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# A BILL FOR AN ACT

RELATING TO SUSTAINABILITY.

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

1           SECTION 1. The legislature finds that Hawaii is a unique  
2 and beautiful State that is largely dependent on the importation  
3 of fuel, food, and supplies to sustain its economy and  
4 communities. In 2005, the legislature enacted Act 8, Special  
5 Session Laws of Hawaii 2005, to establish the Hawaii 2050  
6 sustainability task force. The task force was established to  
7 review the Hawaii state plan and other fundamental components of  
8 community planning; to develop a Hawaii 2050 sustainability plan  
9 to address the real, serious, and immediate problems the State  
10 faces today; and recommend various solutions to preserve and  
11 maintain a healthy future for the State.

12           Since then, the interest in the concept of sustainability  
13 has grown through the efforts of the task force, state and  
14 county departments and agencies, local businesses and community  
15 groups, and community engagement programs and projects. Private  
16 industries and developers have introduced technology and  
17 concepts that can assist communities to become more sustainable



1 and independent with minimal detrimental effects to the  
2 environment and the economy. Sustainability has transformed  
3 from the conceptual stage to an actual lifestyle that can be  
4 achieved, but only through a comprehensive joint effort with the  
5 government and the community.

6 A prime example of this sustainable lifestyle is the  
7 soldier and family housing developments at Schofield Barracks on  
8 Oahu where Army Hawaii Family Housing and its managing partner  
9 Actus Lend Lease of Hawaii have merged the concept of  
10 sustainability with community development. The residential  
11 developments that are currently being constructed incorporate  
12 the following sustainability initiatives:

13 (1) Energy efficiency:

- 14 (A) Windows of the homes are dual glazed with low  
15 e-tinting to reflect heat away from the home to  
16 keep it cool inside;
- 17 (B) Walls of the homes are insulated and constructed  
18 to sustain hurricane force winds;
- 19 (C) Appliances are energy efficient (ENERGY STAR  
20 refrigerators and dishwashers) and installed in  
21 all homes;



- 1 (D) Compact fluorescent lighting fixtures and bulbs
- 2 are installed to save the amount of electricity
- 3 used;
- 4 (E) Roofs have radiant barriers to reflect heat back
- 5 and are insulated to keep the inside of the home
- 6 cool, and vents are installed to allow natural
- 7 airflow throughout the homes;
- 8 (F) Photovoltaic panels on garage roofs and solar
- 9 water heating devices are installed to
- 10 collectively generate thirty per cent of the
- 11 electricity needs for the entire project; and
- 12 (G) An army metering program is being implemented
- 13 that meters the electricity and water use on all
- 14 military buildings and homes, where practicable,
- 15 and charges military housing residents for
- 16 electricity and water to encourage residents to
- 17 track their electricity and water usage and to
- 18 save money and conserve;
- 19 (2) Comprehensive recycling program:
- 20 (A) Crushed building slabs, asphalt, curbs, and
- 21 sidewalks from demolition are used for structural
- 22 fill under new buildings and streets. Ninety-



- 1           seven per cent of the materials from the  
2           demolition of the previous residential homes at  
3           Schofield Barracks have been recycled;
- 4           (B) Reclaimed rebar, metal fencing, and miscellaneous  
5           metals from demolition are bundled and sent to  
6           local metal recyclers;
- 7           (C) Trees that are not reserved are ground for wood  
8           chips and sent to composting sites;
- 9           (D) Rain gutters and downspouts divert water away  
10          from homes and are used for landscaping needs;
- 11          (E) Used appliances from previous residential homes  
12          are donated to local charities; and
- 13          (F) A weekly curbside recycling program for paper,  
14          metal, and glass is being implemented;
- 15        (3) Water conservation:
- 16           (A) A water irrigation policy is in force;
- 17           (B) Leak detection and repair projects on water mains  
18           are being implemented; and
- 19           (C) An aquifer management plan is in force; and
- 20        (4) Comprehensive wastewater treatment program:
- 21           (A) The wastewater treatment system is designed to R1  
22           control zone standards; and



1 (B) The R1 water is being used for landscaping and  
2 vehicle washing.

