

JAN 22 2007

A BILL FOR AN ACT

RELATING TO LAND USE.

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.

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



1 classification and physical use capabilities of the land to
2 allow and encourage the most beneficial use of the land
3 consonant with good zoning practices. The zoning power granted
4 [~~herein~~] in this section shall be exercised by ordinance [~~which~~]
5 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, and
20 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 that the council of any county finds necessary and
- 7 proper to permit and encourage the orderly development
- 8 of land resources within their 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~~] the amortization or phasing out of nonconforming
2 uses apply to any existing building or premises used for
3 residential, [~~+~~]single-family or duplex[~~+~~], uses or agricultural
4 uses. Nothing in this section shall affect or impair the powers
5 and duties of the director of transportation as set forth in
6 chapter 262.

7 (b) Any final order of a zoning agency established under
8 this section may be appealed to the circuit court of the circuit
9 in which the land in question is found. The appeal shall be in
10 accordance with the Hawaii rules of civil procedure.

11 (c) Each county may adopt reasonable standards to allow
12 the construction of two single-family dwelling units on any lot
13 where a residential dwelling unit is permitted.

14 (d) Neither this section nor any other law, county
15 ordinance, or rule shall prohibit group living in facilities
16 with eight or fewer residents and that are licensed by the State
17 as provided for under section 321-15.6, or in an intermediate
18 care facility/mental retardation-community for persons,
19 including mentally ill, elder, disabled, developmentally
20 disabled, or totally disabled persons, who are not related to
21 the home operator or facility staff; provided that those group
22 living facilities meet all applicable county requirements not



1 inconsistent with the intent of this subsection and including
2 building height, setback, maximum lot coverage, parking, and
3 floor area requirements.

4 (e) No permit shall be issued by a county agency for the
5 operation of a halfway house, a clean and sober home, or a drug
6 rehabilitation home unless a public informational meeting is
7 first held in the affected community. The State shall provide
8 notification and access to relevant information, as required,
9 under chapter 846E.

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

14 (f) For purposes of this section:

15 "Clean and sober home" means a house that is operated
16 pursuant to a program designed to provide a stable environment
17 of clean and sober living conditions to sustain recovery and
18 that is shared by unrelated adult persons who:

19 (1) Are recovering from substance abuse;

20 (2) Share household expenses; and

21 (3) Do not require twenty-four-hour supervision,

22 rehabilitation, or therapeutic services or care in the



1 home or on the premises. The home shall meet all
2 applicable laws, codes, and rules of the counties and
3 State.

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

6 "Disabled person" means a person with a disability as
7 defined under section 515-2.

8 "Drug rehabilitation home" means:

9 (1) A residential treatment facility that provides a
10 therapeutic residential program for care, diagnosis,
11 treatment, or rehabilitation for socially or
12 emotionally distressed persons, mentally ill persons,
13 persons suffering from substance abuse, and
14 developmentally disabled persons; or

15 (2) A supervised living arrangement that provides mental
16 health services, substance abuse services, or
17 supportive services for individuals or families who do
18 not need the structure of a special treatment facility
19 and are transitioning to independent living;

20 provided that drug rehabilitation homes shall not include
21 halfway houses or clean and sober homes.



1 "Elder" means an elder as defined under section [~~201G-1.~~]
2 356D-1.

3 "Halfway house" is defined as a group living facility for
4 people who:

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

7 (2) Have been released from a mental health treatment
8 facility; or

9 (3) Are receiving substance abuse or sex offender
10 treatment; and

11 are housed to participate in programs that help them readjust to
12 living in the community.

13 "Intermediate care facility/mental retardation-community"
14 means as an identifiable unit providing residence and care for
15 eight or fewer mentally retarded individuals. Its primary
16 purpose is the provision of health, social, and rehabilitation
17 services to the mentally retarded through an individually
18 designed active treatment program for each resident. No person
19 who is predominantly confined to bed shall be admitted as a
20 resident of such a facility.



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

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

6 "Totally disabled person" means a "person totally disabled"
7 as defined under section 235-1.

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

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

18 (h) Anything to the contrary notwithstanding, no county,
19 by ordinance or private agreement, may permit any use in the
20 agricultural district, as described in section 205-2, other than
21 a permissible use pursuant to section 205-4.5."



