

JAN 24 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.

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, and
15 the adoption of regulations for each district to carry out the
16 purposes of this section. In establishing or regulating the
17 districts, full consideration shall be given to all available



1 data as to soil classification and physical use capabilities of
2 the land to allow and encourage the most beneficial use of the
3 land consonant with good zoning practices. The zoning power
4 granted herein shall be exercised by ordinance which may relate
5 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 necessary and proper to permit and encourage the
- 7 orderly development of land resources within their
- 8 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 shall be liberally construed in
4 favor of the county exercising them, and in such a manner as to
5 promote the orderly development of each county or city and
6 county in accordance with a long-range, comprehensive general
7 plan to ensure the greatest benefit for the State as a whole.
8 This section shall not be construed to limit or repeal any
9 powers of any county to achieve these ends through zoning and
10 building regulations, except insofar as forest and water reserve
11 zones are concerned and as provided in subsections (c) and (d).

12 Neither this section nor any ordinance enacted pursuant to
13 this section shall prohibit the continued lawful use of any
14 building or premises for any trade, industrial, residential,
15 agricultural, or other purpose for which the building or
16 premises is used at the time this section or the ordinance takes
17 effect; provided that a zoning ordinance may provide for
18 elimination of nonconforming uses as the uses are discontinued,
19 or for the amortization or phasing out of nonconforming uses or
20 signs over a reasonable period of time in commercial,
21 industrial, resort, and apartment zoned areas only. In no event
22 shall such amortization or phasing out of nonconforming uses



1 apply to any existing building or premises used for residential
2 (single-family or duplex) or agricultural uses. Nothing in this
3 section shall affect or impair the powers and duties of the
4 director of transportation as set forth in chapter 262.

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

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

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



1 building height, setback, maximum lot coverage, parking, and
2 floor area requirements.

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

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

13 (f) For purposes of this section:

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

- 18 (1) Are recovering from substance abuse;
19 (2) Share household expenses; and
20 (3) Do not require twenty-four-hour supervision,
21 rehabilitation, or therapeutic services or care in the
22 home or on the premises. The home shall meet all



1 applicable laws, codes, and rules of the counties and
2 State.

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

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

7 "Drug rehabilitation home" means:

- 8 (1) A residential treatment facility that provides a
9 therapeutic residential program for care, diagnosis,
10 treatment, or rehabilitation for socially or
11 emotionally distressed persons, mentally ill persons,
12 persons suffering from substance abuse, and
13 developmentally disabled persons; or
14 (2) A supervised living arrangement that provides mental
15 health services, substance abuse services, or
16 supportive services for individuals or families who do
17 not need the structure of a special treatment facility
18 and are transitioning to independent living;
19 provided that drug rehabilitation homes shall not include
20 halfway houses or clean and sober homes.

21 "Elder" means an elder as defined under section 201G-1.



1 "Halfway house" is defined as a group living facility for
2 people who:

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

5 (2) Have been released from a mental health treatment
6 facility; or

7 (3) Are receiving substance abuse or sex offender
8 treatment; and

9 are housed to participate in programs that help them readjust to
10 living in the community.

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

19 "Mental health treatment facility" means a psychiatric
20 facility or special treatment facility as defined under section
21 334-1.



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

3 "Totally disabled person" means a "person totally disabled"
4 as defined under section 235-1.

5 "Treatment program" means a "substance abuse program" or
6 "treatment program", as those terms are defined under section
7 353G-2.

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

15 (h) Each county may adopt reasonable standards to allow
16 the construction of a single-family residential dwelling not
17 used in connection with farm use in agricultural districts
18 pursuant to section 205-4.5(g). Upon receipt of an application
19 to construct a dwelling under this subsection, the county shall
20 notify:



1 (1) Owners of land that is within two hundred fifty feet
2 of the lot or parcel on which the dwelling will be
3 established; and

4 (2) Persons who have requested notice of the application
5 and who have paid a reasonable fee imposed by the
6 county to cover the cost of the notice.

7 The notice required shall specify that persons have fifteen
8 days following the date of postmark of the notice to file a
9 written objection on the grounds that the conditions contained
10 in section 205-4.5(g) have not been met."

