

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. The legislature finds that the State's
2 agricultural and rural areas have significant economic and open
3 space value to Hawaii's residents and visitors. However, the
4 state land use system does not currently promote rural and
5 agricultural land use patterns and development practices that
6 protect the character and historic form of Hawaii's rural
7 communities, rural areas, and its open space and agricultural
8 lands.

9 The state rural land use district offers an important tool
10 for accommodating appropriately scaled village centers, non-
11 agricultural rural uses, the siting of agricultural support
12 activities, and the buffering of agricultural and conservation
13 district lands from urban land uses. With less than one per
14 cent of all lands in the State classified in the rural land use
15 district, the rural district is an underutilized tool in the
16 statewide land use management system.

17 The purpose of this Act is to clarify the intent and
18 policies for the rural district as necessary to ensure that both

1 the rural and agricultural districts function appropriately.
2 The legislature believes these amendments will create a more
3 viable rural district that can absorb development pressures
4 currently directed at the agricultural district, threatening
5 agricultural viability by increasing agricultural land values
6 and nuisance complaints for agricultural producers.

7 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§205- Density bonuses for certain parcels. (a) Each
11 county may permit additional density for lots of record existing
12 as of January 1, 2007, for which the underlying county zoning in
13 effect on January 1, 2007, would permit more dwelling units than
14 is allowable under the maximum density thresholds for the rural
15 and agricultural land use districts, subject to the limitations
16 of this section. For the purposes of this section only, "lots
17 of record existing as of January 1, 2007," shall include
18 properties with subdivision applications that have been accepted
19 as a complete filing by the county on or before January 1, 2007.
20 The additional density shall be no more than the difference
21 between the number of dwelling units allowed by the underlying
22 zoning of the lot in effect as of January 1, 2007 and the

1 maximum density allowed for the applicable rural or agricultural
2 district. In adopting ordinances to implement this section, the
3 county may institute a cap on the total number of additional
4 dwelling units or density allowed.

5 (b) Use of the additional density may be restricted to a
6 property or project which promotes clustering or the dedication
7 of open space or working landscapes, as determined by the
8 county."

9 SECTION 3. Section 205-2, Hawaii Revised Statutes, is
10 amended by amending subsections (a), (b), and (c) to read as
11 follows:

12 **"§205-2 Districting and classification of lands. (a)**
13 There shall be four major land use districts in which all lands
14 in the State shall be placed: urban, rural, agricultural, and
15 conservation. The land use commission shall group contiguous
16 land areas suitable for inclusion in one of these four major
17 districts. The districts shall be distinguished by their level
18 and intensity of development, their predominant character of
19 uses and physical landscapes, and natural resources. The
20 commission shall set standards for determining the boundaries of
21 each district, provided that:

22 (1) In the establishment of boundaries of urban districts,

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1 those lands that are now in urban use and a sufficient
2 reserve area for foreseeable urban growth shall be
3 included;

4 (2) In the establishment of boundaries for rural
5 districts, areas of land composed primarily of small
6 farms mixed with very low density residential lots,
7 which may be shown by a minimum density of not more
8 than one house per one-half acre and a minimum lot
9 size of not less than one-half acre shall be included,
10 except as herein provided, and areas of land suitable
11 for agriculture and other uses requiring limited
12 physical infrastructure development and services,
13 including low density residential uses, outdoor
14 recreational uses, and passive open space uses which
15 may also serve as a buffer to productive agricultural
16 land or conservation resource areas, shall be
17 included. The rural district may also include
18 compact, small mixed use rural towns and service
19 centers;

20 (3) In the establishment of the boundaries of agricultural
21 districts, the greatest possible protection shall be
22 given to those lands with a high capacity for

1 intensive cultivation; and
2 (4) In the establishment of the boundaries of conservation
3 districts, the "forest and water reserve zones"
4 provided in Act 234, section 2, Session Laws of Hawaii
5 1957, are renamed "conservation districts" and,
6 effective as of July 11, 1961, the boundaries of the
7 forest and water reserve zones theretofore established
8 pursuant to Act 234, section 2, Session Laws of Hawaii
9 1957, shall constitute the boundaries of the
10 conservation districts; provided that thereafter the
11 power to determine the boundaries of the conservation
12 districts shall be in the commission.

13 In establishing the boundaries of the districts in each county,
14 the commission shall give consideration to the [~~master plan or~~]
15 general plan [ef] or community and development plans adopted by
16 the county.

17 (b) Urban districts shall include activities or uses as
18 provided by ordinances or [~~regulations~~] rules of the county
19 within which the urban district is situated.

