

JAN 26 2009

S.B. NO. 1048

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.~~] conservation district as designated by
8 chapter 205.

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



1 data as to soil classification and physical use capabilities of
2 the land to allow and encourage the most beneficial use of the
3 land consonant with good zoning practices. The zoning power
4 granted [~~herein~~] in this section shall be exercised by ordinance
5 [~~which~~] that may relate to:

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



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

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

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

21 Nothing in this section shall invalidate any zoning
22 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~~] in this section shall be
4 liberally construed in favor of the county exercising them, and
5 in [~~such~~] a manner as to promote the orderly development of each
6 county or city and county in accordance with a long-range,
7 comprehensive general plan to ensure the greatest benefit for
8 the State as a whole. This section shall not be construed to
9 limit or repeal any powers of any county to achieve these ends
10 through zoning and building regulations, except insofar as
11 [~~forest and water reserve zones are~~] the conservation district
12 is concerned and as provided in subsections (c) and (d).

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 in this
4 section shall affect or impair the powers and duties of the
5 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) Each county shall enact zoning ordinances providing
14 that lands deemed subject to the potential impact of land slides
15 and rock slides shall not be used for residential, commercial,
16 or other intensive use and shall require a sufficient buffer
17 zone to protect persons from any dangers to life, health,
18 safety, or property.

19 [~~(d)~~] (e) Neither this section nor any other law, county
20 ordinance, or rule shall prohibit group living in facilities
21 with eight or fewer residents and that are licensed by the State
22 as provided for under section 321-15.6, or in an intermediate



1 care facility/mental retardation-community for persons,
2 including mentally ill, elder, disabled, developmentally
3 disabled, or totally disabled persons, who are not related to
4 the home operator or facility staff; provided that those group
5 living facilities meet all applicable county requirements not
6 inconsistent with the intent of this subsection and including
7 building height, setback, maximum lot coverage, parking, and
8 floor area requirements.

9 ~~[(e)]~~ (f) No permit shall be issued by a county agency for
10 the operation of a halfway house, a clean and sober home, or a
11 drug rehabilitation home unless a public informational meeting
12 is first held in the affected community. The State shall
13 provide notification and access to relevant information, as
14 required, under chapter 846E.

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

19 ~~[(f)]~~ (g) For purposes of this section:

20 "Clean and sober home" means a house that is operated
21 pursuant to a program designed to provide a stable environment



1 of clean and sober living conditions to sustain recovery and
2 that is shared by unrelated adult persons who:

- 3 (1) Are recovering from substance abuse;
- 4 (2) Share household expenses; and
- 5 (3) Do not require twenty-four-hour supervision,
6 rehabilitation, or therapeutic services or care in the
7 home or on the premises;

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

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

12 "Disabled person" means a person with a disability as
13 defined under section 515-2.

14 "Drug rehabilitation home" means:

- 15 (1) A residential treatment facility that provides a
16 therapeutic residential program for care, diagnosis,
17 treatment, or rehabilitation for socially or
18 emotionally distressed persons, mentally ill persons,
19 persons suffering from substance abuse, and
20 developmentally disabled persons; or
- 21 (2) A supervised living arrangement that provides mental
22 health services, substance abuse services, or



1 supportive services for individuals or families who do
2 not need the structure of a special treatment facility
3 and are transitioning to independent living;
4 provided that drug rehabilitation homes shall not include
5 halfway houses or clean and sober homes.

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

7 "Halfway house" means a group living facility for people
8 who:

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

11 (2) Have been released from a mental health treatment
12 facility; or

13 (3) Are receiving substance abuse or sex offender
14 treatment; and

15 are housed to participate in programs that help them readjust to
16 living in the community.

17 "Intermediate care facility/mental retardation-community"

18 means an identifiable unit providing residence and care for

19 eight or fewer mentally retarded individuals. Its primary

20 purpose is the provision of health, social, and rehabilitation

21 services to the mentally retarded through an individually

22 designed active treatment program for each resident. No person



1 who is predominantly confined to bed shall be admitted as a
2 resident of such a facility.

3 "Mental health treatment facility" means a psychiatric
4 facility or special treatment facility as defined under section
5 334-1.

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

8 "Totally disabled person" means a "person totally disabled"
9 as defined under section 235-1.

10 "Treatment program" means a "substance abuse program" or
11 "treatment program", as those terms are defined under section
12 353G-2.

13 [~~(g)~~] (h) Neither this section nor any other law, county
14 ordinance, or rule shall prohibit the use of land for employee
15 housing and community buildings in plantation community
16 subdivisions as defined in section 205-4.5(a)(12); in addition,
17 no zoning ordinance shall provide for elimination, amortization,
18 or phasing out of plantation community subdivisions as a
19 nonconforming use."

20 SECTION 2. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: Ernesto M. Caland

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Report Title:

Zoning

Description:

Requires each county to enact zoning ordinances to protect against land slides and rock slides.

