

S.B. NO. 2954

JAN 22 2008

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 subdivided and converted into
11 developments that feature luxury homes and a lack of
12 agricultural activity, agribusiness, or subsistence farming,
13 despite the statutory requirement that single-family dwellings
14 on class "A" and "B" agricultural lands are to be used in
15 connection with a farm. Although the homeowners may cultivate a
16 few fruit trees or an herb garden, no meaningful agricultural
17 activity takes place, even though the developments are often
18 called "agricultural subdivisions".

1 The legislature further finds that the loss of agricultural
2 lands in this manner results in the loss of the State's ability
3 to develop sustainable agriculture that could increase food and
4 fuel self-sufficiency for Hawaii's people.

5 The purpose of this Act is to comply with the requirements
6 of article XI, section 3, to protect the State's agricultural
7 land with the highest productivity potential and ensure their
8 use in agribusiness, subsistence farming, and other permissible
9 uses on "real farms".

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

13 "§46- Subdivisions and building permits on agricultural
14 land. (a) Except as provided in this section, each subdivision
15 of land for farm dwellings and each building permit for farm
16 dwellings in the agricultural land use district with soil
17 classified by the land study bureau's detailed land
18 classification as overall (master) productivity rating class A
19 or B shall be subject to the following conditions:

20 (1) For any subdivision application in which farm
21 dwellings will be among the uses on the subdivided
22 lots, the county shall require that the applicant

S.B. NO. 2954

1 demonstrate the feasibility of agribusiness or
2 subsistence farming as the primary activity undertaken
3 on the land. Evidence of feasibility shall include
4 consideration of sufficiency in quantity, storage, and
5 distribution of irrigation water for each proposed lot
6 to meet anticipated maximum demand; adequacy of
7 infrastructure, such as internal roadways, utilities,
8 and areas for the common use of lot owners; the
9 proposed agribusiness uses and their agronomic
10 suitability for the area, cost of production,
11 potential income, and market outlook; the proposed
12 subsistence farming uses and their agronomic
13 suitability for the area; and the form of organization
14 of lot owners and how it will optimize agribusiness or
15 subsistence farming uses. Upon receipt of subdivision
16 approval, the applicant shall record with the bureau
17 of conveyances or land court, deed restrictions or
18 covenants that shall be enforced by the appropriate
19 county authority, requiring that the lot owner or
20 lessee use the lot primarily for agribusiness or
21 subsistence farming as long as the land is classified

1 in the agricultural land use district, and such
2 restrictions or covenants shall run with the land; and
3 (2) For any building permit for construction of a farm
4 dwelling, as defined in section 205-4.5(a)(4), the
5 county shall require that the applicant for the
6 building permit demonstrate an established and
7 substantial agribusiness or subsistence farming
8 activity. Evidence of an established and substantial
9 agribusiness or subsistence farming activity shall
10 include annual income from agribusiness or subsistence
11 farming; capital expenditures for agribusiness or
12 subsistence farming; household income, household size,
13 and agricultural products grown on the lot and
14 consumed by the household demonstrating subsistence
15 farming; and a farm plan demonstrating substantial
16 progress in achieving a successful agribusiness or
17 subsistence farming activity. Upon receipt of
18 building permit approval, if not already done, the
19 applicant shall record with the bureau of conveyances
20 or land court, deed restrictions or covenants that
21 shall be enforced by the appropriate county authority,
22 requiring that the lot owner or lessee use the lot

1 primarily for agribusiness or subsistence farming as
2 long as the land is classified in the agricultural
3 land use district, and such restrictions or covenants
4 shall run with the land.

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

7 "Agribusiness" means a business licensed for the sale of
8 products derived from the uses permitted in section 205-
9 4.5(a)(1), (2), and (3), including the processing of farm
10 products.

11 "Approval" means final approval of a proposed subdivision
12 where the actual division of land into smaller parcels is
13 sought, final approval of a building permit, or final approval
14 of a farm plan, as the context may require.

15 "Family subdivision" means the division of improved or
16 unimproved land or interests in land of less than fifteen acres
17 into two or more lots, parcels, sites, or other divisions of
18 land, including condominiums under chapter 514A or 514B, and for
19 the purpose of transfer of title to the children of the owner of
20 the land.

