
A BILL FOR AN ACT

RELATING TO LAND USE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 **PART I**

2 SECTION 1. Article XI, section 3 of the Hawaii State
3 Constitution provides, among other things, that "the State shall
4 conserve and protect agricultural lands, promote diversified
5 agriculture, increase agricultural self-sufficiency and assure
6 the availability of agriculturally suitable lands."

7 The legislature finds that in the recent past, hundreds of
8 acres of agricultural land have been converted into developments
9 that feature homes without agricultural activity, agribusiness,
10 or subsistence farming. No meaningful agricultural activity
11 takes place on these residential lands even though these types
12 of developments are labeled as agricultural subdivisions. The
13 legislature further finds that loss of agricultural lands
14 results in a loss of the State's ability to develop sustainable
15 agricultural productivity that could increase food and fuel
16 self-sufficiency for Hawaii residents.



1 The purpose of this part is to comply with the mandate of
2 Article XI, section 3 of the Hawaii State Constitution to
3 protect the State's agricultural lands by requiring that
4 agricultural land be only used for the purposes of agricultural
5 activities, agribusiness, or subsistence farming.

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

8 "**§205-4.5 Permissible uses within the agricultural**
9 **districts.** (a) Within the agricultural district, all lands
10 with soil classified by the land study bureau's detailed land
11 classification as overall (master) productivity rating class A
12 or B shall be restricted to the following permitted uses:

- 13 (1) Cultivation of crops, including but not limited to
14 flowers, vegetables, foliage, fruits, forage, and
15 timber;
- 16 (2) Game and fish propagation;
- 17 (3) Raising of livestock, including but not limited to
18 poultry, bees, fish, or other animal or aquatic life
19 that are propagated for economic or [~~personal~~]
20 subsistence use;
- 21 (4) Farm dwellings, employee housing, farm buildings, or
22 activities or uses related to farming and animal



1 husbandry. "Farm dwelling", as used in this
2 paragraph, means a single-family dwelling located on
3 and used in connection with [~~a farm,~~] agricultural
4 activities, agribusiness, or subsistence farming,
5 including clusters of single-family farm dwellings
6 permitted within agricultural parks developed by the
7 State, or where agricultural activity provides income
8 to the family occupying the dwelling;

9 (5) Public institutions and buildings that are necessary
10 for agricultural practices;

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

16 (7) Public, private, and quasi-public utility lines and
17 roadways, transformer stations, communications
18 equipment buildings, solid waste transfer stations,
19 major water storage tanks, and appurtenant small
20 buildings such as booster pumping stations, but not
21 including offices or yards for equipment, material,
22 vehicle storage, repair or maintenance, treatment



- 1 plants, corporation yards, or other similar
2 structures;
- 3 (8) Retention, restoration, rehabilitation, or improvement
4 of buildings or sites of historic or scenic interest;
- 5 (9) Roadside stands for the sale of agricultural products
6 grown on the premises;
- 7 (10) Buildings and uses, including but not limited to
8 mills, storage, and processing facilities, maintenance
9 facilities, and vehicle and equipment storage areas
10 that are normally considered directly accessory to the
11 above mentioned uses and are permitted under section
12 205-2(d);
- 13 (11) Agricultural parks;
- 14 (12) Plantation community subdivisions, which as used in
15 this paragraph means a subdivision or cluster of
16 employee housing, community buildings, and acreage
17 established on land currently or formerly owned,
18 leased, or operated by a sugar or pineapple plantation
19 and in residential use by employees or former
20 employees of the plantation; provided that the
21 employees or former employees shall have a property
22 interest in the land;



1 [+] (13) [+] Agricultural tourism conducted on a working farm, or
2 a farming operation as defined in section 165-2, for
3 the 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; or

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

16 (b) Uses not expressly permitted in subsection (a) shall
17 be prohibited, except the uses permitted as provided in sections
18 205-6 and 205-8, and construction of single-family dwellings on
19 lots existing before June 4, 1976. Any other law to the
20 contrary notwithstanding, no subdivision of land within the
21 agricultural district with soil classified by the land study
22 bureau's detailed land classification as overall (master)



1 productivity rating class A or B shall be approved by a county
2 unless those A and B lands within the subdivision are made
3 subject to the restriction on uses as prescribed in this section
4 and to the condition that the uses shall be [~~primarily~~]
5 exclusively in pursuit of [~~an~~] agricultural activity[~~-~~],
6 agribusiness, or subsistence farming.

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

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



1 become effective only [~~in the event that~~] if the property is
2 subjected to foreclosure proceedings by the mortgage lender.

3 The mortgage lending agencies referred to in the preceding
4 paragraph are the Federal Housing Administration, Federal
5 National Mortgage Association, Veterans Administration, Small
6 Business Administration, United States Department of
7 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
8 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
9 other federal, state, or private mortgage lending agency
10 qualified to do business in Hawaii, and their respective
11 successors and assigns.

