

ACT 237

S.B. NO. 2774

A Bill for an Act Relating to Housing.

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

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

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

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

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

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

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:

- (1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;
- (2) The areas in which residential uses may be regulated or prohibited;
- (3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted;
- (4) The areas in which particular uses may be subjected to special restrictions;
- (5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;
- (6) The location, height, bulk, number of stories, and size of buildings and other structures;
- (7) The location of roads, schools, and recreation areas;
- (8) Building setback lines and future street lines;
- (9) The density and distribution of population;
- (10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
- (11) Minimum and maximum lot sizes; and
- (12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.

Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to [insure] ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d).

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

(b) Any final order of a zoning agency established under this section may be appealed to the circuit court of the circuit in which the land in question is found. The appeal shall be in accordance with the Hawaii rules of civil procedure.

(c) Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents and that are licensed by the State as provided for under section 321-15.6, or in an intermediate care facility/mental retardation-community for persons, including mentally ill, elder, disabled, developmentally disabled, or totally disabled persons, who are not related to the home operator or facility staff; provided that those group living facilities meet all applicable county requirements not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements.

(e) No permit shall be issued by a county agency for the operation of a halfway house, a clean and sober home, or a drug rehabilitation home unless a public informational meeting is first held in the affected community. The State shall provide notification and access to relevant information, as required, under chapter 846E.

A clean and sober home shall be considered a residential use of property and shall be a permitted or conditional use in residentially designated zones, including but not limited to zones for single-family dwellings.

(f) For purposes of this section:

“Clean and sober home” means a house that is operated pursuant to a program designed to provide a stable environment of clean and sober living conditions to sustain recovery and that is shared by unrelated adult persons who:

- (1) Are recovering from substance abuse;
- (2) Share household expenses; and
- (3) Do not require twenty-four-hour supervision, rehabilitation, or therapeutic services or care in the home or on the premises. The home shall meet all applicable laws, codes, and rules of the counties and State.

“Developmentally disabled person” means a person suffering from developmental disabilities as defined under section 333F-1.

“Disabled person” means a person with a disability as defined under section 515-2.

“Drug rehabilitation home” means:

- (1) A residential treatment facility that provides a therapeutic residential program for care, diagnosis, treatment, or rehabilitation for socially or emotionally distressed persons, mentally ill persons, persons suffering from substance abuse, and developmentally disabled persons; or
- (2) A supervised living arrangement that provides mental health services, substance abuse services, or supportive services for individuals or families who do not need the structure of a special treatment facility and are transitioning to independent living;

provided that drug rehabilitation homes shall not include halfway houses or clean and sober homes.

“Elder” means an elder as defined under section 201G-1.

“Halfway house” is defined as a group living facility for people who:

- (1) Have been released or are under supervised release from a correctional facility;
- (2) Have been released from a mental health treatment facility; or
- (3) Are receiving substance abuse or sex offender treatment; and

are housed to participate in programs that help them readjust to living in the community.

“Intermediate care facility/mental retardation-community” [~~is defined~~] means as an identifiable unit providing residence and care for eight or fewer mentally retarded individuals. Its primary purpose is the provision of health, social, and rehabilitation services to the mentally retarded through an individually designed active treatment program for each resident. No person who is predominantly confined to bed shall be admitted as a resident of such a facility.

“Mental health treatment facility” means a psychiatric facility or special treatment facility as defined under section 334-1.

“Mentally ill person” [~~means a mentally ill person~~] has the same meaning as defined under section 334-1.

“Totally disabled person” means a “person totally disabled” as defined under section 235-1.

“Treatment program” means a “substance abuse program” or “treatment program”, as those terms are defined under section 353G-2.

(g) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for employee housing and community buildings in plantation community subdivisions as defined in section 205-4.5(a)(12); in addition, no zoning ordinance shall provide for elimination, amortization, or phasing out of plantation community subdivisions as a nonconforming use.”

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

“(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 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[;], and plantation community subdivisions as defined in section 205-4.5(a)(12); 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 these facilities shall not be used as or equipped for use as living quarters or dwellings; agricultural parks; and open area recreational facilities. 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 4. 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. 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 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] similar 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 above mentioned uses and are permitted under section 205-2(d);

- (11) Agricultural parks; [ø]
- (12) Plantation community subdivisions, which as used in this paragraph means a subdivision or cluster of employee housing, community buildings, and acreage established on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation and in residential use by employees or former employees of the plantation; provided that the employees or former employees shall have a property interest in the land; or
- (13) 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 that [{}the{}] 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 the requirement is the sole reason for failure to obtain mortgage financing, then such requirement of encumbrances shall, insofar as the mortgage financing is so jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that 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.

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

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

“(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot[,] which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements.”

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

SECTION 7. This Act shall take effect upon approval.

(Approved June 23, 2006.)