3 The Simpson Wisser Community at Fort Shafter on Oahu has  
4 been selected by the United States Green Building Council to  
5 participate in the Leadership in Energy and Environmental Design  
6 Neighborhood Development Pilot Program. This pilot program will  
7 incorporate the principles of smart growth, new urbanism, and  
8 green building and is expected to break ground in the spring of  
9 2008. These remarkable sustainability initiatives emphasize  
10 that developing a sustainable community is beyond the conceptual  
11 stage and is now a reality.

12 The purpose of this Act is to establish a process by which  
13 developers of residential communities may elect to develop  
14 sustainable communities in the State and to provide incentives  
15 for developers to do so.

16 SECTION 2. The Hawaii Revised Statutes is amended by  
17 adding a new chapter to title 13 to be appropriately designated  
18 and to read as follows:

19 "CHAPTER

20 SUSTAINABLE COMMUNITIES

21 § -1 Sustainable communities; established; objectives.

22 (a) To maintain and preserve a healthy quality of life and



1 environment for Hawaii's future generations, the State, in a  
2 combined effort with all state departments and agencies, shall  
3 assist in the development and maintenance of sustainable  
4 communities that will:

- 5 (1) Generate their own energy onsite by utilizing  
6 alternative energy sources to fulfill a large  
7 percentage of their energy requirements, and become  
8 less reliant on imported fossil fuels;
- 9 (2) Implement extensive recycling programs for their solid  
10 waste management and avoid adding more waste to  
11 landfills that further pollution and other harmful  
12 effects to the environment;
- 13 (3) Implement an extensive wastewater recycling and  
14 treatment management system that will enable the  
15 communities to conserve water and protect waters in  
16 and around the State;
- 17 (4) Implement an extensive water conservation management  
18 system that will enable the communities to conserve  
19 water and protect waters in and around the State;
- 20 (5) Protect and preserve open space;
- 21 (6) Promote and encourage visitation to nearby cultural or  
22 historic sites, public beaches, shores, trails, and



- 1 other outdoor recreational areas by not restricting  
2 public access to these areas;
- 3 (7) Provide affordable housing units for residents to  
4 enable them to stay in Hawaii and provide shelter for  
5 their families; and
- 6 (8) Educate and promote awareness that sustainability is  
7 more than a concept, but a lifestyle that can be  
8 achieved and implemented in the daily lives of Hawaii  
9 residents.
- 10 (b) Any developer of a residential community with a  
11 development plan for fifty or more residential units for which  
12 general planning, development, and construction is commenced  
13 after December 31, 2008, shall have the option of developing the  
14 residential community in a manner that fulfills the criteria  
15 prescribed under this chapter. If a developer elects to be  
16 subject to this chapter, the developer, upon approval, shall be  
17 able to engage in an expedited permit process under  
18 section -4.
- 19 § -2 **Applicability.** (a) This chapter shall only apply  
20 to a residential community with a development plan for fifty or  
21 more residential units for which general planning, development,  
22 and construction is commenced after December 31, 2008, and for



1 which the project developer has elected to be subject to this  
2 chapter and has notified the energy resources coordinator, in  
3 accordance with section -3, to engage in the expedited permit  
4 process provided under this chapter.

5 (b) This chapter shall apply to all state departments and  
6 agencies with the authority to grant any permit necessary to  
7 assist in the development and maintenance of a sustainable  
8 community pursuant to:

9 (1) An executed written development agreement between the  
10 energy resources coordinator, on behalf of the ad hoc  
11 development advisory committee under section -3 and  
12 the developer; and

13 (2) Notice of the agreement from the energy resources  
14 coordinator pursuant to section -4.

15 **§ -3 Energy resources coordinator; ad hoc development**  
16 **advisory committee convenor.** (a) Prior to a developer engaging  
17 in the expedited permit process under this chapter, the energy  
18 resources coordinator shall convene an ad hoc development  
19 advisory committee only when a developer of the residential  
20 community plan has submitted written notice to the energy  
21 resources coordinator that includes:





1 (1) A detailed draft project development plan that  
2 proposes to develop fifty or more residential units  
3 within the proposed community of which general  
4 planning, development, and construction will commence  
5 after December 31, 2008; and

6 (2) A statement of the developer's interest and  
7 willingness to comply with the sustainability  
8 requirements of this chapter.

