
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 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;



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

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

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

"(a) Before any agency or officer of the State or its political subdivisions commences any project ~~[which]~~ that may affect historic property, an aviation artifact, or a burial site, the lead agency ~~[or officer]~~ shall ~~[advise the department]~~ render a determination on the potential effect of the project and allow the department an opportunity for review of the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The lead agency shall be the entity with designated responsibility for compliance with this section. The decision 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 of
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 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 additional historic properties,
20 aviation artifacts, or burial sites are 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 historic
10 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 has already
18 begun, continue, until the department shall have given its
19 concurrence or ninety calendar days have elapsed. Within ninety
20 calendar days after notification, the department shall:



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

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

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

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

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



1 shall have one hundred eighty calendar days to provide written
2 concurrence of 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 additional historic properties,
10 aviation artifacts, or burial sites are 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 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 may affect
11 historic property, aviation artifacts, or a burial site, the
12 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, its successor, or an equivalent
11 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 of 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



project, the appropriate agency or officer of the State or any of its political subdivisions may commence the project, and the project shall be exempt from further review by the department unless there is a change to the project's physical scope of work or project area or unless additional historic properties, aviation artifacts, or burial sites are identified within the project area; provided that, for the purposes of this subsection, "physical scope of work" means the size, location, and depth of ground disturbances.

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



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 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 memorandum on the mass transit
19 stations, and specific transit-oriented development
20 parcels, scoping the potential area for initiating
21 programmatic review; and



1 (2) The counties shall then solicit requests and consent
2 from non-county landowners to have their parcels
3 within the scoped area of the memorandum initiating
4 programmatic review to proceed with the programmatic
5 review process.

6 (e) The department shall review all parcels submitted by
7 the counties pursuant to the scoping memorandum and classify
8 each parcel, within six months of submittal, according to the
9 risk that residential transit-oriented development may pose to
10 historic properties into three categories in order of potential
11 effect level from high to low in the categories of architecture,
12 archaeology, and history and culture; provided that:

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

17 (2) This assessment is based on:

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

20 (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; and

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

8 (f) The department shall work with the county that made
9 the submittal to develop and agree on permitting memoranda
10 within three months of classification regarding development best
11 practices, including continued identification, addressing levels
12 of risk for the lower two effect levels in each of the
13 categories, including but not limited to creating photo
14 inventories, conducting an archaeological field survey,
15 archaeological excavation, or onsite archaeological monitoring,
16 and consider these best practices as standardized for activities
17 conducted under this section.

18 A county shall incorporate by reference these best
19 practices as conditions of approval for any project involving a
20 permit, license, certificate, land use change, subdivision, or
21 other entitlement for use.



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

8 (1) The project is only residential transit-oriented;

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

11 (3) Development activities have commenced consistent with
12 best practices to address the applicable level of
13 risk.

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

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

18 (j) The Hawaii housing finance and development corporation
19 may submit to the department any additional parcels and state or
20 county housing developments for programmatic review if the
21 counties do not provide a submittal pursuant to subsection (d);



1 provided that the same analysis shall be conducted pursuant to
2 subsection (e), and the department shall classify the submittal
3 within six months of receipt.

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

14 (1) The project is only residential transit-oriented;

15 (2) The project has reached substantial construction by
16 June 30, 2036;

17 (3) Development activities have commenced consistent with
18 best practices to address the applicable level of
19 risk; and

20 (4) The department shall classify the submittal within six
21 months of receipt.



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

3 (m) For the purposes of this section, "residential" shall
4 include mixed-use projects where residential use is the majority
5 use."

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

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

11 SECTION 7. This Act shall take effect on July 1, 2025.



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. (SD1)

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