
A BILL FOR AN ACT

RELATING TO LAND USE.

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

- 1 SECTION 1. Section 205-2, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:
- 3 "(d) Agricultural districts shall include:
- 4 (1) Activities or uses as characterized by the cultivation
5 of crops, including crops for bioenergy, orchards,
6 forage, and forestry;
- 7 (2) Farming activities or uses related to animal husbandry
8 and game and fish propagation;
- 9 (3) Aquaculture, which means the production of aquatic
10 plant and animal life within ponds and other bodies of
11 water;
- 12 (4) Wind generated energy production for public, private,
13 and commercial use;
- 14 (5) Biofuel production, as described in section 205-
15 4.5(a)(15), for public, private, and commercial use;
- 16 (6) Solar energy facilities; provided that this paragraph
17 shall apply only to land with soil classified by the



- 1 land study bureau's detailed land classification as
2 overall (master) productivity rating class D or E;
- 3 (7) Bona fide agricultural services and uses that support
4 the agricultural activities of the fee or leasehold
5 owner of the property and accessory to any of the
6 above activities, regardless of whether conducted on
7 the same premises as the agricultural activities to
8 which they are accessory, including farm dwellings as
9 defined in section 205-4.5(a)(4), employee housing,
10 farm buildings, mills, storage facilities, processing
11 facilities, agricultural-energy facilities as defined
12 in section 205-4.5(a)(16), vehicle and equipment
13 storage areas, roadside stands for the sale of
14 products grown on the premises, and plantation
15 community subdivisions as defined in section 205-
16 4.5(a)(12);
- 17 (8) Wind machines and wind farms;
- 18 (9) Small-scale meteorological, air quality, noise, and
19 other scientific and environmental data collection and
20 monitoring facilities occupying less than one-half
21 acre of land; provided that these facilities shall not



1 be used as or equipped for use as living quarters or
2 dwellings;

3 (10) Agricultural parks;

4 (11) Agricultural tourism conducted on a working farm, or a
5 farming operation as defined in section 165-2, for the
6 enjoyment, education, or involvement of visitors;
7 provided that the agricultural tourism activity is
8 accessory and secondary to the principal agricultural
9 use and does not interfere with surrounding farm
10 operations; and provided further that this paragraph
11 shall apply only to a county that has adopted
12 ordinances regulating agricultural tourism under
13 section 205-5; [and]

14 (12) Open area recreational facilities[-]; and

15 (13) Mining for sand, rock, gravel, and other materials
16 suitable for use and used in agriculture or
17 construction, and activities ancillary to mining,
18 including processing and storage.

19 Agricultural districts shall not include golf courses and golf
20 driving ranges, except as provided in section 205-4.5(d).

21 Agricultural districts may include areas that are not used for,
22 or that are not suited to, agricultural and ancillary activities



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

3 SECTION 2. 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 crops for bioenergy,
11 flowers, vegetables, foliage, fruits, forage, and
12 timber;
- 13 (2) Game and fish propagation;
- 14 (3) Raising of livestock, including poultry, bees, fish,
15 or other animal or aquatic life that are propagated
16 for economic or personal use;
- 17 (4) Farm dwellings, employee housing, farm buildings, or
18 activities or uses related to farming and animal
19 husbandry. "Farm dwelling", as used in this
20 paragraph, means a single-family dwelling located on
21 and used in connection with a farm, including clusters
22 of single-family farm dwellings permitted within



- 1 agricultural parks developed by the State, or where
2 agricultural activity provides income to the family
3 occupying the 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, treatment
18 plants, corporation yards, or other similar
19 structures;
- 20 (8) Retention, restoration, rehabilitation, or improvement
21 of buildings or sites of historic or scenic interest;



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



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



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

9 For the purposes of this paragraph:

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

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



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

13 As used in this paragraph:

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

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

20 "Agricultural-energy facility" means a facility
21 that generates, stores, or distributes renewable
22 energy as defined in section 269-91 or renewable fuel



1 including electrical or thermal energy or liquid or
2 gaseous fuels from products of agricultural activities
3 from agricultural lands located in the State.

