

ACT 205

H.B. NO. 109

A Bill for an Act Relating to Land Use Commission.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to amend the land use commission's regulatory duties. Part I of this Act clarifies permitted uses on agricultural and rural land districts. Part II of this Act facilitates the redefining, expansion, and enhancement of uses on rural district lands.

PART I

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

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

(d) Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, and game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private, and commercial use; bona fide agricultural services and uses [which] that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing,

farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land, provided that [sueh] these facilities shall not be used as or equipped for use as living quarters or dwellings; agricultural parks; and open area recreational facilities[~~including golf courses and golf driving ranges~~; provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B]. For the purposes of this chapter, golf courses and golf driving ranges are prohibited in agricultural districts, except as provided in section 205-4.5(d).

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

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

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

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry[~~s~~]. Farm dwelling as used in this paragraph means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings [~~which~~] that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment

storage areas that are normally considered directly accessory to the abovementioned uses and are permitted under section 205-2(d);

- (11) Agricultural parks; or
- (12) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.

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

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section [~~which~~] that these restriction and condition shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee from obtaining mortgage financing from any of the mortgage lending agencies set forth hereinbelow, and [~~said~~] the requirement is the sole reason for failure to obtain mortgage financing, then such requirement of encumbrances shall, insofar as [~~sueh~~] the mortgage financing is so jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that [~~sueh~~] the conditional waiver shall thereafter become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies mentioned hereinabove are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

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

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

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

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

- (1) Low density residential uses;
- (2) Agricultural uses; [~~and~~]
- (3) Golf courses, golf driving ranges, and golf-related facilities; and

(4) Public, quasi-public, and public utility facilities.

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

PART II

SECTION 5. Many parts of the state contain pockets of rural communities that are located in the near vicinity of many state highways. These unique communities offer a glimpse of what Hawaii was like before the advent of modern subdivisions.

Historically rural communities in our state were self-contained and did not function as a suburb of a major urban center. Commerce and community business were conducted within their boundaries at a personal level and everyone knew their neighbors. There was no need to venture outside of the community, and a trip to the city was usually reserved for special occasions.

The legislature believes that rural districts are an asset to our state, and by creating more rural districts, citizens will look at their land not just as real estate but as precious communities.

The purpose of this part is to:

- (1) Allow counties to work with the executive officer of the land use commission to develop policy and recommend boundary amendments to expand and enhance the use of rural districts;
- (2) Convene an advisory group for redefining rural districts; and
- (3) Appropriate money to accomplish the purposes of this part.

SECTION 6. (a) Each county’s planning department may conduct a study with the executive officer of the land use commission to review boundaries within its jurisdiction to develop policies and boundary amendment recommendations that would expand and enhance the use of rural districts. The boundary review process shall include but not be limited to:

- (1) Developing recommendations for more effective state and county rural land use policies and development standards; and
 - (2) Mapping lands recommended for rural district boundary amendments.
- (b) Each county may convene an advisory group or utilize existing general or community planning review processes for redefining rural districts and creating appropriate rural standards for boundary reviews. The advisory group may conduct public hearings in accordance with chapter 92, Hawaii Revised Statutes.

The advisory group may include representatives of county, state, and federal agencies, landowners, farmers and farm organizations, the business community, environmental organizations, native Hawaiian organizations, planning organizations, and community groups.

The advisory group’s review shall include:

- (1) Examining existing state and county rural land use policies and development standards, and the practices used in other states;
 - (2) Proposing amendments to existing statutes to better utilize the rural district for rural settlements and rural town centers;
 - (3) Developing common rural land use principles to guide state and county rural land use policies, including the concepts of rural service centers and rural service areas; and
 - (4) Compiling spatial data and mapping for lands in each county that are suitable for reclassification to rural district using geographic information systems.
- (c) The counties may develop a work plan that provides guidance in:

- (1) Examining existing state and county rural land use policies and development standards and the practices used in other states;
- (2) Developing common rural land use principles to guide state and county rural land use policies, including the concepts of rural service centers and rural service areas;
- (3) Developing recommendations for improving existing state and county rural land use policies to provide flexibility for rural non-agricultural uses and to utilize innovative rural land management tools; and
- (4) Compiling spatial data and mapping for lands in each county that are suitable for reclassification to rural districts using geographic information systems.

The executive officer of the land use commission shall be responsible for any consulting services as may be needed for the boundary review process. The executive officer of the land use commission shall also assist the counties in coordinating working and public informational meetings for their respective counties.

(d) Counties may develop criteria for mapping lands to be recommended for reclassification into rural districts; provided that priority shall be placed on the reclassification of lands that are already subdivided and developed for non-agricultural uses. Counties may further consider long-range land use patterns contained in the county's general, community, or development plans and new rural policy standards developed or considered by the county.

County planning departments may identify areas that have land use and resource characteristics suitable for the new rural district, and counties shall also consult with stakeholders, including property owners, community organizations, and county and state agencies in the mapping process.

(e) Each county may develop procedures for involving the public in reviewing lands for amending rural district boundaries. The procedures shall include a series of public meetings during the policy and mapping phases of the boundary review.

SECTION 7. The county planning departments shall submit any proposed legislation to redefine the rural district to the legislature at least twenty days before the convening of the regular session of 2006.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2005-2006 to conduct a study to develop policy and recommend boundary amendments to expand and enhance the use of rural districts.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

PART III

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval; provided that section 8 shall take effect on July 1, 2005.

(Approved July 7, 2005.)