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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1           SECTION 1. In a recent decision, the state circuit court  
2 of the third circuit halted the Hokulia project in South Kona  
3 after ruling that the dwellings being constructed for the  
4 project were not farm dwellings and therefore not a permitted  
5 use in the state agricultural district. The court made this  
6 decision in spite of arguments by the developer that it had  
7 relied on the county's prior approval of the project in  
8 proceeding with the development, including the sale of over one  
9 hundred ninety homes and after investing more than \$350,000,000.

10           The legislature finds that the Hokulia decision has created  
11 great uncertainty over the validity of county approvals of land  
12 development projects granted prior to the decision. The adverse  
13 effect the decision has on land development and investment in  
14 the state is far-reaching. County approvals of projects are  
15 devoid of certainty. Developers of county-approved projects  
16 face the loss of millions of dollars after undertaking or  
17 completing projects while relying on government approval.



1 Buyers and investors are at risk of losing the use of their  
2 property for purposes that were previously approved.

3       Uncertainty in the real estate market also has a negative  
4 impact on Hawaii's economy by deterring investment and reducing  
5 the amount of jobs and the demand for local materials and  
6 supplies tied to affected projects. Counties will lose property  
7 tax revenue that could help pay for community infrastructure and  
8 services. The reduction of development projects in the state  
9 would also result in a corresponding decrease in the multitude  
10 of benefits for local communities that frequently accompany  
11 these projects, such as exactions on developers to include  
12 affordable housing, transportation infrastructure, shoreline and  
13 beach access, and public parks.

14       The Hokulia decision could also draw a variety of parties  
15 into costly and time-consuming litigation, including the  
16 government, developers, construction companies, buyers, lenders,  
17 realtors, title insurers, and residential lot owners. Such  
18 litigation only adds to delays of projects and the uncertainty  
19 of their status.

20       All of these considerations revolve around the need for  
21 assurances and finality regarding the validity of existing land  
22 development projects. An area of such profound importance to



1 the state economy, local businesses, employment, housing, and  
2 general community interests deserves a greater measure of  
3 certainty in the status of county-approved land developments.

4 The purpose of this Act is to reestablish certainty for  
5 existing land development projects that have received county  
6 approval, by providing that developments approved by counties  
7 prior to the Hokulia decision are deemed to be in compliance  
8 with state laws relating to permissible land use.

9 SECTION 2. Chapter 205, Hawaii Revised Statutes, is  
10 amended by adding a new section to be appropriately designated  
11 and to read as follows:

12 "§205- Land use restrictions; certain developments  
13 approved by counties; compliance. Notwithstanding any other law  
14 to the contrary, any land development or project therefor  
15 approved by the appropriate county land use decision-making  
16 authority prior to shall be deemed to be in  
17 compliance with the provisions of this chapter relating to  
18 permissible uses of land."

19 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY:  
HB HMS 2009-1187  
Kamui Gabbard  
Suzanne Kawakami  
Hakulani Young  
Murray  
Cindy Evans  
Bryant

H.B. NO. 2839

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*[Handwritten signature]*  
Ricky T. P. Catorilla

*[Handwritten signature]*  
[Signature]

*[Handwritten signature]*  
Alex M. [Signature]

JAN 25 2006



HB 2839

**Report Title:**

Land Developments; Compliance with Land Use Restrictions

**Description:**

Provides that developments that have received county approval before a certain date are deemed to be in compliance with state land use restrictions.