20 (c) Rural districts shall include activities or uses as
21 characterized by low density residential lots of not more than
22 one dwelling house per one-half acre, except as provided by

1 county ordinance pursuant to section 46-4(c), in areas where
2 "city-like" concentration of people, structures, streets, and
3 urban level of services are absent, and where small farms are
4 intermixed with low density residential lots except that within
5 a subdivision, as defined in section 484-1, the commission for
6 good cause may allow one lot of less than one-half acre, but not
7 less than 18,500 square feet, or an equivalent residential
8 density, within a rural subdivision and permit the construction
9 of one dwelling on such lot, provided that all other dwellings
10 in the subdivision shall have a minimum lot size of one-half
11 acre or 21,780 square feet. Such petition for variance may be
12 processed under the special permit procedure. These districts
13 may include contiguous areas which are not suited to low density
14 residential lots or small farms by reason of topography, soils,
15 and other related characteristics. Rural districts shall also
16 include golf courses, golf driving ranges, and golf-related
17 facilities.

18 The rural district may also be characterized by a regional
19 land use pattern of farmland, contiguous open space and natural
20 areas, mixed-use rural towns or rural service centers, low-
21 density residential settlements, and outdoor recreational areas.
22 Rural district lands may serve to spatially separate urban

1 settlements from agricultural, preservation, or conservation
2 landscapes to protect these resources and to mitigate land use
3 conflicts and nuisances. The rural district may also include
4 contiguous areas that are not suited to physical development
5 because of topography, soils, unique conservation values, or
6 other related characteristics.

7 Uses and physical development in the rural district should
8 be of appropriate scale and density to rural character and form
9 with a level of physical infrastructure and services lower than
10 in urban areas."

11 SECTION 4. Section 205-5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§205-5 [~~Zoning~~] Conformance of county land use
14 policies, ordinances, and rules with this chapter. (a) County
15 land use plans, zoning, and development standards adopted by
16 ordinances or rules shall be consistent with and implement the
17 objectives and district policies and standards contained in this
18 chapter. Except as [~~herein~~] provided[~~7~~] in this chapter, the
19 powers granted to counties under section 46-4 shall govern the
20 zoning within the urban, rural, and agricultural districts[~~7~~
21 ~~other than in conservation districts~~]. Conservation districts

1 shall be governed by the department of land and natural
2 resources pursuant to chapter 183C.

3 **(b)** Within agricultural districts, uses compatible to the
4 activities described in section 205-2 as determined by the
5 commission shall be permitted; provided that accessory
6 agricultural uses and services described in sections 205-2 and
7 205-4.5 may be further defined by each county by zoning
8 ordinance. Each county shall adopt ordinances setting forth
9 procedures and requirements, including provisions for
10 enforcement, penalties, and administrative oversight, for the
11 review and permitting of agricultural tourism uses and
12 activities as an accessory use on a working farm, or farming
13 operation as defined in section 165-2; provided that
14 agricultural tourism activities shall not be permissible in the
15 absence of a bona fide farming operation. Ordinances shall
16 include but not be limited to:

- 17 (1) Requirements for access to a farm, including road
18 width, road surface, and parking;
- 19 (2) Requirements and restrictions for accessory facilities
20 connected with the farming operation, including gift
21 shops and restaurants; provided that overnight
22 accommodations shall not be permitted;

- 1 (3) Activities that may be offered by the farming
- 2 operation for visitors;
- 3 (4) Days and hours of operation; and
- 4 (5) Automatic termination of the accessory use upon the
- 5 cessation of the farming operation.

6 Each county may require an environmental assessment under
7 chapter 343 as a condition to any agricultural tourism use and
8 activity. Other uses may be allowed by special permits issued
9 pursuant to this chapter. The minimum lot size in agricultural
10 districts shall be determined by each county by zoning
11 ordinance, subdivision ordinance, or other lawful means;
12 provided that the minimum lot size for any agricultural use
13 shall not be less than one acre, except as provided herein. If
14 the county finds that unreasonable economic hardship to the
15 owner or lessee of land cannot otherwise be prevented or where
16 land utilization is improved, the county may allow lot sizes of
17 less than the minimum lot size as specified by law for lots
18 created by a consolidation of existing lots within an
19 agricultural district and the resubdivision thereof; provided
20 that the consolidation and resubdivision do not result in an
21 increase in the number of lots over the number existing prior to
22 consolidation; and provided further that in no event shall a lot

1 which is equal to or exceeds the minimum lot size of one acre be
2 less than that minimum after the consolidation and resubdivision
3 action. The county may also allow lot sizes of less than the
4 minimum lot size as specified by law for lots created or used
5 for plantation community subdivisions as defined in section 205-
6 4.5(a)(12), for public, private, and quasi-public utility
7 purposes, and for lots resulting from the subdivision of
8 abandoned roadways and railroad easements.

9 (c) Unless authorized by special permit issued pursuant to
10 this chapter, only the following uses shall be permitted within
11 rural districts:

- 12 (1) Low density residential uses;
- 13 (2) Agricultural uses;
- 14 (3) Golf courses, golf driving ranges, and golf-related
15 facilities; and
- 16 (4) Public, quasi-public, and public utility facilities.

