
A BILL FOR AN ACT

RELATING TO WETLAND PRESERVATION.

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

1 SECTION 1. The legislature finds that wetlands are some of
2 the most productive and biodiverse habitats on the planet.
3 Wetlands protect beaches against erosion, recharge aquifers,
4 provide flood alleviation, support endangered species, and
5 sequester carbon. The legislature further finds that the
6 destruction of wetlands and waterways is a major concern because
7 development in these areas leads to excessive flooding and
8 inhibits the natural processes that filter sediments and
9 nutrients from stormwater runoff before reaching coral reefs.
10 The United Nations Millennium Ecosystem Assessment determined
11 that environmental degradation is more prominent within wetlands
12 than any other ecosystem on earth and therefore wetlands deserve
13 greater protection.

14 The legislature also finds that according to the United
15 States Environmental Protection Agency, an acre of wetland can
16 store one million to one and one-half million gallons of
17 floodwater. In 1991, wetland-related ecotourism activities such



1 as hunting, fishing, birdwatching, and photography added
2 approximately \$59,000,000,000 to the national economy.
3 According to the Pacific Coast Federation of Fishermen's
4 Associations, almost \$79,000,000,000 per year is generated from
5 wetland-dependent species, or about seventy-one per cent of the
6 nation's entire \$111,000,000,000 commercial and recreational
7 fishing industry in 1997. Furthermore, the legislature finds
8 that although wetlands keep only about five per cent of the land
9 surface in the conterminous United States, wetlands are home to
10 thirty-one per cent of plant species in the country. Up to one-
11 half of North American bird species nest or feed in wetlands.

12 In Hawaii, more than thirty-one per cent of its coastal
13 wetlands have been lost. Wetlands, by virtue of the functions
14 and ecosystem services they provide, are far more precious than
15 market values or commercial profits.

16 Additionally, the legislature finds that without wetlands,
17 Hawaii would have to spend exorbitant amounts of money to
18 replace wetland functions that protect water supply, protect
19 ocean water quality and coral reefs, provide flood attenuation
20 and storage, sequester carbon, and provide habitat for native
21 plants and animals. Furthermore, without wetlands to provide



1 these ecosystem services, drinking and irrigation water will
2 require more treatment, floods will become more devastating,
3 storm surges from hurricanes will penetrate farther mauka, coral
4 reefs and fisheries will be damaged or destroyed, animals and
5 plants will face disruption and extinction, climate change
6 mitigation will be reduced, and food security and livelihoods
7 will be threatened.

8 The legislature further finds that surface water, ground
9 water, floodplains, wetlands, and other features do not function
10 as separate and isolated components of the watershed, but rather
11 as a single, integrated natural system. Disruption of any part
12 of this system can have long-term and far-reaching consequences
13 on the functioning of the entire system as evidenced by
14 disastrous recent flooding events. This Act will establish
15 ahupuaa-based protection of wetlands and the watersheds (natural
16 stormwater infrastructure) that connect to them.

17 The purpose of this Act is to encourage the preservation of
18 wetlands by:

19 (1) Amending provisions that exempt a proposed housing
20 project of the Hawaii housing finance and development
21 corporation from statutes, ordinances, charter



1 provisions to include a requirement that the proposed
2 project does not impact wetlands or natural stormwater
3 infrastructure; and

4 (2) Requiring an environmental assessment for actions
5 under the environmental impact statements law that
6 impact wetlands or natural stormwater infrastructure.

7 SECTION 2. Section 201H-38, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The corporation may develop on behalf of the State or
10 with an eligible developer, or may assist under a government
11 assistance program in the development of, housing projects that
12 shall be exempt from all statutes, ordinances, charter
13 provisions, and rules of any government agency relating to
14 planning, zoning, construction standards for subdivisions,
15 development and improvement of land, and the construction of
16 dwelling units thereon; provided that:

17 (1) The corporation finds the housing project is
18 consistent with the purpose and intent of this
19 chapter, and meets minimum requirements of health and
20 safety;



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1 (2) The development of the proposed housing project does
2 not contravene any safety standards, tariffs, or rates
3 and fees approved by the public utilities commission
4 for public utilities or of the various boards of water
5 supply authorized under chapter 54;

6 (3) The development of the proposed housing project does
7 not impact wetlands or natural stormwater
8 infrastructure as defined in section 343-2;

