



November 20, 2014

Dr. Alan Downer  
Deputy State Historic Preservation Officer  
State Historic Preservation Division  
Department of Land and Natural Resources  
State of Hawai'i  
601 Kamokila Blvd., Ste. 555  
Kapolei, HI 96707

**RE: Draft List of Proposed Projects with No Potential to Affect Historic Properties**

Dear Dr. Downer:

Historic Hawai'i Foundation has received the request for comment on the draft list of categories of projects that the State Historic Preservation Division has proposed to be added to a list of projects that have no potential to affect historic properties and that would no longer be subject to review and comment per Hawai'i Revised Statutes (HRS) §6E-42, received via hand-delivery and email on October 28, 2014.

**BACKGROUND**

HRS §6E-8, §6E-10 and §6E-42 require that before any State agency or officer of the State, including its political subdivisions, approves any project involving a permit, license, certificate, land use change, subdivision or other entitlement for use "which may affect historic property"... it shall refer the matter to the State Historic Preservation Division (SHPD) for review and comment on "the effect of the proposed project on historic properties." The referral applies to any property over 50 years old (§6E-2). SHPD's review then establishes:

1. Whether the property has historic significance and integrity that would make it eligible for the state register of historic places, and
2. Whether the proposed project has the potential to "affect" the property, and specifically if it would have an adverse effect or inflict harm on the property's historic integrity or character-defining features.

The purpose of the review process is to help ensure the preservation and appropriate use of historic properties, and to provide opportunities for correction should a proposed action be found to inflict irreversible harm.

This is consistent with the constitution of the State of Hawai'i, which recognizes the value of conserving and developing the historic and cultural property within the State for the public good, and the public interest to engage in a comprehensive program of historic preservation at all levels of

Historic Hawai'i Foundation Comments  
SHPD Proposed List of Projects with No Potential to Affect Historic Properties  
November 18, 2014  
Page 1 of 5

government to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of its citizens. The Department of Land and Natural Resources (DLNR) is mandated by Hawaii Revised Statutes §6E “to provide leadership in preserving, restoring, and maintaining historic and cultural property...”

In order to meet this mandate and to ensure that the historic and cultural resources of Hawai‘i are treated appropriately, it is necessary to have a framework based on criteria and standards to develop an effective, efficient, standardized and reliable system for review of projects which have the potential to harm or adversely affect historic resources.

### ISSUES

SHPD and County planning and permitting departments have raised concerns with the workload on the state and county agencies in processing the review and compliance actions. Members of the development and construction industries have also voiced concerns over delays to projects. Historic Hawai‘i Foundation is mindful of these concerns, and also notes that the overriding public policy should be to evaluate proposed changes not only for procedural efficiency, but also for effectiveness in protecting historic properties.

In response to these concerns, SHPD has proposed a list of categories of projects which have a low likelihood to affect the historic property’s integrity or character, and which therefore should not be referred to SHPD for review and comment. A similar approach, often referred to as “categorical exclusions,” has been used effectively in programmatic agreements with federal agencies in order to prioritize efforts on those undertakings with the greatest potential to harm historic properties, and to limit the amount of time, money and other resources that would otherwise be diverted to unnecessary reviews.

### RECOMMENDATIONS

**Historic Hawai‘i Foundation supports this approach, and agrees that it is a reasonable and responsible way to address the need to have a rational basis for eliminating review of projects that are unlikely to affect historic properties, while continuing to provide review and comment of more substantial work that could inflict harm.**

HHF has several recommendations to refine and clarify the proposal:

1. The list of projects with no potential to effect historic properties should be clearly noted to **apply only to projects submitted under HRS §6E-42** (private property not designated on the state register of historic places) and **not to §6E-8** (public property) or **§6E-10** (property designated on the state register of historic places).
2. **A formal implementation mechanism or structure needs to be included.** The current proposal appears to take the form of a letter from SHPD to State agencies and officers, including their political subdivisions, as an advisory not to submit such projects to SHPD for review and comment. We note that SHPD has issued previous advisories, some of which covered these same types of projects, and the Counties declined to follow the advice. The

result was inconsistent referrals and requests for comment, an unpredictable process and an exacerbation of the frustration with the overall preservation program.

