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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  
11             majority-residential mixed-use transit-oriented  
12             development or residential transit-oriented  
13             development on certain parcels and rights-of-way  
14             within county-designated transit-oriented development  
15             zones that have a low risk of affecting historically  
16             significant resources;



- 1           (2) Further empower lead agencies, including county
- 2                   agencies, to make determinations on the potential
- 3                   effects of a project;
- 4           (3) Create a ninety-day limit, or thirty-calendar-day
- 5                   limit if no historic properties are affected, for the
- 6                   department of land and natural resources to concur or
- 7                   not concur with project effect determinations; and
- 8           (4) Ensure that projects with written concurrence are
- 9                   exempt from further review unless there is a
- 10                  significant change to the project or additional
- 11                  historic properties, aviation artifacts, or burial
- 12                  sites are identified within the project area.

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

16           "Majority-residential mixed-use transit-oriented  
17 development" means a mixed-use transit-oriented development  
18 project where the majority of the project is residential and may  
19 include off-site infrastructure."

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



1           "~~§6E-8~~ **Review of effect of proposed state projects.** (a)  
2 Before any agency or officer of the State or its political  
3 subdivisions commences any project [~~which~~] that may affect  
4 historic property, an aviation artifact, or a burial site, the  
5 lead agency [~~or officer~~] shall [~~advise the department~~] render a  
6 determination on the potential effect of the project and allow  
7 the department an opportunity for review of the effect of the  
8 proposed project on historic properties, aviation artifacts, or  
9 burial sites, consistent with section 6E-43, especially those  
10 listed on the Hawaii register of historic places. The proposed  
11 project shall not be commenced, or if it has already begun,  
12 continued, until the department has [~~given its written~~  
13 ~~concurrence.~~] been afforded the opportunity to review the  
14 project in compliance with this subsection. 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 may give its written concurrence based on a  
21 phased review of the project; provided that there shall be [a]



1 an executed programmatic agreement in place between the  
2 department and the project applicant that identifies each  
3 construction phase and the estimated timelines for each  
4 phase[-], and any agreed upon mitigation measures.

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

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

17 (1) Determines that the historic preservation review  
18 submittal requirements are not met;

19 (2) Requires additional information or clarification  
20 regarding the project scope of work; or



1       (3) Requires an archaeological inventory survey or  
2           reconnaissance level survey for architectural  
3           resources,  
4 the department shall notify the applicant and specify the  
5 information needed to meet the requirements for complete  
6 submittal. The review period for the project shall cease until  
7 a complete submittal is made to the department. Once the  
8 department has received a complete submittal, the applicable  
9 review period shall restart.

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

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



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

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



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

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

8           ~~(b)~~ (f) The department of Hawaiian home lands, prior to  
9 any proposed project relating to lands under its jurisdiction,  
10 shall consult with the department regarding the effect of the  
11 project upon historic property or a burial site.

12           ~~(e)~~ (g) The State, its political subdivisions, agencies,  
13 and officers shall report to the department the finding of any  
14 historic property during any project and shall cooperate with  
15 the department in the investigation, recording, preservation,  
16 and salvage of the property.

17           ~~(d)~~ (h) The department shall adopt rules in accordance  
18 with chapter 91 to implement this section.

19           (i) For purposes of this section:

20           "Complete submittal" means a packet that includes:

21           (1) A submittal form;



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



1       (8) For projects submitted under section 6E-42, a copy of  
2       the building permit application associated with the  
3       project; and

4       (9) For projects submitted under this chapter where  
5       historic properties are identified as high effect  
6       level under section 6E-42(e), documentation of  
7       consultation with the office of Hawaiian affairs and  
8       any associated comments the applicant received from  
9       the office of Hawaiian affairs.

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

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

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

19       "**§6E-10 Privately owned historic property.** (a) Before  
20 any construction, alteration, disposition or improvement of any  
21 nature, by, for, or permitted by a private landowner may be



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

- 13 (1) Commence condemnation proceedings for the purchase of  
14 the historic property if the department and property  
15 owner do not agree upon an appropriate course of  
16 action;
- 17 (2) Permit the owner to proceed with the owner's  
18 construction, alteration, or improvement; or
- 19 (3) In coordination with the owner, undertake or permit  
20 the investigation, recording, preservation, and  
21 salvage of any historical information deemed necessary



1 to preserve Hawaiian history, by any qualified agency  
2 for this purpose.

