
A BILL FOR AN ACT

RELATING TO HISTORIC PRESERVATION.

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

- 1 SECTION 1. Section 6E-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "complete submittal" to
3 read as follows:
- 4 ""Complete submittal" means a packet that includes:
- 5 (1) A submittal form;
- 6 (2) A permit set or sixty per cent-complete project
7 drawing set;
- 8 (3) A site plan that identifies the project area and
9 locations of ground disturbance;
- 10 (4) A written scope of work that identifies the length,
11 width, and depth of ground disturbance and the
12 narrative boundaries of the project area;
- 13 (5) Photographs of the property and at least one
14 photograph of each elevation of existing buildings or
15 structures on the property;



- 1 (6) A map indicating the boundaries of the project area
2 that include any associated construction, ground
3 disturbance, or setting and staging areas;
- 4 (7) For projects submitted under this [~~section~~] chapter:
5 (A) A copy of previous archaeological, architectural,
6 or cultural resource survey for the property; or
7 (B) A literature review and field inspection for
8 archaeological resources or windshield survey for
9 architectural resources for the tax map key or
10 portion of the tax map key where the project area
11 is located;
- 12 (8) For projects submitted under section 6E-42, a copy of
13 the building permit application associated with the
14 project; and
- 15 (9) For projects where historic properties are identified
16 as having a high potential effect level under section
17 [~~6E-42(f)~~], 6E-42(h), documentation of consultation
18 with the office of Hawaiian affairs and any associated
19 comments the applicant received from the office of
20 Hawaiian affairs."



1 SECTION 2. Section 6E-10, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§6E-10 Privately owned historic property.** (a) Before
4 any construction, alteration, disposition, or improvement of any
5 nature, by, for, or permitted by a private landowner may be
6 commenced that will affect a historic property on the Hawaii
7 register of historic places, the landowner shall notify the
8 department of the construction, alteration, disposition, or
9 improvement of any nature and allow the department the
10 opportunity to review the effect of the proposed construction,
11 alteration, disposition, or improvement of any nature on the
12 historic property. If:

13 (1) The proposed construction, alteration, disposition, or
14 improvement consists of corridors or large land areas;
15 (2) Access to the property or properties is restricted; or
16 (3) Circumstances dictate that construction, alteration,
17 disposition, routine maintenance, or improvement be
18 done in stages or repeatedly executed to ensure the
19 preservation of historic properties,
20 the project proponent or landowner may complete a preservation
21 plan to guide preservation-related maintenance intervals and set



1 up a timeline for proposed preservation-related repair or
2 restoration work, which may include construction activities.
3 The department shall review and approve the preservation plan
4 before implementation.

5 (b) The department shall provide written concurrence or
6 non-concurrence within ninety calendar days, or within thirty
7 calendar days if no historic properties are adversely affected
8 by the proposed construction, alteration, disposition, or
9 improvement, after the department has processed a complete
10 submittal filed by the property owner. The department shall
11 certify a complete submittal within five business days of its
12 filing. The proposed construction, alteration, disposition, or
13 improvement of any nature shall not be commenced, or in the
14 event it has already begun, continue, until the department has
15 given its [concurrence or ninety days have elapsed. Within
16 ninety days after notification, the department shall:

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



- 1 ~~(2) Permit the owner to proceed with the owner's~~
2 ~~construction, alteration, or improvement; or~~
- 3 ~~(3) In coordination with the owner, undertake or permit~~
4 ~~the investigation, recording, preservation, and~~
5 ~~salvage of any historical information deemed necessary~~
6 ~~to preserve Hawaiian history, by any qualified agency~~
7 ~~for this purpose.~~
- 8 ~~(b)] written concurrence or non-concurrence.~~
- 9 (c) The property owner shall ensure any application filed
10 by the property owner for the proposed construction, alteration,
11 disposition, or improvement is complete and accurate. If the
12 department:
- 13 (1) Determines the application is not a complete
14 submittal;
- 15 (2) Requires additional information or clarification
16 regarding the physical scope of work; or
- 17 (3) Requires an archaeological survey or reconnaissance
18 level survey for architectural resources,
- 19 the department shall notify the property owner and specify the
20 additional information needed to meet the requirements for a
21 complete submittal. The review period for the proposed project



1 shall be tolled until a complete submittal is made to the
2 department. Once the department has received a complete
3 submittal, the applicable review period shall restart.