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

13 "(d) Agricultural districts shall include:

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

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

18 (3) Aquaculture, which means the production of aquatic
19 plant and animal life within ponds and other bodies of
20 water;

21 (4) Wind generated energy production for public, private,
22 and commercial use;



- 1 (5) Bona fide agricultural services and uses that support
2 the agricultural activities of the fee or leasehold
3 owner of the property and accessory to any of the
4 above activities, whether or not conducted on the same
5 premises as the agricultural activities to which they
6 are accessory, including but not limited to farm
7 dwellings as defined in section 205-4.5(a)(4),
8 employee housing, farm buildings, mills, storage
9 facilities, processing facilities, vehicle and
10 equipment storage areas, roadside stands for the sale
11 of products grown on the premises, and plantation
12 community subdivisions as defined in section 205-
13 4.5(a)(12);
- 14 (6) Wind machines and wind farms;
- 15 (7) Small-scale meteorological, air quality, noise, and
16 other scientific and environmental data collection and
17 monitoring facilities occupying less than one-half
18 acre of land; provided that these facilities shall not
19 be used as or equipped for use as living quarters or
20 dwellings;
- 21 (8) Agricultural parks;



1 (9) Agricultural tourism conducted on a working farm, or a
2 farming operation as defined in section 165-2, for the
3 enjoyment, education, or involvement of visitors;
4 provided that the agricultural tourism activity is
5 accessory and secondary to the principal agricultural
6 use and does not interfere with surrounding farm
7 operations; and provided further that this paragraph
8 shall apply only to a county that has adopted
9 ordinances regulating agricultural tourism under
10 section 205-5; ~~and~~

11 (10) Single family residential dwellings as approved by the
12 county pursuant to section 205-4.5(g) and 46-4(h);
13 provided that this paragraph shall apply only to a
14 county that has adopted ordinances regulating
15 construction of single family residential dwellings on
16 agricultural lands; and

17 ~~(10)~~ (11) Open area recreational facilities.

18 Agricultural districts shall not include golf courses and golf
19 driving ranges, except as provided in section 205-4.5(d).

20 Agricultural districts include areas that are not used for, or
21 that are not suited to, agricultural and ancillary activities by
22 reason of topography, soils, and other related characteristics."



1 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§205-4.5 Permissible uses within the agricultural**
4 **districts.** (a) Within the agricultural district, all lands
5 with soil classified by the land study bureau's detailed land
6 classification as overall (master) productivity rating class A
7 or B shall be restricted to the following permitted uses:

- 8 (1) Cultivation of crops, including but not limited to
9 flowers, vegetables, foliage, fruits, forage, and
10 timber;
- 11 (2) Game and fish propagation;
- 12 (3) Raising of livestock, including but not limited to
13 poultry, bees, fish, or other animal or aquatic life
14 that are propagated for economic or personal use;
- 15 (4) Farm dwellings, employee housing, farm buildings, or
16 activities or uses related to farming and animal
17 husbandry. "Farm dwelling", as used in this
18 paragraph, means a single-family dwelling located on
19 and used in connection with a farm, including clusters
20 of single-family farm dwellings permitted within
21 agricultural parks developed by the State, or where



1 agricultural activity provides income to the family
2 occupying the dwelling;

3 (5) Public institutions and buildings that are necessary
4 for agricultural practices;

5 (6) Public and private open area types of recreational
6 uses, including day camps, picnic grounds, parks, and
7 riding stables, but not including dragstrips,
8 airports, drive-in theaters, golf courses, golf
9 driving ranges, country clubs, and overnight camps;

10 (7) Public, private, and quasi-public utility lines and
11 roadways, transformer stations, communications
12 equipment buildings, solid waste transfer stations,
13 major water storage tanks, and appurtenant small
14 buildings such as booster pumping stations, but not
15 including offices or yards for equipment, material,
16 vehicle storage, repair or maintenance, treatment
17 plants, corporation yards, or other similar
18 structures;

19 (8) Retention, restoration, rehabilitation, or improvement
20 of buildings or sites of historic or scenic interest;

21 (9) Roadside stands for the sale of agricultural products
22 grown on the premises;



- 1 (10) Buildings and uses, including but not limited to
2 mills, storage, and processing facilities, maintenance
3 facilities, and vehicle and equipment storage areas
4 that are normally considered directly accessory to the
5 above mentioned uses and are permitted under section
6 205-2(d);
- 7 (11) Agricultural parks;
- 8 (12) Plantation community subdivisions, which as used in
9 this paragraph means a subdivision or cluster of
10 employee housing, community buildings, and acreage
11 established on land currently or formerly owned,
12 leased, or operated by a sugar or pineapple plantation
13 and in residential use by employees or former
14 employees of the plantation; provided that the
15 employees or former employees shall have a property
16 interest in the land;
- 17 [+](13)[+] Agricultural tourism conducted on a working farm, or
18 a farming operation as defined in section 165-2, for
19 the enjoyment, education, or involvement of visitors;
20 provided that the agricultural tourism activity is
21 accessory and secondary to the principal agricultural
22 use and does not interfere with surrounding farm



1 operations; and provided further that this paragraph
2 shall apply only to a county that has adopted
3 ordinances regulating agricultural tourism under
4 section 205-5; or

5 [+](14)[+] Wind energy facilities, including the appurtenances
6 associated with the production and transmission of
7 wind generated energy; provided that such facilities
8 and appurtenances are compatible with agriculture uses
9 and cause minimal adverse impact on agricultural land.

