



STATE HISTORIC PRESERVATION REVIEW

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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

Section 106

§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.

Chapter 6E

- ▶ §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.

Discretion

- ▶ 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.

County Review/SHPD Review

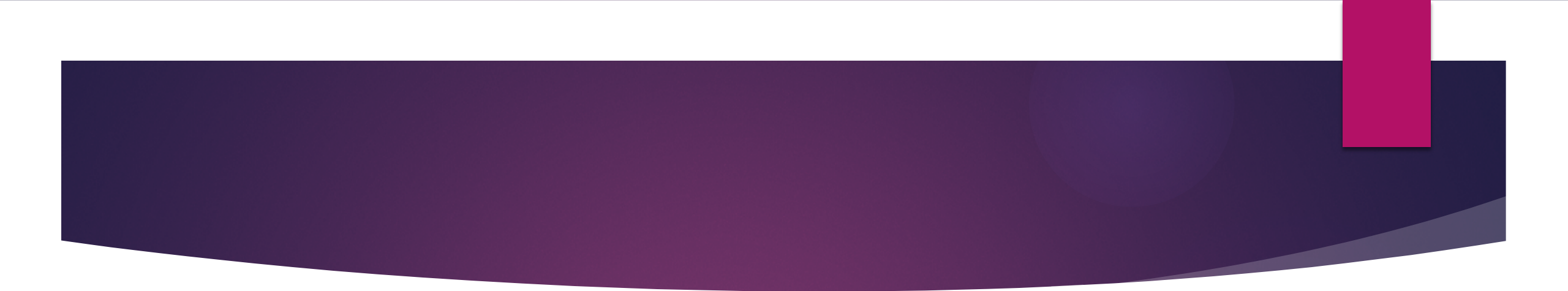
- ▶ When the County receives a permit application, it should determine whether the project is exempt;
 - ▶ Is it a single family dwelling or is it affecting a building or structure that is less than 50 years old and involve no ground disturbance
- ▶ If not exempt, the County should then do an initial 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

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- ▶ 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

Preservation Standards

- ▶ 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*

Tips

- ▶ 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

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- ▶ When in doubt, consult SHPD





CONTACT INFORMATION

- ▶ SHPD: 808.6928015/8016
- ▶ Architecture Branch: 808.692.8022
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- ▶ History and Culture Branch: 808.243.4640