
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. The purpose of this Act is to provide a means
2 of addressing the rapid and increasing loss of rural lands and
3 to protect our scenic, historic, recreational, cultural, natural
4 and archaeological resources that tourism depends on. As a
5 consequence to this situation, the legislature is currently
6 considering measures addressing the preservation of lands on the
7 north shore of O'ahu owned by Kuilima Resort and the Galbraith
8 Estate and the Ka'iwi coast on the south shore of O'ahu.

9 The purpose of this Act is to provide an alternative for
10 preserving valuable lands by allowing for the transferability of
11 development rights between properties.

12 As part of a statewide development plan, the state land use
13 commission would designate properties whose landowners would be
14 allowed to sell their property's development rights to a
15 transfer development rights (TDR) bank. The State would store
16 and sell these development rights to landowners in a receiving
17 area designated for high density. This would allow the State to



1 offer compensation to landowners who are willing to retain their
2 land classification or down zone it to conservation or
3 preservation.

4 This Act does not replace but supplements current statutory
5 resources that are designed to preserve lands designated as
6 valuable lands such as tax credits to landowners or moneys for
7 purchasing lands.

8 TDR programs have existed since the 1990s and have been
9 used successfully in Maryland, New Jersey, Colorado and
10 Washington.

11 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
12 amended by adding a new part to be appropriately designated and
13 to read as follows:

14 "PART . TRANSFER OF DEVELOPMENT RIGHTS

15 §205- Purpose. The purpose of this part is to:

- 16 (1) Preserve open space, scenic views, critical and
17 sensitive areas, and natural hazard areas;
18 (2) Protect lands and structures of aesthetic,
19 architectural, and historic significance;
20 (3) Retain open areas in which healthful outdoor
21 recreation can occur;



1 (4) Ensure that the owners of preserved, conserved, or
2 protected land may make reasonable use of their
3 property rights by transferring their right to develop
4 to eligible zones;

5 (5) Provide a mechanism whereby development rights may be
6 reliably transferred; and

7 (6) Ensure that development rights are transferred to
8 properties in areas or districts that have adequate
9 community facilities, including transportation, to
10 accommodate additional development.

11 §205- Authority. The land use commission shall be the
12 authority of this part.

13 §205- Definitions. For purposes of this part:

14 "Density" or "net density" means the result of multiplying
15 the net area in acres times 43,560 square feet per acre and then
16 dividing the product by the required minimum number of square
17 feet per dwelling unit required by the zoning ordinance for a
18 specific use district. "Density" or "net density" is expressed
19 as dwelling units per acre or per net acre.

20 "Development rights" means the rights of the owner of a
21 parcel of land, under land development rules and regulations, to
22 configure that parcel and the structures thereon to a particular



1 density for residential uses or floor area ratio for
2 nonresidential uses. Development rights exclude the rights to
3 the area of or height of a sign.

4 "Floor area" means the gross horizontal area of a floor of
5 a building or structure measured from the exterior walls or from
6 the centerline of party walls. "Floor area" includes the floor
7 area of accessory buildings and structures.

8 "Floor area ratio" means the maximum amount of floor area
9 on a lot or parcel expressed as a proportion of the net area of
10 the lot or parcel.

11 "Net area" means the total area of a site for residential
12 or nonresidential development, excluding street rights-of-way
13 and other publicly dedicated improvements, such as parks, open
14 space, and stormwater detention and retention facilities, and
15 easements, covenants, or deed restrictions, that prohibit the
16 construction of a building on any part of the site. "Net area"
17 is expressed in either acres or square feet.

18 "Overlay district" means a district superimposed over one
19 or more zoning districts or parts of districts that imposes
20 additional requirements to those applicable for the underlying
21 zone.



1 "Receiving district" means one or more districts in which
2 the development rights of parcels in the sending district may be
3 used.

4 "Receiving parcel" means a parcel of land in the receiving
5 district that is the subject of a transfer of development
6 rights, where the owner of the parcel is receiving development
7 rights, directly or by intermediate transfers, from a sending
8 parcel, and on which increased density, intensity, or both, is
9 allowed by reason of the transfer of development rights.

10 "Sending district" means one more districts in which the
11 development rights of parcels in the district may be designated
12 for use in one or more receiving districts.

13 "Sending parcel" means a parcel of land in the sending
14 district that is the subject of a transfer of development
15 rights, where the owner of the parcel is conveying development
16 rights of the parcel, and on which those rights so conveyed are
17 extinguished and may not be used by reason of the transfer of
18 development rights.

19 "Transfer of development rights" means the procedure
20 prescribed by this part whereby the owner of a parcel in the
21 sending district may convey development rights to the owner of a
22 parcel in the receiving district or other person or entity,



1 whereby the development rights so conveyed are extinguished on
2 the sending parcel and may be exercised on the receiving parcel
3 in addition to the development rights already existing regarding
4 that parcel or may be held by the receiving person or entity.

5 "Transferee" means the person or legal entity, including a
6 person or legal entity that owns property in a receiving
7 district, who purchases the development rights.

8 **§205- Districts.** (a) The commission may establish
9 sending and receiving districts as overlays within land use
10 district boundaries or any other provisions to effectuate their
11 duties. The commission shall cause the official zoning district
12 map to be amended by overlay districts to the affected
13 properties. The designation "TDR-S" shall be the title of the
14 overlay for a sending district, and the designation "TDR-R"
15 shall be the title of the overlay for a receiving district.

16 (b) Sending and receiving districts established pursuant
17 to this part shall be consistent with the local comprehensive
18 plan.

19 **§205- Designation of districts.** (a) The commission
20 shall designate appropriate areas as sending districts for the
21 purposes of the transfer of development rights program.



1 (b) The commission shall designate zoning districts that
2 shall be receiving districts for the purposes of the transfer of
3 development rights program after approval by the respective
4 county planning commission.

5 §205- Right to transfer development rights. (a) Each
6 transferor shall have the right to sever all or a portion of the
7 rights to develop from the parcel in a sending district and to
8 sell, trade, or barter all or a portion of those rights to a
9 transferee consistent with the purposes of this part.

10 (b) All rights transferred under this part are
11 extinguished upon transfer.

12 §205- Development rights bank. A development rights
13 bank is established within the commission and shall be called
14 the "TDR Bank". The bank shall have the power to:

- 15 (1) Purchase and sell or convey development rights;
- 16 (2) Recommend to a state agency where the State should
17 acquire development rights by condemnation;
- 18 (3) Hold indefinitely any development rights it possesses
19 for conservation or other purposes;
- 20 (4) Receive donations of development rights from any
21 person or entity; and



1 (5) Receive funding from any source, the proceeds from the
2 sale of development rights or grants or donations.

3 §205- Administration. The commission shall adopt rules
4 pursuant to chapter 91 for the determination of development
5 rights, issuance of certificate, instruments of transfer, and
6 application of development rights to a receiving parcel."

7 SECTION 3. This Act shall take effect on July 1, 2050.



Report Title:

Development Rights

Description:

Sets up a process for transferring development rights from one property to another. (SD1)