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

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



1 respond within five business days of the notification
 2 with an assessment of the historic property or
 3 aviation artifact and shall provide concurrence or
 4 non-concurrence with the actions proposed to avoid,
 5 minimize, or mitigate adverse effects. The property
 6 owner shall provide the department with a report of
 7 the agreed upon actions when they are completed; and
 8 (2) If a burial site is inadvertently discovered, the
 9 property owner shall proceed pursuant to section 6E-43
 10 or 6E-43.6, or both, as appropriate.

11 [~~(e)~~] (e) Nothing in this section shall be construed to
 12 prevent the ordinary maintenance or repair of any feature in or
 13 on a historic property that does not involve a change in design,
 14 material, or outer appearance or change in those characteristics
 15 that qualified the historic property for entry onto the Hawaii
 16 register of historic places.

17 [~~(f)~~] (f) Any person, natural or corporate, who violates
 18 the provisions of this section shall be fined not more than
 19 \$1,000, and each day of continued violation shall constitute a
 20 distinct and separate offense under this section for which the
 21 offender may be punished.



1 [~~e~~] (g) If funds for the acquisition of needed property
2 are not available, the governor may, upon the recommendation of
3 the department, allocate from the contingency fund an amount
4 sufficient to acquire an option on the property or for the
5 immediate acquisition, preservation, restoration, or operation
6 of the property.

7 [~~f~~] (h) The department may enter, solely in performance
8 of its official duties and only at reasonable times, upon
9 private lands for examination or survey thereof. Whenever any
10 member of the department duly authorized to conduct
11 investigations and surveys of a historic or cultural nature
12 determines that entry onto private lands for examination or
13 survey of historic or cultural finding is required, the
14 department shall give written notice of the finding to the owner
15 or occupant of the property at least five days before entry. If
16 entry is refused, the member may make a complaint to the
17 district environmental court in the circuit in which the land is
18 located. The district environmental court may thereupon issue a
19 warrant, directed to any police officer of the circuit,
20 commanding the officer to take sufficient aid, and, being
21 accompanied by a member of the department, between the hours of



1 sunrise and sunset, allow the member of the department to
2 examine or survey the historic or cultural property."

3 SECTION 3. Section 6E-42, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§6E-42 Review of proposed projects.** (a) Except as
6 provided in section 6E-42.2, before any agency or officer of the
7 State or its political subdivisions approves any project
8 involving a permit, license, certificate, land use change,
9 subdivision, or other entitlement for use, which may affect
10 historic property, aviation artifacts, or a burial site, the
11 agency or officer shall advise the department and, before any
12 approval, allow the department an opportunity for review and
13 comment on the effect of the proposed project on historic
14 properties, aviation artifacts, or burial sites, consistent with
15 section 6E-43, including those listed in the Hawaii register of
16 historic places. If:

- 17 (1) The proposed project consists of corridors or large
18 land areas;
19 (2) Access to properties is restricted; or
20 (3) Circumstances dictate that construction be done in
21 stages,



1 the department's review and comment may be based on a phased
2 review of the project; provided that there shall be a
3 programmatic agreement between the department and the project
4 applicant that identifies each phase and the estimated timelines
5 for each phase.

6 (b) The department shall provide written concurrence or
7 non-concurrence within ninety calendar days, or within thirty
8 calendar days if no historic properties are adversely affected
9 by the proposed project, after the filing of a request with the
10 department.

11 (c) The project applicant shall ensure that its
12 application is complete and accurate. If the department:

13 (1) Determines the application is not a complete
14 submittal;

15 (2) Requires additional information or clarification
16 regarding the physical scope of work; or

17 (3) Requires an archaeological survey or reconnaissance
18 level survey for architectural resources,

19 the department shall notify the applicant and specify the
20 additional information needed to meet the requirements for a
21 complete submittal. The review period for the proposed project



1 shall be tolled until a complete submittal is made to the
2 department. Once the department has received a complete
3 submittal, the applicable review period shall restart.

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

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



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

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

16 [~~(e)~~] (e) The department shall inform the public of any
17 project proposals submitted to the department under this section
18 that are not otherwise subject to the requirement of a public
19 hearing or other public notification.

20 [~~(f)~~] (f) Counties deriving and expending revenues on mass
21 transit stations pursuant to section 46-16.8 may request



1 programmatic review by the department for a majority-residential
2 mixed-use transit-oriented development or residential transit-
3 oriented development where a permit, license, certificate, land
4 use change, subdivision, or other entitlement may be required.

