
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) Further empower lead agencies, including county
11 agencies, to make determinations on the potential
12 effects of a project;
- 13 (2) Create a ninety-day limit, or thirty-calendar-day
14 limit if no historic properties are affected, for the
15 department of land and natural resources to concur or
16 not concur with project effect determinations;



- 1 (3) Ensure that projects with written concurrence are
- 2 exempt from further review unless there is a
- 3 significant change to the project or additional
- 4 historic properties, aviation artifacts, or burial
- 5 sites are identified within the project area; and
- 6 (4) Create a process for expediting the review of
- 7 majority-residential mixed-use transit-oriented
- 8 development or residential transit-oriented
- 9 development on certain parcels and rights-of-way
- 10 within county-designated transit-oriented development
- 11 zones that have a low risk of affecting historically
- 12 significant resources.

13 SECTION 2. Section 6E-2, Hawaii Revised Statutes, is
 14 amended by adding two new definitions to be appropriately
 15 inserted and to read as follows:

- 16 "Complete submittal" means a packet that includes:
- 17 (1) A submittal form;
- 18 (2) A permit set or sixty per cent-complete project
- 19 drawing set;
- 20 (3) A site plan that identifies the project area and
- 21 locations of ground disturbance;



- 1 (4) A written scope of work that identifies the length,
2 width, and depth of ground disturbance and the
3 narrative boundaries of the project area;
- 4 (5) Photographs of the property and at least one
5 photograph of each elevation of existing buildings or
6 structures on the property;
- 7 (6) A map indicating the boundaries of the project area
8 that include any associated construction, ground
9 disturbance, or setting and staging areas;
- 10 (7) For projects submitted under this section:
- 11 (A) A copy of previous archaeological, architectural,
12 or cultural resource survey for the property; or
- 13 (B) A literature review and field inspection for
14 archaeological resources or windshield survey for
15 architectural resources for the tax map key or
16 portion of the tax map key where the project area
17 is located;
- 18 (8) For projects submitted under section 6E-42, a copy of
19 the building permit application associated with the
20 project; and



1 (9) For projects where historic properties are identified
2 as having a high potential effect level under section
3 6E-42(f), documentation of consultation with the
4 office of Hawaiian affairs and any associated comments
5 the applicant received from the office of Hawaiian
6 affairs.

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

9 SECTION 3. Section 6E-8, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§6E-8 Review of effect of proposed state projects. (a)**
12 Before any agency or officer of the State or its political
13 subdivisions commences any project [~~which~~] that may affect
14 historic property, an aviation artifact, or a burial site, the
15 lead agency [~~or officer~~] shall [~~advise the department~~] render a
16 determination on the potential effect of the project and allow
17 the department an opportunity for review of the effect of the
18 proposed project on historic properties, aviation artifacts, or
19 burial sites, consistent with section 6E-43, especially those
20 listed on the Hawaii register of historic places. The proposed
21 project shall not be commenced, or if it has already begun,



1 continued, until the department has [~~given its written~~
2 ~~concurrence.~~] been afforded the opportunity to review the
3 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 each
13 construction phase and the estimated timelines for each
14 phase[-], and any agreed upon mitigation measures.

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



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

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

7 (1) Determines that the submittal is not a complete
8 submittal;

9 (2) Requires additional information or clarification
10 regarding the physical scope of work; or

11 (3) Requires an archaeological inventory survey or
12 reconnaissance level survey for architectural
13 resources,

14 the department shall notify the applicant and specify the
15 information needed to meet the requirements for complete
16 submittal. The review period for the project shall cease until
17 a complete submittal is made to the department. Once the
18 department has received a complete submittal, the applicable
19 review period shall restart.

20 (d) The agency or officer seeking to proceed with the
21 project, or any person, may appeal the department's concurrence



1 or non-concurrence, or failure to provide written concurrence or
2 non-concurrence within the applicable review period, to the
3 Hawaii historic places review board. An agency, officer, or
4 other person who is dissatisfied with the decision of the review
5 board may apply to the governor, who may take action as the
6 governor deems best in overruling or sustaining the department.

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

17 (1) If there is a change in the project's physical scope
18 of work or project area or if additional historic
19 properties or aviation artifacts are identified within
20 the project area post-review, the appropriate agency
21 or officer of the State or its political subdivisions



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

15 (2) If a burial site is inadvertently discovered, the lead
16 agency shall proceed pursuant to section 6E-43 or
17 6E-43.6, or both, as appropriate.

18 ~~[(b)]~~ (f) The department of Hawaiian home lands, ~~[prior~~
19 ~~to]~~ before any proposed project relating to lands under its
20 jurisdiction, shall consult with the department regarding the
21 effect of the project upon historic property or a burial site.



1 [~~e~~] (g) The State~~[r]~~ and its political subdivisions,
2 agencies, and officers shall report to the department the
3 finding of any historic property during any project and shall
4 cooperate with the department in the investigation, recording,
5 preservation, and salvage of the property.

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

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

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

15 "**§6E-10 Privately owned historic property.** (a) Before
16 any construction, alteration, disposition, or improvement of any
17 nature, by, for, or permitted by a private landowner may be
18 commenced [~~which~~] that will affect [~~an~~] a historic property on
19 the Hawaii register of historic places, the landowner shall
20 notify the department of the construction, alteration,
21 disposition, or improvement of any nature and allow the



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

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

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

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

20 (b) Once the department has provided written concurrence
21 on the project effect determination and any necessary mitigation



1 measures have been identified and agreed upon for a proposed
2 project, the property owner 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:

8 (1) If there is a change in the project's physical scope
9 of work or project area or if additional historic
10 properties or aviation artifacts are identified within
11 the project area post-review, the property owner shall
12 notify the department within forty-eight hours of the
13 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 property



1 owner shall provide the department with a report of
2 the agreed upon actions when they are completed; and
3 (2) If a burial site is inadvertently discovered, the
4 property owner shall proceed pursuant to section 6E-43
5 or 6E-43.6, or both, as appropriate.

