
A BILL FOR AN ACT

RELATING TO AGRICULTURAL DISTRICTS.

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

1 SECTION 1. 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 crops for bioenergy,
9 flowers, vegetables, foliage, fruits, forage, and
10 timber;
- 11 (2) Game and fish propagation;
- 12 (3) Raising of livestock, including poultry, bees, fish,
13 or other animal or aquatic life that are propagated
14 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



1 and used in connection with a farm, including clusters
2 of single-family farm dwellings permitted within
3 agricultural parks developed by the State, or where
4 agricultural activity provides income to the family
5 occupying the dwelling;

6 (5) Public institutions and buildings that are necessary
7 for agricultural practices;

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

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



- 1 (8) Retention, restoration, rehabilitation, or improvement
- 2 of buildings or sites of historic or scenic interest;
- 3 (9) Roadside stands for the sale of agricultural products
- 4 grown on the premises;
- 5 (10) Buildings and uses, including mills, storage, and
- 6 processing facilities, maintenance facilities, and
- 7 vehicle and equipment storage areas that are normally
- 8 considered directly accessory to the above-mentioned
- 9 uses and are permitted under section 205-2(d);
- 10 (11) Agricultural parks;
- 11 (12) Plantation community subdivisions, which as used in
- 12 this chapter means an established subdivision or
- 13 cluster of employee housing, community buildings, and
- 14 agricultural support buildings on land currently or
- 15 formerly owned, leased, or operated by a sugar or
- 16 pineapple plantation; provided that the existing
- 17 structures may be used or rehabilitated for use, and
- 18 new employee housing and agricultural support
- 19 buildings may be allowed on land within the
- 20 subdivision as follows:



- 1 (A) The employee housing is occupied by employees or
2 former employees of the plantation who have a
3 property interest in the land;
- 4 (B) The employee housing units not owned by their
5 occupants shall be rented or leased at affordable
6 rates for agricultural workers; or
- 7 (C) The agricultural support buildings shall be
8 rented or leased to agricultural business
9 operators or agricultural support services;
- 10 (13) Agricultural tourism conducted on a working farm, or a
11 farming operation as defined in section 165-2, for the
12 enjoyment, education, or involvement of visitors;
13 provided that the agricultural tourism activity is
14 accessory and secondary to the principal agricultural
15 use and does not interfere with surrounding farm
16 operations; and provided further that this paragraph
17 shall apply only to a county that has adopted
18 ordinances regulating agricultural tourism under
19 section 205-5;
- 20 (14) Wind energy facilities, including the appurtenances
21 associated with the production and transmission of
22 wind generated energy; provided that the wind energy



1 facilities and appurtenances are compatible with
2 agriculture uses and cause minimal adverse impact on
3 agricultural land;

- 4 (15) Biofuel processing facilities, including the
5 appurtenances associated with the production and
6 refining of biofuels that is normally considered
7 directly accessory and secondary to the growing of the
8 energy feedstock; provided that biofuels processing
9 facilities and appurtenances do not adversely impact
10 agricultural land and other agricultural uses in the
11 vicinity.

12 For the purposes of this paragraph:

13 "Appurtenances" means operational infrastructure
14 of the appropriate type and scale for economic
15 commercial storage and distribution, and other similar
16 handling of feedstock, fuels, and other products of
17 biofuels processing facilities.

18 "Biofuel processing facility" means a facility
19 that produces liquid or gaseous fuels from organic
20 sources such as biomass crops, agricultural residues,
21 and oil crops, including palm, canola, soybean, and
22 waste cooking oils; grease; food wastes; and animal



1 residues and wastes that can be used to generate
2 energy;

3 (16) Agricultural-energy facilities, including
4 appurtenances necessary for an agricultural-energy
5 enterprise; provided that the primary activity of the
6 agricultural-energy enterprise is agricultural
7 activity. To be considered the primary activity of an
8 agricultural-energy enterprise, the total acreage
9 devoted to agricultural activity shall be not less
10 than ninety per cent of the total acreage of the
11 agricultural-energy enterprise. The agricultural-
12 energy facility shall be limited to lands owned,
13 leased, licensed, or operated by the entity conducting
14 the agricultural activity.

15 As used in this paragraph:

16 "Agricultural activity" means any activity
17 described in paragraphs (1) to (3) of this subsection.

