

JAN 20 2017

A BILL FOR AN ACT

RELATING TO AGRICULTURAL LAND.

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

1 SECTION 1. Section 205-4.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Within the agricultural district, all lands with soil
4 classified by the land study bureau's detailed land
5 classification as overall (master) productivity rating class A
6 or B and for solar energy facilities, class B or C, shall be
7 restricted to the following permitted uses:

8 (1) Cultivation of crops, including crops for bioenergy,
9 flowers, vegetables, foliage, fruits, forage, and
10 timber;

11 (2) Game and fish propagation;

12 (3) Raising of livestock, including poultry, bees, fish,
13 or other animal or aquatic life that are propagated
14 for economic or personal use;

15 (4) Farm dwellings, employee housing, farm buildings, or
16 activities or uses related to farming and animal
17 husbandry. "Farm dwelling", as used in this



1 paragraph, means a single-family dwelling located on
2 and used in connection with a farm, including clusters
3 of single-family farm dwellings permitted within
4 agricultural parks developed by the State, or where
5 agricultural activity provides income to the family
6 occupying the dwelling[+]. No residential project
7 shall be created as a condominium under chapter 514B
8 or a planned community association under chapter 421J;

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

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

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



- 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) Agricultural-based commercial operations as described
7 in section 205-2(d)(15);
- 8 (10) Buildings and uses, including mills, storage, and
9 processing facilities, maintenance facilities,
10 photovoltaic, biogas, and other small-scale renewable
11 energy systems producing energy solely for use in the
12 agricultural activities of the fee or leasehold owner
13 of the property, and vehicle and equipment storage
14 areas that are normally considered directly accessory
15 to the above-mentioned uses and are permitted under
16 section 205-2(d);
- 17 (11) Agricultural parks;
- 18 (12) Plantation community subdivisions, which as used in
19 this chapter means an established subdivision or
20 cluster of employee housing, community buildings, and
21 agricultural support buildings on land currently or



1 formerly owned, leased, or operated by a sugar or
2 pineapple plantation; provided that the existing
3 structures may be used or rehabilitated for use, and
4 new employee housing and agricultural support
5 buildings may be allowed on land within the
6 subdivision as follows:

7 (A) The employee housing is occupied by employees or
8 former employees of the plantation who have a
9 property interest in the land;

10 (B) The employee housing units not owned by their
11 occupants shall be rented or leased at affordable
12 rates for agricultural workers; or

13 (C) The agricultural support buildings shall be
14 rented or leased to agricultural business
15 operators or agricultural support services;

16 (13) Agricultural tourism conducted on a working farm, or a
17 farming operation as defined in section 165-2, for the
18 enjoyment, education, or involvement of visitors;
19 provided that the agricultural tourism activity is
20 accessory and secondary to the principal agricultural
21 use and does not interfere with surrounding farm



1 operations; and provided further that this paragraph
2 shall apply only to a county that has adopted
3 ordinances regulating agricultural tourism under
4 section 205-5;

5 (14) Agricultural tourism activities, including overnight
6 accommodations of twenty-one days or less, for any one
7 stay within a county; provided that this paragraph
8 shall apply only to a county that includes at least
9 three islands and has adopted ordinances regulating
10 agricultural tourism activities pursuant to section
11 205-5; provided further that the agricultural tourism
12 activities coexist with a bona fide agricultural
13 activity. For the purposes of this paragraph, "bona
14 fide agricultural activity" means a farming operation
15 as defined in section 165-2;

16 (15) Wind energy facilities, including the appurtenances
17 associated with the production and transmission of
18 wind generated energy; provided that the wind energy
19 facilities and appurtenances are compatible with
20 agriculture uses and cause minimal adverse impact on
21 agricultural land;



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

9 For the purposes of this paragraph:

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

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



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

13 As used in this paragraph:

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

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

20 "Agricultural-energy facility" means a facility
21 that generates, stores, or distributes renewable



1 energy as defined in section 269-91 or renewable fuel
2 including electrical or thermal energy or liquid or
3 gaseous fuels from products of agricultural activities
4 from agricultural lands located in the State.

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

11 (18) Construction and operation of wireless communication
12 antennas; provided that, for the purposes of this
13 paragraph, "wireless communication antenna" means
14 communications equipment that is either freestanding
15 or placed upon or attached to an already existing
16 structure and that transmits and receives
17 electromagnetic radio signals used in the provision of
18 all types of wireless communications services;
19 provided further that nothing in this paragraph shall
20 be construed to permit the construction of any new



1 structure that is not deemed a permitted use under
2 this subsection;

3 (19) Agricultural education programs conducted on a farming
4 operation as defined in section 165-2, for the
5 education and participation of the general public;
6 provided that the agricultural education programs are
7 accessory and secondary to the principal agricultural
8 use of the parcels or lots on which the agricultural
9 education programs are to occur and do not interfere
10 with surrounding farm operations. For the purposes of
11 this paragraph, "agricultural education programs"
12 means activities or events designed to promote
13 knowledge and understanding of agricultural activities
14 and practices conducted on a farming operation as
15 defined in section 165-2;