5 [~~e~~] (g) No later than January 1, [~~2026~~] 2028, the
6 counties and the Hawaii community development authority shall
7 work with the department to identify and submit to the
8 department specific parcels and rights-of-way in proximity to
9 mass transit stations where a majority-residential mixed-use
10 transit-oriented development, a residential transit-oriented
11 development, or infrastructure is specifically consistent with a
12 comprehensive general plan adopted pursuant to section 46-4;
13 provided that the counties and Hawaii community development
14 authority shall:

15 (1) First consult with the department and agree through
16 memorandum on the mass transit stations, and specific
17 transit-oriented development parcels and rights-of-
18 way, scoping the potential area for initiating
19 programmatic review; and

20 (2) Then solicit requests and consent from non-county
21 landowners to have their parcels and rights-of-way



1 within the scoped area of the memorandum initiating
2 programmatic review to proceed with the programmatic
3 review process.

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

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



- 1 (2) The assessment is based on:
- 2 (A) The Hawaii or national register of historic
- 3 places;
- 4 (B) The age of above-surface structures;
- 5 (C) Any existing archaeological inventory surveys
- 6 previously accepted by the department;
- 7 (D) Any burial treatment plans accepted by the
- 8 department;
- 9 (E) The type of substrate known to typically contain
- 10 burials;
- 11 (F) Consultation with the:
- 12 (i) Relevant island burial council; and
- 13 (ii) Office of Hawaiian affairs; and
- 14 (G) Any other literary review relevant to the area.
- 15 [~~(g)~~] (i) The department shall work with the county that
- 16 made the submittal and the Hawaii community development
- 17 authority to develop and agree on permitting memoranda within
- 18 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 and the Hawaii community development authority
7 shall incorporate by reference these best practices as
8 conditions of approval for any project involving a permit,
9 license, certificate, land use change, subdivision, or other
10 entitlement for use.

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

20 (1) The project is or includes infrastructure to support
21 the development of:



1 (A) A majority-residential mixed-use transit-oriented
2 development; or

3 (B) A residential transit-oriented development;

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

6 (3) Development activities have commenced consistent with
7 best practices to address the applicable level of
8 risk.

9 [~~(i)~~] (k) Any parcels or rights-of-way characterized as
10 highest risk shall require referral to the department pursuant
11 to subsection (a).

12 [~~(j)~~] (l) Section 6E-43.6 shall apply in the event of an
13 inadvertent discovery of a burial site.

14 [~~(k)~~] (m) The Hawaii housing finance and development
15 corporation may submit to the department any additional parcels
16 or rights-of-way for programmatic review if the counties do not
17 provide a submittal pursuant to subsection [~~(e)~~] (g); provided
18 that the same analysis shall be conducted pursuant to subsection
19 [~~(f)~~] (h), and the department shall classify the submittal
20 within six months of receipt.



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

- 11 (1) The project is or includes infrastructure to support
- 12 the development of:
 - 13 (A) A majority-residential mixed-use transit-oriented
 - 14 development; or
 - 15 (B) A residential transit-oriented development;
- 16 (2) The project has reached substantial construction by
- 17 June 30, 2036;
- 18 (3) Development activities have commenced consistent with
- 19 best practices to address the applicable level of
- 20 risk; and



1 (4) The department shall classify the submittal within six
2 months of receipt.

3 [~~m~~] (o) The department shall adopt rules in accordance
4 with chapter 91 to implement this section.

5 [~~n~~] (p) For the purposes of this section, "majority-
6 residential mixed-use transit-oriented development" means a
7 mixed-use transit-oriented development project where the
8 majority of the project is residential and may include off-site
9 infrastructure."

10 SECTION 4. Section 6E-42.2, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§6E-42.2 Excluded activities for existing privately-owned**
13 **[single-family detached dwelling units and townhouses,**
14 **residential projects, and nominally sensitive areas.]**
15 **residential properties.** (a) An application for a proposed
16 project on an existing privately-owned [~~single-family detached~~
17 ~~dwelling unit or townhouse]~~ residential property shall be
18 subject to the requirements of section 6E-42 only [~~if the~~
19 ~~single-family detached dwelling unit or townhouse is over fifty~~
20 ~~years old and is:]~~ when one or more of the following applies:



- 1 (1) ~~[Listed]~~ The property is listed on the Hawaii or
2 national register of historic places, or both;
- 3 (2) ~~[Nominated]~~ The property is nominated for inclusion on
4 the Hawaii or national register of historic places, or
5 both; ~~[or]~~
- 6 (3) ~~[Located]~~ The property is located in a historic
7 district~~[+]~~;
- 8 (4) The proposed project involves ground-disturbing
9 activity and:
 - 10 (A) Occurs on or adjacent to land containing sandy
11 soils; or
 - 12 (B) The ground-disturbing activity exceeds the
13 excavation of topsoil and occurs on or adjacent
14 to land that:
 - 15 (i) Contains previously identified burials or
16 cemeteries;
 - 17 (ii) Contains lava tubes, karst features, or
18 caves; or
 - 19 (iii) Contains a historic property previously
20 determined to be significant under criterion
21 "e" pursuant to section 13-275-6(b) (5) or



