

# OVERVIEW

THE AUDITOR  
STATE OF HAWAII

## Review of the Regulation of Residential Construction in the Conservation District

### Summary

Citizens wanting to protect Hawaii's natural beauty have turned to the laws and rules governing land use in the conservation district. The laws, however, and the rules implementing them, may disappoint many. Framed about thirty years ago, they allow residential construction in the conservation district under certain designations. We reviewed Chapter 205 and Section 183-41, *Hawaii Revised Statutes*, and Title 13, Chapter 2, of the *Hawaii Administrative Rules* and also examined the process for approving applications to build on conservation lands. We believe that current regulation would be strengthened by adopting specific standards for residential construction, by making the statutes and rules more consistent with each other, and by reexamining--and reframing if necessary--the definition of nonconforming use.

State law assigns zoning authority over conservation lands to the Department of Land and Natural Resources. The department exercises its authority through the Board of Land and Natural Resources--the body that decides on applications to build in these areas. Approval or denial of an application rests mainly on the requirements of the particular subzone and whether the proposed use is deemed either "nonconforming" or "conditional."

We found that because the department's rules lack specific standards for residences, they give wide discretion to the board. Provisions in the rules for nonconforming use may exceed the authority of the statutes, and provisions for conditional use are not strongly backed by construction standards. Further, by allowing new homes to be built under the nonconforming designation, both statutes and rules part from the usual regulatory practice of phasing out nonconforming uses.

In the processing of applications, the department has for the most part complied with the statutes and rules. However, our survey of a sample of applications showed that the department has accepted applications with inadequate environmental assessments and has also incorrectly designated certain proposed uses as nonconforming.

The laws and rules contain the dual public purposes of preservation and conservation. Preservation seeks to protect land areas from any kind of development, while conservation seeks to manage an area's resources.

Therefore, additional steps would be needed to achieve the level of protection many would desire. These measures could include reexamining the intent of the laws governing the conservation district, designating particular natural landmarks for special protection, using the State's powers of eminent domain, and other political initiatives.

---

## Recommendations and Response

We recommend that the Department of Land and Natural Resources propose legislation to describe the construction standards, such as house size and height, that the rules should include and then adopt these specific standards in the rules. The department should make the rules' definition of nonconforming use consistent with the statute and link the definition of conditional use to standards for residential construction. If the department determines that it is inappropriate to give landowners a legal right to a future residence under a nonconforming designation, it should propose corrective legislation. In the processing of applications, the department should take greater care to ensure that all legal requirements are met.

The department concurs with our recommendations. It says it will seek immediately to develop appropriate legislation. In addition, based on an opinion from the Land Use Division of the Department of the Attorney General, the department will ask the Board of Land and Natural Resources to give special protection to Mount Olomana, one of the areas where residential construction has become a concern.

---

## Background

State law divides Hawaii's lands into four land-use districts--urban, rural, agricultural, and conservation. Conservation lands make up approximately 48 percent of the total. Owned either by government or private parties, the conservation district consists of environmentally sensitive areas, such as forests, watersheds, scenic and historic sites, park lands, and areas containing threatened or endangered plants, fish, and wildlife.

The rules of the Department of Land and Natural Resources regulate land use, including residences, in the conservation district. The department's Office of Conservation and Environmental Affairs processes the applications for residential construction and makes recommendations to the Board of Natural Resources. Final decisions to approve, modify, or deny the recommendation rest with the board.

---

**Office of the Auditor**  
**State of Hawaii**  
465 South King Street, Suite 500  
Honolulu, Hawaii 96813  
(808) 548-2450  
FAX (808) 548-2693