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## A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1           SECTION 1. Article XI, section 3, of the state  
2 constitution provides in part the following: "The State shall  
3 conserve and protect agricultural lands, promote diversified  
4 agriculture, increase agricultural self-sufficiency and assure  
5 the availability of agriculturally suitable lands. The  
6 legislature shall provide standards and criteria to accomplish  
7 the foregoing."

8           The purpose of this Act is to require an agricultural  
9 subdivision or agricultural condominium in lands that are in the  
10 agricultural district pursuant to chapter 205, Hawaii Revised  
11 Statutes, to be approved by the relevant county council by  
12 ordinance. The legislature intends that designating the  
13 subdivision or condominium approval as a discretionary,  
14 legislative act confers upon the county council flexibility in  
15 determining whether the agricultural subdivision or agricultural  
16 condominium is in the best interest of the county before  
17 deciding whether to approve or reject an application.



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

4 "§46- Agricultural subdivision and agricultural  
5 condominium; requirement for county council approval. (a) For  
6 the purpose of this section:

7 "Agricultural condominium" means a condominium property  
8 regime on land, any part of which is within the agricultural  
9 district established under chapter 205.

10 "Agricultural subdivision" means a subdivision of land, any  
11 part of which is within the agricultural district established  
12 under chapter 205.

13 (b) No building, grading, grubbing, stockpiling, or other  
14 county permit shall be issued for a structure or improvement in  
15 or for an agricultural subdivision or agricultural condominium  
16 prior to approval by the applicable county council of the  
17 agricultural subdivision or agricultural condominium. The  
18 approval shall be expressed by ordinance and shall be deemed a  
19 discretionary, legislative act. As part of the ordinance, the  
20 county council may include any term or condition deemed  
21 necessary to ensure:



1       (1) The operation of agricultural activity on each lot or  
2       unit created, other than roadway or utility purposes,  
3       is economically viable; and

4       (2) The subdivider, condominium developer, or lot or unit  
5       owners or occupants are in compliance with chapter 205  
6       and any other applicable law or ordinance.

7       (c) The county council may establish provisions by  
8       ordinance with respect to the application for, processing of,  
9       and action on a proposed agricultural subdivision or  
10       agricultural condominium. The provisions may include prior  
11       review of the application by the county planning commission."

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, 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           (4) Farm dwellings, employee housing, farm buildings, or
- 5           activities or uses related to farming and animal
- 6           husbandry. "Farm dwelling", as used in this
- 7           paragraph, means a single-family dwelling located on
- 8           and used in connection with a farm, including clusters
- 9           of single-family farm dwellings permitted within
- 10          agricultural parks developed by the State, or where
- 11          agricultural activity provides income to the family
- 12          occupying the dwelling;
- 13          (5) Public institutions and buildings that are necessary
- 14          for agricultural practices;
- 15          (6) Public and private open area types of recreational
- 16          uses, including day camps, picnic grounds, parks, and
- 17          riding stables, but not including dragstrips,
- 18          airports, drive-in theaters, golf courses, golf
- 19          driving ranges, country clubs, and overnight camps;
- 20          (7) Public, private, and quasi-public utility lines and
- 21          roadways, transformer stations, communications
- 22          equipment buildings, solid waste transfer stations,



1 major water storage tanks, and appurtenant small  
2 buildings such as booster pumping stations, but not  
3 including offices or yards for equipment, material,  
4 vehicle storage, repair or maintenance, treatment  
5 plants, corporation yards, or other similar  
6 structures;

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

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

11 (10) Buildings and uses, including but not limited to  
12 mills, storage, and processing facilities, maintenance  
13 facilities, and vehicle and equipment storage areas  
14 that are normally considered directly accessory to the  
15 above mentioned uses and are permitted under section  
16 205-2(d);

17 (11) Agricultural parks;

18 (12) Plantation community subdivisions, which as used in  
19 this paragraph means a subdivision or cluster of  
20 employee housing, community buildings, and acreage  
21 established on land currently or formerly owned,  
22 leased, or operated by a sugar or pineapple plantation



1 and in residential use by employees or former  
2 employees of the plantation; provided that the  
3 employees or former employees shall have a property  
4 interest in the land;

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

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

21 (15) Biofuel processing facilities, including the  
22 appurtenances associated with the production and



1 refining of biofuels that is normally considered  
 2 directly accessory and secondary to the growing of the  
 3 energy feedstock; provided that biofuels processing  
 4 facilities and appurtenances do not adversely impact  
 5 agricultural land and other agricultural uses in the  
 6 vicinity.

