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## A BILL FOR AN ACT

RELATING TO 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 up-scale housing. The legislature  
9 finds that, in the recent past, hundreds of acres of  
10 agricultural land have been converted into developments that  
11 feature luxury homes and a lack of agricultural activity,  
12 agribusiness, or subsistence farming. While the homeowners may  
13 cultivate a few fruit trees or an herb garden, no meaningful  
14 agricultural activity takes place, even though the developments  
15 are sometimes called "agricultural subdivisions".

16           The legislature further finds that the loss of agricultural  
17 lands to "fake farms" results in the loss of ability of the



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

3 The purpose of this Act is to comply with the requirements  
4 of article XI, section 3, to protect the State's agricultural  
5 land by ensuring 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 as  
12 provided in this section, 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 purposes;

18 (2) Prior to issuing any building permit for  
19 construction of a farm dwelling, as defined in  
20 section 205-4.5, the county shall require that the  
21 applicant for the building permit:



1           (A) Submit to the appropriate county authority and  
2           obtain approval of a farm plan; and

3           (B) Have established agricultural activity,  
4           agribusiness, or subsistence farming on the lot  
5           for which the building permit is sought.

6           (b) For purposes of this section the following terms shall  
7           have the following meanings:

8           "Agribusiness" means farming and the business associated  
9           with farming, including but not limited to the processing of  
10           farm products or the manufacturing of farm equipment and  
11           fertilizers.

12           "Agricultural activity" means any of the permitted uses  
13           described in section 205-4.5.

14           "Approval" means final approval granted for a proposed  
15           subdivision where the actual division of land into small parcels  
16           is sought, approval of a building permit, or approval of a farm  
17           plan, as the context may require.

18           "Subdivision" means the division of improved or unimproved  
19           land into two or more lots, parcels, sites, or other divisions  
20           of land and for the purpose, whether immediate or future, of  
21           sale, lease, rental, transfer of title to, or interest in, any  
22           or all such lots, parcels, sites, or divisions of land. The



1 term may include a consolidation and resubdivision and, when  
2 appropriate to the context, shall relate to the land subdivided.

3 "Subsistence farming" means farming that provides for the  
4 farm family's needs with little surplus for marketing.

5 (c) This section shall apply to the plan of any  
6 subdivision or development on land within the agricultural  
7 district pursuant to chapter 205 that has not been approved by a  
8 county on the effective date of this Act."

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

11 "(d) The county land use decision-making authority shall  
12 serve a copy of the application for a district boundary  
13 amendment to the land use commission and the department of  
14 business, economic development, and tourism and shall notify the  
15 commission and the department in writing thirty days in advance  
16 of the time and place of the hearing and the proposed amendments  
17 scheduled to be heard at the hearing. No county land use  
18 decision-making authority shall approve a change in the land use  
19 district boundaries pursuant to this section unless the county  
20 land use decision-making authority finds that the proposed  
21 boundary change is reasonable, not violative of section 205-2,  
22 and consistent with the policies and criteria established



1 pursuant to sections 205-16 and 205-17, and any additional  
2 county requirements not in conflict with those sections. A  
3 change in the state land use district boundaries pursuant to  
4 this subsection shall become effective on the day designated by  
5 the county land use decision-making authority in its decision.  
6 Within sixty days of the effective date of any decision to amend  
7 state land use district boundaries by the county land use  
8 decision-making authority, the decision and the description and  
9 map of the affected property shall be transmitted to the land  
10 use commission and the department of business, economic  
11 development, and tourism by the county planning director."

12 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§205-4.5 Permissible uses within the agricultural**  
15 **districts.** (a) Within the agricultural district, all lands  
16 [~~with soil classified by the land study bureau's detailed land~~  
17 ~~classification as overall (master) productivity rating class A~~  
18 ~~or B~~] shall be restricted to the following permitted uses:

19 (1) Cultivation of crops, including but not limited to  
20 flowers, vegetables, foliage, fruits, forage, fiber,  
21 and timber;

22 (2) Game and fish propagation;



1 (3) Raising of livestock, including but not limited to  
2 poultry, bees, fish, or other animal or aquatic life  
3 that are propagated for economic or personal use;

4 (4) Farm dwellings, employee housing, farm buildings, or  
5 activities or uses related to farming and animal  
6 husbandry. "Farm dwelling", as used in this  
7 paragraph~~[, means]~~:

8 (A) Means a single-family dwelling located on and  
9 used in connection with a farm, including  
10 clusters of single-family farm dwellings  
11 permitted within agricultural parks developed by  
12 the State, or where agricultural activity  
13 provides income to the family occupying the  
14 dwelling; and

15 (B) Excludes:

16 (i) Single-family dwellings in a subdivided  
17 development where there is no agricultural  
18 activity, agribusiness, or subsistence  
19 farming established; and

20 (ii) Guest cottages;

21 (5) Public institutions and buildings that are necessary  
22 for agricultural practices;



