

JAN 18 2008

A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The legislature finds that the zoning
2 designation of certain lands has raised questions pertaining to
3 interim zoning established during the period just after Hawaii's
4 land use law was enacted and its relationship to the various
5 state land use classifications. This has resulted in
6 invalidation of zoning ordinances when lands are reclassified by
7 the land use commission, where the uses allowed under the zoning
8 ordinances are permissible uses under the state land use
9 classification.

10 The purpose of this Act is to provide that a zoning
11 ordinance adopted by the county shall not be invalidated by a
12 reclassification of land if the uses allowed under the zoning
13 ordinance are permissible uses under the new classification.

14 SECTION 2. Section 46-4, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) This section and any ordinance, rule, or regulation
17 adopted in accordance with this section shall apply to lands not



1 contained within the forest reserve boundaries as established on
2 January 31, 1957, or as subsequently amended.

3 Zoning in all counties shall be accomplished within the
4 framework of a long-range, comprehensive general plan prepared
5 or being prepared to guide the overall future development of the
6 county. Zoning shall be one of the tools available to the
7 county to put the general plan into effect in an orderly manner.
8 Zoning in the counties of Hawaii, Maui, and Kauai means the
9 establishment of districts of such number, shape, and area, and
10 the adoption of regulations for each district to carry out the
11 purposes of this section. In establishing or regulating the
12 districts, full consideration shall be given to all available
13 data as to soil classification and physical use capabilities of
14 the land to allow and encourage the most beneficial use of the
15 land consonant with good zoning practices. The zoning power
16 granted herein shall be exercised by ordinance which may relate
17 to:

- 18 (1) The areas [~~within~~] in which agriculture, forestry,
19 industry, trade, and business may be conducted;
- 20 (2) The areas in which residential uses may be regulated
21 or prohibited;



- 1 (3) The areas bordering natural watercourses, channels,
2 and streams, in which trades or industries, filling or
3 dumping, erection of structures, and the location of
4 buildings may be prohibited or restricted;
- 5 (4) The areas in which particular uses may be subjected to
6 special restrictions;
- 7 (5) The location of buildings and structures designed for
8 specific uses and designation of uses for which
9 buildings and structures may not be used or altered;
- 10 (6) The location, height, bulk, number of stories, and
11 size of buildings and other structures;
- 12 (7) The location of roads, schools, and recreation areas;
- 13 (8) Building setback lines and future street lines;
- 14 (9) The density and distribution of population;
- 15 (10) The percentage of a lot that may be occupied, size of
16 yards, courts, and other open spaces;
- 17 (11) Minimum and maximum lot sizes; and
- 18 (12) Other regulations the boards or [eity] county council
19 find necessary and proper to permit and encourage the
20 orderly development of land resources within their
21 jurisdictions.



1 The council of any county shall prescribe rules,
2 regulations, and administrative procedures and provide personnel
3 it finds necessary to enforce this section and any ordinance
4 enacted in accordance with this section. The ordinances may be
5 enforced by appropriate fines and penalties, civil or criminal,
6 or by court order at the suit of the county or the owner [~~or~~
7 ~~owners~~] of real estate directly affected by the ordinances.

8 Any civil fine or penalty provided by ordinance under this
9 section may be imposed by the district court[~~7~~] or by the zoning
10 agency after an opportunity for a hearing pursuant to chapter
11 91. The proceeding shall not be a prerequisite for any
12 injunctive relief ordered by the circuit court.

13 Nothing in this section shall invalidate any zoning
14 ordinance or regulation adopted by any county or other agency of
15 government pursuant to the statutes in effect prior to July 1,
16 1957.

17 The powers granted herein shall be liberally construed in
18 favor of the county exercising them[~~7~~] and in such a manner as
19 to promote the orderly development of each county or city and
20 county in accordance with a long-range, comprehensive general
21 plan to ensure the greatest benefit for the State as a whole.
22 This section shall not be construed to limit or repeal any



1 powers of any county to achieve these ends through zoning and
2 building regulations, except insofar as forest and water reserve
3 zones are concerned and as provided in subsections (c) and (d).
4 Nothing in this section shall invalidate any zoning ordinance
5 adopted by a county for land that is reclassified pursuant to
6 section 205-3.1 or section 205-4; provided that the uses allowed
7 under the zoning ordinance are permissible uses under the
8 reclassification.

9 Neither this section nor any ordinance enacted pursuant to
10 this section shall prohibit the continued lawful use of any
11 building or premises for any trade, industrial, residential,
12 agricultural, or other purpose for which the building or
13 premises is used at the time this section or the ordinance takes
14 effect; provided that a zoning ordinance may provide for
15 elimination of nonconforming uses as the uses are discontinued,
16 or for the amortization or phasing out of nonconforming uses or
17 signs over a reasonable period of time in commercial,
18 industrial, resort, and apartment zoned areas only. In no event
19 shall such amortization or phasing out of nonconforming uses
20 apply to any existing building or premises used for residential
21 [+] single-family or duplex[+] or agricultural uses. Nothing



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1 in this section shall affect or impair the powers and duties of
2 the director of transportation as set forth in chapter 262."

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

5 SECTION 4. This Act shall take effect upon its approval.

6

INTRODUCED BY: *J.B.T.K.*



Report Title:

Land Use; Reclassification; County Ordinance

Description:

Provides that a zoning ordinance adopted by a county shall not be invalidated by a reclassification of land; provided that the uses allowed under the zoning ordinance are permissible uses under the new classification.