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

17 (d) Notwithstanding any other provision of this chapter to
18 the contrary, golf courses and golf driving ranges approved by a
19 county before July 1, 2005, for development within the
20 agricultural district shall be permitted uses within the
21 agricultural district.



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

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

9 (1) The principal use of the leased land is [~~agriculture~~]
10 for agricultural activities, agribusiness, or
11 subsistence farming;

12 (2) No permanent or temporary dwellings or farm dwellings,
13 including trailers and campers, are constructed on the
14 leased area. This restriction shall not prohibit the
15 construction of storage sheds, equipment sheds, or
16 other structures appropriate to the agricultural
17 activity carried on within the lot; and

18 (3) The lease term for a subdivided lot shall be for at
19 least as long as the greater of:

20 (A) The minimum real property tax agricultural
21 dedication period of the county in which the
22 subdivided lot is located; or



1 (B) Five years.

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

5 (g) For the purposes of this section, the following shall
6 apply:

7 "Agricultural activity" means any of the permitted uses
8 described under section 205-4.5.

9 "Agribusiness" means a business licensed for the production
10 and sale of products produced from the cultivation, propagation,
11 and raising activities defined as agricultural activity.

12 "Subsistence farming" means the method of horticulture and
13 cultural practices described under section 205-2(d) in which a
14 parcel of land produces only enough food to feed the family
15 working it. De minimis agriculture is not evidence of
16 subsistence farming.

17 (h) This section shall not apply to development of any
18 land within the agricultural district which has not been
19 approved by the respective counties as of July 1, 2007."

20 SECTION 3. Section 205-5, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



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

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



1 (4) Days and hours of operation; and

2 (5) Automatic termination of the accessory use upon the
3 cessation of the farming operation.

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



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

8 SECTION 4. Section 205-6, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsection (a) to read:

11 "(a) Subject to this section, the county planning
12 commission may permit certain unusual and reasonable uses within
13 agricultural and rural districts other than those for which the
14 district is classified[~~-~~]; provided that this use is not
15 otherwise prohibited by section 205-2 or 205-4.5(b). Any person
16 who desires to use the person's land within an agricultural or
17 rural district other than for an agricultural or rural use, as
18 the case may be, may petition the planning commission of the
19 county within which the person's land is located for permission
20 to use the person's land in the manner desired. Each county may
21 establish the appropriate fee for processing the special permit
22 petition. Copies of the special permit petition shall be



1 forwarded to the land use commission, the office of planning,
2 and the department of agriculture for their review and comment."

3 2. By amending subsection (c) to read:

4 "(c) The county planning commission may, under such
5 protective restrictions as may be deemed necessary, permit the
6 desired use, but only when the use would promote the
7 effectiveness and objectives of this chapter; provided that a
8 use proposed for agricultural lands or for designated important
9 agricultural lands shall not conflict with any part of this
10 chapter. A decision in favor of the applicant shall require a
11 majority vote of the total membership of the county planning
12 commission."

13 **PART II**

14 SECTION 5. The legislature finds that amendments the land
15 use laws will create a more viable rural district that can
16 absorb development pressures currently directed at the
17 agricultural district. Agricultural viability is threatened by
18 increased agricultural land values and nuisance complaints
19 regarding the agricultural activities of agricultural producers.

20 The purpose of this part is to clarify the intent and
21 policies for the rural district as necessary to ensure that both
22 the rural and agricultural districts function appropriately.



1 SECTION 6. Section 205-2, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) There shall be four major land use districts in which
5 all lands in the State shall be placed: urban, rural,
6 agricultural, and conservation. The land use commission shall
7 group contiguous land areas suitable for inclusion in one of
8 these four major districts. The commission shall set standards
9 for determining the boundaries of each district, provided that:

10 (1) In the establishment of boundaries of urban districts
11 those lands that are now in urban use and a sufficient
12 reserve area for foreseeable urban growth shall be
13 included;

14 (2) In the establishment of boundaries for rural
15 districts, areas of land composed primarily of small
16 farms mixed with very low density residential lots,
17 which may be shown by a minimum density of not more
18 than one house per [~~one-half~~] one acre and a minimum
19 lot size of not less than [~~one-half~~] one acre shall be
20 included, except as herein provided[+]. Areas of land
21 suitable for agriculture and other uses requiring
22 limited physical infrastructure development and



1 services, including low density residential uses,
2 outdoor recreational uses, and passive open space uses
3 that may also serve as a buffer to productive
4 agricultural land or conservation resources areas,
5 shall be included. The rural district may also
6 include compact, small mixed-use rural towns and
7 service centers;

8 (3) In the establishment of the boundaries of agricultural
9 districts, the greatest possible protection shall be
10 given to those lands with a high capacity for
11 intensive cultivation; and

12 (4) In the establishment of the boundaries of conservation
13 districts, the "forest and water reserve zones"
14 provided in Act 234, section 2, Session Laws of Hawaii
15 1957, are renamed "conservation districts" and,
16 effective as of July 11, 1961, the boundaries of the
17 forest and water reserve zones theretofore established
18 pursuant to Act 234, section 2, Session Laws of Hawaii
19 1957, shall constitute the boundaries of the
20 conservation districts; provided that thereafter the
21 power to determine the boundaries of the conservation
22 districts shall be in the commission.