9 ~~(3)~~ (4) The legislative body of the county in which the
10 housing project is to be situated shall have approved
11 the project with or without modifications:

12 (A) The legislative body shall approve, approve with
13 modification, or disapprove the project by
14 resolution within forty-five days after the
15 corporation has submitted the preliminary plans
16 and specifications for the project to the
17 legislative body. If on the forty-sixth day a
18 project is not disapproved, it shall be deemed
19 approved by the legislative body;

20 (B) No action shall be prosecuted or maintained
21 against any county, its officials, or employees



1 on account of actions taken by them in reviewing,
2 approving, modifying, or disapproving the plans
3 and specifications; and

4 (C) The final plans and specifications for the
5 project shall be deemed approved by the
6 legislative body if the final plans and
7 specifications do not substantially deviate from
8 the preliminary plans and specifications. The
9 final plans and specifications for the project
10 shall constitute the zoning, building,
11 construction, and subdivision standards for that
12 project. For purposes of sections 501-85 and
13 502-17, the executive director of the corporation
14 or the responsible county official may certify
15 maps and plans of lands connected with the
16 project as having complied with applicable laws
17 and ordinances relating to consolidation and
18 subdivision of lands, and the maps and plans
19 shall be accepted for registration or recordation
20 by the land court and registrar; and



1 [~~4~~] (5) The land use commission shall approve, approve
2 with modification, or disapprove a boundary change
3 within forty-five days after the corporation has
4 submitted a petition to the commission as provided in
5 section 205-4. If, on the forty-sixth day, the
6 petition is not disapproved, it shall be deemed
7 approved by the commission."

8 SECTION 3. Section 343-2, Hawaii Revised Statutes, is
9 amended by adding three new definitions to be appropriately
10 inserted and to read as follows:

11 "Floodway means the channel of a river or stream,
12 including any adjacent floodplain areas.

13 "Natural stormwater infrastructure" means all naturally-
14 occurring streams, ephemeral streams, gulches, drainage
15 corridors, wetlands, floodways, and other areas where water
16 naturally collects or drains to the ocean.

17 "Wetlands" means:

18 (1) Land that is transitional between terrestrial and
19 aquatic ecosystems where water is the primary factor
20 controlling the environment and the associated animal
21 and plant life, where for any duration of time,



- 1 including non-consecutive years, the water table is at
2 or near the surface and the land is covered by water
3 or saturated by:
- 4 (A) Subsurface water, including the water table,
5 subsurface kahawai, or springs; or
6 (B) Well or ditch influent water;
- 7 (2) Areas of marsh, fen, peatland, or water; provided that
8 water can be natural or artificial; permanent,
9 temporary, intermittent, or ephemeral; static or
10 flowing; fresh, brackish, or salt; or above or below
11 ground;
- 12 (3) Areas of marine water, the depth of which at low tide
13 does not exceed six meters, including fishponds and
14 coral reefs;
- 15 (4) Areas of riparian zone, floodplain, and floodway,
16 including flowing, intermittent, or ephemeral streams,
17 and streambeds;
- 18 (5) Areas of coastal zones adjacent to wetlands, islands,
19 or bodies of marine water deeper than six meters at
20 low tide lying within the wetlands;



- 1 (6) Areas where hydric soils are present (soils that in
2 their undrained condition are saturated, flooded, or
3 ponded, creating conditions that favor the growth and
4 regeneration of hydrophytic vegetation); or where the
5 substratum is nonsoil (gravel or rocks) and is
6 periodically saturated with water or covered by
7 shallow water;
- 8 (7) Subsurface water that is hydrologically connected to
9 wetlands;
- 10 (8) Areas described by six wetland classifications,
11 including:
 - 12 (A) Marine: coastal wetlands, coastal lagoons, rocky
13 shores, seagrass beds, and coral reefs;
 - 14 (B) Estuarine: muliwai, deltas, tidal marshes,
15 mudflats, and mangrove swamps;
 - 16 (C) Lacustrine: wetlands near natural lakes or
17 ponds;
 - 18 (D) Riverine: wetlands near rivers, streams, and
19 gulches;
 - 20 (E) Palustrine: marshes, swamps, and bogs; and



1 (F) Human-made: Native Hawaiian fish ponds, shrimp
2 ponds, farm ponds, paddies, and dams; lo'i kalo;
3 and inland fishponds;

