
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
12 as provided in this section, each subdivision of land classified
13 in the agricultural district under chapter 205 that is approved
14 by any county shall be subject to the following conditions:

15 (1) Each lot in the subdivision, except roadways, shall be
16 used for agribusiness or subsistence farming purposes;
17 provided that upon receipt of subdivision approval,
18 the applicant shall record with the bureau of
19 conveyances or land court, deed restrictions or
20 covenants requiring that the lot owner or lessee use
21 the lot solely for agribusiness or subsistence farming
22 and such covenants shall run with the land; and



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

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

7 (B) Have substantially established agricultural
8 activity on the lot for which the building permit
9 is sought.

10 (b) For the purposes of this section, the following terms
11 shall have the following meanings:

12 "Agribusiness" means a business licensed for the production
13 and sale of products from the cultivation of crops, propagation
14 of fish or game, or raising of livestock, including but not
15 limited to the processing of farm products or the manufacturing
16 of farm equipment and fertilizers.

17 "Agricultural activity" means activities involved in the
18 cultivation of crops, propagation of fish or game, or raising of
19 livestock.

20 "Approval" means final approval granted for a proposed
21 subdivision where the actual division of land into small parcels



1 is sought, approval of a building permit, or approval of a farm
2 plan, as the context may require.

3 "Subdivision" means the division of improved or unimproved
4 land or interests in land into two or more lots, parcels, sites,
5 or other divisions of land, including condominiums under chapter
6 514A or 514B, and for the purpose, whether immediate or future,
7 of sale, lease, rental, transfer of title to or interest in, any
8 or all such lots, parcels, sites, or other divisions of land.
9 The term may include a consolidation and resubdivision and, when
10 appropriate to the context, shall relate to the land subdivided.

11 "Subsistence farming" means agricultural activity or
12 agricultural practices that produce food or products primarily
13 for consumption by the family working the land, and where the
14 family is dependent on this activity to meet a significant
15 portion of the family's nutritional needs. De minimis
16 agriculture shall not be evidence of subsistence farming.

17 (c) This section shall apply to any subdivision or
18 development application for land within the agricultural
19 district that has not been approved by a county on or before the
20 effective date of this Act."

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



- 1 "(d) Agricultural districts shall include:
- 2 (1) Activities or uses as characterized by the cultivation
- 3 of crops, orchards, forage, and forestry;
- 4 (2) Farming activities or uses related to animal
- 5 husbandry, and game and fish propagation;
- 6 (3) Aquaculture, which means the production of aquatic
- 7 plant and animal life within ponds and other bodies of
- 8 water;
- 9 (4) Wind generated energy production for public, private,
- 10 and commercial use;
- 11 (5) Bona fide agricultural services and uses that support
- 12 the agricultural activities of the fee or leasehold
- 13 owner of the property and accessory to any of the
- 14 above activities, whether or not conducted on the same
- 15 premises as the agricultural activities to which they
- 16 are accessory, including but not limited to farm
- 17 dwellings as defined in section 205-4.5(a)(4),
- 18 employee housing, farm buildings, mills, storage
- 19 facilities, processing facilities, vehicle and
- 20 equipment storage areas, roadside stands for the sale
- 21 of products grown on the premises, and plantation



- 1 community subdivisions as defined in section 205-
2 4.5(a)(12);
- 3 (6) Wind machines and wind farms;
- 4 (7) Small-scale meteorological, air quality, noise, and
5 other scientific and environmental data collection and
6 monitoring facilities occupying less than one-half
7 acre of land; provided that these facilities shall not
8 be used as or equipped for use as living quarters or
9 dwellings;
- 10 (8) Agricultural parks;
- 11 (9) Agricultural tourism conducted on a working farm, or a
12 farming operation as defined in section 165-2, for the
13 enjoyment, education, or involvement of visitors;
14 provided that the agricultural tourism activity is
15 accessory and secondary to the principal agricultural
16 use and does not interfere with surrounding farm
17 operations; and provided further that this paragraph
18 shall apply only to a county that has adopted
19 ordinances regulating agricultural tourism under
20 section 205-5; and
- 21 (10) Open area recreational facilities.



