

JAN 21 2022

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# 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



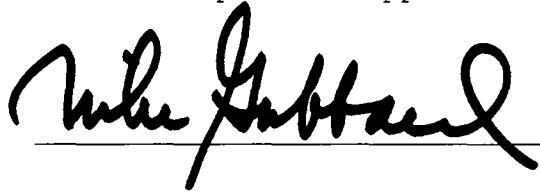
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1        (10) Propose any development that would impact wetlands or  
2                    natural stormwater infrastructure."

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: 



# S.B. NO. 3010

**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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