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**A BILL FOR AN ACT**

RELATING TO AGRICULTURAL LAND USE.

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

1           SECTION 1. Article XI, section 3, of the Constitution of  
2 the State of Hawaii provides, among other things, that "[t]he  
3 State shall conserve and protect agricultural lands, promote  
4 diversified agriculture, increase agricultural self-sufficiency  
5 and assure the availability of agriculturally suitable lands."

6           Some of the best agricultural lands in the State are also  
7 lands that, because of topography, location, and climate, are  
8 desirable for development of housing. The Legislature finds  
9 that in the recent past hundreds of acres of agricultural land  
10 have been converted into developments that feature homes without  
11 agricultural activity, agribusiness, or subsistence farming.  
12 Although the homeowners may cultivate a few fruit trees or an  
13 herb garden, no meaningful agricultural activity takes place,  
14 even though the developments are sometimes called "agricultural  
15 subdivisions."

16           The Legislature further finds that loss of agricultural  
17 lands to "fake farms" results in loss of the State's ability to

1 develop sustainable agriculture that could increase food and  
2 fuel self-sufficiency for Hawaii's people.

3 The purpose of this Act is to comply with the mandate of  
4 Article XI, section 3 to protect the State's agricultural land  
5 by requiring that agricultural land is used for agricultural  
6 activities, agribusiness, or subsistence farming, and not for  
7 "fake farms."

8 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
9 by adding a new section, to be appropriately designated, and to  
10 read as follows:

11 "§46- Subdivisions on agricultural land. (a) Except  
12 as hereinafter provided, each subdivision of land classified in  
13 the agricultural district under chapter 205 that is approved by  
14 any county shall be subject to the following conditions:

- 15 (1) Each lot in the subdivision, except roadways, shall  
16 be used for agribusiness or subsistence farming;  
17 (2) Prior to issuing any building permits for  
18 construction of a farm dwelling, as defined in  
19 section 205-4.5, the county shall require the  
20 applicant for the building permit to submit to and  
21 obtain approval from the appropriate county authority  
22 a farm plan, and shall have substantially established

1 an agricultural activity, agribusiness, or subsistence  
2 farm on the lot for which the building permit is  
3 sought.

4 (3) Upon receipt of subdivision approval, the applicant  
5 shall cause to be recorded with the bureau of  
6 conveyances deed covenants running with the land  
7 requiring that the lot owner utilize the lot for  
8 agribusiness or subsistence farming.

9 (b) For purposes of this section, the following  
10 definitions apply:

11 (1) "Approval" means final approval of a proposed  
12 subdivision where the actual division of land  
13 into small parcels is sought; approval of a  
14 building permit; or approval of a farm plan, as the  
15 context may require.

16 (2) "Agricultural activity" means any of the permitted  
17 uses described in section 205-4.5.

18 (3) "Agribusiness" means a business licensed for the  
19 production and sale of products produced from the  
20 cultivation, propagation, and raising activities  
21 defined as agricultural activity, including the

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1 manufacturing of farm equipment and fertilizers, and  
2 intended for compensation in any form.

3 (4) "Subdivision" means the division of improved or  
4 unimproved land into two or more lots, parcels,  
5 sites, or other divisions of land for the  
6 purpose, whether immediate or future, of sale,  
7 lease, rental, transfer of title to, or interest  
8 in, any or all such lots, parcels, sites, or other  
9 divisions of land. The term includes resubdivision  
10 and, when appropriate to the context, shall relate  
11 to the land subdivided.

12 (5) "Subsistence farming" means the method of horticulture  
13 and/or the agricultural practices described in section  
14 205-2(d) in which a parcel of land produces only  
15 enough food to feed the family working it. De minimis  
16 agriculture is not evidence of subsistence farming.

17 (c) This section shall apply to the plan of any  
18 subdivision or development on land within the agricultural  
19 district pursuant to chapter 205 which has not been approved by  
20 the respective counties as of July 1, 2007."