16 (20) Solar energy facilities that do not occupy more than
17 ten per cent of the acreage of the parcel, or twenty
18 acres of land, whichever is lesser or for which a
19 special use permit is granted pursuant to section 205-
20 6; provided that this use shall not be permitted on
21 lands with soil classified by the land study bureau's



1 detailed land classification as overall (master)
2 productivity rating class A unless the solar energy
3 facilities are:

4 (A) Located on a paved or unpaved road in existence
5 as of December 31, 2013, and the parcel of land
6 upon which the paved or unpaved road is located
7 has a valid county agriculture tax dedication
8 status or a valid agricultural conservation
9 easement;

10 (B) Placed in a manner that still allows vehicular
11 traffic to use the road; and

12 (C) Granted a special use permit by the commission
13 pursuant to section 205-6;

14 (21) Solar energy facilities on lands with soil classified
15 by the land study bureau's detailed land
16 classification as overall (master) productivity rating
17 B or C for which a special use permit is granted
18 pursuant to section 205-6; provided that:

19 (A) The area occupied by the solar energy facilities
20 is also made available for compatible
21 agricultural activities at a lease rate that is



1 at least fifty per cent below the fair market
2 rent for comparable properties;

3 (B) Proof of financial security to decommission the
4 facility is provided to the satisfaction of the
5 appropriate county planning commission prior to
6 date of commencement of commercial generation;
7 and

8 (C) Solar energy facilities shall be decommissioned
9 at the owner's expense according to the following
10 requirements:

11 (i) Removal of all equipment related to the
12 solar energy facility within twelve months
13 of the conclusion of operation or useful
14 life; and

15 (ii) Restoration of the disturbed earth to
16 substantially the same physical condition as
17 existed prior to the development of the
18 solar energy facility.

19 For the purposes of this paragraph, "agricultural
20 activities" means the activities described in
21 paragraphs (1) to (3);



1 (22) Geothermal resources exploration and geothermal
2 resources development, as defined under section 182-1;
3 or

4 (23) Hydroelectric facilities, including the appurtenances
5 associated with the production and transmission of
6 hydroelectric energy, subject to section 205-2;
7 provided that the hydroelectric facilities and their
8 appurtenances:

9 (A) Shall consist of a small hydropower facility as
10 defined by the United States Department of
11 Energy, including:

12 (i) Impoundment facilities using a dam to store
13 water in a reservoir;

14 (ii) A diversion or run-of-river facility that
15 channels a portion of a river through a
16 canal or channel; and

17 (iii) Pumped storage facilities that store energy
18 by pumping water uphill to a reservoir at
19 higher elevation from a reservoir at a lower
20 elevation to be released to turn a turbine
21 to generate electricity;



1 (B) Comply with the state water code, chapter 174C;

2 (C) Shall, if over five hundred kilowatts in
3 hydroelectric generating capacity, have the
4 approval of the commission on water resource
5 management, including a new instream flow
6 standard established for any new hydroelectric
7 facility; and

8 (D) Do not impact or impede the use of agricultural
9 land or the availability of surface or ground
10 water for all uses on all parcels that are served
11 by the ground water sources or streams for which
12 hydroelectric facilities are considered."

13 SECTION 2. Section 514B-31, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) To create a condominium property regime, all of the
16 owners of the fee simple interest in land shall execute and
17 record a declaration submitting the land to the condominium
18 property regime. Upon recordation of the master deed together
19 with a declaration, the condominium property regime shall be
20 deemed created[-]; provided that:



- 1 (1) No condominium property regime shall be created on any
- 2 parcel of agricultural land consisting of twenty-five
- 3 or more acres;
- 4 (2) No condominium property regime created on any parcel
- 5 of agricultural land shall be later amended to allow
- 6 for a residential dwelling; and
- 7 (3) No parcel of agricultural land consisting of twenty-
- 8 five or more acres shall be subdivided for the purpose
- 9 of creating a condominium property regime."

10 SECTION 3. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

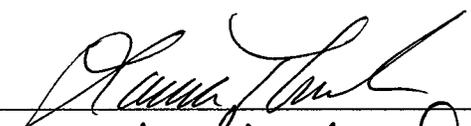
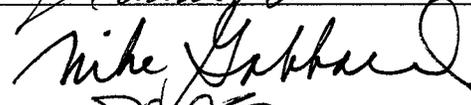
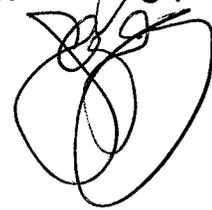
12 SECTION 4. This Act shall take effect upon its approval;
 13 provided that the amendments made to section 205-4.5(a), Hawaii
 14 Revised Statutes, by section 1 of this Act shall not be repealed
 15 when that section is repealed and reenacted on June 30, 2019, by
 16 section 3 of Act 52, Session Laws of Hawaii 2014.

17

INTRODUCED BY: _____





Report Title:

Condominium Property Regime; Agricultural Land

Description:

Prohibits the creation of a condominium property regime on agricultural land 25 acres or greater. Prohibits a condominium property regime on agricultural land from being amended to allow a residential dwelling. Prohibits the subdivision of agricultural land 25 acres or greater for the purpose of creating a condominium property regime. Prohibits any residential project created as a condominium under chapter 514B, HRS, or a planned community association under chapter 421J, HRS, in class A or B agricultural lands.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

