
A BILL FOR AN ACT

RELATING TO ZONING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 46-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§46-4 County zoning.** (a) This section and any
4 ordinance, rule, or regulation adopted in accordance with this
5 section shall apply to lands not contained within the forest
6 reserve boundaries as established on January 31, 1957, or as
7 subsequently amended.

8 Zoning in all counties shall be accomplished within the
9 framework of a long-range, comprehensive general plan prepared
10 or being prepared to guide the overall future development of the
11 county. Zoning shall be one of the tools available to the
12 county to put the general plan into effect in an orderly manner.
13 Zoning in the counties of Hawaii, Maui, and Kauai means the
14 establishment of districts of such number, shape, and area, and
15 the adoption of regulations for each district to carry out the
16 purposes of this section. In establishing or regulating the
17 districts, full consideration shall be given to all available
18 data as to soil classification and physical use capabilities of



1 the land to allow and encourage the most beneficial use of the
2 land consonant with good zoning practices. The zoning power
3 granted herein shall be exercised by ordinance which may relate
4 to:

- 5 (1) The areas within which agriculture, forestry,
6 industry, trade, and business may be conducted;
- 7 (2) The areas in which residential uses may be regulated
8 or prohibited;
- 9 (3) The areas bordering natural watercourses, channels,
10 and streams, in which trades or industries, filling or
11 dumping, erection of structures, and the location of
12 buildings may be prohibited or restricted;
- 13 (4) The areas in which particular uses may be subjected to
14 special restrictions;
- 15 (5) The location of buildings and structures designed for
16 specific uses and designation of uses for which
17 buildings and structures may not be used or altered;
- 18 (6) The location, height, bulk, number of stories, and
19 size of buildings and other structures;
- 20 (7) The location of roads, schools, and recreation areas;
- 21 (8) Building setback lines and future street lines;
- 22 (9) The density and distribution of population;



- 1 (10) The percentage of a lot that may be occupied, size of
- 2 yards, courts, and other open spaces;
- 3 (11) Minimum and maximum lot sizes; and
- 4 (12) Other regulations the boards or city council find
- 5 necessary and proper to permit and encourage the
- 6 orderly development of land resources within their
- 7 jurisdictions.

8 The council of any county shall prescribe rules,
9 regulations, and administrative procedures and provide personnel
10 it finds necessary to enforce this section and any ordinance
11 enacted in accordance with this section. The ordinances may be
12 enforced by appropriate fines and penalties, civil or criminal,
13 or by court order at the suit of the county or the owner or
14 owners of real estate directly affected by the ordinances.

15 Any civil fine or penalty provided by ordinance under this
16 section may be imposed by the district court, or by the zoning
17 agency after an opportunity for a hearing pursuant to chapter
18 91. The proceeding shall not be a prerequisite for any
19 injunctive relief ordered by the circuit court.

20 Nothing in this section shall invalidate any zoning
21 ordinance or regulation adopted by any county or other agency of



1 government pursuant to the statutes in effect prior to July 1,
2 1957.

3 The powers granted herein shall be liberally construed in
4 favor of the county exercising them, and in such a manner as to
5 promote the orderly development of each county or city and
6 county in accordance with a long-range, comprehensive general
7 plan to ensure the greatest benefit for the State as a whole.
8 This section shall not be construed to limit or repeal any
9 powers of any county to achieve these ends through zoning and
10 building regulations, except insofar as forest and water reserve
11 zones are concerned and as provided in subsections (c) [~~and~~],
12 (d) [~~-~~], (e), and (g).

13 Neither this section nor any ordinance enacted pursuant to
14 this section shall prohibit the continued lawful use of any
15 building or premises for any trade, industrial, residential,
16 agricultural, or other purpose for which the building or
17 premises is used at the time this section or the ordinance takes
18 effect; provided that a zoning ordinance may provide for
19 elimination of nonconforming uses as the uses are discontinued,
20 or for the amortization or phasing out of nonconforming uses or
21 signs over a reasonable period of time in commercial,
22 industrial, resort, and apartment zoned areas only. In no event



1 shall [~~such~~] amortization or phasing out of nonconforming uses
2 apply to any existing building or premises used for residential
3 [~~(+)~~, single-family or duplex~~(+)~~, or agricultural uses. Nothing
4 in this section shall affect or impair the powers and duties of
5 the director of transportation as set forth in chapter 262.

6 (b) Any final order of a zoning agency established under
7 this section may be appealed to the circuit court of the circuit
8 in which the land in question is found. The appeal shall be in
9 accordance with the Hawaii rules of civil procedure.

10 (c) Each county may adopt reasonable standards to allow
11 the construction of two single-family dwelling units on any lot
12 where a residential dwelling unit is permitted.