7 For the purposes of this paragraph:

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

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

20 [+](16)[+] Construction and operation of wireless communication  
 21 antennas; provided that, for the purposes of this  
 22 paragraph, "wireless communication antenna" means



1           communications equipment that is either freestanding  
2           or placed upon or attached to an already existing  
3           structure and that transmits and receives  
4           electromagnetic radio signals used in the provision of  
5           all types of wireless communications services;  
6           provided further that nothing in this paragraph shall  
7           be construed to permit the construction of any new  
8           structure that is not deemed a permitted use under  
9           this subsection.

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





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

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

18 The mortgage lending agencies referred to in the preceding  
19 paragraph are the Federal Housing Administration, Federal  
20 National Mortgage Association, Veterans Administration, Small  
21 Business Administration, United States Department of  
22 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate



1 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any  
2 other federal, state, or private mortgage lending agency  
3 qualified to do business in Hawaii, and their respective  
4 successors and assigns.

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

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

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

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



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

2 (2) No permanent or temporary dwellings or farm dwellings,  
3 including trailers and campers, are constructed on the  
4 leased area. This restriction shall not prohibit the  
5 construction of storage sheds, equipment sheds, or  
6 other structures appropriate to the agricultural  
7 activity 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 legal  
15 lots of record for mortgage lending purposes and shall be exempt  
16 from county subdivision standards.

17 (g) Each unit of a condominium property regime in the  
18 agricultural district shall be in compliance with the minimum  
19 size, farm dwelling restrictions, agricultural activity  
20 requirements, and other term and conditions applicable to a  
21 subdivided lot on that agricultural land."



1 SECTION 4. Section 514B-5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§514B-5[+] **Conformance with county land use laws.** Any  
4 condominium property regime established under this chapter shall  
5 conform to the existing underlying county zoning for the  
6 property and all applicable county permitting requirements  
7 adopted by the county in which the property is located,  
8 including the requirements of and any terms and conditions  
9 adopted pursuant to section 46- and any supplemental rules  
10 adopted by the county, pursuant to section 514B-6, to ensure the  
11 conformance of condominium property regimes to the purposes and  
12 provisions of county zoning and development ordinances and  
13 chapter 205. In the case of a property [~~which~~] that includes  
14 one or more existing structures being converted to condominium  
15 status, the condominium property regime shall comply with  
16 section 514B-32(a)(13) or 514B-84(a)."

17 SECTION 5. Section 514B-31, Hawaii Revised Statutes, is  
18 amended by amending its title and subsection (a) to read as  
19 follows:

20 "[+]§514B-31[+] **Creation[-]; agricultural district.** (a)  
21 To create a condominium property regime, all of the owners of  
22 the fee simple interest in land shall execute and record a



1 declaration submitting the land to the condominium property  
 2 regime. If the condominium property regime is on land, any part  
 3 of which is within the agricultural district established under  
 4 chapter 205, the declaration shall not be recorded until after  
 5 the condominium property regime has been approved by the  
 6 applicable county council pursuant to section 46- . Upon  
 7 recordation of the master deed together with a declaration, the  
 8 condominium property regime shall be deemed created."

9 SECTION 6. This Act shall not apply to:

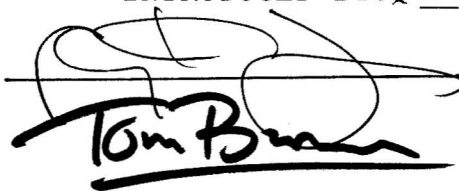
- 10 (1) Any application for the subdivision of land within the
- 11 state agricultural district that is pending before, or
- 12 was approved by, a county on June 30, 2008; and
- 13 (2) Any declaration of a condominium property regime
- 14 recorded before June 30, 2008.

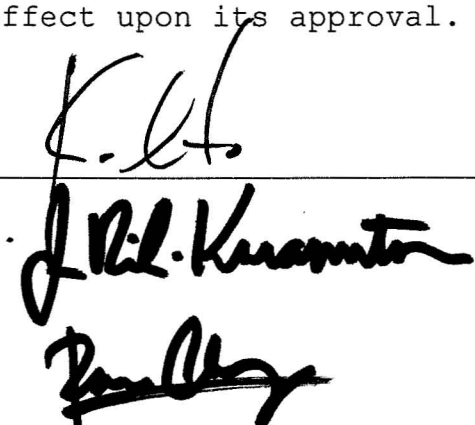
15 SECTION 7. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

  
 Tom Brown

  
 J. Phil. Karaman

JAN 15 2008



**Report Title:**

Agriculture; Subdivision; Condominium

**Description:**

Requires subdivision or condominium property regime in agricultural district to be approved pursuant to ordinance.

