

**CHAPTER 183C**  
**CONSERVATION DISTRICT**

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## **Note**

Judiciary report to 2019 legislature on change in judicial proceedings made by L 2016, c 48. L 2016, c 48, §12.

## **Cross References**

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

## **Attorney General Opinions**

New administrative rules superseded old rules as to all matters except permit applications that were filed before July 1, 1994, when statutory authority for old rules was repealed. Att. Gen. Op. 97-4.

" **[\$183C-1] Findings and purpose.** The legislature finds that lands within the state land use conservation district contain important natural resources essential to the preservation of the State's fragile natural ecosystems and the sustainability of the State's water supply. It is therefore, the intent of the legislature to conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare. [L 1994, c 270, pt of §1]

" **[\$183C-2] Definitions.** As used in this chapter, unless the context otherwise requires:

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Conservation district" means those lands within the various counties of the State bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto.

"Department" means the department of land and natural resources.

"Kuleana" means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and as amended.

"Land" means all real property, fast or submerged, and all interests therein, including fauna, flora, minerals, and all such natural resources, unless otherwise expressly provided.

"Landowner" means an owner of land or any estate or interest in that land.

"Land use" means:

- (1) The placement or erection of any solid material on land;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

"Nonconforming" use means the lawful use of any building, premises or land for any trade, industry, residence or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district. [L 1994, c 270, pt of §1]

**" [§183C-3] Powers and duties of the board and department.**

The board and department shall:

- (1) Maintain an accurate inventory of lands classified within the state conservation district by the state land use commission, pursuant to chapter 205;
- (2) Identify and appropriately zone those lands classified within the conservation district;
- (3) Adopt rules, in compliance with chapter 91 which shall have the force and effect of law;
- (4) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of processing applications for zoning, use, and subdivision of conservation lands;
- (5) Establish categories of uses or activities on conservation lands, including allowable uses or activities for which no permit shall be required;
- (6) Establish restrictions, requirements, and conditions consistent with the standards set forth in this chapter on the use of conservation lands; and
- (7) Establish and enforce land use regulations on conservation district lands including the collection of fines for violations of land use and terms and conditions of permits issued by the department. [L 1994, c 270, pt of §1]

## Case Notes

Section 13-5-23(L-6), Hawaii Administrative Rules, allowing for construction of single family residences within floodplains and coastal high hazard areas when granted permit approval from the board of land and natural resources, was not facially unconstitutional under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution because it was rationally related to the State's legitimate interests. 438 F. Supp. 2d 1186.

The board of land and natural resources was not required to engage in rule-making to adopt a standardized methodology for valuation of damages to conservation lands before making a valuation of damage to land in the conservation district resulting from excessive sedimentation. 132 H. 247, 320 P.3d 912 (2014).

The intermediate court of appeals correctly determined that the board of land and natural resources had jurisdiction, pursuant to paragraph (7), to institute a proceeding to enforce land use regulations on conservation district lands in a case involving the alleged damages to state lands and natural resources due to excessive sedimentation. 132 H. 247, 320 P.3d 912 (2014).

" **§183C-4 Zoning; amendments.** (a) The department, after notice and hearing as provided in this section, shall review and redefine the boundaries of the zones within the conservation district.

(b) The department shall adopt rules governing the use of land within the boundaries of the conservation district that are consistent with the conservation of necessary forest growth, the conservation and development of land and natural resources adequate for present and future needs, and the conservation and preservation of open space areas for public use and enjoyment. No use except a nonconforming use as defined in section 183C-5, shall be made within the conservation district unless the use is in accordance with a zoning rule.

(c) The department may allow a temporary variance from zoned use where good cause is shown and where the proposed temporary variance is for a use determined by the department to be in accordance with good conservation practices.

(d) The department shall establish zones within the conservation district, which shall be restricted to certain uses. The department, by rules, may specify the land uses permitted therein which may include, but are not limited to, farming, flower gardening, operation of nurseries or orchards, growth of commercial timber, grazing, recreational or hunting

pursuits, or residential use. The rules may control the extent, manner, and times of the uses, and may specifically prohibit unlimited cutting of forest growth, soil mining, or other activities detrimental to good conservation practices.

(e) Notwithstanding this section or any other law to the contrary, geothermal resources exploration and geothermal resources development, as defined under section 182-1, shall be permissible uses in all zones of the conservation district. The rules required under subsection (b) governing the use of land within the boundaries of the conservation district shall be deemed to include the provisions of this section without necessity of formal adoption by the department.

