

PROPOSED

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 2774
S.D. 1

A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. The legislature finds that the closure of Del
2 Monte Fresh Produce will result in significant negative impacts
3 to Kunia pineapple workers. Housing ranks among their primary
4 concerns. Currently, many employees and their families live in
5 plantation homes owned by the company at Kunia Camp. With the
6 closure of Del Monte Fresh Produce, many of these families face
7 the possibility of losing their homes. Housing is a fundamental
8 need, to which every person should have access.

9 With the loss of their jobs, many employees will undergo a
10 transition period as they seek new employment, participate in
11 job training programs, or seek other opportunities. During this
12 stressful period of transition, these employees must be assured
13 that their homes are secure and protected from any action that
14 might declare them to be an impermissible or illegal land use,
15 in the event that those units may require permits for renovation
16 or reconstruction at some time in the future.



1 The purpose of this Act is to make plantation communities
2 such as Kunia Camp a permitted rather than nonconforming use
3 within the state agricultural land use district.

4 SECTION 2. Section 46-4, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§46-4 County zoning.** (a) This section and any
7 ordinance, rule, or regulation adopted in accordance with this
8 section shall apply to lands not contained within the forest
9 reserve boundaries as established on January 31, 1957, or as
10 subsequently amended.

11 Zoning in all counties shall be accomplished within the
12 framework of a long-range, comprehensive general plan prepared
13 or being prepared to guide the overall future development of the
14 county. Zoning shall be one of the tools available to the
15 county to put the general plan into effect in an orderly manner.
16 Zoning in the counties of Hawaii, Maui, and Kauai means the
17 establishment of districts of such number, shape, and area, and
18 the adoption of regulations for each district to carry out the
19 purposes of this section. In establishing or regulating the
20 districts, full consideration shall be given to all available
21 data as to soil classification and physical use capabilities of
22 the land to allow and encourage the most beneficial use of the



1 land consonant with good zoning practices. The zoning power
2 granted herein shall be exercised by ordinance which may relate
3 to:

- 4 (1) The areas within which agriculture, forestry,
5 industry, trade, and business may be conducted;
- 6 (2) The areas in which residential uses may be regulated
7 or prohibited;
- 8 (3) The areas bordering natural watercourses, channels,
9 and streams, in which trades or industries, filling or
10 dumping, erection of structures, and the location of
11 buildings may be prohibited or restricted;
- 12 (4) The areas in which particular uses may be subjected to
13 special restrictions;
- 14 (5) The location of buildings and structures designed for
15 specific uses and designation of uses for which
16 buildings and structures may not be used or altered;
- 17 (6) The location, height, bulk, number of stories, and
18 size of buildings and other structures;
- 19 (7) The location of roads, schools, and recreation areas;
- 20 (8) Building setback lines and future street lines;
- 21 (9) The density and distribution of population;



- 1 (10) The percentage of a lot that may be occupied, size of
- 2 yards, courts, and other open spaces;
- 3 (11) Minimum and maximum lot sizes; and
- 4 (12) Other regulations the boards or city council find
- 5 necessary and proper to permit and encourage the
- 6 orderly development of land resources within their
- 7 jurisdictions.

8 The council of any county shall prescribe rules,

9 regulations, and administrative procedures and provide personnel

10 it finds necessary to enforce this section and any ordinance

11 enacted in accordance with this section. The ordinances may be

12 enforced by appropriate fines and penalties, civil or criminal,

13 or by court order at the suit of the county or the owner or

14 owners of real estate directly affected by the ordinances.

15 Any civil fine or penalty provided by ordinance under this

16 section may be imposed by the district court, or by the zoning

17 agency after an opportunity for a hearing pursuant to chapter

18 91. The proceeding shall not be a prerequisite for any

19 injunctive relief ordered by the circuit court.

20 Nothing in this section shall invalidate any zoning

21 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 insure 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 is defined as an identifiable unit providing residence and care
13 for 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" means a mentally ill person as
2 defined under 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 residential use of land
10 for single-family dwellings in plantation communities as defined
11 in section 205-4.5; provided that no zoning ordinance shall
12 provide for elimination, amortization, or phasing out of
13 plantation communities as a nonconforming use existing on the
14 effective date of this Act."

15 SECTION 3. Section 205-2, Hawaii Revised Statutes, is
16 amended by amending subsection (d) to read as follows:

17 "(d) Agricultural districts shall include activities or
18 uses as characterized by the cultivation of crops, orchards,
19 forage, and forestry; farming activities or uses related to
20 animal husbandry, aquaculture, and game and fish propagation;
21 aquaculture, which means the production of aquatic plant and
22 animal life for food and fiber within ponds and other bodies of



1 water; wind generated energy production for public, private, and
2 commercial use; bona fide agricultural services and uses that
3 support the agricultural activities of the fee or leasehold
4 owner of the property and accessory to any of the above
5 activities, whether or not conducted on the same premises as the
6 agricultural activities to which they are accessory, including
7 but not limited to farm dwellings as defined in section
8 205-4.5(a)(4), employee housing, farm buildings, mills, storage
9 facilities, processing facilities, vehicle and equipment storage
10 areas, [~~and~~] roadside stands for the sale of products grown on
11 the premises[+], and plantation communities as defined in
12 section 205-4.5(a)(12); wind machines and wind farms; small-
13 scale meteorological, air quality, noise, and other scientific
14 and environmental data collection and monitoring facilities
15 occupying less than one-half acre of land, provided that these
16 facilities shall not be used as or equipped for use as living
17 quarters or dwellings; agricultural parks; and open area
18 recreational facilities. For the purposes of this chapter, golf
19 courses and golf driving ranges are prohibited in agricultural
20 districts, except as provided in section 205-4.5(d).