1 In establishing the boundaries of the districts in each county,
2 the commission shall give consideration to the [~~master plan or~~]
3 general plan [~~of~~] or community and development plans adopted by
4 the county."

5 2. By amending subsection (c) to read:

6 "(c) Rural districts shall include activities or uses as
7 characterized by low density residential lots of not more than
8 one dwelling house per [~~one-half~~] one acre, except as provided
9 by county ordinance pursuant to section 46-4(c), in areas where
10 "city-like" concentration of people, structures, streets, and
11 urban level of services are absent, and where small farms are
12 intermixed with low density residential lots except that within
13 a subdivision, as defined in section 484-1, the commission for
14 good cause may allow one lot of less than [~~one-half~~] one acre,
15 but not less than [~~18,500~~] 37,000 square feet, or an equivalent
16 residential density, within a rural subdivision and permit the
17 construction of one dwelling on [~~such~~] the lot, provided that
18 all other dwellings in the subdivision shall have a minimum lot
19 size of [~~one-half~~] one acre or [~~21,780~~] 43,400 square feet.
20 [~~Such~~] A petition for a variance may be processed under the
21 special permit procedure. The clustering of dwelling houses may
22 be permitted but shall not diminish the maximum density per one-



1 acre requirement established under this subsection. These
2 districts may include contiguous areas which are not suited to
3 low density residential lots or small farms by reason of
4 topography, soils, and other related characteristics. Rural
5 districts shall also include golf courses, golf driving ranges,
6 and golf-related facilities.

7 The rural district may also be characterized by a regional
8 land use pattern of farmland, contiguous open space and natural
9 areas, mixed-use rural towns or rural service center, low-
10 density residential settlements, and outdoor recreational areas.
11 Rural district lands may serve to spatially separate urban
12 settlements from agricultural, preservation, or conservation
13 landscapes to protect these resources and to mitigate land use
14 conflicts and nuisances. The rural district may also include
15 contiguous areas that are not suited to physical development
16 because of topography, soils, unique conservation values, or
17 other related characteristics."

18 SECTION 7. Section 205-5, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) Unless authorized by special permit issued pursuant
21 to this chapter, only the following uses shall be permitted
22 within rural districts:



- 1 (1) Low density residential uses;
- 2 (2) Agricultural uses;
- 3 (3) Golf courses, golf driving ranges, and golf-related
- 4 facilities; [~~and~~]
- 5 (4) Public, quasi-public, and public utility
- 6 facilities[~~-~~]; and
- 7 (5) A range of uses that support rural economic
- 8 activities, rural settlements, and open space,
- 9 including but not limited to:
- 10 (A) Agricultural support services and processing;
- 11 (B) Cottage or craft industries;
- 12 (C) Commercial, businesses, and establishments
- 13 providing goods and services compatible with
- 14 rural character and scale;
- 15 (D) Outdoor recreational uses;
- 16 (E) Forestry;
- 17 (F) Passive open space; and
- 18 (G) Conservation areas.
- 19 A rural village or service center shall be physically
- 20 compact with a well-defined edge, characterized by a
- 21 core area having a mix of residential uses, public and
- 22 commercial services, and economic activities.



1 Physical development within a rural village or service
2 center shall be compatible with the scale, historic
3 character, and physical form of existing rural
4 centers.

5 In addition, the minimum lot size for any low density
6 residential use shall be [~~one-half~~] one acre and there shall be
7 but one dwelling house per [~~one-half~~] one acre, except as
8 provided for in section 205-2."

9 SECTION 8. The lawful use of land or buildings on the
10 effective date of this Act may be continued although the use
11 does not conform to this Act; provided that no nonconforming use
12 of land shall be expanded or changed to another nonconforming
13 use. If any nonconforming use of land is discontinued, then the
14 provisions of this Act shall apply.

15 SECTION 9. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 10. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 11. This Act shall take effect upon its approval.



Report Title:

Land Use; Residential Lot Size; Rural Districts; Agricultural Districts

Description:

Makes several amendments to the land use laws relating to agricultural districts and rural districts to protect and maintain viable agricultural productivity (SD2)

