

COMPREHENSIVE MANAGEMENT PLAN

CR – 12 : Consult with Kahu Kū Mauna about establishing buffers (preservation zones) around known historic sites in the Astronomy Precinct, to protect them from potential future development.

Policy for CR-12

CR-12: Buffers or preservation zones around known historic sites in the Astronomy Precinct shall be established to protect these sites from potential future development. A buffer zone shall be established on a case by case basis after the Area of Potential Effect (APE) has been determined and approved by the State Historic Preservation Division.

Hawaii State Constitution

The Hawaii State Constitution states in Article XII, Section 7 that:

“The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]”

While traditional and cultural rights are recognized as an important aspect of our political heritage the Hawaii State Constitution also tasks the state with the regulation of these rights.

Hawaii Revised Statutes

[§6E-1] Declaration of intent. The Constitution of the State of Hawaii recognizes the value of conserving and developing the historic and cultural property within the State for the public good. The legislature declares that the historic and cultural heritage of the State is among its important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage. The legislature further declares that it is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of its citizens. The legislature further declares that it shall be the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of such historic and cultural property in a spirit of

stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property. [L 1976, c 104, pt of §2]

§6E-3 Historic preservation program. There is established within the department a division to administer a comprehensive historic preservation program, which shall include but not be limited to the following:

- (1) Development of an ongoing program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, signage, and publications on the State's historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the counties in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;

- (12) Submittal of an annual report to the governor and legislature detailing the accomplishments of the year, recommendations for changes in the state plan or future programs relating to historic preservation, and an accounting of all income, expenditures, and the fund balance of the Hawaii historic preservation special fund;
- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter which shall be in accordance with chapter 76;
- (15) The charging of fees to be determined by the department that are proportional to the nature and complexity of the projects or services provided, and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this chapter, do not surpass the annual operating costs of the comprehensive historic preservation program;
- (16) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- (17) Development and adoption, in consultation with the office of Hawaiian affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments. [L 1976, c 104, pt of §2; am L 1987, c 330, §1; am L 1989, c 324, §2; am L 1990, c 306, §5; am L 1991, c 108, §2; am L 1993, c 323, §2; am L 1996, c 97, §4; am L 1997, c 207, §1; am L 1998, c 311, §1; am L 2000, c 253, §150; am L 2006, c 300, §2; am L 2012, c 150, §1; am L 2014, c 181, §2]

§6E-7 State title to historic property.

- (a) All historic property located on lands or under waters owned or controlled by the State shall be the property of the State. The control and management of the historic property shall be vested in the department.
- (b) The department may dispose of the historic property subject to chapter 171 and subject further to those reservations, restrictions, covenants, or conditions which relate to the preservation of the historic property, such as rights of access, public visitation, operation, maintenance, restoration, and repair. The department shall determine the conditions for any research affecting the historic property and may issue permits for the research.
- (c) The State shall hold known burial sites located on lands or under waters owned or controlled by the State in trust for preservation or proper disposition by the lineal or cultural descendants.

- (d) The State shall not transfer any historic property or aviation artifact under its jurisdiction without the concurrence of the department, and shall not transfer any burial site under its jurisdiction without consulting the appropriate island burial council. [L 1976, c 104, pt of §2; am L 1985, c 124, §1; am L 1990, c 306, §6; am L 1996, c 97, §6]

§6E-8 Review of effect of proposed state projects.

- (a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property, aviation artifact, or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced, or if it has already begun, continued, until the department has given its written concurrence. If:
 - (1) The proposed project consists of corridors or large land areas;
 - (2) Access to properties is restricted; or
 - (3) Circumstances dictate that construction be done in stages, the department may give its written concurrence based on a phased review of the project; provided that there shall be a programmatic agreement between the department and the project applicant that identifies each phase and the estimated timelines for each phase.

The department shall provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department's concurrence or non-concurrence to the Hawaii historic places review board. An agency, officer, or other person who is dissatisfied with the decision of the review board may apply to the governor, who may take action as the governor deems best in overruling or sustaining the department.

- (b) The department of Hawaiian home lands, prior to any proposed project relating to lands under its jurisdiction, shall consult with the department regarding the effect of the project upon historic property or a burial site.
- (c) The State, its political subdivisions, agencies, and officers shall report to the department the finding of any historic property during any project and shall cooperate with the department in the investigation, recording, preservation, and salvage of the property.
- (d) The department shall adopt rules in accordance with chapter 91 to implement this section. [L 1976, c 104, pt of §2; gen ch 1985; am L 1990, c 306, §7; am L

1995, c 187, §2; am L 1996, c 13, §1 and c 97, §7; am L 2008, c 228, §2; am L 2009, c 4, §2; am L 2013, c 85, §2]

§6E-42 Review of proposed projects.