(f) Whenever any landowner or government agency whose property will be directly affected makes an application to change the boundaries or land uses of any zone, or to establish a zone with certain land uses, or where the department proposes to make the change or changes itself, the change or changes shall be put in the form of a proposed rule by the applicant and the department shall then give public notice thereof during three successive weeks statewide and in the county in which the property is located. The notice shall be given not less than thirty days prior to the date set for the hearing, and shall state the time and place of the hearing and the changes proposed. Any proposed rules and the necessary maps shall be made available for inspection by interested members of the public. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. For the purpose of its public hearing or hearings, the board may summon witnesses, administer oaths, and require the giving of testimony. [L 1994, c 270, pt of §1; am L 1998, c 2, §49; am L 2012, c 97, §5]

" **[\$183C-5] Nonconforming uses.** Neither this chapter nor any rules adopted hereunder shall prohibit the continuance of the lawful use of any building, premises, or land for any trade, industrial, residential, or other purpose for which the building, premises, or land was used on October 1, 1964, or at the time any rule adopted under authority of this part takes effect. All such existing uses shall be nonconforming uses. Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, the construction of a single family residence. Any structures may be subject to conditions to ensure they are consistent with the surrounding environment. [L 1994, c 270, pt of §1]

" **§183C-6 Permits and site plan approvals.** (a) The department shall regulate land use in the conservation district by the issuance of permits.

(b) The department shall render a decision on a completed application for a permit within one hundred eighty days of its acceptance by the department. If within one hundred eighty days after acceptance of a completed application for a permit, the department shall fail to give notice, hold a hearing, and render a decision, the owner may automatically put the owner's land to the use or uses requested in the owner's application. When an environmental impact statement is required pursuant to chapter 343, or when a contested case hearing is requested pursuant to chapter 91, the one hundred eighty days shall be extended an additional ninety days beyond the time necessary to complete the requirements of chapter 343 or chapter 91. Any request for additional extensions by the applicant shall be subject to the approval of the board.

(c) The department shall hold a public hearing in every case involving the proposed use of land for commercial purposes, at which hearing interested persons shall be afforded a reasonable opportunity to be heard. Public notice of the time and place of the hearing shall be given at least once statewide and in the county in which the property is located. The notice shall be given not less than twenty days prior to the date set for the hearing. The hearing shall be held in the county in which the land is located and may be delegated to an agent or representative of the board as may otherwise be provided by law and in accordance with rules adopted by the board. For the purposes of its public hearing or hearings, the department shall have the power to summon witnesses, administer oaths, and require the giving of testimony. As used in this subsection, the term "commercial purposes" shall not include the use of land for utility purposes.

(d) The department shall regulate the construction, reconstruction, demolition, or alteration of any structure, building, or facility by the issuance of site plan approvals.

(e) Any permit for the reconstruction, restoration, repair, or use of any Hawaiian fishpond exempted from the requirements of chapter 343 under section 183B-2 shall provide for compliance with the conditions of section 183B-2. [L 1994, c 270, pt of §1; am L 1995, c 177, §4; am L 1998, c 2, §50; am L 2016, c 216, §1]

Although subsection (b) references the "hold[ing] [of] a hearing" as part of the permitting process for uses in the conservation district, it does not mandate one; the court could not read the statute to require a hearing for all permit applications in the absence of mandatory language directing the agency to do so. 131 H. 193, 317 P.3d 300 (2013).

The university's conservation district use application necessitated a hearing required by law, i.e., by the administrative rules governing the department of land and natural resources and board of land and natural resources. 131 H. 193, 317 P.3d 300 (2013).

" **§183C-7 Penalty for violation.** (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter and any zoning rule adopted in accordance therewith. These rules may be enforced by court order at the suit of the department or of the owner or owners of real estate directly affected by the rules. The provisions of section 607-25 shall apply to this chapter.

(b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, wilful violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to \$15,000 per day per violation for each day in which the violation persists. The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.

(c) This section shall not be construed to prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii constitution. [L 1994, c 270, pt of §1; am L 2003, c 16, §1; am L 2008, c 217, §1]

#### **Note**

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§183C-8 Zoning order; appeal to circuit environmental court.** *[Repeal and reenactment on July 1, 2019. L 2016, c 48, §14]* Except as otherwise provided in this chapter, any final order of the department based upon this chapter may be appealed to the circuit environmental court of the circuit in which the land in question is found. The appeal shall be in accord with chapter 91 and the Hawaii rules of civil procedure. [L 1994, c 270, pt of §1; am L 2014, c 218, §8; am L 2016, c 48, §7]

#### **Note**

Judiciary report to 2019 legislature on change in judicial proceedings made by L 2016, c 48. L 2016, c 48, §12.

#### **Rules of Court**

Appeal to circuit court, see HRCF rule 72.

" **[\$183C-9] Contested cases.** *[Section repealed July 1, 2019. L 2016, c 48, §14.]* (a) Chapter 91 shall apply to every contested case arising under this chapter except where chapter 91 conflicts with this chapter, in which case this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case under this chapter shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by section 91-14(a) upon the record directly to the supreme court for final decision, except for those appeals heard pursuant to this chapter arising in whole or in part from part III of chapter 205A or arising in whole or in part from chapter 115. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the final decision and order or preliminary ruling. For the purposes of this section, the term "person aggrieved" includes an agency that is a party to a contested case proceeding before that agency or another agency.

(b) The court shall give priority to contested case appeals of significant statewide importance over all other civil or administrative appeals or matters and shall decide these appeals as expeditiously as possible. [L 2016, c 48, §2]

#### **Note**

Judiciary report to 2019 legislature on change in judicial proceedings made by L 2016, c 48. L 2016, c 48, §12.