6 [~~(b)~~] (c) Nothing in this section shall be construed to
7 prevent the ordinary maintenance or repair of any feature in or
8 on [~~an~~] a historic property that does not involve a change in
9 design, material, or outer appearance or change in those
10 characteristics [~~which~~] that qualified the historic property for
11 entry onto the Hawaii register of historic places.

12 [~~(e)~~] (d) Any person, natural or corporate, who violates
13 the provisions of this section shall be fined not more than
14 \$1,000, and each day of continued violation shall constitute a
15 distinct and separate offense under this section for which the
16 offender may be punished.

17 [~~(d)~~] (e) If funds for the acquisition of needed property
18 are not available, the governor may, upon the recommendation of
19 the department, allocate from the contingency fund an amount
20 sufficient to acquire an option on the property or for the



1 immediate acquisition, preservation, restoration, or operation
2 of the property.

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



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

3 **"§6E-42 Review of proposed projects.** (a) Except as
4 provided in section 6E-42.2, before any agency or officer of the
5 State or its political subdivisions approves any project
6 involving a permit, license, certificate, land use change,
7 subdivision, or other entitlement for use, which may affect
8 historic property, aviation artifacts, or a burial site, the
9 agency or [~~office~~] officer shall advise the department and
10 [~~prior to~~], before any approval, allow the department an
11 opportunity for review and comment on the effect of the proposed
12 project on historic properties, aviation artifacts, or burial
13 sites, consistent with section 6E-43, including those listed in
14 the Hawaii register of historic places. If:

15 (1) The proposed project consists of corridors or large
16 land areas;

17 (2) Access to properties is restricted; or

18 (3) Circumstances dictate that construction be done in
19 stages,

20 the department's review and comment may be based on a phased
21 review of the project; provided that there shall be a



1 programmatic agreement between the department and the project
2 applicant that identifies each phase and the estimated timelines
3 for each phase.

4 (b) 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 appropriate agency or officer of the State or any
8 of its political subdivisions may commence the project, and the
9 project shall be exempt from further review by the department
10 unless there is a change to the project's physical scope of work
11 or project area or unless additional historic properties,
12 aviation artifacts, or burial sites are identified within the
13 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
20 forty-eight hours of the discovery. The notification
21 shall include a description of the historic property



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

20 (d) 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
3 transit-oriented development where a permit, license,
4 certificate, land use change, subdivision, or other entitlement
5 may be required.

6 (e) No later than January 1, 2026, the counties and the
7 Hawaii community development authority shall work with the
8 department to identify and submit to the department specific
9 parcels and rights-of-way in proximity to mass transit stations
10 where a majority-residential mixed-use transit-oriented
11 development, a residential transit-oriented development, or
12 infrastructure is specifically consistent with a comprehensive
13 general plan adopted pursuant to section 46-4; provided that the
14 counties and Hawaii community development 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
18 rights-of-way, scoping the potential area for
19 initiating 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) 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
10 transit-oriented development may pose to historic properties.
11 The classification shall be categorized into three categories,
12 in 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 for
17 programmatic review shall include the county's or the
18 Hawaii community development authority's assessment of
19 whether development on each parcel or right-of-way may
20 affect historic property, aviation artifacts, or a
21 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) The department shall work with the county that made
- 16 the submittal and the Hawaii community development authority to
- 17 develop and agree on permitting memoranda within three months of
- 18 classification regarding development best practices, including
- 19 continued identification, addressing levels of risk for the
- 20 lower two effect levels in each of the categories, including but
- 21 not limited to creating photo inventories, conducting an



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

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

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

19 (1) The project is or includes infrastructure to support
20 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) Any parcels or rights-of-way characterized as highest
10 risk shall require referral to the department pursuant to
11 subsection (a).
- 12 (j) Section 6E-43.6 shall apply in the event of an
13 inadvertent discovery of a burial site.
- 14 (k) The Hawaii housing finance and development corporation
15 may submit to the department any additional parcels or rights-
16 of-way for programmatic review if the counties do not provide a
17 submittal pursuant to subsection (e); provided that the same
18 analysis shall be conducted pursuant to subsection (f), and the
19 department shall classify the submittal within six months of
20 receipt.



1 (1) The Hawaii community development authority may submit
2 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 (a) or (b) or section 6E-8 regarding state or
7 county lands or projects, and any subsequent permit, license,
8 certificate, land use change, subdivision, or other entitlement
9 for use shall not require referral to the department; provided
10 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 [~~e~~] (m) The department shall adopt rules in accordance
4 with chapter 91 to implement this section.

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

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

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act shall take effect on July 1, 2025.



Report Title:

DLNR; HCDA; HHFDC; Historic Preservation; Transient-Oriented Development; State Historic Preservation Division Review; Historic Property

Description:

Amends the procedures and required information for the Department of Land and Natural Resources historic preservation review of proposed state projects, privately owned historic property, and other proposed projects that require entitlement for use. Establishes procedures for the review of transit-oriented development identified by the counties and Hawaii Community Development Authority, or Hawaii Housing Finance and Development Corporation. (CD1)

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