- (a) Except as provided in section 6E-42.2, before any agency or officer of the State or 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, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places. If:
 - (1) The proposed project consists of corridors or large land areas;
 - (2) Access to properties is restricted; or
 - (3) Circumstances dictate that construction be done in stages, the department's review and comment may be based on a phased review of the project; provided that there shall be a programmatic agreement between the department and the project applicant that identifies each phase and the estimated timelines for each phase.
- (b) The department shall inform the public of any project proposals submitted to it under this section that are not otherwise subject to the requirement of a public hearing or other public notification.
- (c) The department shall adopt rules in accordance with chapter 91 to implement this section. [L 1988, c 265, pt of §1; am L 1990, c 306, §12; am L 1995, c 187, §3; am L 1996, c 97, §10; am L 2013, c 85, §3; am L 2015, c 224, §3]

Department of Land and Natural Resources Administrative Rules

Natural Areas Reserve

HAR 13-209-4, prohibited activities within the Natural Area Reserve

The following activities are prohibited within a natural area reserve:

- (1) To remove, injure, or kill any form of plant or animal life, except game mammals and birds hunted according to department rules;

- (2) To introduce any form of plant or animal life, except dogs when permitted by hunting rules of the department and service animals accompanying their handlers;
- (3) To remove, damage, or disturb any geological or paleontological features or substances;
- (4) To remove, damage, or disturb any historic or prehistoric remains;
- (5) To remove, damage, or disturb any notice, marker, or structure;
- (6) To engage in any construction or improvement;

Forest Reserve

HAR 13-104-4, preservation of public property and resources.

The following activities are prohibited within a forest reserve:

- (1) To remove, injure, or kill any form of plant or animal life, either in whole or in part, except as authorized by the Board or authorized representative or as provided by rules of the Board;
- (2) To remove, damage, or disturb any natural feature or resource (e.g. natural stream beds) except as authorized by the board or its authorized representative;
- (3) To remove, damage, or disturb any historic or prehistoric remains;
- (4) To remove, damage, or disturb any notice, marker, or structure;
- (5) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within or on forest reserve except as authorized by the board or its representative;
- (6) To engage in any construction or improvement except as authorized by the board.
- (7) To sell, peddle, solicit, or offer for sale any merchandise or service except with written authorization from the board.
- (8) To distribute or post handbills, circulars, or other notices. Unofficial compilation:
- (9) To introduce any plant or animal except as approved by the Board.
- (10) To enter or remain within forest reserves when under the influence of alcohol, narcotics, or drugs, to a degree that may endanger oneself or endanger or cause annoyance to other persons or property. The use or possession of narcotics, drugs or alcohol within forest reserves is

prohibited. [Eff 9/28/81; am and comp 10/15/93] (Auth: HRS §183-2) (Imp: HRS §§183- 2, 183-17) §

State Historic Preservation Division Administrative Rules

§13-277-3 Preservation plan.

A preservation plan prepared pursuant to chapters 13-275 or 13-284, shall:

- (1) Identify for each significant historic property which forms of preservation will be implemented: avoidance and protection (conservation), stabilization, rehabilitation, restoration, reconstruction, interpretation, or appropriate cultural use;
- (2) Specify the buffer zones around each significant historic property and depict them on a map of sufficient scale;
- (3) Specify short-term protection measures for each significant historic property that will be within or near a construction area;
- (4) Discuss the agency or person's consultation process for historic properties deemed significant under paragraphs 13-275-G(bl (5) or 13-284-G(bl (5). The agency or person shall consult with ethnic organizations and individuals for whom the historic properties are of significance. The comments on preservation treatment expressed by these individuals or organizations shall be considered when preparing the preservation plan. The plan shall include a list of individuals and organizations consulted, and shall summarize their input.
- (5) Specify the long term preservation measures to be undertaken at each significant historic property. (Eff Dec. 11) I (Auth: HRS §6E-3) (Imp: §6E-I, 6E-3, 6E-7, 6E-8, 6E-42)

§13-277-4 Buffer zones.

- (a) Buffer zones shall ensure that the integrity and context of the historic property is preserved, in many cases including the visual integrity.
- (b) The size of a buffer zone shall be proposed by the person or agency on a site-by-site basis. Size will vary with the local terrain, eventual use of the site, surrounding land uses, the type of site, and the criterion for which a site is significant.
- (c) The manner in which a buffer zone will be treated with regards to demarcation, landscaping and other activities shall be proposed by the person or agency on a site-by-site basis.

- (d) Once approved, buffer zones shall be marked on overall project maps, and physical markers shall be placed in the ground delineating the buffers.

(Eff DEC 1 1] (Auth: HRS §6E-3) (Imp: HRS §§ 6E-1, 6E-3, 6E-7, 6E-8, 6E-42)