THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

S.B. NO. 1236 S.D. 1 H.D. 1

A BILL FOR AN ACT

RELATING TO LAND USE.

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

SECTION 1. Article XI, section 3, of the Constitution of the State of Hawaii provides, among other things, that "[t]he State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands."

Some of the best agricultural lands in the state are also lands that, because of topography, location, and climate, are desirable for development of up-scale housing. The legislature finds that, in the recent past, hundreds of acres of agricultural land have been converted into developments that feature luxury homes and a lack of agricultural activity, agribusiness, or subsistence farming. While the homeowners may cultivate a few fruit trees or an herb garden, no meaningful agricultural activity takes place, even though the developments are sometimes called "agricultural subdivisions".

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

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

The purpose of this Act is to comply with the requirements of article XI, section 3, to protect the State's agricultural land by ensuring that agricultural land is used for agricultural activities, agribusiness, or subsistence farming and not for "fake farms".

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§46- Subdivisions on agricultural land.** (a) Except as provided in this section, each subdivision of land in the agricultural land use district under chapter 205 that is approved by any county shall be subject to the following conditions:

(1) Each lot in the subdivision, except roadways, shall be restricted to agribusiness or subsistence farming uses; provided that upon receipt of subdivision approval, the applicant shall record with the bureau of conveyances or land court, deed restrictions or covenants requiring that the lot owner or lessee use the lot solely for agribusiness or subsistence farming

and such restrictions or covenants shall run with the land; and

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

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

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

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

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

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

1 "Approval" means final approval granted for a proposed
2 subdivision where the actual division of land into small parcels
3 is sought, approval of a building permit, or approval of a farm
4 plan, as the context may require.
5 "Subdivision" means the division of improved or unimproved
6 land or interests in land into two or more lots, parcels, sites,
7 or other divisions of land, including condominiums under chapter
8 514A or 514B, and for the purpose, whether immediate or future,
9 of sale, lease, rental, transfer of title to or interest in, any
10 or all such lots, parcels, sites, or other divisions of land.
11 The term may include a consolidation and resubdivision and, when
12 appropriate to the context, shall relate to the land subdivided.
13 "Subsistence farming" means agricultural activity or
14 agricultural practices that produce food or products primarily
15 for consumption by the family working the land, and where the
16 family is dependent on this activity to meet a significant
17 portion of the family's nutritional needs. Agriculture that is
18 insignificant in relation to the actual use of land shall not be
19 evidence of subsistence farming.
20 (c) This section shall apply to any subdivision or
21 development application for land within the agricultural

district that has not been approved by a county on or before the effective date of this Act.

(d) Notwithstanding anything to the contrary in this section or section 46-4, county approvals issued pursuant to this section shall remain valid in the event the land use district classification of the affected land is reclassified pursuant to section 205-3.1 or 205-4; provided that the uses permitted under the approval are permissible uses under the new land use district classification."

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

"(d) Agricultural districts shall include:

(1) Activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry;

(2) Farming activities or uses related to animal husbandry, and game and fish propagation;

(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind generated energy production for public, private, and commercial use;

(5) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);

(6) Wind machines and wind farms;

(7) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;

(8) Agricultural parks;

(9) 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; and

(10) Open area recreational facilities.

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

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

1 "(d) The county land use decision-making authority shall
2 serve a copy of the application for a district boundary
3 amendment to the land use commission and the department of
4 business, economic development, and tourism and shall notify the
5 commission and the department in writing thirty days in advance
6 of the time and place of the hearing and the proposed amendments
7 scheduled to be heard at the hearing. No county land use
8 decision-making authority shall approve a change in the land use
9 district boundaries pursuant to this section unless the county
10 land use decision-making authority finds that the proposed
11 boundary change is reasonable, not violative of section 205-2,
12 and consistent with the policies and criteria established
13 pursuant to sections 205-16 and 205-17, and any additional
14 county requirements not in conflict with those sections. A
15 change in the state land use district boundaries pursuant to
16 this subsection shall become effective on the day designated by
17 the county land use decision-making authority in its decision.
18 Within sixty days of the effective date of any decision to amend
19 state land use district boundaries by the county land use
20 decision-making authority, the decision and the description and
21 map of the affected property shall be transmitted to the land

use commission and the department of business, economic development, and tourism by the county planning director."

