

JAN 20 2023

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; in 1997,
3 almost \$79,000,000,000 per year was generated from wetland-
4 dependent species, or about seventy-one per cent of the nation's
5 entire \$111,000,000,000 commercial and recreational fishing
6 industry; and although wetlands occupy only about five per cent
7 of the land surface in the conterminous United States, wetlands
8 are home to thirty-one per cent of plant species in the country
9 and up to one-half of North American bird species nest or feed
10 in wetlands. Although the United States Environmental
11 Protection Agency has not updated these figures in subsequent
12 publications, the estimated economic value of wetlands has
13 likely increased dramatically due to wetland depletion,
14 inflation, and the impacts of climate change.

15 In Hawaii, more than thirty-one per cent of its coastal
16 wetlands have been lost. Wetlands, by virtue of the functions
17 and ecosystem services they provide, are far more precious than
18 market values or commercial profits. Without wetlands, Hawaii
19 would have to spend exorbitant amounts of money to replace
20 wetland functions that protect the water supply, ocean water
21 quality, and coral reefs; provide flood attenuation and storage;



1 sequester carbon; and provide habitat for native plants and
2 animals. Furthermore, without wetlands to provide these
3 ecosystem services, drinking and irrigation water will require
4 more treatment, floods will become more devastating, storm
5 surges from hurricanes will penetrate further mauka, coral reefs
6 and fisheries will be damaged or destroyed, animals and plants
7 will face disruption and extinction, climate change mitigation
8 will be reduced, and food security and livelihoods will be
9 threatened.

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

19 Accordingly, the purpose of this Act is to encourage the
20 preservation of wetlands by:



1 (1) Adding definitions for "floodway", "natural stormwater
2 infrastructure", and "wetlands" to section 343-2,
3 Hawaii Revised Statutes;

4 (2) Requiring a proposed housing project of the Hawaii
5 housing finance and development corporation that is
6 exempt from all statutes, ordinances, charter
7 provisions, and rules of any government agency
8 relating to planning, zoning, and construction
9 standards to ensure that the proposed project does not
10 impact wetlands or natural stormwater infrastructure;
11 and

12 (3) Requiring an environmental assessment for actions
13 under the environmental impact statements law that
14 impact wetlands or natural stormwater infrastructure.

15 SECTION 2. Section 343-2, Hawaii Revised Statutes, is
16 amended by adding three new definitions to be appropriately
17 inserted and to read as follows:

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

20 "Natural stormwater infrastructure" means all naturally-
21 occurring streams, ephemeral streams, gulches, drainage



1 corridors, wetlands, floodways, and other areas where water
2 naturally collects or drains to the ocean.

3 "Wetlands" means:

4 (1) Land that is transitional between terrestrial and
5 aquatic ecosystems where water is the primary factor
6 controlling the environment and the associated animal
7 and plant life, where for any duration of time,
8 including non-consecutive years, the water table is at
9 or near the surface and the land is covered by water
10 or saturated by:

11 (A) Subsurface water, including the water table,
12 subsurface kahawai, or springs; or

13 (B) Well or ditch influent water;

14 (2) Areas of marsh, fen, peatland, or water; provided that
15 water can be natural or artificial; permanent,
16 temporary, intermittent, or ephemeral; static or
17 flowing; fresh, brackish, or salt; or above or below
18 ground;

19 (3) Areas of marine water, the depth of which at low tide
20 does not exceed six meters, including fishponds and
21 coral reefs;



- 1 (4) Areas of riparian zone, floodplain, and floodway,
2 including flowing, intermittent, or ephemeral streams
3 and streambeds;
- 4 (5) Areas of coastal zones adjacent to wetlands, islands,
5 or bodies of marine water deeper than six meters at
6 low tide lying within the wetlands;
- 7 (6) Areas where hydric soils are present (soils that in
8 their undrained condition are saturated, flooded, or
9 ponded, creating conditions that favor the growth and
10 regeneration of hydrophytic vegetation); or where the
11 substratum is nonsoil (gravel or rocks) and is
12 periodically saturated with water or covered by
13 shallow water;
- 14 (7) Subsurface water that is hydrologically connected to
15 wetlands;
- 16 (8) Areas described by six wetland classifications,
17 including:
- 18 (A) Marine: coastal wetlands, coastal lagoons, rocky
19 shores, seagrass beds, and coral reefs;
- 20 (B) Estuarine: muliwai, deltas, tidal marshes,
21 mudflats, and mangrove swamps;



S.B. NO. 507

- 1 (C) Lacustrine: wetlands near natural lakes or
- 2 ponds;
- 3 (D) Riverine: wetlands near rivers, streams, and
- 4 gulches;
- 5 (E) Palustrine: marshes, swamps, and bogs; and
- 6 (F) Human-made: Native Hawaiian fish ponds, shrimp
- 7 ponds, farm ponds, paddies, and dams; lo'i kalo;
- 8 and inland fishponds;
- 9 (9) Areas that provide wetland functions, including:
- 10 (A) Conveyance of stormwater;
- 11 (B) Flood attenuation and storage;
- 12 (C) Sediment attenuation and reduction;
- 13 (D) Nutrient and chemical attenuation and reduction;
- 14 (E) Plant community abundance and diversity;
- 15 (F) Fish and wildlife habitat;
- 16 (G) Groundwater recharge and discharge;
- 17 (H) Shoreline or stream bank anchoring; and
- 18 (I) Carbon sequestration; and
- 19 (10) Areas that formerly had wetland characteristics or
- 20 functions but have been altered or degraded by
- 21 channelization, filling, draining, dredging, grading,



1 grubbing, deep ripping, groundwater pumping, hardening
2 of surfaces, or introduction of non-native or
3 aggressive-invasive plant and animal species."