17 In addition, the minimum lot size for any low density
18 residential use shall be one-half acre and there shall be but
19 one dwelling house per one-half acre, except as provided for in
20 section 205-2.

21 (d) Each county may adopt ordinances and rules for the
22 rural district that define allowable uses, standards for

1 physical development and infrastructure, and rural design
2 guidelines as needed, to govern land use and development in
3 rural service centers and the rural district as a whole. Uses
4 in the rural district may include a range of uses that support
5 rural economic activities, rural settlements, and open space
6 uses, such as agriculture or ranching, agricultural support
7 services and processing, low-density residential uses, cottage
8 or craft industries, commercial businesses and establishments
9 providing goods and services compatible with rural character and
10 scale, outdoor recreational uses including golf courses and golf
11 course facilities, forestry, public and quasi-public utilities,
12 passive open space, and conservation areas. Exclusive
13 agricultural use zoning may be a permissible use in the rural
14 district.

15 A rural village or service center shall be physically
16 compact with a well-defined edge, characterized by a core area
17 having a mix of residential uses, public and commercial
18 services, and economic activities. Physical development within
19 a rural village or service center should be compatible with the
20 scale, historic character, and physical form of existing rural
21 centers, as determined by the county.

22 (e) Each county may consider progressive practices,

1 including zoning or other land use mechanisms, that promote the
2 clustering of dwelling units and the preservation of working
3 lands and open space on lands situated in the rural land use
4 district; provided that the overall dwelling unit density of the
5 gross project area shall not exceed one dwelling unit per one
6 half acre, except within designated rural villages or service
7 centers where higher densities are allowed."

8 SECTION 5. Section 205-6, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) Subject to this section, the county planning
11 commission may [~~permit certain unusual and reasonable~~] allow by
12 special permit uses within the agricultural and rural-~~[districts]~~
13 district other than those for which the district is classified.
14 Any person who desires to use the person's land within an
15 agricultural or rural district other than for an agricultural or
16 rural use, as the case may be, may petition the planning
17 commission of the county within which the person's land is
18 located for permission to use the person's land in the manner
19 desired. Each county may establish the appropriate fee for
20 processing the special permit petition. Copies of the special
21 permit petition shall be forwarded to the land use commission,
22 the office of planning, and the department of agriculture for
23 their review and comment.

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1 (b) The planning commission, upon consultation with the
 2 central coordinating agency, except in counties where the
 3 planning commission is advisory only in which case the central
 4 coordinating agency, shall establish by rule [~~or regulation~~],
 5 the time within which the hearing and action on the petition for
 6 a special permit shall occur. The county planning commission
 7 shall notify the land use commission, the department of
 8 agriculture, the office of planning, and such persons and
 9 agencies that may have an interest in the subject matter of the
 10 time and place of the hearing."

11 SECTION 6. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.

14
 15 INTRODUCED BY: _____
 16 BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT Business, Economic Development, and
Tourism

TITLE: A BILL FOR AN ACT RELATING TO LAND USE.

PURPOSE: The purpose of this bill is to amend the state land use law to provide for additional uses in the state rural district. It will strengthen policy guidance for the establishment of land use patterns that preserve the State's rural heritage and rural lands while allowing greater flexibility for rural development and rural economic opportunities. The bill provides that agriculture may be a permitted use in the rural district and that other activity and uses may be allowed including clustered development and rural towns.

MEANS: Add a new section to chapter 205 and amend sections 205-2(a), (b), and (c), 205-5, and 205-6(a) and (b), Hawaii Revised Statutes.

JUSTIFICATION: Less than one percent of all lands in the State are classified in the state rural district. The rural district is an underutilized tool in the statewide land use management system. The definition and description of the rural district in the state land use law should be amended to expand and enhance utilization of the rural district, including non-agricultural rural uses, such as recreational uses; the siting of agricultural support activities; buffering of agricultural and conservation lands from urban land uses; and its role in preserving the State's rural heritage and open space resources.

The creation of a more viable rural district would help absorb development pressures that are currently directed at the agricultural district.

Moreover, once important agricultural lands are identified, a significant portion of lands now in the agricultural district--the non-important agricultural lands--may be appropriate to transfer to the rural district.

Since the lands in the rural district will be non-important agricultural lands there is need to assure compatibility and an appropriate relationship between urban and rural district uses.

Impact on the public: Expanded uses of the rural district and subsequent use of appropriate rural policies and standards could improve preservation of rural areas and character while offering opportunities for more affordable housing in rural centers and mitigating the cost of rural infrastructure and services.

Impact on the department and other agencies. May require rule changes by the land use commission; no other impact foreseen on other state agencies.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-103.

OTHER AFFECTED
AGENCIES:

Land Use Commission, Office of
Planning, County Planning Departments,
and other state agencies.

EFFECTIVE DATE:

Upon approval.