1 SECTION 2. Section 205-2, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) Agricultural districts shall include:

4 (1) Activities or uses as characterized by the cultivation
5 of crops, orchards, forage, and forestry;

6 (2) Farming activities or uses related to animal
7 husbandry, and game and fish propagation;

8 (3) Aquaculture, which means the production of aquatic
9 plant and animal life within ponds and other bodies of
10 water;

11 (4) Wind generated energy production for public, private,
12 and commercial use;

13 (5) Bona fide agricultural services and uses that support
14 the agricultural activities of the fee or leasehold
15 owner of the property and accessory to any of the
16 above activities, whether or not conducted on the same
17 premises as the agricultural activities to which they
18 are accessory, including but not limited to farm
19 dwellings as defined in section 205-4.5(a)(4),
20 employee housing, farm buildings, mills, storage
21 facilities, processing facilities, vehicle and
22 equipment storage areas, roadside stands for the sale



- 1 of products grown on the premises, and plantation
2 community subdivisions as defined in section 205-
3 4.5(a)(12);
- 4 (6) Wind machines and wind farms;
- 5 (7) Small-scale meteorological, air quality, noise, and
6 other scientific and environmental data collection and
7 monitoring facilities occupying less than one-half
8 acre of land; provided that these facilities shall not
9 be used as or equipped for use as living quarters or
10 dwellings;
- 11 (8) Agricultural parks;
- 12 (9) Agricultural tourism conducted on a working farm, or a
13 farming operation as defined in section 165-2, for the
14 enjoyment, education, or involvement of visitors;
15 provided that the agricultural tourism activity is
16 accessory and secondary to the principal agricultural
17 use and does not interfere with surrounding farm
18 operations; and provided further that this paragraph
19 shall apply only to a county that has adopted
20 ordinances regulating agricultural tourism under
21 section 205-5; and
- 22 (10) Open area recreational facilities.



1 Agricultural districts shall not include golf courses [and],
 2 golf driving ranges, golf-related facilities, private membership
 3 facilities, or other resort facilities, including hotels and
 4 resort-related commercial uses, time share facilities, and
 5 commercial vacation facilities or homes, except as provided in
 6 section 205-4.5(d). Agricultural districts include areas that
 7 are not used for, or that are not suited to, agricultural and
 8 ancillary activities by reason of topography, soils, and other
 9 related characteristics."

10 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
 11 amended by amending subsection (b) to read as follows:

12 "(b) Uses not expressly permitted in subsection (a) shall
 13 be prohibited, except the uses permitted as provided in sections
 14 205-6 and 205-8, and construction of single-family dwellings on
 15 lots existing before June 4, 1976. Any other law to the
 16 contrary notwithstanding, no subdivision or other division of
 17 land [~~within the agricultural district with soil classified by~~
 18 ~~the land study bureau's detailed land classification as overall~~
 19 ~~(master) productivity rating class A or B]~~ shall be approved by
 20 a county or other governmental agency unless [~~those A and B~~
 21 ~~lands within]~~ the subdivision or other division of land are made
 22 subject to the restriction [~~on uses as prescribed in this~~



1 ~~section and to the condition~~] that the uses shall be primarily
2 in pursuit of ~~[an]~~ those agricultural ~~[activity.]~~ activities
3 described in this chapter.

4 Any deed, lease, agreement of sale, mortgage, or other
5 instrument of conveyance covering any land within the
6 agricultural subdivision shall expressly contain the restriction
7 on uses and the condition, as prescribed in this section that
8 these restrictions and conditions shall be encumbrances running
9 with the land until such time that the land is reclassified to a
10 land use district other than agricultural district.

11 If the foregoing requirement of encumbrances running with
12 the land jeopardizes the owner or lessee in obtaining mortgage
13 financing from any of the mortgage lending agencies set forth in
14 the following paragraph, and the requirement is the sole reason
15 for failure to obtain mortgage financing, then the requirement
16 of encumbrances shall, insofar as such mortgage financing is
17 jeopardized, be conditionally waived by the appropriate county
18 enforcement officer; provided that the conditional waiver shall
19 become effective only in the event that the property is
20 subjected to foreclosure proceedings by the mortgage lender.

21 The mortgage lending agencies referred to in the preceding
22 paragraph are the Federal Housing Administration, Federal



1 National Mortgage Association, Veterans Administration, Small
2 Business Administration, United States Department of
3 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
4 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
5 other federal, state, or private mortgage lending agency
6 qualified to do business in Hawaii, and their respective
7 successors and assigns."