3 (b) Once the department has provided written concurrence  
4 on the 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:

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



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

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

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

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

18           ~~(e)~~ (d) Any person, natural or corporate, who violates  
19 the provisions of this section shall be fined not more than  
20 \$1,000, and each day of continued violation shall constitute a



1 distinct and separate offense under this section for which the  
2 offender may be punished.

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

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



1 commanding the officer to take sufficient aid, and, being  
2 accompanied by a member of the department, between the hours of  
3 sunrise and sunset, allow the member of the department to  
4 examine or survey the historic or cultural property."

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

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

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

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



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

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

20 For the purposes of this subsection, "physical scope of  
21 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 majority-residential  
8 mixed-use transit-oriented development or residential transit-  
9 oriented development where a permit, license, certificate, land  
10 use change, subdivision, or other entitlement may be required.

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

19 (1) The counties and the Hawaii community development  
20 authority shall first consult with the department and  
21 agree through memorandum on the mass transit stations,



1           and specific transit-oriented development parcels and  
2           rights-of-way, scoping the potential area for  
3           initiating programmatic review; and

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

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

20           (1) All county and non-county and Hawaii community  
21           development authority parcels and rights-of way for



1 programmatic review shall include the county's or the  
2 Hawaii community development authority's assessment of  
3 whether development on each parcel or right-of-way may  
4 affect historic property, aviation artifacts, or a  
5 burial site; and

6 (2) This assessment is based on:

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

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

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

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

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

16 (F) Consultation with the:

17 (i) Relevant island burial council; and

18 (ii) Office of Hawaiian affairs; and

19 (G) Any other literary review relevant to the area.

20 (f) The department shall work with the county that made  
21 the submittal and the Hawaii community development authority to



1 develop and agree on permitting memoranda within three months of  
2 classification regarding development best practices, including  
3 continued identification, addressing levels of risk for the  
4 lower two effect levels in each of the categories, including but  
5 not limited to creating photo inventories, conducting an  
6 archaeological field survey, archaeological excavation, or  
7 onsite archaeological monitoring, and the presence of onsite  
8 archaeological monitoring, and consider these best practices as  
9 standardized for activities conducted under this section.

10 A county and the Hawaii community development authority  
11 shall incorporate by reference these best practices as  
12 conditions of approval for any project involving a permit,  
13 license, certificate, land use change, subdivision, or other  
14 entitlement for use.

15 (g) Parcels and rights-of-way identified by the department  
16 where all categories are rated in the lower two effect levels  
17 shall be considered to comply with subsection (a) or section 6E-  
18 8 regarding state or county lands or projects, and any  
19 subsequent permit, license, certificate, land use change,  
20 subdivision, or other entitlement for use shall not require  
21 referral to or written concurrence from the department on



1 project effect determination and mitigation measures; provided  
2 that:

3 (1) The project is or includes infrastructure to support  
4 the development of:

5 (A) Majority-residential mixed-use transit-oriented  
6 development; or

7 (B) Residential transit-oriented development;

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

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

13 (h) Any parcels or rights-of-way characterized as highest  
14 risk shall require referral to the department pursuant to  
15 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 or rights-  
20 of-way for programmatic review if the counties do not provide a  
21 submittal pursuant to subsection (d); provided that the same



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

4 (k) The Hawaii community development authority may submit  
5 parcels or rights-of-way within its jurisdiction to the  
6 department for review, and any parcels or rights-of-way  
7 identified by the department for which all categories are rated  
8 in the lower two effect levels shall be considered to comply  
9 with subsection (a) or section 6E-8 regarding state or county  
10 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 or includes infrastructure to support  
15 the development of:

16 (A) Majority-residential mixed-use transit-oriented  
17 development; or

18 (B) Residential transit-oriented development;

19 (2) The project has reached substantial construction by  
20 June 30, 2036;



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

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

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

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

11        SECTION 7. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13        SECTION 8. This Act shall take effect on July 1, 3000.



**Report Title:**

Historic Preservation; Majority-residential mixed-use transient-oriented development; 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-calendar-day limit if no historic property is to be affected, to concur or not concur with project effect determinations. Exempts projects with written concurrence from further review unless there is a change to the project or additional historic properties, aviation artifacts, or burial sites are identified within the project area. Establishes notice and reporting requirements if there is a change to the project or additional historic properties, aviation artifacts, or burial sites are identified within the project area after the initial written concurrence. Effective 7/1/3000. (HD2)

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