21 SECTION 3. Section 205-3.1, Hawaii Revised Statutes, is  
22 amended by amending subsection (d) to read as follows:

1       "(d) The county land use decision-making authority shall  
2 serve a copy of the application for a district boundary  
3 amendment to the land use commission and the department of  
4 business, economic development, and tourism and shall notify the  
5 commission and the department in writing thirty days in advance  
6 of the time and place of the hearing and the proposed amendments  
7 scheduled to be heard at the hearing. No county land use  
8 decision-making authority shall approve a change in the land use  
9 district boundaries pursuant to this section unless the county  
10 land use decision-making authority finds that the proposed  
11 boundary is reasonable, does not violate section 205-2, and is  
12 consistent with the policies and criteria established pursuant  
13 to sections 205-16 and 205-17 and any additional county  
14 requirements not in conflict therewith. A change in the state  
15 land use district boundaries pursuant to this subsection shall  
16 become effective on the day designated by the county land use  
17 decision-making authority in its decision. Within sixty days of  
18 the effective date of any decision to amend state land use  
19 district boundaries by the county land use decision-making  
20 authority, the decision and the description and map of the  
21 affected property shall be transmitted to the land use

1 commission and the department of business, economic development,  
2 and tourism by the county planning director."

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~~]  
17 subsistence use;
- 18 (4) Farm dwellings, employee housing, farm buildings, or  
19 activities or uses related to farming and animal  
20 husbandry. "Farm dwelling", as used in this  
21 paragraph, means a single-family dwelling located on  
22 and used in connection with [~~a farm,~~] agricultural

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1 activities, agribusiness, or subsistence farming,  
2 including clusters of single-family farm dwellings  
3 permitted within agricultural parks developed by the  
4 State, or where agricultural activity provides income  
5 to the family occupying the dwelling[+] and excludes  
6 single-family dwellings in a subdivided development,  
7 where there is little or no agricultural activities,  
8 agribusiness, or subsistence farming established, and  
9 excludes guest cottages;

10 (5) Public institutions and buildings that are necessary  
11 for agricultural practices;

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

17 (7) Public, private, and quasi-public utility lines and  
18 roadways, transformer stations, communications  
19 equipment buildings, solid waste transfer stations,  
20 major water storage tanks, and appurtenant small  
21 buildings such as booster pumping stations, but not  
22 including offices or yards for equipment, material,

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1 vehicle storage, repair or maintenance, treatment  
2 plants, corporation yards, or other similar  
3 structures;

4 (8) Retention, restoration, rehabilitation, or improvement  
5 of buildings or sites of historic or scenic interest;

6 (9) Roadside stands for the sale of agricultural products  
7 grown on the premises;

8 (10) Buildings and uses, including but not limited to  
9 mills, storage, and processing facilities, maintenance  
10 facilities, and vehicle and equipment storage areas  
11 that are normally considered directly accessory to the  
12 abovementioned uses and are permitted under section  
13 205-2(d);

14 (11) Agricultural parks;

15 (12) Plantation community subdivisions, which as used in  
16 this paragraph means a subdivision or cluster of  
17 employee housing, community buildings, and acreage  
18 established on land currently or formerly owned,  
19 leased, or operated by a sugar or pineapple plantation  
20 and in residential use by employees or former  
21 employees of the plantation; provided that the

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1 employees or former employees shall have a property  
2 interest in the land;

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

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

19 (b) Uses not expressly permitted in subsection (a) shall  
20 be prohibited, except the uses as provided in [~~sections 205-6~~  
21 ~~and~~] section 205-8, and construction of single-family dwellings  
22 on lots existing before June 4, 1976. Any other law to the

1 contrary notwithstanding, no subdivision of land within the  
2 agricultural district [~~with soil classified by the land study~~  
3 ~~bureau's detailed land classification as overall (master)~~  
4 ~~productivity rating class A or B~~] shall be approved by a county  
5 unless those [~~A and B~~] lands within the subdivision are made  
6 subject to the restriction on uses as prescribed in this section  
7 and to the condition that the uses shall be [~~primarily~~]  
8 exclusively in pursuit of [~~an~~] agricultural activity[~~+~~],  
9 agribusiness, or subsistence farming.

10 Any deed, lease, agreement of sale, mortgage, or other  
11 instrument of conveyance covering any land within the  
12 agricultural subdivision shall expressly contain the restriction  
13 on uses and the condition, as prescribed in this section; that  
14 these restrictions and conditions shall be encumbrances running  
15 with the land until such time that the land is reclassified to a  
16 land use district other than agricultural district[.], including  
17 that the land shall not be subdivided and used for development  
18 where the primary purpose of the development is the sale or  
19 development of residential homes.

