
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The legislature finds that the state
2 constitution recognizes the importance of preserving
3 agricultural lands for future generations. The subdivision of
4 lands within the agricultural district, however, has been used
5 to create farms that are used for personal pleasure. This is
6 contrary to the constitutional goal of subdividing lands to
7 allow land to remain in the hands of descendants or successors
8 who intend to continue to farm the land. Further, several
9 recent proposed subdivisions and condominium or horizontal
10 property regime schemes have been processed by the counties and
11 department of commerce and consumer affairs that have been made
12 without full consideration as to the local impact on the
13 community, cultural resources, the environment and
14 infrastructure, or the preservation of agricultural lands for
15 future generations and food sustainability.

16 The purpose of this Act is to promote sustainable and
17 constitutional subdivision of agricultural lands.



SECTION 2. 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 and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

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

(2) Game and fish propagation;

(3) Raising of livestock, including 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 activities 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



1 agricultural parks developed by the State, or where
2 agricultural activity provides income to the family
3 occupying the dwelling;

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

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

11 (7) Public, private, and quasi-public utility lines and
12 roadways, transformer stations, communications
13 equipment buildings, solid waste transfer stations,
14 major water storage tanks, and appurtenant small
15 buildings such as booster pumping stations, but not
16 including offices or yards for equipment, material,
17 vehicle storage, repair or maintenance, treatment
18 plants, corporation yards, or other similar
19 structures;

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



(9) Agricultural-based commercial operations as described
in section 205-2(d)(15);

(10) Buildings and uses, including mills, storage, and
processing facilities, maintenance facilities,
photovoltaic, biogas, and other small-scale renewable
energy systems producing energy solely for use in the
agricultural activities of the fee or leasehold owner
of the property, 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;

(12) Plantation community subdivisions, which as used in
this chapter means an established subdivision or
cluster of employee housing, community buildings, and
agricultural support buildings on land currently or
formerly owned, leased, or operated by a sugar or
pineapple plantation; provided that the existing
structures may be used or rehabilitated for use, and
new employee housing and agricultural support



1 buildings may be allowed on land within the
2 subdivision as follows:

3 (A) The employee housing is occupied by employees or
4 former employees of the plantation who have a
5 property interest in the land;

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

9 (C) The agricultural support buildings shall be
10 rented or leased to agricultural business
11 operators or agricultural support services;

12 (13) Agricultural tourism conducted on a working farm, or a
13 farming operation as defined in section 165-2, for the
14 enjoyment, education, or involvement of visitors;
15 provided that the agricultural tourism activity is
16 accessory and secondary to the principal agricultural
17 use and does not interfere with surrounding farm
18 operations; and provided further that this paragraph
19 shall apply only to a county that has adopted
20 ordinances regulating agricultural tourism under
21 section 205-5;



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

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

18 (16) Biofuel processing facilities, including the
19 appurtenances associated with the production and
20 refining of biofuels that is normally considered
21 directly accessory and secondary to the growing of the



1 energy feedstock; provided that biofuel processing
2 facilities and appurtenances do not adversely impact
3 agricultural land and other agricultural uses in the
4 vicinity.

5 For the purposes of this paragraph:

6 "Appurtenances" means operational infrastructure
7 of the appropriate type and scale for economic
8 commercial storage and distribution, and other similar
9 handling of feedstock, fuels, and other products of
10 biofuel processing facilities.

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

18 (17) Agricultural-energy facilities, including
19 appurtenances necessary for an agricultural-energy
20 enterprise; provided that the primary activity of the
21 agricultural-energy enterprise is agricultural



1 activity. To be considered the primary activity of an
2 agricultural-energy enterprise, the total acreage
3 devoted to agricultural activity shall be not less
4 than ninety per cent of the total acreage of the
5 agricultural-energy enterprise. The agricultural-
6 energy facility shall be limited to lands owned,
7 leased, licensed, or operated by the entity conducting
8 the agricultural activity.

9 As used in this paragraph:

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

12 "Agricultural-energy enterprise" means an
13 enterprise that integrally incorporates an
14 agricultural activity with an agricultural-energy
15 facility.

16 "Agricultural-energy facility" means a facility
17 that generates, stores, or distributes renewable
18 energy as defined in section 269-91 or renewable fuel
19 including electrical or thermal energy or liquid or
20 gaseous fuels from products of agricultural activities
21 from agricultural lands located in the State.



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

7 (18) Construction and operation of wireless communication
8 antennas; provided that, for the purposes of this
9 paragraph, "wireless communication antenna" means
10 communications equipment that is either freestanding
11 or placed upon or attached to an already existing
12 structure and that transmits and receives
13 electromagnetic radio signals used in the provision of
14 all types of wireless communications services;
15 provided further that nothing in this paragraph shall
16 be construed to permit the construction of any new
17 structure that is not deemed a permitted use under
18 this subsection;

19 (19) Agricultural education programs conducted on a farming
20 operation as defined in section 165-2, for the
21 education and participation of the general public;



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

11 (20) Solar energy facilities that do not occupy more than
12 ten per cent of the acreage of the parcel, or twenty
13 acres of land, whichever is lesser or for which a
14 special use permit is granted pursuant to section 205-
15 6; provided that this use shall not be permitted on
16 lands with soil classified by the land study bureau's
17 detailed land classification as overall (master)
18 productivity rating class A unless the solar energy
19 facilities are:

20 (A) Located on a paved or unpaved road in existence
21 as of December 31, 2013, and the parcel of land