9 (b) The ad hoc development advisory committee shall  
10 convene to:

11 (1) Explore all applicable types of available programs and  
12 resources that promote energy and resource  
13 conservation and a self sustaining community; and

14 (2) Determine the feasibility of each type of program and  
15 resource in developing an integrated plan for a  
16 sustainable residential community on any proposed  
17 tract of land that fulfills the requirements under  
18 this chapter.

19 (c) The members of the advisory committee shall consist  
20 of:

21 (1) The residential community developer;

22 (2) The energy resources coordinator;



- 1           (3) The director of planning from the county in which the
- 2           development is planned for or the director's designee;
- 3           (4) The director of the office of planning or the
- 4           director's designee;
- 5           (5) The director of health or the director's designee;
- 6           (6) The deputy for water resource management of the
- 7           department of land and natural resources or the
- 8           deputy's designee; and
- 9           (7) The executive director of the Hawaii housing finance
- 10          and development corporation or the executive
- 11          director's designee.
- 12          (d) The energy resources coordinator shall be the
- 13          chairperson of the advisory committee.
- 14          (e) The agreed upon sustainability plans and programs that
- 15          fulfill the requirements under this chapter shall be
- 16          incorporated in an integrated plan for a sustainable residential
- 17          community on any proposed tract of land and shall be reduced to
- 18          writing in a sustainability agreement, which shall be part of
- 19          the executed development agreement. Any other development
- 20          requirements established and agreed upon between the energy
- 21          resources coordinator, on behalf of an ad hoc development



1 advisory committee, and the developer shall be in writing and  
2 shall be included in the executed development agreement.

3       **§ -4 Expedited permit process; notice and agreement.**

4 Upon the convening and approval of the ad hoc development  
5 advisory committee and the execution of a written development  
6 agreement pursuant to -3, including the sustainability  
7 agreement, the energy resources coordinator shall notify any  
8 applicable state departments and agencies to allow the project  
9 developer of fifty or more residential units within the proposed  
10 community of which general planning, development, and  
11 construction will commence after December 31, 2008, to  
12 participate in the expedited permit process.

13       **§ -5 State department and agency cooperation and**

14 **compliance; required.** Each state department and agency shall  
15 cooperate and comply with any request made pursuant to this  
16 chapter from the energy resources coordinator. Each department  
17 and agency shall prioritize the energy resources coordinator's  
18 request and expedite the processing thereof.

19       **§ -6 Community energy requirements. (a)**

20 Notwithstanding any provision under chapter 196 to the contrary,  
21 the energy resources coordinator shall advise and coordinate  
22 with other state departments and agencies and a developer who



1 has agreed to be subject to this chapter to develop a plan on a  
2 case-by-case basis that will enable a residential community in  
3 Hawaii to generate at least fifty per cent of all of its energy  
4 requirements for the entire community under development,  
5 including residential homes, areas, and services provided for  
6 and used by the entire community under development.

7 (b) The energy resources coordinator shall develop a plan  
8 for the developer's implementation that explores all types of  
9 energy resources, as defined under section 196-2, and determine  
10 which resources are the most feasible for the community under  
11 development to use to meet its energy needs and energy  
12 generating requirements under this section.

13 (c) The energy resources coordinator shall cooperate and  
14 coordinate with all applicable state departments or agencies to  
15 expedite the application process for all permits relating to  
16 generating energy and, upon the execution of a written  
17 development agreement pursuant to section -3, allow the state  
18 department or agency three hundred sixty days to review and  
19 decide on the permit application. If the three hundred sixty-  
20 day time period has expired on a state permit application and no  
21 decision has been rendered, the permit shall be deemed approved.



1           §   -7   **Community solid waste management requirements.**   (a)

2   Notwithstanding any provision under chapter 342G to the  
3   contrary, the director of health shall advise, cooperate, and  
4   coordinate with other applicable state departments and agencies  
5   and a developer who has agreed to be subject to this chapter to  
6   develop a plan on a case-by-case basis that will enable a  
7   residential community in Hawaii to implement a comprehensive  
8   recycling program. The goal of the plan shall be to enable the  
9   community to divert at least seventy-five per cent of its solid  
10  waste from the landfills.