13 (d) Neither this section nor any other law, county
14 ordinance, or rule shall prohibit group living in facilities
15 with eight or fewer residents and that are licensed by the State
16 as provided for under section 321-15.6, or in an intermediate
17 care facility/mental retardation-community for persons,
18 including mentally ill, elder, disabled, developmentally
19 disabled, or totally disabled persons, who are not related to
20 the home operator or facility staff; provided that those group
21 living facilities meet all applicable county requirements not
22 inconsistent with the intent of this subsection and including



1 building height, setback, maximum lot coverage, parking, and
2 floor area requirements.

3 (e) No permit shall be issued by a county agency for the
4 operation of a halfway house, a clean and sober home, or a drug
5 rehabilitation home unless a public informational meeting is
6 first held in the affected community. The State shall provide
7 notification and access to relevant information, as required,
8 under chapter 846E.

9 A clean and sober home shall be considered a residential
10 use of property and shall be a permitted or conditional use in
11 residentially designated zones, including but not limited to
12 zones for single-family dwellings.

13 (f) For purposes of this section:

14 "Clean and sober home" means a house that is operated
15 pursuant to a program designed to provide a stable environment
16 of clean and sober living conditions to sustain recovery and
17 that is shared by unrelated adult persons who:

- 18 (1) Are recovering from substance abuse;
- 19 (2) Share household expenses; and
- 20 (3) Do not require twenty-four-hour supervision,
21 rehabilitation, or therapeutic services or care in the
22 home or on the premises;



1 provided that the home shall meet all applicable laws, codes,
2 and rules of the counties and State.

3 "Developmentally disabled person" means a person suffering
4 from developmental disabilities as defined under section 333F-1.

5 "Disabled person" means a person with a disability as
6 defined under section 515-2.

7 "Drug rehabilitation home" means:

- 8 (1) A residential treatment facility that provides a
9 therapeutic residential program for care, diagnosis,
10 treatment, or rehabilitation for socially or
11 emotionally distressed persons, mentally ill persons,
12 persons suffering from substance abuse, and
13 developmentally disabled persons; or
- 14 (2) A supervised living arrangement that provides mental
15 health services, substance abuse services, or
16 supportive services for individuals or families who do
17 not need the structure of a special treatment facility
18 and are transitioning to independent living;
- 19 provided that drug rehabilitation homes shall not include
20 halfway houses or clean and sober homes.

21 "Elder" means an elder as defined under section 356D-1.



1 "Halfway house" means a group living facility for people
2 who:

3 (1) Have been released or are under supervised release
4 from a correctional facility;

5 (2) Have been released from a mental health treatment
6 facility; or

7 (3) Are receiving substance abuse or sex offender
8 treatment; and

9 are housed to participate in programs that help them readjust to
10 living in the community.

11 "Intermediate care facility/mental retardation-community"
12 means an identifiable unit providing residence and care for
13 eight or fewer mentally retarded individuals. Its primary
14 purpose is the provision of health, social, and rehabilitation
15 services to the mentally retarded through an individually
16 designed active treatment program for each resident. No person
17 who is predominantly confined to bed shall be admitted as a
18 resident of such a facility.

19 "Mental health treatment facility" means a psychiatric
20 facility or special treatment facility as defined under section
21 334-1.



1 "Mentally ill person" has the same meaning as defined under
2 section 334-1.

3 "Totally disabled person" means a "person totally disabled"
4 as defined under section 235-1.

5 "Treatment program" means a "substance abuse program" or
6 "treatment program", as those terms are defined under section
7 353G-2.

8 (g) Notwithstanding any law to the contrary, no permit
9 shall be issued by a county agency for any residential or
10 commercial development of any wetland or tidal area within
11 feet from the shoreline unless:

12 (1) A public informational meeting is first held in the
13 affected community; and

14 (2) The county agency solicits public input at the public
15 informational meeting regarding whether to approve,
16 deny, or conditionally approve the proposed
17 development.

18 For purposes of this subsection:

19 "Shoreline" has the same meaning as that term is defined in
20 section 205A-1.

21 "Tidal" means the presence of periodically rising and
22 falling or flowing and ebbing waters.



1 "Wetland" means land or areas, such as tidal flats and
2 swamps that contain a lot of soil moisture.

3 [~~(g)~~] (h) Neither this section nor any other law, county
4 ordinance, or rule shall prohibit the use of land for employee
5 housing and community buildings in plantation community
6 subdivisions as defined in section 205-4.5(a)(12); in addition,
7 no zoning ordinance shall provide for elimination, amortization,
8 or phasing out of plantation community subdivisions as a
9 nonconforming use."