4 SECTION 3. Section 201H-38, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

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

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

18 (2) The development of the proposed housing project does
19 not contravene any safety standards, tariffs, or rates
20 and fees approved by the public utilities commission



1 for public utilities or of the various boards of water
2 supply authorized under chapter 54;

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

6 ~~[(3)]~~ (4) The legislative body of the county in which the
7 housing project is to be situated shall have approved
8 the project with or without modifications:

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

17 (B) No action shall be prosecuted or maintained
18 against any county, its officials, or employees
19 on account of actions taken by them in reviewing,
20 approving, modifying, or disapproving the plans
21 and specifications; and



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

18 ~~[(4)]~~ (5) The land use commission shall approve, approve
19 with modification, or disapprove a boundary change
20 within forty-five days after the corporation has
21 submitted a petition to the commission as provided in



1 section 205-4. If, on the forty-sixth day, the
2 petition is not disapproved, it shall be deemed
3 approved by the commission."

4 SECTION 4. Section 343-5, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

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

- 8 (1) Propose the use of state or county lands or the use of
9 state or county funds, other than funds to be used for
10 feasibility or planning studies for possible future
11 programs or projects that the agency has not approved,
12 adopted, or funded, or funds to be used for the
13 acquisition of unimproved real property; provided that
14 the agency shall consider environmental factors and
15 available alternatives in its feasibility or planning
16 studies; provided further that an environmental
17 assessment for proposed uses under section 205-
18 2(d)(11) or 205-4.5(a)(13) shall only be required
19 pursuant to section 205-5(b);



S.B. NO. 507

- 1 (2) Propose any use within any land classified as a
2 conservation district by the state land use commission
3 under chapter 205;
- 4 (3) Propose any use within a shoreline area as defined in
5 section 205A-41;
- 6 (4) Propose any use within any historic site as designated
7 in the National Register or Hawaii Register, as
8 provided for in the Historic Preservation Act of 1966,
9 Public Law 89-665, or chapter 6E;
- 10 (5) Propose any use within the Waikiki area of Oahu, the
11 boundaries of which are delineated in the land use
12 ordinance as amended, establishing the "Waikiki
13 Special District";
- 14 (6) Propose any amendments to existing county general
15 plans where the amendment would result in designations
16 other than agriculture, conservation, or preservation,
17 except actions proposing any new county general plan
18 or amendments to any existing county general plan
19 initiated by a county;



S.B. NO. 507

- 1 (7) Propose any reclassification of any land classified as
2 a conservation district by the state land use
3 commission under chapter 205;
- 4 (8) Propose the construction of new or the expansion or
5 modification of existing helicopter facilities within
6 the State, that by way of their activities, may
7 affect:
- 8 (A) Any land classified as a conservation district by
9 the state land use commission under chapter 205;
- 10 (B) A shoreline area as defined in section 205A-41;
11 or
- 12 (C) Any historic site as designated in the National
13 Register or Hawaii Register, as provided for in
14 the Historic Preservation Act of 1966, Public Law
15 89-665, or chapter 6E; or until the statewide
16 historic places inventory is completed, any
17 historic site that is found by a field
18 reconnaissance of the area affected by the
19 helicopter facility and is under consideration
20 for placement on the National Register or the
21 Hawaii Register of Historic Places; [and]



S.B. NO. 507

- 1 (9) Propose any:
- 2 (A) Wastewater treatment unit, except an individual
- 3 wastewater system or a wastewater treatment unit
- 4 serving fewer than fifty single-family dwellings
- 5 or the equivalent;
- 6 (B) Waste-to-energy facility;
- 7 (C) Landfill;
- 8 (D) Oil refinery; or
- 9 (E) Power-generating facility[-]; and
- 10 (10) Propose any development that would impact wetlands or
- 11 natural stormwater infrastructure."

12 SECTION 5. Statutory material to be repealed is bracketed

13 and stricken. New statutory material is underscored.

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

15

INTRODUCED BY: 



S.B. NO.507

Report Title:

Wetland Protection; Wetlands; Natural Stormwater Infrastructure; Environmental Assessment; Hawaii Housing Finance and Development Corporation

Description:

Adds definitions for "floodway", "natural stormwater infrastructure", and "wetlands" to section 343-2, Hawaii Revised Statutes. Requires a proposed housing project of the Hawaii Housing Finance and Development Corporation that is exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, and construction standards to ensure 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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