18 "Agricultural-energy enterprise" means an
19 enterprise that integrally incorporates an
20 agricultural activity with an agricultural-energy
21 facility.



1 "Agricultural-energy facility" means a facility
2 that generates, stores, or distributes renewable
3 energy as defined in section 269-91 or renewable fuel
4 including electrical or thermal energy or liquid or
5 gaseous fuels from products of agricultural activities
6 from agricultural lands located in the State.

7 "Appurtenances" means operational infrastructure
8 of the appropriate type and scale for the economic
9 commercial generation, storage, distribution, and
10 other similar handling of energy, including equipment,
11 feedstock, fuels, and other products of agricultural-
12 energy facilities; or

13 (17) Construction and operation of wireless communication
14 antennas; provided that, for the purposes of this
15 paragraph, "wireless communication antenna" means
16 communications equipment that is either freestanding
17 or placed upon or attached to an already existing
18 structure and that transmits and receives
19 electromagnetic radio signals used in the provision of
20 all types of wireless communications services;
21 provided further that nothing in this paragraph shall
22 be construed to permit the construction of any new



1 structure that is not deemed a permitted use under
2 this subsection.

3 (b) Uses not expressly permitted in subsection (a) shall
4 be prohibited, except the uses permitted as provided in sections
5 205-6 and 205-8, and construction of single-family dwellings on
6 lots existing before June 4, 1976. Any other law to the
7 contrary notwithstanding, no subdivision of land within the
8 agricultural district with soil classified by the land study
9 bureau's detailed land classification as overall (master)
10 productivity rating class A or B shall be approved by a county
11 unless those A and B lands within the subdivision are made
12 subject to the restriction on uses as prescribed in this section
13 and to the condition that the uses shall be primarily in pursuit
14 of an agricultural activity.

15 Any deed, lease, agreement of sale, mortgage, or other
16 instrument of conveyance covering any land within the
17 agricultural subdivision shall expressly contain the restriction
18 on uses and the condition, as prescribed in this section that
19 these restrictions and conditions shall be encumbrances running
20 with the land until such time that the land is reclassified to a
21 land use district other than agricultural district.



1 If the foregoing requirement of encumbrances running with
2 the land jeopardizes the owner or lessee in obtaining mortgage
3 financing from any of the mortgage lending agencies set forth in
4 the following paragraph, and the requirement is the sole reason
5 for failure to obtain mortgage financing, then the requirement
6 of encumbrances [~~shall~~], insofar as such mortgage financing is
7 jeopardized, shall be conditionally waived by the appropriate
8 county enforcement officer; provided that the conditional waiver
9 shall become effective only in the event that the property is
10 subjected to foreclosure proceedings by the mortgage lender.

11 The mortgage lending agencies referred to in the preceding
12 paragraph are the Federal Housing Administration, Federal
13 National Mortgage Association, Veterans Administration, Small
14 Business Administration, United States Department of
15 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
16 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
17 other federal, state, or private mortgage lending agency
18 qualified to do business in Hawaii, and their respective
19 successors and assigns.

20 (c) Within the agricultural district, all lands with soil
21 classified by the land study bureau's detailed land
22 classification as overall (master) productivity rating class C,



1 D, E, or U shall be restricted to the uses permitted for
2 agricultural districts as set forth in section 205-5(b).

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

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

12 (f) Notwithstanding any other provision of this chapter to
13 the contrary, the renting of a dwelling unit on a long- or
14 short-term basis, shall be a permitted use within the
15 agricultural district. For the purposes of this section,
16 "dwelling unit" shall have the same meaning as defined in
17 section 521-8.

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

22 (1) The principal use of the leased land is agriculture;



1 (2) No permanent or temporary dwellings or farm dwellings,
 2 including trailers and campers, are constructed on the
 3 leased area. This restriction shall not prohibit the
 4 construction of storage sheds, equipment sheds, or
 5 other structures appropriate to the agricultural
 6 activity carried on within the lot; and

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

9 (A) The minimum real property tax agricultural
 10 dedication period of the county in which the
 11 subdivided lot is located; or

12 (B) Five years.

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

16 SECTION 2. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 3. This Act shall take effect upon its approval.

19

INTRODUCED BY: Roland D. Sarno II
 BY REQUEST

JAN 23 2009

Report Title:

Agricultural Districts; Permitted Uses

Description:

Allows the renting of dwelling units in state agricultural districts.