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 mortgage financing is  
4 jeopardized, be conditionally waived by the appropriate county  
5 enforcement officer; provided that the conditional waiver shall  
6 become effective only in the event that the property is  
7 subjected to foreclosure proceedings by the mortgage lender.

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

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

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

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

10       ~~(f)~~ (e) 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  
15           ~~[agricultural;]~~ for agricultural activities,  
16           agribusiness, or subsistence farming;

17       (2) No permanent or temporary dwellings or farm  
18           dwellings, including trailers and campers, are  
19           constructed on the leased area. This restriction  
20           shall not prohibit the construction of storage sheds,  
21           equipment sheds, or other structures appropriate to

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1 the agricultural activity carried on within the lot;  
2 and

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

5 (A) The minimum real property tax agricultural  
6 dedication period of the county in which the  
7 subdivision is located; or

8 (B) Five years.

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

12 (f) For the purposes of this section, the following shall  
13 apply:

14 (1) "Agricultural activity" means any of the permitted  
15 uses described in section 205-4.5.

16 (2) "Agribusiness" means a business licensed for the  
17 production and sale of products produced from the  
18 cultivation, propagation, and raising activities  
19 defined as agricultural activity, including the  
20 manufacturing of farm equipment and fertilizers, and  
21 intended for compensation in any form.

22 (3) "Subdivision" means the division of improved or

1 unimproved land into two or more lots, parcels,  
2 sites, or other divisions of land for the purpose,  
3 whether immediate or future, of sale, lease, rental,  
4 transfer of title to, or interest in, any or all such  
5 lots, parcels, sites, or other divisions of land. The  
6 term includes resubdivision and, when appropriate to  
7 the context, shall relate to the land subdivided.

8 (4) "Subsistence farming" means the method of horticulture  
9 and/or the agricultural practices described in section  
10 205-2(d) in which a parcel of land produces only  
11 enough food to feed the family working it. De minimis  
12 agriculture is not evidence of subsistence farming."

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

15 "(b) Within agricultural districts, uses compatible to the  
16 activities described in section 205-2 as determined by the  
17 commission shall be permitted [~~provided that accessory~~  
18 ~~agricultural uses and services described in sections 205-2 and~~  
19 ~~205-4.5 may be further defined by each county by zoning~~  
20 ~~ordinance~~]. Each county within eighteen months of the effective  
21 date of this section, shall adopt ordinances setting forth  
22 procedures and requirements, including provisions for

1 enforcement, penalties, and administrative oversight, for the  
2 review and permitting of agricultural tourism uses and  
3 activities as an accessory use on a working farm, or farming  
4 operation as defined in section 165-2; provided that  
5 agricultural tourism activities shall not be permissible in the  
6 absence of a bona fide farming operation. Ordinances shall  
7 include but not be limited to:

- 8 (1) Requirements for access to a farm, including road  
9 width, road surface, and parking;
- 10 (2) Requirements and restrictions for accessory facilities  
11 connected with the farming operation, including gift  
12 shops and restaurants; provided that overnight  
13 accommodations shall not be permitted;
- 14 (3) Activities that may be offered by the farming  
15 operation for visitors;
- 16 (4) Days and hours of operation; and
- 17 (5) Automatic termination of the accessory use upon the  
18 cessation of the farming operation.

19 Each county may require an environmental assessment under  
20 chapter 343 as a condition to any agricultural tourism use and  
21 activity. Other uses may be allowed by special permits issued  
22 pursuant to this chapter. The minimum lot size in agricultural

