What projects are subject review?

- The State Historic Preservation Division (SHPD) in the Department of Land and Natural Resources reviews projects with potential effects to historic properties
  - Chapter 6E Hawaii Revised Statutes;
  - Section 106 of the National Historic Preservation Act
§ 106 applies to federal undertakings

- Things a federal agency: does, funds (including grants, loan guarantees), or pays a contractor to do for it; or
- Things requiring a federal permit, license or other form of official permission or approval.
SHPD Reviews

- Last year SHPD completed review of about 2700 submittals;
  - About 650 under § 106;
  - About 683 under § 6E-8;
  - About 1367 under § 6E-42.
§6E-8 requires state & county agencies to consult with SHPD if a state or county project has the potential to effect historic properties;

- Historic property is “any building, structure, object, district, area, or site, including heiau or underwater site, which is fifty years old;” burials that are 50 years old and aviation artifacts that are 50 years old are special categories of protected properties;

- State projects mean any project carried out by a state or county agency, funded by a state or county agency; or

- Occurring on state or county property;

- These projects are virtually always also subject to review under §6E-42;

- Projects reviewed under §6E-8 require SHPD concurrence.
State or county permits (§ 6E-42)

- State and county agencies are also required to consult SHPD prior to the issuance of a permit for a project that has the potential to affect a historic property.

- Privately owned single family houses and town homes that are 50 years old, but not listed in the Hawaii or National Registers of Historic Places, not located in a designated historic district, or not nominated to the Hawaii or National Register are exempt for §6E review.

- Except for single family dwellings, listing in one of the historic registers makes no difference for §6E-42 reviews.
Permit reviews

- The majority of SHPD reviews are done for state or county permits;
- Permitting agency has discretion to determine whether a project has “potential to effect”;
- Permitting agency is the decision maker, SHPD is advising on potential effects, and measures to avoid, minimize, or mitigate effects.
Permitting agencies do have discretion on what permits to send to SHPD; Agencies don’t have unlimited discretion, it is potentially subject to judicial review

SHPD may or may not agree with the agency decision; SHPD routinely see permits for projects that are exempt, or otherwise not subject to review; SHPD sometimes doesn’t see permits for projects that, in our view, absolutely should have been subject to 6E review;

Permitting agencies DO NOT have discretion on what is a historic property, that is set by definition in §6E HRS - it’s the law.
Privately owned historic property (§6E-10)

- §6E-10 requires owners of historic properties that are listed in the Hawaii Register of Historic Places to consult with SHPD about proposed projects that may affect them;
- §6E-10 requires SHPD concurrence on such projects;
- such projects will almost always also require a county permit, which would also be subject to review under §6E-42.
When the County receives a permit application, it should determine whether the project is exempt;

- Is it a single family dwelling or is it affecting a building or structure that is less than 50 years old and involve no ground disturbance

If not exempt, the County should then do an initial assessment of whether or not the project has the potential to affect historic properties; If the result of that assessment is yes,

- The County should submit the permit to SHPD for review;

- If the result is no, the County does not submit the project to SHPD
How does it actually work

- §6E allows counties to delegate the duty to consult to 3rd parties,
- Counties routinely direct permit applicants consult directly with SHPD;
- Each county operates differently, on O`ahu, the default option is to send applicants to SHPD;
- The county then waits until SHPD provides its written comments on the permit application before issuing the permit
How long does SHPD review take

- It depends on many factors, especially the completeness of the information submitted to SHPD;
  - Any and every time SHPD needs to request additional information or clarification, will slow the review.
- The nominal deadline for § 6E-42 reviews is 45 days,
  - The clock starts when the agency makes its determination,
    - No agency determination, the clock hasn’t started;
  - SHPD receives complete information;
    - Incomplete, inaccurate, and/or confusing contradictory information, the clock hasn’t started
- Last time we ran the numbers, reviews involving existing buildings and no ground disturbance were completed in an average of 17 days;
- Reviews for projects requiring archaeological review average about 6 months.
- The counties are not required to wait after the deadline has passed (unless SHPD has requested additional information), but most of the time they wait until SHPD comments
The State of Hawaii relies on federal standards for project affecting historic properties;

The Secretary of the Interior’s Standards and Guidelines for the Treatment of Historic Properties (https://www.nps.gov/tps/standards.htm);

These include Standards for preservation, rehabilitation, rehabilitation projects using the federal historic tax credit, and reconstruction; and

Guidelines for treatment of historic properties, or rehabilitation of historic properties.
If your project requires a state or county permit, consult the permitting agency to try to find out whether or not your project will be submitted to SHPD for review;

If it will consult with SHPD to ensure that you have put together all the information SHPD will need to make an informed, independent determination; the 6E submission form is a helpful guide on this (https://dlnr.hawaii.gov/shpd/files/2015/06/ALL-County-SHPD-HRS-6E-Submittal-Intake-Form.pdf)

If you need to have consultants to assist you through this process, it is a good idea to check performance with prior users.
When in doubt, consult SHPD
CONTACT INFORMATION

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- Architecture Branch: 808.692.8022
- Archaeology Branch: 808.692.8019
- History and Culture Branch: 808.243.4640