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



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

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

18 The mortgage lending agencies referred to in the preceding
19 paragraph are the Federal Housing Administration, Federal
20 National Mortgage Association, [~~Veterans Administration,~~
21 Department of Veterans Affairs, Small Business Administration,
22 United States Department of Agriculture, Federal Land Bank of



1 Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley
2 Bank for Cooperatives, and any other federal, state, or private
3 mortgage lending agency qualified to do business in Hawaii, and
4 their respective successors and assigns.

5 (c) Within the agricultural district, all lands with soil
6 classified by the land study bureau's detailed land
7 classification as overall (master) productivity rating class C,
8 D, E, or U shall be restricted to the uses permitted for
9 agricultural districts as set forth in section 205-5(b).

10 (d) Notwithstanding any other provision of this chapter to
11 the contrary, golf courses and golf driving ranges approved by a
12 county before July 1, 2005, for development within the
13 agricultural district shall be permitted uses within the
14 agricultural district.

15 (e) Notwithstanding any other provision of this chapter to
16 the contrary, plantation community subdivisions as defined in
17 this section shall be permitted uses within the agricultural
18 district, and section 205-8 shall not apply.

19 [+](f)[+] Notwithstanding any other law to the contrary,
20 agricultural lands may be subdivided and leased for the
21 agricultural uses or activities permitted in subsection (a);
22 provided that:



- 1 (1) The principal use of the leased land is agriculture;
- 2 (2) No permanent or temporary dwellings or farm dwellings,
- 3 including trailers and campers, are constructed on the
- 4 leased area. This restriction shall not prohibit the
- 5 construction of storage sheds, equipment sheds, or
- 6 other structures appropriate to the agricultural
- 7 activity carried on within the lot; and
- 8 (3) The lease term for a subdivided lot shall be for at
- 9 least as long as the greater of:
 - 10 (A) The minimum real property tax agricultural
 - 11 dedication period of the county in which the
 - 12 subdivided lot is located; or
 - 13 (B) Five years.

14 Lots created and leased pursuant to this section shall be legal
15 lots of record for mortgage lending purposes and shall be exempt
16 from county subdivision standards.

17 (g) Notwithstanding any other provision in this chapter to
18 the contrary, in the agricultural district on lands with soil
19 classified by the land study bureau's detailed land
20 classification as overall (master) productivity rating class C,
21 D, E, or U, a single-family residential dwelling not used in
22 connection with farm use may be constructed. The dwelling shall



1 be subject to approval of the county pursuant to section 46-4(h)
2 upon written findings showing all of the following:

3 (1) The dwelling or activities associated with the
4 dwelling will not force a significant change in or
5 significantly increase the cost of accepted
6 agricultural practices on nearby lands devoted to farm
7 use, other than possible increases in property taxes
8 or other costs associated with the values of the lands
9 to the extent the values are increased by the dwelling
10 or activities; and

11 (2) The dwelling complies with all other conditions that
12 the county may impose."

13 SECTION 4. Section 205-5, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) Within agricultural districts, uses compatible to the
16 activities described in section 205-2 as determined by the
17 commission shall be permitted; provided that accessory
18 agricultural uses and services described in sections 205-2 and
19 205-4.5 may be further defined by each county by zoning
20 ordinance. Each county shall adopt ordinances setting forth
21 procedures and requirements, including provisions for
22 enforcement, penalties, and administrative oversight, for the



1 review and permitting of agricultural tourism uses and
2 activities as an accessory use on a working farm, or farming
3 operation as defined in section 165-2; provided that
4 agricultural tourism activities shall not be permissible in the
5 absence of a bona fide farming operation. Ordinances shall
6 include but not be limited to:

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

18 Each county may require an environmental assessment under
19 chapter 343 as a condition to any agricultural tourism use and
20 activity. Other uses may be allowed by special permits issued
21 pursuant to this chapter. The minimum lot size in agricultural
22 districts shall be determined by each county by zoning



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

21 Each county may adopt reasonable standards to allow the
22 construction of a single-family residential dwelling not used in



1 connection with farm use in agricultural districts pursuant to
2 section 205-4.5(g) and 46-4(h)."

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

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

6

INTRODUCED BY: 



Report Title:

Land Use; Agricultural District; Residences

Description:

Allows the construction of residential dwellings on agricultural lands of marginal quality by the Land Study Bureau, provided that the dwelling shall be subject to county approval.