1 districts shall be determined by each county by zoning  
2 ordinance, subdivision ordinance, or other lawful means;  
3 provided that the minimum lot size for any agricultural use  
4 shall not be less than [~~one-acre,~~] five acres, except as  
5 provided herein. If the county finds that unreasonable economic  
6 hardship to the owner or lessee of land cannot otherwise be  
7 prevented or where land utilization is improved, the county may  
8 allow lot sizes of less than the minimum lot size as specified  
9 by law for lots created by a consolidation of existing lots  
10 within an agricultural district and the resubdivision thereof;  
11 provided that the consolidation and resubdivision do not result  
12 in an increase in the number of lots over the number existing  
13 prior to consolidation; and provided further that in no event  
14 shall a lot, which is equal to or exceeds the minimum lot size  
15 of [~~one-acre~~] five acres be less than that minimum after the  
16 consolidation and resubdivision action. The county may also  
17 allow lot sizes of less than the minimum lot size as specified  
18 by law for lots created or used for plantation community  
19 subdivisions as defined in section 205-4.5(a)(12), for public,  
20 private, and quasi-public utility purposes, and for lots  
21 resulting from the subdivision of abandoned roadways and  
22 railroad easements."

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1 SECTION 6. Section 205-6, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Subject to this section, the county planning  
4 commission may permit certain unusual and reasonable uses within  
5 agricultural and rural districts other than those for which the  
6 district is classified[-]; provided that such use is not  
7 otherwise prohibited by sections 205-2 or 205-4.5(b). Any  
8 person who desires to use the person's land within an  
9 agricultural or rural district other than for an agricultural or  
10 rural use, as the case may be, may petition the planning  
11 commission of the county within which the person's land is  
12 located for permission to use the person's land in the manner  
13 desired. Each county may establish the appropriate fee for  
14 processing the special permit petition. Copies of the special  
15 permit petition shall be forwarded to the land use commission,  
16 the office of planning, and the department of agriculture for  
17 their review and comment."

18 SECTION 7. Section 205-6, Hawaii Revised Statutes, is  
19 amended by amending subsection (c) to read as follows:

20 "(c) The county planning commission may, under such  
21 protective restrictions as may be deemed necessary, permit the  
22 desired use, but only when the use would promote the

1 effectiveness and objectives of this chapter; provided that a  
2 use proposed for agricultural lands or for designated important  
3 agricultural lands shall not conflict with any part of this  
4 chapter. A decision in favor of the applicant shall require a  
5 majority vote of the total membership of the county planning  
6 commission."

7 SECTION 8. Section 205-6, Hawaii Revised Statutes, is  
8 amended by amending subsection (d) to read as follows:

9 "(d) Special permits for land designated rural, the area  
10 of which is greater than fifteen acres or for lands designated  
11 agricultural or as important agricultural lands shall be subject  
12 to approval by the land use commission. The land use commission  
13 may impose additional restrictions as may be necessary or  
14 appropriate in granting the approval, including the adherence to  
15 representations made by the applicant."

16 SECTION 9. The lawful use of land or buildings on the  
17 effective date of this Act may be continued although the use  
18 does not conform to this Act; provided that no nonconforming use  
19 of land shall be expanded or changed to another nonconforming  
20 use. If any nonconforming use of land is discontinued, then the  
21 provisions of this Act shall apply.

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1 SECTION 10. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect upon its approval.

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INTRODUCED BY: Calvin M. Boy  
BY REQUEST

JAN 22 2007

HB 1224

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO AGRICULTURAL LAND USE.

PURPOSE: The purpose of this bill is to protect Hawaii's agricultural land for agricultural use and to prevent agricultural land from being used for "fake farms," or upscale residential development.

MEANS: Add a new section to chapter 46 and amend sections 205-3.1(d), 205-4.5(b), 205-5, 205-6(a), (c), and (d), Hawaii Revised Statutes.

JUSTIFICATION: Article XI, section 3, of the State Constitution provides, among other things, that "[t]he State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." Some of the best agricultural lands in the State are also the most desirable for upscale residential development. Loss of agricultural lands to these developments or "fake farms" results in loss of the ability of the State to develop sustainable agriculture that could increase food and fuel self-sufficiency for Hawaii's people.

Impact on the public: Protection of agricultural lands so that they can be farmed will enhance the well-being of the public inasmuch as it may increase food and fuel self-sufficiency for the State.

Impact on the department and other agencies: Gives direction to the counties on how to protect agricultural lands. The Land Use Commission may see an increase in the number of petitions for district boundary amendments.

GENERAL FUND: None.

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OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Land Use Commission, Office of Planning.

EFFECTIVE DATE: Upon approval.