8 SECTION 4. Section 205-5, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) Except as herein provided, the powers granted to
11 counties under section 46-4 shall govern the zoning within the
12 districts, other than in conservation districts~~[+]~~; provided
13 that the counties shall not permit any use in the agricultural
14 district other than those permissible uses set forth in section
15 205-4.5. Conservation districts shall be governed by the
16 department of land and natural resources pursuant to chapter
17 183C.

18 (b) Within agricultural districts, only uses compatible to
19 the activities described in [~~section 205-2~~] this chapter and as
20 determined by the commission shall be permitted~~[+ provided that~~
21 ~~accessory agricultural uses and services described in sections~~
22 ~~205-2 and 205-4.5 may be further defined by each county by~~



1 ~~zoning ordinance~~]. Each county shall adopt ordinances setting
2 forth procedures and requirements, including provisions for
3 enforcement, penalties, and administrative oversight, for the
4 review and permitting of agricultural tourism uses and
5 activities as an accessory use on a working farm, or farming
6 operation as defined in section 165-2; provided that
7 agricultural tourism activities shall not be permissible in the
8 absence of a bona fide farming operation. Ordinances shall
9 include but not be limited to:

- 10 (1) Requirements for access to a farm, including road
11 width, road surface, and parking;
- 12 (2) Requirements and restrictions for accessory facilities
13 connected with the farming operation, including gift
14 shops and restaurants; provided that overnight
15 accommodations shall not be permitted;
- 16 (3) Activities that may be offered by the farming
17 operation for visitors;
- 18 (4) Days and hours of operation; and
- 19 (5) Automatic termination of the accessory use upon the
20 cessation of the farming operation.

21 Each county may require an environmental assessment under
22 chapter 343 as a condition to any agricultural tourism use and



1 activity. [~~Other uses may be allowed by special permits issued~~
2 ~~pursuant to this chapter.~~] The minimum lot size in agricultural
3 districts shall be determined by each county by zoning
4 ordinance, subdivision ordinance, or other lawful means;
5 provided that the minimum lot size for any agricultural use
6 shall not be less than one acre, except as provided herein. If
7 the county finds that unreasonable economic hardship to the
8 owner or lessee of land cannot otherwise be prevented or where
9 land utilization is improved, the county may allow lot sizes of
10 less than the minimum lot size as specified by law for lots
11 created by a consolidation of existing lots within an
12 agricultural district and the resubdivision thereof; provided
13 that the consolidation and resubdivision do not result in an
14 increase in the number of lots over the number existing prior to
15 consolidation; and provided further that in no event shall a lot
16 [~~which~~] that is equal to or exceeds the minimum lot size of one
17 acre be less than that minimum after the consolidation and
18 resubdivision action. The county may also allow lot sizes of
19 less than the minimum lot size as specified by law for lots
20 created or used for plantation community subdivisions as defined
21 in section 205-4.5(a)(12), for public, private, and quasi-public



1 utility purposes, and for lots resulting from the subdivision of
2 abandoned roadways and railroad easements."

3 SECTION 5. Section 205-6, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Subject to this section, the county planning
6 commission may permit certain unusual and reasonable uses within
7 agricultural and rural districts other than those for which the
8 district is classified[~~-~~]; provided that golf courses, golf
9 driving ranges, golf-related facilities, private membership
10 facilities or other resort facilities, including hotels and
11 resort-related commercial uses, time share facilities, and
12 commercial vacation facilities or homes shall not be permitted
13 within the agricultural districts. Any person who desires to
14 use the person's land within an agricultural or rural district
15 other than for an agricultural or rural use, as the case may be,
16 may petition the planning commission of the county within which
17 the person's land is located for permission to use the person's
18 land in the manner desired. Each county may establish the
19 appropriate fee for processing the special permit petition.
20 Copies of the special permit petition shall be forwarded to the
21 land use commission, the office of planning, and the department
22 of agriculture for their review and comment."



1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

7

INTRODUCED BY: Gay L. Acorn



Report Title:

Land Use; Agricultural Districts

Description:

Prohibits counties from allowing any uses in agricultural district other than permitted uses set forth in section 205-4.5 (land use law).