10 SECTION 2. Section 205-5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§205-5 Zoning.** (a) Except as herein provided, the
13 powers granted to counties under section 46-4 shall govern the
14 zoning within the districts, other than in conservation
15 districts. Conservation districts shall be governed by the
16 department of land and natural resources pursuant to chapter
17 183C.

18 (b) Within agricultural districts, uses compatible to the
19 activities described in section 205-2 as determined by the
20 commission shall be permitted; provided that accessory
21 agricultural uses and services described in sections 205-2 and
22 205-4.5 may be further defined by each county by zoning



1 ordinance. Each county shall adopt ordinances setting forth
2 procedures and requirements, including provisions for
3 enforcement, penalties, and administrative oversight, for the
4 review and permitting of agricultural tourism uses and
5 activities as an accessory use on a working farm, or farming
6 operation as defined in section 165-2; provided that
7 agricultural tourism activities shall not be permissible in the
8 absence of a bona fide farming operation. Ordinances shall
9 include but not be limited to:

- 10 (1) Requirements for access to a farm, including road
11 width, road surface, and parking;
- 12 (2) Requirements and restrictions for accessory facilities
13 connected with the farming operation, including gift
14 shops and restaurants; provided that overnight
15 accommodations shall not be permitted;
- 16 (3) Activities that may be offered by the farming
17 operation for visitors;
- 18 (4) Days and hours of operation; and
- 19 (5) Automatic termination of the accessory use upon the
20 cessation of the farming operation.

21 Each county may require an environmental assessment under
22 chapter 343 as a condition to any agricultural tourism use and



1 activity. Other uses may be allowed by special permits issued
2 pursuant to this chapter. The minimum lot size in agricultural
3 districts shall be determined by each county by zoning
4 ordinance, subdivision ordinance, or other lawful means;
5 provided that the minimum lot size for any agricultural use
6 shall not be less than one acre, except as provided herein. If
7 the county finds that unreasonable economic hardship to the
8 owner or lessee of land cannot otherwise be prevented or where
9 land utilization is improved, the county may allow lot sizes of
10 less than the minimum lot size as specified by law for lots
11 created by a consolidation of existing lots within an
12 agricultural district and the resubdivision thereof; provided
13 that the consolidation and resubdivision do not result in an
14 increase in the number of lots over the number existing prior to
15 consolidation; and provided further that in no event shall a lot
16 which is equal to or exceeds the minimum lot size of one acre be
17 less than that minimum after the consolidation and resubdivision
18 action. The county may also allow lot sizes of less than the
19 minimum lot size as specified by law for lots created or used
20 for plantation community subdivisions as defined in section 205-
21 4.5(a)(12), for public, private, and quasi-public utility



1 purposes, and for lots resulting from the subdivision of
2 abandoned roadways and railroad easements.

3 (c) Unless authorized by special permit issued pursuant to
4 this chapter, only the following uses shall be permitted within
5 rural districts:

- 6 (1) Low density residential uses;
- 7 (2) Agricultural uses;
- 8 (3) Golf courses, golf driving ranges, and golf-related
9 facilities; and
- 10 (4) Public, quasi-public, and public utility facilities.

11 In addition, the minimum lot size for any low density
12 residential use shall be one-half acre and there shall be but
13 one dwelling house per one-half acre, except as provided for in
14 section 205-2.

15 (d) Notwithstanding any law to the contrary, no permit
16 under this section or special permit under section 205-6 shall
17 be issued by a county for any residential or commercial
18 development of any wetland or tidal area within _____ feet from
19 the shoreline unless:

- 20 (1) A public informational meeting is first held in the
21 affected community; and



1 (2) The county solicits public input at the public
 2 informational meeting regarding whether to approve,
 3 deny, or conditionally approve the proposed
 4 development.

5 For purposes of this subsection:

6 "Shoreline" has the same meaning as that term is defined in
 7 section 205A-1.

8 "Tidal" means the presence of periodically rising and
 9 falling or flowing and ebbing waters.

10 "Wetland" means land or areas, such as tidal flats and
 11 swamps that contain a lot of soil moisture."

12 SECTION 3. This Act does not affect rights and duties that
 13 matured, penalties that were incurred, and proceedings that were
 14 begun, before its effective date.

15 SECTION 4. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

18

INTRODUCED BY: *Michelle Canale*

JAN 21 2008



Report Title:

Zoning; Wetland and Tidal Areas

Description:

Prohibits a county from issuing a permit or special permit for any residential or commercial development of any wetland or tidal area abutting the shoreline unless the county first holds a public informational meeting in the affected community and solicits public input on the proposed development.