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

10 (17) Construction and operation of wireless communication
11 antennas; provided that, for the purposes of this
12 paragraph, "wireless communication antenna" means
13 communications equipment that is either freestanding
14 or placed upon or attached to an already existing
15 structure and that transmits and receives
16 electromagnetic radio signals used in the provision of
17 all types of wireless communications services;
18 provided further that nothing in this paragraph shall
19 be construed to permit the construction of any new
20 structure that is not deemed a permitted use under
21 this subsection.



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

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

20 If the foregoing requirement of encumbrances running with
21 the land jeopardizes the owner or lessee in obtaining mortgage
22 financing from any of the mortgage lending agencies set forth in



1 the following paragraph, and the requirement is the sole reason
2 for failure to obtain mortgage financing, then the requirement
3 of encumbrances [~~shall~~], insofar as [~~such~~] the mortgage
4 financing is jeopardized, shall be conditionally waived by the
5 appropriate county enforcement officer; provided that the
6 conditional waiver shall become effective only in the event that
7 the property is subjected to foreclosure proceedings by the
8 mortgage lender.

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

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



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

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

10 [†] (f) [†] Notwithstanding any other law to the contrary,
11 agricultural lands may be subdivided and leased for the
12 agricultural uses or activities permitted in subsection (a);
13 provided that:

- 14 (1) The principal use of the leased land is agriculture;
15 (2) No permanent or temporary dwellings or farm dwellings,
16 including trailers and campers, are constructed on the
17 leased area. This restriction shall not prohibit the
18 construction of storage sheds, equipment sheds, or
19 other structures appropriate to the agricultural
20 activity carried on within the lot; and
21 (3) The lease term for a subdivided lot shall be for at
22 least as long as the greater of:



1 (A) The minimum real property tax agricultural
 2 dedication period of the county in which the
 3 subdivided lot is located; or

4 (B) Five years.

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

8 (g) Notwithstanding any other provision of this chapter to
 9 the contrary, the mining of sand, rock, gravel, or other
 10 materials suitable for use and used in agriculture or
 11 construction, and activities ancillary to mining, including
 12 processing and storage, shall be permitted uses in the
 13 agricultural district."

14 SECTION 3. Section 205-5, Hawaii Revised Statutes, is
 15 amended by amending subsections (a) and (b) to read as follows:

16 "(a) Except as herein provided, the powers granted to
 17 counties under section 46-4 shall govern the zoning within the
 18 districts, [~~other than in~~] except for conservation districts[-]
 19 and mining pursuant to section 205-2(d)(13). Conservation
 20 districts shall be governed by the department of land and
 21 natural resources pursuant to chapter 183C. Mining pursuant to



1 section 205-4.5(g) shall be within the exclusive jurisdiction of
2 the commission.

3 (b) Within agricultural districts, uses compatible to the
4 activities described in section 205-2 as determined by the
5 commission shall be permitted; provided that accessory
6 agricultural uses and services described in sections 205-2 and
7 205-4.5 may be further defined by each county by zoning
8 ordinance[-], except for mining pursuant to section 205-4.5.

9 Each county shall adopt ordinances setting forth procedures and
10 requirements, including provisions for enforcement, penalties,
11 and administrative oversight, for the review and permitting of
12 agricultural tourism uses and activities as an accessory use on
13 a working farm, or farming operation as defined in section
14 165-2; provided that agricultural tourism activities shall not
15 be permissible in the absence of a bona fide farming operation.
16 Ordinances shall include but not be limited to:

17 (1) Requirements for access to a farm, including road
18 width, road surface, and parking;

19 (2) Requirements and restrictions for accessory facilities
20 connected with the farming operation, including gift
21 shops and restaurants; provided that overnight
22 accommodations shall not be permitted;



- 1 (3) Activities that may be offered by the farming
- 2 operation for visitors;
- 3 (4) Days and hours of operation; and
- 4 (5) Automatic termination of the accessory use upon the
- 5 cessation of the farming operation.

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



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

9 SECTION 4. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval.
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INTRODUCED BY:

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Report Title:

Land Use; Agricultural District; Mining

Description:

Allows mining as a permitted use in the agricultural district.

