

JAN 19 2018

A BILL FOR AN ACT

RELATING TO THE PRESERVATION OF AGRICULTURAL LAND.

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

1 SECTION 1. The legislature finds that the Hawaii State
2 Constitution recognizes the importance of preserving
3 agricultural lands for future generations. The legislature
4 further finds that subdivision of lands within the agricultural
5 district has been used to create "gentleman farms", contrary to
6 the goal of allowing farmers to subdivide lands to allow the
7 land to remain in the hands of descendants or successors who
8 intend to continue to farm the land. However, recent proposed
9 subdivisions, such as Dillingham Ranch, and condominium or
10 horizontal property regime schemes, such as Kunia-Loa Ridge,
11 have been processed by the counties and department of commerce
12 and consumer affairs without consideration to their impact on
13 the community, cultural resources, environments, and
14 infrastructure, or their impact on preservation of agricultural
15 lands for future generations and food sustainability.

16 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is
17 amended to read as follows:



1 "§205-4.5 Permissible uses within the agricultural
2 districts. (a) Within the agricultural district, all lands
3 with soil classified by the land study bureau's detailed land
4 classification as overall (master) productivity rating class A
5 or B and for solar energy facilities, class B or C, shall be
6 restricted to the following permitted uses:

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

10 (2) Game and fish propagation;

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

14 (4) Farm dwellings, employee housing, farm buildings, or
15 activities or uses related to farming and animal
16 husbandry. "Farm dwelling", as used in this
17 paragraph, means a single-family dwelling located on
18 and used in connection with a farm, including clusters
19 of single-family farm dwellings permitted within
20 agricultural parks developed by the State, or where



1 agricultural activity provides income to the family
2 occupying the dwelling;

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

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

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

19 (8) Retention, restoration, rehabilitation, or improvement
20 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



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

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

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

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

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

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

17 "Agricultural-energy facility" means a facility
18 that generates, stores, or distributes renewable
19 energy as defined in section 269-91 or renewable fuel
20 including electrical or thermal energy or liquid or



1 gaseous fuels from products of agricultural activities
2 from agricultural lands located in the State.

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

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



- 1 (19) Agricultural education programs conducted on a farming
2 operation as defined in section 165-2, for the
3 education and participation of the general public;
4 provided that the agricultural education programs are
5 accessory and secondary to the principal agricultural
6 use of the parcels or lots on which the agricultural
7 education programs are to occur and do not interfere
8 with surrounding farm operations. For the purposes of
9 this paragraph, "agricultural education programs"
10 means activities or events designed to promote
11 knowledge and understanding of agricultural activities
12 and practices conducted on a farming operation as
13 defined in section 165-2;
- 14 (20) Solar energy facilities that do not occupy more than
15 ten per cent of the acreage of the parcel, or twenty
16 acres of land, whichever is lesser or for which a
17 special use permit is granted pursuant to section 205-
18 6; provided that this use shall not be permitted on
19 lands with soil classified by the land study bureau's
20 detailed land classification as overall (master)



1 productivity rating class A unless the solar energy
2 facilities are:

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

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

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

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

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



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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);



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

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

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

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

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

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



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

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

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

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



1 subject to the restriction on uses as prescribed in this section
2 and to the condition that the uses shall be primarily in pursuit
3 of an agricultural activity.

4 Any deed, lease, agreement of sale, mortgage, or other
5 instrument of conveyance covering any land within the
6 agricultural subdivision shall expressly contain the restriction
7 on uses and the condition, as prescribed in this section that
8 these restrictions and conditions shall be encumbrances running
9 with the land until such time that the land is reclassified to a
10 land use district other than agricultural district.

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



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

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

15 (d) Notwithstanding any other provision of this chapter to
16 the contrary, golf courses and golf driving ranges approved by a
17 county before July 1, 2005, for development within the
18 agricultural district shall be permitted uses within the
19 agricultural district.

20 (e) Notwithstanding any other provision of this chapter to
21 the contrary, plantation community subdivisions as defined in



1 this section shall be permitted uses within the agricultural
2 district, and section 205-8 shall not apply.

3 [+] (f) [+] Notwithstanding any other law to the contrary,
4 agricultural lands may be subdivided and leased for the
5 agricultural uses or activities permitted in subsection (a);
6 provided that:

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

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

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

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

19 (B) Five years.



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

4 (g) Notwithstanding any other law to the contrary, any
5 subdivision of agricultural lands into more than five lots, any
6 one of which is two acres or less, or any submission of
7 agricultural lands to the department of commerce and consumer
8 affairs for approval for a condominium or horizontal property
9 regime, shall first be approved by the land use commission. The
10 commission may only allow the subdivision if there is a showing
11 that:

12 (1) The entire parcel subject to subdivision will remain
13 in agricultural use for a period of twenty years;

14 (2) The subdivision will not result in fragmentation of
15 the agricultural district;

16 (3) The subdivision is consistent with all relevant county
17 general and community plans;

18 (4) The subdivision is consistent with all state
19 agricultural sustainability plans; and

20 (5) The subdivision is not done primarily for residential
21 purposes."



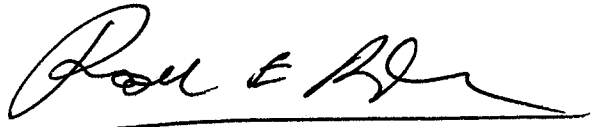
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1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

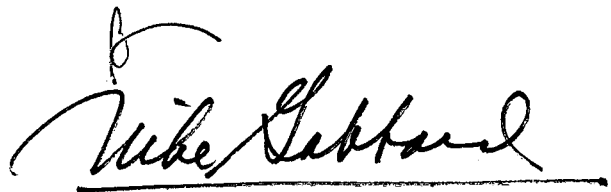
3 SECTION 4. This Act shall take effect upon its approval.
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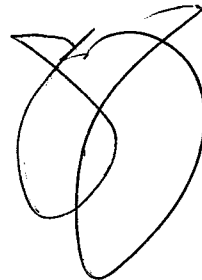














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Report Title:

Preservation of Agricultural Lands; Subdivision

Description:

Requires that any subdivision of agricultural lands into more than five lots, any one of which is two acres or less, or any submission of agricultural lands to the department of commerce and consumer affairs for approval for a condominium or horizontal property regime, first be approved by the land use commission. Sets requirements under which the land use commission may approve such a subdivision.

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