The department shall review all parcels submitted by
14 the counties pursuant to the scoping memorandum and classify
15 each parcel, within six months of submittal, according to the
16 risk that majority-residential mixed-use transit-oriented
17 development or residential transit-oriented development may pose
18 to historic properties into three categories in order of
19 potential effect level from high to low in the categories of
20 architecture, archaeology, and history and culture; provided
21 that:



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

5 (2) This assessment is based on:

6 (A) The Hawaii or national register of historic
7 places;

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

9 (C) Any existing archaeological inventory surveys
10 previously accepted by the department;

11 (D) Any burial treatment plans accepted by the
12 department;

13 (E) The type of substrate known to typically contain
14 burials; and

15 (F) Any other literary review relevant to the area.

16 (f) The department shall work with the county that made
17 the submittal to develop and agree on permitting memoranda
18 within three months of classification regarding development best
19 practices, including continued identification, addressing levels
20 of risk for the lower two effect levels in each of the
21 categories, including but not limited to creating photo



1 inventories, conducting an archaeological field survey,
2 archaeological excavation, or onsite archaeological monitoring,
3 and the presence of onsite archaeological monitoring, and
4 consider these best practices as standardized for activities
5 conducted under this section.

6 A county shall incorporate by reference these best
7 practices as conditions of approval for any project involving a
8 permit, license, certificate, land use change, subdivision, or
9 other entitlement for use.

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

18 (1) The project is:

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

20 or

21 (B) Residential transit-oriented;



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

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

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

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

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

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



1 regarding state or county lands or projects, and any subsequent
2 permit, license, certificate, land use change, subdivision, or
3 other entitlement for use shall not require referral to the
4 department; provided 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; 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-day 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. (HD2)

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