SECTION 5. 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~~] shall be restricted to the following permitted uses:

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

(2) Game and fish propagation;

(3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for [~~economic or personal use;~~] agribusiness or subsistence farming purposes;

(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) Means a single-family dwelling located on and used in connection with [~~a farm,~~] agricultural activities, agribusiness, or subsistence farming, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling; and

(B) Excludes:

(i) Single-family dwellings in a subdivided development where the agricultural activity, agribusiness, or subsistence farming established is insignificant in relation to the actual use of the land; and

(ii) Guest cottages;

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

(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf

driving ranges, golf-related facilities, country clubs, and overnight camps;

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

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

(9) Roadside stands for the sale of agricultural products grown on the premises;

(10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are [~~normally considered~~] directly accessory to the [~~above mentioned uses and are~~] agricultural activities, agribusiness, or subsistence farming

permitted [~~under~~] in this section and section 205-2(d);

(11) Agricultural parks;

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

[~~(~~] (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; or

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

(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 subject to [~~the~~]:

(1) The restriction on uses as prescribed in this section [~~and to the~~];

(2) The condition that the uses shall be [~~primarily~~] solely in pursuit of an agricultural activity[~~.~~], agribusiness, or subsistence farming; and

(3) The condition that the land shall not be subdivided and used for development where the primary purpose of the development is the sale or development of residential homes.

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

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee in obtaining mortgage financing from any of the mortgage lending agencies set forth in the following paragraph, and the requirement is the sole reason for failure to obtain mortgage financing, then the requirement of encumbrances shall[~~,~~] be conditionally waived, insofar as such mortgage financing is jeopardized, [~~be conditionally waived~~] by the appropriate county enforcement officer; provided that the conditional waiver shall become effective only in the

event that the property is subjected to foreclosure proceedings by the mortgage lender.

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

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

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

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

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

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

(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.

1 Lots created and leased pursuant to this section shall be
2 legal lots of record for mortgage lending purposes and shall be
3 exempt from county subdivision standards.
4 (f) For the purposes of this section, the following terms
5 shall have the following meanings:
6 "Agribusiness" means a business licensed for the production
7 and sale of products from the cultivation of crops, propagation
8 of fish or game, or raising of livestock, including but not
9 limited to the processing of farm products or the manufacturing
10 of farm equipment and fertilizers.
11 "Agricultural activity" means activities involved in the
12 cultivation of crops, propagation of fish or game, or raising of
13 livestock.
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 or interests in land into two or more lots, parcels, sites,
20 or other divisions of land, including condominiums under chapter
21 514A or 514B, and for the purpose, whether immediate or future,
22 of sale, lease, rental, transfer of title to, or interest in,

any or all of the lots, parcels, sites, or other divisions of land. The term may include a consolidation and resubdivision and, when appropriate to the context, shall relate to the land subdivided.

"Subsistence farming" means agricultural activity or agricultural practices that produce food or products primarily for consumption by the family working the land, and where the family is dependent on this activity to meet a significant portion of the family's nutritional needs. Agriculture that is insignificant in relation to the actual use of land shall not be evidence of subsistence farming.

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

"(b) Within agricultural districts, uses compatible to the activities described in [~~section~~] sections 205-2 and 205-4.5 as determined by the commission shall be permitted[~~; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance~~]. Each county within eighteen months of the effective date of this Act shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the

review and permitting of agricultural tourism uses and activities as an accessory use on a working farm[~~,~~] or farming operation as defined in section 165-2; provided that agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation. Ordinances shall include but not be limited to:

(1) Requirements for access to a farm, including road width, road surface, and parking;

(2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants; provided that overnight accommodations shall not be permitted;

(3) Activities that may be offered by the farming operation for visitors;

(4) Days and hours of operation; and

(5) Automatic termination of the accessory use upon the cessation of the farming operation.

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning

ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than [~~one acre,~~] five acres, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot [~~which~~] that is equal to or exceeds the minimum lot size of [~~one acre~~] five acres be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements."

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

1. By amending subsection (a) to read:

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

2. By amending subsection (c) to read:

"(c) The county planning commission [~~may~~], under such protective restrictions as may be deemed necessary, may permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a

use proposed for lands in an agricultural district or designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission."

3. By amending subsection (d) to read:

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

SECTION 8. The lawful use of land or improvements on the effective date of this Act may be continued although the use does not conform to this Act; provided that no nonconforming use of land shall be expanded or changed to another nonconforming use. If any nonconforming use of land is discontinued, then the provisions of this Act shall apply.

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

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

S.B. NO. 1236
S.D. 1
H.D. 1

Report Title:
Land Use; Agricultural District; Uses

Description:
Imposes conditions on the use of lands in the agricultural district, including limiting county zoning power in agricultural districts, providing that county special permits for rural district lands greater than 15 acres and agricultural district lands are subject to approval of the Land Use Commission. (SB1236 HD1)