1 upon which the paved or unpaved road is located
2 has a valid county agriculture tax dedication
3 status or a valid agricultural conservation
4 easement;

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

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

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

14 (A) The area occupied by the solar energy facilities
15 is also made available for compatible
16 agricultural activities at a lease rate that is
17 at least fifty per cent below the fair market
18 rent for comparable properties;

19 (B) Proof of financial security to decommission the
20 facility is provided to the satisfaction of the
21 appropriate county planning commission prior to



1 date of commencement of commercial generation;

2 and

3 (C) Solar energy facilities shall be decommissioned
4 at the owner's expense according to the following
5 requirements:

6 (i) Removal of all equipment related to the
7 solar energy facility within twelve months
8 of the conclusion of operation or useful
9 life; and

10 (ii) Restoration of the disturbed earth to
11 substantially the same physical condition as
12 existed prior to the development of the
13 solar energy facility.

14 For the purposes of this paragraph, "agricultural
15 activities" means the activities described in
16 paragraphs (1) to (3);

17 (22) Geothermal resources exploration and geothermal
18 resources development, as defined under section 182-1;
19 or

20 (23) Hydroelectric facilities, including the appurtenances
21 associated with the production and transmission of



1 hydroelectric energy, subject to section 205-2;
2 provided that the hydroelectric facilities and their
3 appurtenances:

4 (A) Shall consist of a small hydropower facility as
5 defined by the United States Department of
6 Energy, including:

7 (i) Impoundment facilities using a dam to store
8 water in a reservoir;

9 (ii) A diversion or run-of-river facility that
10 channels a portion of a river through a
11 canal or channel; and

12 (iii) Pumped storage facilities that store energy
13 by pumping water uphill to a reservoir at
14 higher elevation from a reservoir at a lower
15 elevation to be released to turn a turbine
16 to generate electricity;

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

18 (C) Shall, if over five hundred kilowatts in
19 hydroelectric generating capacity, have the
20 approval of the commission on water resource
21 management, including a new instream flow



1 standard established for any new hydroelectric
2 facility; and

3 (D) Do not impact or impede the use of agricultural
4 land or the availability of surface or ground
5 water for all uses on all parcels that are served
6 by the ground water sources or streams for which
7 hydroelectric facilities are considered.

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

20 Any deed, lease, agreement of sale, mortgage, or other
21 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 shall be encumbrances running
4 with the land until such time that the land is reclassified to a
5 land use district other than agricultural district.

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

16 The mortgage lending agencies referred to in the preceding
17 paragraph are the Federal Housing Administration, Federal
18 National Mortgage Association, Department of Veterans Affairs,
19 Small Business Administration, United States Department of
20 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
21 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any



1 other federal, state, or private mortgage lending agency
2 qualified to do business in Hawaii, and their respective
3 successors and assigns.

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

9 (d) Notwithstanding any other provision of this chapter to
10 the contrary, golf courses and golf driving ranges approved by a
11 county before July 1, 2005, for development within the
12 agricultural district shall be permitted uses within the
13 agricultural district.

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

18 [f] (f) Notwithstanding any other law to the contrary,
19 agricultural lands may be subdivided and leased for the
20 agricultural uses or activities permitted in subsection (a);
21 provided that:



(1) The principal use of the leased land is agriculture;

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

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

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

(B) Five years.

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

(g) Notwithstanding any other law to the contrary, a subdivision of agricultural lands shall be approved by the land use commission if:

(1) The subdivision is subdivided into more than five lots and:



1 (A) At least one subdivided lot is two acres or less;

2 or

3 (B) Has been submitted to the department of commerce

4 and consumer affairs for approval for a

5 condominium or horizontal property regime;

6 (2) Continued use of the entire parcel subject to

7 subdivision will remain in agricultural use for a

8 period of not less than twenty years; and

9 (3) Subdivision:

10 (A) Will not result in fragmentation of the

11 agricultural district;

12 (B) Is consistent with relevant county general and

13 community plans;

14 (C) Is consistent with all relevant state

15 agricultural sustainability plans; and

16 (D) Is not done primarily for residential purposes."

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.



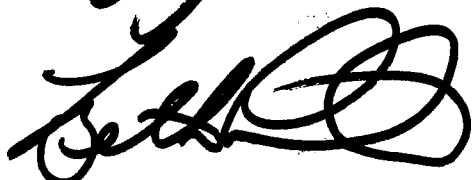
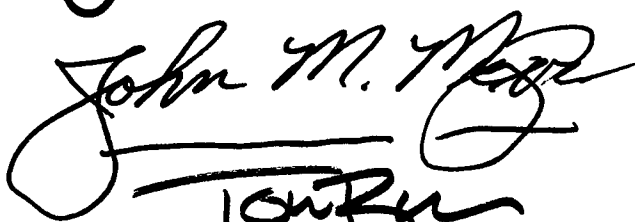



19 SECTION 4. This Act shall take effect upon its approval;
20 provided that the amendments made to section 205-4.5(a), Hawaii
21 Revised Statutes, by section 2 of this Act shall not be repealed



1 when that section is reenacted on June 30, 2019, pursuant to
2 section 3(1) of Act 52, Session Laws of Hawaii 2014.

3

INTRODUCED BY:

JAN 19 2018



H.B. NO. 2020

Report Title:

Preservation and Subdivision of Agricultural Lands

Description:

Establishes criteria for the subdivision of agricultural lands to promote agricultural uses.

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