

There are two basic layers of land use control in Hawaii: State laws/regulations and County ordinances/rules. The State divides all real estate into four land use classifications: Conservation, Agricultural, Rural and Urban.

The State has primary control over any development in conservation land. Land immediately along the ocean and land at the higher elevations above normal agricultural activity are typically designated Conservation. Very limited development is permitted in the Conservation District.

Generally, the County of Maui has control over lands designated Agricultural, Rural and Urban. Rural zoning usually permits subdivision into lots no smaller than one-half acre. Few parcels in Maui County have been designated Rural.

The majority of land in Maui available for purchase is Urban or Agricultural. Agricultural land permits, of course, all agricultural activities and also residential subdivisions. The new County Agricultural Ordinance controls the subdivision of agricultural lands. Subdivision approval is granted by the County Department of Public Works and Waste Management, with input from various County and State agencies. Depending upon the particular property, other agencies, such as the Department of Land and Natural Resources (Archaeological Sites Division and Streams Division), the burial commission and the Department of Health, may need to comment on the subdivision. The Department of Health requires a septic tank, properly engineered, in nearly every case where a residential dwelling will be constructed in areas lacking a county sewer system. Cesspools are generally no longer permitted. The owner normally receives a Preliminary Approval when the subdivision application is in proper order, but which specifies requirements to be met before Final Subdivision Approval will be granted.

Within the Urban District, the County designates properties into various zones, such as: Business, Industrial, Residential, Apartment and Hotel. Each zone typically has further sub-classifications for different types of uses and building standards.

If some part of the development cannot meet the requirement of the Subdivision or Zoning Ordinance, one might seek a variance from the Board of Variances and Appeals. A variance may be granted if special circumstances exist, which were not created intentionally by the landowner.

Coastal lands are designated as "Special Management Areas" ("SMA") pursuant to the State Coastal Zone Management Act and County rules. A SMA permit is required for any development of lands within the SMA area. In addition, shoreline setback requirements apply to development near the ocean. The shoreline is located at the high wash of the waves, normally evidenced by the vegetation or debris line. The location of that shoreline requires a private survey, certified by the State surveyor, and certification typically remains valid for one year. Generally, without obtaining a shoreline setback variance, no major structures may be built closer than 25, 40 or 150 feet from the shore, depending upon the size and shape of the lot.

Many applications for development require public hearings. Where persons have a special and unique interest in a particular project, they may have a right to a Contested Case Hearing, which is an administrative hearing (an informal trial) before a hearing officer who reviews the issues and makes a recommendation to the deciding authority (e.g., a planning commission or the state Land Use Commission).

An often critical issue that arises in development is water, which of course is necessary for development. Water is under the jurisdiction of the County Board of Water Supply which is a semi-autonomous board.