21 "Subdivision" means the division of improved or unimproved
22 land or interests in land into two or more lots, parcels, sites,

1 or other divisions of land, including condominiums under chapter
2 514A or 514B, for the purpose, whether immediate or future, of
3 sale, lease, rental, transfer of title to, or interest in, any
4 or all such lots, parcels, sites, or other divisions of land.

5 The term may include a consolidation and resubdivision and, when
6 appropriate to the context, shall relate to the land subdivided.

7 "Subsistence farming" means agricultural uses and practices
8 that produce food or products primarily for consumption by the
9 individual or family working the land, and where the individual
10 or family is dependent on this activity to meet a significant
11 portion of the individual's or family's needs. Each county
12 shall define the term "significant portion of the individual's
13 or family's needs" and may request the assistance of the
14 department of agriculture.

15 (c) Nothing in this section shall prevent the county from
16 imposing other requirements or specifying the format or
17 additional content of the application.

18 (d) This section shall not apply to any subdivision or
19 building permit application received by a county on or before
20 the effective date of this Act.

21 (e) This section shall not apply to family subdivisions,
22 providing the following conditions are met:

1 (1) The lot has not been subdivided subsequent to the
2 effective date of this Act; and

3 (2) The lot is not resold to a non-family member for
4 twenty-five years, except as may be required by law or
5 court order.

6 (f) Nothing in this section shall prevent permissible uses
7 or activities in existence on the effective date of this Act
8 from continuing as permissible uses.

9 (g) Nothing in this section shall invalidate any county
10 subdivision approval or building permit granted or issued on or
11 prior to the effective date of this Act."

12 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§205-4.5 Permissible uses within the agricultural**
15 **districts.** (a) Within the agricultural district, all lands
16 with soil classified by the land study bureau's detailed land
17 classification as overall (master) productivity rating class A
18 or B shall be restricted to the following permitted uses:

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

22 (2) Game and fish propagation;

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

5 (4) Farm dwellings, employee housing, farm buildings, or
6 activities or uses related to farming and animal
7 husbandry. "Farm dwelling", as used in this
8 paragraph[~~, means~~]:

9 (A) Means a single-family dwelling [~~located on and~~
10 accessory to and used in connection with [a
11 farm,] agribusiness or subsistence farming,
12 including clusters of single-family farm
13 dwellings permitted within agricultural parks
14 developed by the State, [~~or where agricultural~~
15 ~~activity provides income to the family occupying~~
16 ~~the dwelling,~~] but excluding single-family
17 dwellings in a subdivided development where there
18 is little or no agribusiness or subsistence
19 farming established; and

20 (B) Excludes guest cottages;

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

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

1 the [~~above mentioned uses and are~~] agribusiness or
2 subsistence farming permitted [~~under~~] in this section
3 and section 205-2(d);

4 (11) Agricultural parks;

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

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

1 ordinances regulating agricultural tourism under
2 section 205-5;

3 (14) Wind energy facilities, including the appurtenances
4 associated with the production and transmission of
5 wind generated energy; provided that the wind energy
6 facilities and appurtenances are compatible with
7 agriculture uses and cause minimal adverse impact on
8 agricultural land;

9 (15) Biofuel processing facilities, including the
10 appurtenances associated with the production and
11 refining of biofuels that is normally considered
12 directly accessory and secondary to the growing of the
13 energy feedstock; provided that biofuels processing
14 facilities and appurtenances do not adversely impact
15 agricultural land and other agricultural uses in the
16 vicinity.

17 For the purposes of this paragraph:

18 "Appurtenances" means operational infrastructure
19 of the appropriate type and scale for economic
20 commercial storage and distribution, and other similar
21 handling of feedstock, fuels, and other products of
22 biofuels processing facilities.