11           (b) The solid waste management plan shall include  
12  provisions for recycling, bioconversion, and composting,  
13  including recycling provisions for building or structure  
14  demolition. The plan shall also provide safety measures for the  
15  proper disposal and treatment of hazardous waste or materials  
16  with hazardous components under chapter 342J. The director of  
17  health shall explore all types of recycling programs and  
18  determine which programs are the most feasible for the community  
19  under development to implement and fulfill its solid waste  
20  management requirements under this section.

21           (c) Notwithstanding any provision relating to permits  
22  under chapter 342H or any other applicable chapter to the



1 contrary, the department of health shall expedite the  
2 application process for any permit application from a developer  
3 of a residential community that has agreed to be subject to this  
4 chapter and, upon the execution of a written development  
5 agreement pursuant to section -3, shall have three hundred  
6 sixty days to review and decide on the permit application. If  
7 the three hundred sixty-day time period has expired on a permit  
8 application and no decision has been rendered, the permit shall  
9 be deemed approved.

10 § -8 **Community wastewater treatment and recycling.** (a)

11 Notwithstanding any provision under chapter 342D to the  
12 contrary, the director of health shall advise and coordinate  
13 with other applicable state departments and agencies and a  
14 developer who has agreed to be subject to this chapter to  
15 develop a plan on a case-by-case basis that will enable a  
16 residential community in Hawaii to implement a wastewater  
17 treatment and recycling plan.

18 (b) The goal of the plan shall be to enable the community  
19 under development to treat and recycle all of its wastewater for  
20 landscaping water requirements onsite of the community and any  
21 agricultural water irrigation requirements offsite of the  
22 community. The plan shall provide safety measures for the



1 proper treatment and disposal of wastewater that may contain  
2 hazardous materials under chapter 342J. The director of health  
3 shall explore all types of wastewater treatment and recycling  
4 programs and determine which programs are the most feasible for  
5 the community under development to fulfill its wastewater  
6 treatment and recycling requirements under this section.

7 (c) Notwithstanding any provision relating to permits  
8 under chapter 342D or any other applicable section to the  
9 contrary, the department of health shall expedite the  
10 application process for any permit application from a developer  
11 of a residential community who has agreed to be subject to this  
12 chapter and, upon the execution of a written development  
13 agreement pursuant to section -3, shall have three hundred  
14 sixty days to review and decide on the permit application. If  
15 the three hundred sixty-day time period has expired on a permit  
16 application and no decision has been rendered, the permit shall  
17 be deemed approved.

18 § -9 Water conservation management. (a)  
19 Notwithstanding any provision under chapter 174C to the  
20 contrary, the deputy for water resource management for the  
21 department of land and natural resources shall advise and  
22 coordinate with other applicable state departments and agencies



1 and a developer who has agreed to be subject to this chapter to  
2 develop a plan on a case-by-case basis that will enable a  
3 residential community in Hawaii to implement a water  
4 conservation management plan.

5 (b) The purpose of the plan is to enable the community  
6 under development to conserve water by using various methods,  
7 including rain water harvesting to be used for landscaping, non-  
8 potable uses, low flow toilets, and showers. The commission on  
9 water resource management for the department of land and natural  
10 resources shall explore all types of water conservation programs  
11 and determine which programs are the most feasible for the  
12 community under development to fulfill its water conservation  
13 requirements under this section.

14 (c) Notwithstanding any provision relating to permits  
15 under chapter 174C or any other applicable section to the  
16 contrary, the commission on water resource management for the  
17 department of land and natural resources shall expedite the  
18 application process for any permit application from a developer  
19 of a residential community who has agreed to be subject to this  
20 chapter and, upon the execution of a written development  
21 agreement pursuant to section -3, shall have three hundred  
22 sixty days to review and decide on the permit application. If





1 the three hundred sixty-day time period has expired on a permit  
2 application and no decision has been rendered, the permit shall  
3 be deemed approved.

4 § -10 Community land use and planning. (a)

5 Notwithstanding any provision under chapter 205 to the contrary,  
6 the developer of any residential community in Hawaii who has  
7 agreed to be subject to this chapter shall coordinate with the  
8 land use commission and shall cooperate and coordinate with  
9 other state departments and agencies to develop a residential  
10 community land use plan that is in compliance with this chapter.