21 These districts may include areas which are not used for,
22 or which are not suited to, agricultural and ancillary

1 activities by reason of topography, soils, and other related
2 characteristics."

3 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
4 amended to read as follows:

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

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



- 1 parks developed by the State, or where agricultural
2 activity provides income to the family occupying the
3 dwelling;
- 4 (5) Public institutions and buildings that are necessary
5 for agricultural practices;
- 6 (6) Public and private open area types of recreational
7 uses including day camps, picnic grounds, parks, and
8 riding stables, but not including dragstrips,
9 airports, drive-in theaters, golf courses, golf
10 driving ranges, country clubs, and overnight camps;
- 11 (7) Public, private, and quasi-public utility lines and
12 roadways, transformer stations, communications
13 equipment buildings, solid waste transfer stations,
14 major water storage tanks, and appurtenant small
15 buildings such as booster pumping stations, but not
16 including offices or yards for equipment, material,
17 vehicle storage, repair or maintenance, or treatment
18 plants, or corporation yards, or other like
19 structures;
- 20 (8) Retention, restoration, rehabilitation, or improvement
21 of buildings or sites of historic or scenic interest;



PROPOSED

1 (9) Roadside stands for the sale of agricultural products
2 grown on the premises;

3 (10) Buildings and uses, including but not limited to
4 mills, storage, and processing facilities, maintenance
5 facilities, and vehicle and equipment storage areas
6 that are normally considered directly accessory to the
7 abovementioned uses and are permitted under section
8 205-2(d);

9 (11) Agricultural parks; [~~or~~]

10 (12) Plantation communities, which as used in this
11 paragraph means a cluster of single-family dwellings
12 and community buildings established on land owned or
13 formerly owned by a sugar or pineapple plantation and
14 developed for employees or former employees of the
15 plantation; or

16 (13) Wind energy facilities, including the appurtenances
17 associated with the production and transmission of
18 wind generated energy; provided that such facilities
19 and appurtenances are compatible with agriculture uses
20 and cause minimal adverse impact on agricultural land.

21 (b) Uses not expressly permitted in subsection (a) shall
22 be prohibited, except the uses permitted as provided in sections



1 205-6 and 205-8, and construction of single-family dwellings on
2 lots existing before June 4, 1976. Any other law to the
3 contrary notwithstanding, no subdivision of land within the
4 agricultural district with soil classified by the land study
5 bureau's detailed land classification as overall (master)
6 productivity rating class A or B shall be approved by a county
7 unless the said A and B lands within the subdivision shall be
8 made subject to the restriction on uses as prescribed in this
9 section and to the condition that the uses shall be primarily in
10 pursuit of an agricultural activity.

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

18 If the foregoing requirement of encumbrances running with
19 the land jeopardizes the owner or lessee from obtaining mortgage
20 financing from any of the mortgage lending agencies set forth
21 hereinbelow, and the requirement is the sole reason for failure
22 to obtain mortgage financing, then such requirement of



1 encumbrances shall, insofar as the mortgage financing is so
2 jeopardized, be conditionally waived by the appropriate county
3 enforcement officer; provided that the conditional waiver shall
4 thereafter become effective only in the event that the property
5 is subjected to foreclosure proceedings by the mortgage lender.

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

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

19 (d) Notwithstanding any other provision of this chapter to
20 the contrary, golf courses and golf driving ranges approved by a
21 county before July 1, 2005, for development within the



1 agricultural district shall be permitted uses within the
2 agricultural district.

3 (e) Notwithstanding any other provision of this chapter to
4 the contrary, plantation communities as defined in this section
5 existing before the effective date of this Act shall be
6 permitted uses within the agricultural district, and section
7 205-8 shall not apply."

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

10 "(b) Within agricultural districts, uses compatible to the
11 activities described in section 205-2 as determined by the
12 commission shall be permitted; provided that accessory
13 agricultural uses and services described in sections 205-2 and
14 205-4.5 may be further defined by each county by zoning
15 ordinance. Other uses may be allowed by special permits issued
16 pursuant to this chapter. The minimum lot size in agricultural
17 districts shall be determined by each county by zoning
18 ordinance, subdivision ordinance, or other lawful means;
19 provided that the minimum lot size for any agricultural use
20 shall not be less than one acre, except as provided herein. If
21 the county finds that unreasonable economic hardship to the
22 owner or lessee of land cannot otherwise be prevented or where



1 land utilization is improved, the county may allow lot sizes of
 2 less than the minimum lot size as specified by law for lots
 3 created by a consolidation of existing lots within an
 4 agricultural district and the resubdivision thereof; provided
 5 that the consolidation and resubdivision do not result in an
 6 increase in the number of lots over the number existing prior to
 7 consolidation; and provided further that in no event shall a
 8 lot, which is equal to or exceeds the minimum lot size of one
 9 acre be less than that minimum after the consolidation and
 10 resubdivision action. The county may also allow lot sizes of
 11 less than the minimum lot size as specified by law for lots
 12 created or used for plantation communities as defined in section
 13 205-4.5(a)(12), for public, private, and quasi-public utility
 14 purposes, and for lots resulting from the subdivision of
 15 abandoned roadways and railroad easements."

16 SECTION 6. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

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

PROPOSED

Report Title:

Housing; Kunia; Grandfather Land Use

Description:

Provides that plantation communities such as Kunia Camp, Oahu, shall be a permitted land use under agricultural land use district classification and zoning. (SD1)