1 13-284-6(b)(5), Hawaii Administrative Rules;

2 or

3 (5) The proposed permitted project changes the number or
4 density of residential units, or changes the
5 property's classification or zoning, resulting in a
6 mixed-use residential development;

7 provided that the department has executed a programmatic
8 agreement with the permitting agency to establish a program
9 alternative or has otherwise determined the property to not
10 require review under this section due to the absence of historic
11 properties or iwi kupuna.

12 ~~[(b) An application for a proposed project on an existing~~
13 ~~residential property shall be subject to the requirements of~~
14 ~~section 6E-42 only if the existing residential property is over~~
15 ~~fifty years old and is registered on the Hawaii register of~~
16 ~~historic places.~~

17 ~~(e)]~~ (b) An application for a proposed project [~~in a~~
18 ~~nominally sensitive area]~~ shall not be subject to the
19 requirements of section 6E-42~~[+]~~; if the project lies in a
20 nominally sensitive area.

21 ~~(d)]~~ (c) For the purposes of this section:



1 "Dwelling unit" means a building or portion thereof
2 designed or used exclusively for residential occupancy and
3 having all necessary facilities for permanent residency such as
4 living, sleeping, cooking, eating, and sanitation.

5 "Ground-disturbing activity" means any activity that
6 disturbs, penetrates, displaces, or excavates soil or subsurface
7 materials, including but not limited to grading, trenching,
8 digging, augering, drilling, post-hole installation, foundation
9 work, utility installation, excavation, or landscaping
10 activities that disturb the ground surface.

11 "Karst" means a landform characterized by subsurface
12 cavities, voids, or solution features formed by the dissolution
13 of soluble rock, including caves, sinkholes, and underground
14 drainage features.

15 "Nominally sensitive area" means a project area that is
16 known to include a low density of historic, cultural, or
17 archaeological resources, or where the project area has been
18 substantially disturbed by previous excavation or other ground-
19 disturbing work and no significant historic properties have been
20 previously identified[-], as determined by the department based
21 on:



- 1 (1) The Hawaii or national register of historic places;
- 2 (2) The age of above-surface structures;
- 3 (3) Any existing archaeological inventory surveys
- 4 previously accepted by the department;
- 5 (4) Any burial treatment plans accepted by the department;
- 6 (5) The type of substrate known to typically contain
- 7 burials;
- 8 (6) Consultation with the relevant island burial council
- 9 and office of Hawaiian affairs; and
- 10 (7) Any other literary review relevant to the area.

11 "Sandy soil" means soil classified by the United States
 12 Department of Agriculture Natural Resources Conservation Service
 13 as sand, loamy sand, sandy loam, or fine sandy loam, including
 14 but not limited to Jaucas sands, beaches sand, and other coastal
 15 or aeolian sand deposits.

16 "Single-family detached dwelling unit" means an individual,
 17 freestanding, unattached dwelling unit, typically built on a lot
 18 larger than the structure itself, resulting in an area
 19 surrounding the dwelling.

20 "Topsoil" means the uppermost naturally occurring soil
 21 layer characterized by organic material and biological activity,



1 typically extending to a depth of approximately twelve inches
2 below the ground surface, or to the depth of the naturally
3 occurring organic horizon, whichever is less.

4 "Townhouse" has the same meaning as in section 502C-1."

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

8 SECTION 6. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect on July 1, 3000;
11 provided that section 3 shall take effect on June 30, 2026;
12 provided further that the amendments made to section 6E-42,
13 Hawaii Revised Statutes, by section 3 of this Act shall not be
14 repealed when that section is reenacted on June 30, 2030,
15 pursuant to section 7 of Act 306, Session Laws of Hawaii 2025.



Report Title:

SHPD; Historic Preservation; Review; Historic Properties;
Private Properties; Project Review; Review Period

Description:

Authorizes the State Historic Preservation Division to conduct a phased review of a proposed project on private property under certain circumstances. Amends the process and deadlines by which SHPD must provide written concurrence or non-concurrence for proposed projects on private property or certain projects that require state or county approval for entitlement for use. Clarifies when an application for a proposed project on an existing privately-owned residential property shall be subject to the requirements of section 6E-42, HRS. Effective 7/1/3000.
(SD2)

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