- 1           (6) Public and private open area types of recreational  
2           uses, including day camps, picnic grounds, parks, and  
3           riding stables, but not including dragstrips,  
4           airports, drive-in theaters, golf courses, golf  
5           driving ranges, country clubs, and overnight camps;
- 6           (7) Public, private, and quasi-public utility lines and  
7           roadways, transformer stations, communications  
8           equipment buildings, solid waste transfer stations,  
9           major water storage tanks, and appurtenant small  
10          buildings such as booster pumping stations, but not  
11          including offices or yards for equipment, material,  
12          vehicle storage, repair or maintenance, treatment  
13          plants, corporation yards, or other similar  
14          structures;
- 15          (8) Retention, restoration, rehabilitation, or improvement  
16          of buildings or sites of historic, cultural, or scenic  
17          interest;
- 18          (9) Roadside stands for the sale of agricultural products  
19          grown on the premises;
- 20          (10) Buildings and uses, including but not limited to  
21          mills, storage, and processing facilities, maintenance  
22          facilities, and vehicle and equipment storage areas



1 that are normally considered directly accessory to the  
2 above mentioned uses and are permitted under section  
3 205-2(d);

4 (11) Agricultural parks;

5 (12) Plantation community subdivisions, which as used in  
6 this paragraph means a subdivision or cluster of  
7 employee housing, community buildings, and acreage  
8 established on land currently or formerly owned,  
9 leased, or operated by a sugar or pineapple plantation  
10 and in residential use by employees or former  
11 employees of the plantation; provided that the  
12 employees or former employees shall have a property  
13 interest in the land;

14 [†] (13) [†] Agricultural tourism conducted on a working farm, or a  
15 farming operation as defined in section 165-2, for the  
16 enjoyment, education, or involvement of visitors;  
17 provided that the agricultural tourism activity is  
18 accessory and secondary to the principal agricultural  
19 use and does not interfere with surrounding farm  
20 operations; and provided further that this paragraph  
21 shall apply only to a county that has adopted



1           ordinances regulating agricultural tourism under  
2           section 205-5; or  
3   [+] (14) [+] Wind energy facilities, including the appurtenances  
4           associated with the production and transmission of  
5           wind generated energy; provided that such facilities  
6           and appurtenances are compatible with agriculture uses  
7           and cause minimal adverse impact on agricultural land.

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

21           Any deed, lease, agreement of sale, mortgage, or other  
22   instrument of conveyance covering any land within the



1 agricultural subdivision shall expressly contain the restriction  
2 on uses and the condition, as prescribed in this section, that  
3 these restrictions and conditions, including the condition that  
4 the land shall not be subdivided and used for development where  
5 the primary purpose of the development is the sale or  
6 development of residential homes, shall be encumbrances running  
7 with the land until such time that the land is reclassified to a  
8 land use district other than agricultural district.

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

20 The mortgage lending agencies referred to in the preceding  
21 paragraph are the Federal Housing Administration, Federal  
22 National Mortgage Association, Veterans Administration, Small



1 Business Administration, United States Department of  
2 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate  
3 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any  
4 other federal, state, or private mortgage lending agency  
5 qualified to do business in Hawaii, and their respective  
6 successors and assigns.

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

12 ~~[(d)]~~ (c) Notwithstanding any other provision of this  
13 chapter to the contrary, golf courses and golf driving ranges  
14 approved by a county before July 1, 2005, for development within  
15 the agricultural district shall be permitted uses within the  
16 agricultural district.

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

21 ~~[(f)]~~ (e) Notwithstanding any other law to the contrary,  
22 agricultural lands may be subdivided and leased for the



1 agricultural uses or activities permitted in subsection (a);  
2 provided that:

3 (1) The principal use of the leased land is [~~agriculture,~~]  
4 for agricultural activity, agribusiness, or  
5 subsistence farming;

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

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

14 (A) The minimum real property tax agricultural  
15 dedication period of the county in which the  
16 subdivided lot is located; or

17 (B) Five years.

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

21 (f) For the purposes of this section, the following terms  
22 shall have the following meanings:



1       "Agribusiness" means farming and businesses associated with  
2 farming, including but not limited to the processing of farm  
3 products or the manufacturing of farm equipment and fertilizers.

4       "Agricultural activity" means any of the permitted uses  
5 described in this section.

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

13       "Subsistence farming" means farming that provides for the  
14 farm family's needs with little surplus for marketing."

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

17       "(b) Within agricultural districts, uses compatible to the  
18 activities described in section 205-2 as determined by the  
19 commission shall be permitted[~~; provided that accessory~~  
20 ~~agricultural uses and services described in sections 205-2 and~~  
21 ~~205-4.5 may be further defined by each county by zoning~~  
22 ~~ordinance]]. Each county shall adopt ordinances setting forth~~



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

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

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



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



1 resulting from the subdivision of abandoned roadways and  
2 railroad easements."

3 SECTION 6. Section 205-6, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By amending subsection (a) to read as follows:

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

20 2. By amending subsection (c) to read as follows:

21 "(c) The county planning commission [~~may~~], under such  
22 protective restrictions as may be deemed necessary, may permit



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

8 3. 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 7. The lawful use of land or improvements 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.



1 SECTION 8. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2007.

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INTRODUCED BY:

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**Report Title:**

Land Use; Agricultural District; Subdivisions

**Description:**

Imposes conditions on the subdivision of lands in the agricultural district. Limits county zoning power in agricultural district. Requires special permit for land in rural district to require approval of land use commission.