Rather than rely only on an advisory letter, SHPD should either institutionalize the approach through rule-making, or should develop and execute a formal agreement(s) with relevant agencies and officers through a Memorandum of Agreement or Intergovernmental Agreement. This would provide a legal framework, institutionalize the understanding and terms, and provide for amendment or termination as needed.

**3. The terms and descriptions of the types of projects should be carefully defined.**

| Project Type Number | SHPD Proposed Language   | HHF Comment  |
|---------------------|--|--|
| 1                   | Installation of solar/PV/ photovoltaic systems on existing buildings, dwellings and carports | Add “that use a low-profile solar device that is not visible or only minimally visible from the public right of way (such as flat or parallel to the roof to reduce visibility, or installation on the subordinate elevation).”  |
| 2                   | Installation of electrical meters  | Agreed   |
| 3                   | Interior electrical upgrades   | Agreed   |
| 4                   | Demolition of additions and detached structures less than 50 years of age                    | <p>Recommend that these are two separate project types:</p> <p>4a. Demolition of detached structures which are less than 50 years of age that are located on properties which also have a resource that is over 50 years of age.</p> <p>4b. Demolition of additions to historic structures when such additions are less than 50 years of age if no new addition is proposed in its place.</p> <p>The problem with this exemption is that usually an alteration of the historic structure is needed to repair the damage caused by the addition. That may be allowed as an exemption, but review of the substitute addition should continue to be reviewed, so the trigger should be clear.</p> |

| Project Type Number | SHPD Proposed Language   | HHF Comment  |
|---------------------|--|--|
| 5                   | Interior renovations for mid- and high-rise buildings  | <p>Define “mid- and high-rise buildings” or refer to the section of the land use ordinance which contains the definition.</p> <p>Add “that do not include any changes to the building exterior, including changes to windows, doors, lanai or exterior features.”</p>  |
| 6                   | In-kind repairs of interior and exterior features such as doors, windows, siding, fascia and decking | <p>Recommend that these are two separate project types:</p> <p>6a. In-kind repairs of interior architectural features, including doors, siding and cabinets.</p> <p>6b. In-kind repairs of exterior architectural features, including doors, windows, siding, fascia and decking.</p> <p>Define “in-kind” to include matching the original design, color, texture, materials, fenestration, profile, finishes and construction techniques.</p> |
| 7                   | Antenna and satellite dish replacements on existing towers and structures not subject to FCC permits | Agreed   |
| 8                   | Bathroom and kitchen renovations   | Add “that do not include any changes to the building exterior, including changes to windows, doors, lanai or exterior features.”   |
| 9                   | In-kind repair to carports and garages   | Define “in-kind” to include matching the original design, color, texture, materials, fenestration, profile, finishes and construction techniques.  |
| 10                  | The enclosure of existing rear lanai   | Add “that will not destroy historic materials, features, and spatial relationships that characterize the property, and that is compatible in size, scale, proportion and massing to original property.”  |

| Project Type Number | SHPD Proposed Language | HHF Comment   |
|---------------------|------------------------|---|
| 11                  |                        | Add a project type related to interior plumbing systems and fixtures that do not include any changes to the building exterior, including changes to windows, doors, lanai or exterior features. |

Historic Hawai'i Foundation supports this approach to preserve historic properties and provide for efficient government services without undue burden on property owners and other constituents. We commend SHPD for taking this step and look forward to seeing the final proposal and its successful implementation.

Very truly yours,



Kiersten Faulkner, AICP  
Executive Director

Copies via email:

Anna Broverman, SHPD Architectural Historian