1 Agricultural districts shall not include golf courses and golf
2 driving ranges, golf-related facilities, private membership
3 facilities, or other resort facilities, including hotels and
4 resort-related commercial uses, time sharing facilities, and
5 commercial vacation facilities or homes, except as provided in
6 section 205-4.5(d). Agricultural districts include areas that
7 are not used for, or that are not suited to, agricultural and
8 ancillary activities by reason of topography, soils, and other
9 related characteristics."

10 SECTION 4. Section 205-3.1, Hawaii Revised Statutes, is
11 amended by amending subsection (d) to read as follows:

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



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

13 SECTION 5. Section 205-4.5, Hawaii Revised Statutes, is
14 amended to read as follows:

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

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



- 1 (2) Game and fish propagation;
- 2 (3) Raising of livestock, including but not limited to
3 poultry, bees, fish, or other animal or aquatic life
4 that are propagated for [~~economic or personal use,~~
5 agribusiness or subsistence farming purposes;
- 6 (4) Farm dwellings, employee housing, farm buildings, or
7 activities or uses related to farming and animal
8 husbandry. "Farm dwelling", as used in this
9 paragraph[~~, means~~]:
- 10 (A) Means a single-family dwelling located on and
11 used in connection with [~~a farm,~~ agricultural
12 activities, agribusiness, or subsistence farming,
13 including clusters of single-family farm
14 dwellings permitted within agricultural parks
15 developed by the State, or where agricultural
16 activity provides income to the family occupying
17 the dwelling; and
- 18 (B) Excludes:
- 19 (i) Single-family dwellings in a subdivided
20 development where there is little or no
21 agricultural activity, agribusiness, or
22 subsistence farming established; and



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



1 (10) Buildings and uses, including but not limited to mills,
2 storage, and processing facilities, maintenance
3 facilities, and vehicle and equipment storage areas
4 that are [~~normally considered~~] directly accessory to
5 the [~~above mentioned uses and are~~] agricultural
6 activities permitted [~~under~~] in this section and
7 section 205-2(d);

8 (11) Agricultural parks;

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

18 [+](13)[+] Agricultural tourism conducted on a working
19 farm, or a farming operation as defined in section
20 165-2, for the enjoyment, education, or involvement of
21 visitors; provided that the agricultural tourism
22 activity is accessory and secondary to the principal



1 agricultural use and does not interfere with
2 surrounding farm operations; and provided further that
3 this paragraph shall apply only to a county that has
4 adopted ordinances regulating agricultural tourism
5 under section 205-5; or

6 [†](14)[†] Wind energy facilities, including the
7 appurtenances associated with the production and
8 transmission of wind generated energy; provided that
9 such facilities and appurtenances are compatible with
10 agriculture uses and cause minimal adverse impact on
11 agricultural land.

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



- 1 (1) The restriction on uses as prescribed in this section
2 [and to the];
- 3 (2) The condition that the uses shall be [primarily]
4 solely in pursuit of an agricultural activity[-],
5 agribusiness, or subsistence farming; and
- 6 (3) The condition that the land shall not be subdivided
7 and used for development where the primary purpose of
8 the development is the sale or development of
9 residential homes.

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,~~] conditions, as prescribed in this
14 section, that these restrictions and conditions shall be
15 encumbrances running with the land until such time that the land
16 is reclassified to a land use district other than agricultural
17 district.