1 "Biofuels processing facility" means a facility
2 that produces liquid or gaseous fuels from organic
3 sources such as biomass crops, agricultural residues,
4 and oil crops, including palm, canola, soybean, and
5 waste cooking oils; grease; food wastes; and animal
6 residues and wastes that can be used to generate
7 energy[+]; or[+]

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

20 (b) Uses not expressly permitted in subsection (a) shall
21 be prohibited, except the uses permitted as provided in sections
22 205-6 and 205-8, and construction of single-family dwellings on

1 lots existing before June 4, 1976. Any other law to the
2 contrary notwithstanding, no subdivision of land within the
3 agricultural district with soil classified by the land study
4 bureau's detailed land classification as overall (master)
5 productivity rating class A or B shall be approved by a county
6 unless those A and B lands within the subdivision are made
7 subject to ~~the~~:

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

10 (2) The condition that the uses shall be primarily in
11 pursuit of an agricultural activity[-], agribusiness
12 or subsistence farming; and

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

17 Any deed, lease, agreement of sale, mortgage, or other
18 instrument of conveyance covering any land within the
19 agricultural subdivision shall expressly contain the restriction
20 on uses and the ~~condition,~~ conditions, as prescribed in this
21 section, that these restrictions and conditions shall be
22 encumbrances running with the land until such time that the land

1 is reclassified to a land use district other than agricultural
2 district.

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

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

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

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

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

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

19 (1) The principal use of the leased land is [~~agriculture,~~]
20 for agricultural activity, agribusiness, or
21 subsistence farming;

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

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

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

13 (B) Five years.

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

17 (g) For the purposes of this section, the following terms
18 shall have the following meanings:

19 "Agribusiness" means a business licensed for the sale of
20 products derived from the uses permitted in section 205-
21 4.5(a)(1), (2), and (3), including the processing of farm
22 products.

1 "Approval" means final approval of a proposed subdivision
2 where the actual division of land into smaller parcels is
3 sought, final approval of a building permit, or final approval
4 of a farm 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, for the purpose, whether immediate or future, of
9 sale, lease, rental, transfer of title to, or interest in, any
10 or all of the 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 uses and practices
14 that produce food or products primarily for consumption by the
15 individual or family working the land, and where the individual
16 or family is dependent on this activity to meet a significant
17 portion of the individual's or family's needs. Each county
18 shall define the term "significant portion of the individual's
19 or family's needs" and may request the assistance of the
20 department of agriculture."

S.B. NO. 2954


1 SECTION 4. The lawful use of land or improvements on the
2 effective date of this Act may be continued as a permissible use
3 although the use does not conform to this Act.

4 SECTION 5. Nothing in this Act shall invalidate any county
5 subdivision approval or building permit granted or issued on or
6 prior to the effective date of this Act.

7 SECTION 6. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.

10
11 INTRODUCED BY:



A handwritten signature in black ink, consisting of a vertical line on the right and a horizontal line on the left, crossing at the top. The signature is positioned above a horizontal line that spans the width of the signature area.

12 BY REQUEST

Report Title:

Land Use; Agricultural Land; Subdivision

Description:

Protects and promotes the proper use of Hawaii's best agricultural lands by requiring conditions of approval for subdivisions of agricultural land into smaller lots and farm dwellings, thereby ensuring meaningful agricultural use.

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO LAND USE.

PURPOSE: The purpose of this bill is to protect and promote the proper use of Hawaii's best agricultural land by imposing new requirements for subdivisions of agricultural lands and building permits for farm dwellings, thereby ensuring meaningful agricultural use.

MEANS: Add a new section to chapter 46 and amend section 205-4.5, Hawaii Revised Statutes.

JUSTIFICATION: 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 the most desirable for large-lot subdivision developments where the principal use is residential rather than agricultural. Loss of prime agricultural lands to these developments or "fake farms" inhibits the ability of the State to become more self-sufficient in food and energy.

Impact on the public: Protection of agricultural lands and promoting their proper use in agricultural production will enhance the well-being of the public inasmuch as it may increase food and fuel self-sufficiency for the State.

Impact on the department and other agencies: Gives direction to the counties on how to protect agricultural lands. The Land Use Commission is likely to see an increase in the number of petitions for district boundary amendments.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Land Use Commission, Office of Planning,
County Planning and Permitting departments.

EFFECTIVE DATE: Upon approval.