4 (9) Areas that provide wetland functions, including:

5 (A) Conveyance of stormwater;

6 (B) Flood attenuation and storage;

7 (C) Sediment attenuation and reduction;

8 (D) Nutrient and chemical attenuation and reduction;

9 (E) Plant community abundance and diversity;

10 (F) Fish and wildlife habitat;

11 (G) Groundwater recharge and discharge;

12 (H) Shoreline or stream bank anchoring; and

13 (I) Carbon sequestration; and

14 (10) Areas that formerly had wetland characteristics or

15 functions but have been altered or degraded by

16 channelization, filling, draining, dredging, grading,

17 grubbing, deep ripping, groundwater pumping, hardening

18 of surfaces, or introduction of non-native or

19 aggressive-invasive plant and animal species."

20 SECTION 4. Section 343-5, Hawaii Revised Statutes, is

21 amended by amending subsection (a) to read as follows:



1 "(a) Except as otherwise provided, an environmental
2 assessment shall be required for actions that:

3 (1) Propose the use of state or county lands or the use of
4 state or county funds, other than funds to be used for
5 feasibility or planning studies for possible future
6 programs or projects that the agency has not approved,
7 adopted, or funded, or funds to be used for the
8 acquisition of unimproved real property; provided that
9 the agency shall consider environmental factors and
10 available alternatives in its feasibility or planning
11 studies; provided further that an environmental
12 assessment for proposed uses under section 205-
13 2(d) (11) or 205-4.5(a) (13) shall only be required
14 pursuant to section 205-5(b);

15 (2) Propose any use within any land classified as a
16 conservation district by the state land use commission
17 under chapter 205;

18 (3) Propose any use within a shoreline area as defined in
19 section 205A-41;

20 (4) Propose any use within any historic site as designated
21 in the National Register or Hawaii Register, as



1 provided for in the Historic Preservation Act of 1966,
2 Public Law 89-665, or chapter 6E;

3 (5) Propose any use within the Waikiki area of Oahu, the
4 boundaries of which are delineated in the land use
5 ordinance as amended, establishing the "Waikiki
6 Special District";

7 (6) Propose any amendments to existing county general
8 plans where the amendment would result in designations
9 other than agriculture, conservation, or preservation,
10 except actions proposing any new county general plan
11 or amendments to any existing county general plan
12 initiated by a county;

13 (7) Propose any reclassification of any land classified as
14 a conservation district by the state land use
15 commission under chapter 205;

16 (8) Propose the construction of new or the expansion or
17 modification of existing helicopter facilities within
18 the State, that by way of their activities, may
19 affect:

20 (A) Any land classified as a conservation district by
21 the state land use commission under chapter 205;



- 1 (B) A shoreline area as defined in section 205A-41;
- 2 or
- 3 (C) Any historic site as designated in the National
- 4 Register or Hawaii Register, as provided for in
- 5 the Historic Preservation Act of 1966, Public Law
- 6 89-665, or chapter 6E; or until the statewide
- 7 historic places inventory is completed, any
- 8 historic site that is found by a field
- 9 reconnaissance of the area affected by the
- 10 helicopter facility and is under consideration
- 11 for placement on the National Register or the
- 12 Hawaii Register of Historic Places; [~~and~~]
- 13 (9) Propose any:
 - 14 (A) Wastewater treatment unit, except an individual
 - 15 wastewater system or a wastewater treatment unit
 - 16 serving fewer than fifty single-family dwellings
 - 17 or the equivalent;
 - 18 (B) Waste-to-energy facility;
 - 19 (C) Landfill;
 - 20 (D) Oil refinery; or
 - 21 (E) Power-generating facility[~~-~~]; and



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1 (10) Propose any development that would impact wetlands or
2 natural stormwater infrastructure."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect upon its approval.

6

INTRODUCED BY: Tim Wilgen

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Report Title:

Wetland Protection; Wetlands; Natural Stormwater Infrastructure;
Environmental Assessment; Housing Development

Description:

Amends provisions that exempt a proposed housing project of the Hawaii housing finance and development corporation from statutes, ordinances, charter provisions to include a requirement that the proposed project does not impact wetlands or natural stormwater infrastructure. Requires an environmental assessment for actions under the environmental impact statements law that propose any development that would impact wetlands or natural stormwater infrastructure.

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