11 (b) The development plan for the residential community  
12 shall include but not be limited to:

13 (1) Designate at least fifty per cent of the entire tract  
14 of land for the residential community for open space;  
15 provided that:

16 (A) Open space shall not include areas designated for  
17 golf courses; and

18 (B) Open space shall include the shoreline, if the  
19 planned community abuts and includes shoreline  
20 space;



1           (2) A design plan that allows the community to be  
2           accessible by the public and shall not include a gated  
3           community; and

4           (3) Allow free and open access to any nearby cultural or  
5           historic sites, public beaches, shore, parks, trails,  
6           or other public recreational areas.

7           (c) The land use commission may amend any existing urban  
8           or rural land use designation of land on which the residential  
9           community is planned to be situated upon to provide for the open  
10          space requirements under subsection (b) within three hundred  
11          sixty-days from the filing of the request to amend the land use  
12          designation. If the three hundred sixty-day time period has  
13          expired and no decision has been rendered, the amendment to the  
14          land use designation shall be deemed approved.

15          §   -11 **Community affordable units.** (a) Notwithstanding  
16          any provision under chapter 201H to the contrary, the developer  
17          of a residential community in Hawaii who has agreed to be  
18          subject to this chapter shall cooperate and coordinate with the  
19          Hawaii housing finance and development corporation, as  
20          necessary, to develop and implement a residential housing plan  
21          that will designate and reserve at least thirty per cent of all



1 of its residential units within the planned community for  
2 affordable housing units.

3 (b) The Hawaii housing finance and development corporation  
4 shall coordinate with any state department or agency to expedite  
5 the application process for any permit application of a  
6 residential community that is subject to this chapter and  
7 relating to affordable residential unit development to assist  
8 the department or agency subject in, upon the execution of a  
9 written development agreement pursuant to section -3, meeting  
10 the three hundred sixty-day permit processing time period  
11 requirement to review and decide on a permit application. If  
12 the three hundred sixty-day time period has expired on a permit  
13 application and no decision has been rendered, the permit shall  
14 be deemed approved.

15 § -12 **Occupancy; requirement.** Upon completion of the  
16 development, occupancy of the completed residential community  
17 shall not occur until the energy resources coordinator has  
18 approved the completed project and determined that the project  
19 is in compliance with the sustainability agreement included in  
20 the written development agreement pursuant to section -3.

21 § -13 **Community association; established.** Within one  
22 year after occupancy of a residential community that is subject



1 to this chapter, the residents of the residential community  
2 shall establish a community association. The community  
3 association shall serve in an administrative capacity and adopt  
4 rules and bylaws, and shall consist of homeowners and renters of  
5 the residential community.

6 § -14 **Failure to comply; penalty; enforcement.** (a) The  
7 energy resources coordinator shall monitor the developer or  
8 residential community that is subject to this chapter to ensure  
9 that compliance to the written development agreement and the  
10 sustainability agreement of the residential community are met.

11 (b) If, up until one year after occupancy of a residential  
12 community that is subject to this chapter, or at any point prior  
13 to occupancy, the energy resources coordinator determines that a  
14 developer is not in compliance with this chapter, the energy  
15 resources coordinator may fine the developer for noncompliance  
16 and may require the developer to suspend development until the  
17 noncompliance is remedied.

18 (c) If noncompliance with this chapter subsequently occurs  
19 one year after occupancy of the residential community that is  
20 subject to this chapter, the energy resources coordinator may  
21 enforce the requirements of this chapter against the community's  
22 association.



1 (d) The energy resources coordinator shall establish fines  
2 and penalties for noncompliance with this chapter under rules  
3 adopted pursuant to chapter 91.

4 § -15 **Energy resources coordinator.** For purposes of  
5 this chapter, the energy resources coordinator shall be the  
6 director of business, economic development, and tourism, as  
7 provided under section 196-3.

8 § -16 **Rules.** The department of business, economic  
9 development, and tourism, the department of health, the  
10 commission on water resource management, the Hawaii housing  
11 finance and development corporation, and the land use commission  
12 shall adopt rules, as necessary, in accordance with chapter 91  
13 to carry out the purposes of this chapter."

14 SECTION 3. This Act shall take effect on July 1, 2050.



**Report Title:**

Sustainable Communities

**Description:**

Establishes sustainable communities in Hawaii with the combined effort of state departments and agencies. (SB2832 SD2)

