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# 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 mixed-  
11       use transit-oriented development as long as a majority  
12       of the mixed-use transit-oriented development is  
13       residential, or residential transit-oriented  
14       development, on certain parcels within county-  
15       designated transit-oriented development zones that  
16       have a low risk of affecting historically significant  
17       resources;



1           (2) Further empower lead agencies, including county  
2           governments, 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-8, Hawaii Revised Statutes, is  
11          amended by amending subsection (a) to read as follows:

12          "(a) Before any agency or officer of the State or its  
13          political subdivisions commences any project ~~[which]~~ that may  
14          affect historic property, an aviation artifact, or a burial  
15          site, the lead agency ~~[or officer]~~ shall ~~[advise the department]~~  
16          render a determination on the potential effect of the project  
17          and allow the department an opportunity for review of the effect  
18          of the proposed project on historic properties, aviation  
19          artifacts, or burial sites, consistent with section 6E-43,  
20          especially those listed on the Hawaii register of historic  
21          places. The proposed project shall not be commenced, or if it



1 has already begun, continued, until the department has [~~given~~  
2 ~~its written concurrence.~~] been afforded the opportunity to  
3 review the project in compliance with this subsection. 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 may give its written concurrence based on a  
10 phased review of the project; provided that there shall be [a]  
11 an executed programmatic agreement in place between the  
12 department and the project applicant that identifies the  
13 entirety of the project scope, project area, and each  
14 construction phase and the estimated timelines for each  
15 phase[-], and any agreed upon mitigation measures.

16 The department shall provide written concurrence or non-  
17 concurrence within ninety days after the filing of a request  
18 with the department. [The] If the department fails to provide  
19 written concurrence or non-concurrence with a project effect  
20 determination within ninety days, or within thirty calendar days  
21 if no historic properties are to be affected, of receiving a



1 complete and true project submittal, the lead agency may assume  
2 the department's concurrence and the project may move to the  
3 next step in the compliance process.

4 The agency or officer seeking to proceed with the project,  
5 or any person, may appeal the department's concurrence or non-  
6 concurrence, or failure to provide written concurrence or non-  
7 concurrence within the ninety-day review period, to the Hawaii  
8 historic places review board. An agency, officer, or other  
9 person who is dissatisfied with the decision of the review board  
10 may apply to the governor, who may take action as the governor  
11 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 additional historic properties,  
20 aviation artifacts, or burial sites are identified within the  
21 project area.



1       For purposes of this subsection:

2       "Lead agency" means the entity with the designated  
3       responsibility for compliance with this section. The lead  
4       agency shall be decided by the agencies involved; provided that  
5       priority shall be given to the agency with the greater degree of  
6       involvement with the project.

7       "Physical scope of work" means the size, location, and  
8       depth of ground disturbance."

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

11       "(a) Before any construction, alteration, disposition or  
12      improvement of any nature, by, for, or permitted by a private  
13      landowner may be commenced [~~which~~] that will affect an historic  
14      property on the Hawaii register of historic places, the  
15      landowner shall notify the department of the construction,  
16      alteration, disposition, or improvement of any nature and allow  
17      the department opportunity for review of the effect of the  
18      proposed construction, alteration, disposition, or improvement  
19      of any nature on the historic property. The proposed  
20      construction, alteration, disposition, or improvement of any  
21      nature shall not be commenced, or in the event it has already



1 begun, continue, until the department shall have given its  
2 concurrence or ninety days have elapsed. Within ninety days  
3 after notification, the department shall:

4 (1) Commence condemnation proceedings for the purchase of  
5 the historic property if the department and property  
6 owner do not agree upon an appropriate course of  
7 action;

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

10 (3) In coordination with the owner, undertake or permit  
11 the investigation, recording, preservation, and  
12 salvage of any historical information deemed necessary  
13 to preserve Hawaiian history, by any qualified agency  
14 for this purpose.

15 Once the department has provided written concurrence on the  
16 project effect determination and any necessary mitigation  
17 measures have been identified and agreed upon for a proposed  
18 project, the property owner 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.

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

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

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

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



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

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

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





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 mixed-use transit-  
8 oriented development as long as a majority of the mixed-use  
9 transit-oriented development is residential, or residential  
10 transit-oriented development, where a permit, license,  
11 certificate, land use change, subdivision, or other entitlement  
12 may be required.

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



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

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

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



1           (B) Residential transit-oriented;

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

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

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

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

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

18          (k) The Hawaii community development authority may submit  
19          parcels within its jurisdiction to the department for review,  
20          and any parcels identified by the department for which all  
21          categories are rated in the lower two effect levels shall be



1 considered to comply with subsection (a) or section 6E-8  
2 regarding state or county lands or projects, and any subsequent  
3 permit, license, certificate, land use change, subdivision, or  
4 other entitlement for use shall not require referral to the  
5 department; provided that:

6 (1) The project is:

7 (A) Mixed-use transit-oriented as long as a majority  
8 of the mixed-use transit-oriented project is  
9 residential; or

10 (B) Residential transit-oriented;

11 (2) The project has reached substantial construction by  
12 June 30, 2036;

13 (3) Development activities have commenced consistent with  
14 best practices to address the applicable level of  
15 risk; and

16 (4) The department shall classify the submittal within six  
17 months of receipt.

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



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

4       SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6       SECTION 7. 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. Effective 7/1/3000. (HD1)

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