18 If the foregoing requirement of encumbrances running with
19 the land jeopardizes the owner or lessee in obtaining mortgage
20 financing from any of the mortgage lending agencies set forth in
21 the following paragraph, and the requirement is the sole reason
22 for failure to obtain mortgage financing, then the requirement



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

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

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

21 [~~(d)~~] (c) Notwithstanding any other provision of this
22 chapter to the contrary, golf courses and golf driving ranges



1 approved by a county before July 1, 2005, for development within
2 the agricultural district shall be permitted uses within the
3 agricultural district.

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

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

12 (1) The principal use of the leased land is ~~[agriculture,]~~
13 for agricultural activity or agribusiness;

14 (2) No permanent or temporary dwellings or farm dwellings,
15 including trailers and campers, are constructed on the
16 leased area. This restriction shall not prohibit the
17 construction of storage sheds, equipment sheds, or
18 other structures appropriate to the agricultural
19 activity carried on within the lot; and

20 (3) The lease term for a subdivided lot shall be for at
21 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
 6 legal lots of record for mortgage lending purposes and shall be
 7 exempt from county subdivision standards.

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

10 "Agribusiness" means a business licensed for the production
 11 and sale of products from the cultivation of crops, propagation
 12 of fish or game, or raising of livestock, including but not
 13 limited to the processing of farm products or the manufacturing
 14 of farm equipment and fertilizers.

15 "Agricultural activity" means activities involved in the
 16 cultivation of crops, propagation of fish or game, or raising of
 17 livestock.

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



1 "Subdivision" means the division of improved or unimproved
2 land or interests in land into two or more lots, parcels, sites,
3 or other divisions of land, including condominiums under chapter
4 514A or 514B, and for the purpose, whether immediate or future,
5 of sale, lease, rental, transfer of title to, or interest in,
6 any or all of the lots, parcels, sites, or other divisions of
7 land. The term may include a consolidation and resubdivision
8 and, when appropriate to the context, shall relate to the land
9 subdivided.

10 "Subsistence farming" means agricultural activity or
11 agricultural practices that produce food or products primarily
12 for consumption by the family working the land, and where the
13 family is dependent on this activity to meet a significant
14 portion of the family's nutritional needs. De minimis
15 agriculture shall not be evidence of subsistence farming.

16 SECTION 6. Section 205-5, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

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



1 ~~zoning ordinance~~]. Each county within eighteen months of the
2 effective date of this Act shall adopt ordinances setting forth
3 procedures and requirements, including provisions for
4 enforcement, penalties, and administrative oversight, for the
5 review and permitting of agricultural tourism uses and
6 activities as an accessory use on a working farm[7] or farming
7 operation as defined in section 165-2; provided that
8 agricultural tourism activities shall not be permissible in the
9 absence of a bona fide farming operation. Ordinances shall
10 include but not be limited to:

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



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



1 subdivisions as defined in section 205-4.5(a)(12), for public,
2 private, and quasi-public utility purposes, and for lots
3 resulting from the subdivision of abandoned roadways and
4 railroad easements."

5 SECTION 7. Section 205-6, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsection (a) to read:

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

22 2. By amending subsection (c) to read:



1 "(c) The county planning commission [~~may~~], under such
2 protective restrictions as may be deemed necessary, may permit
3 the desired use, but only when the use would promote the
4 effectiveness and objectives of this chapter; provided that a
5 use proposed for agricultural lands or for designated important
6 agricultural lands shall not conflict with any part of this
7 chapter. A decision in favor of the applicant shall require a
8 majority vote of the total membership of the county planning
9 commission."

10 3. By amending subsection (d) to read:

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

19 SECTION 8. The lawful use of land or improvements on the
20 effective date of this Act may be continued although the use
21 does not conform to this Act; provided that no nonconforming use
22 of land shall be expanded or changed to another nonconforming



1 use. If any nonconforming use of land is discontinued, then the
2 provisions of this Act shall apply.

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

5 SECTION 10. This Act shall take effect on July 1, 2007.



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. Provides that county special permits for lands greater than 15 acres in rural district and agricultural lands be subject to approval of the Land Use Commission. (HB257 HD1)

