

Act 278 Study of Subdivision and CPR on Agricultural Lands on Oahu

Report to the 2021 Legislature



Office of Planning
State of Hawaii

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Appendices:

- A. Act 278, SLH 2019
- B. Senate Bill 2706, HD2 (2020)
- C. Public Hearing, December 21, 2020

1. INTRODUCTION

1.1. PURPOSE OF THE STUDY

This report was prepared pursuant to Act 278, Session Laws of Hawaii (SLH) 2019 (SB 381, SD2, HD1, CD1) which directs the State Office of Planning (OP), in consultation with the State Land Use Commission (LUC), the State Real Estate Commission (REC), and the City and County of Honolulu (City) Department of Planning and Permitting (DPP), to study land subdivision and condominium property regime (CPR) laws related to agricultural land on Oahu. The study is to determine whether there are ambiguities, omissions, or other deficiencies through which a landowner might develop land contrary to the legislative intent of those laws and to propose legislation to remedy any deficiencies found.

Act 278 directs the OP to conduct a public hearing to gather information from the general public. OP is required to submit a report of its findings and recommendations, including any proposed legislation remedying any deficiencies found, to the Legislature at least 20 days prior to the regular session of 2021. The Act also requires counties to adopt supplemental rules on CPRs on agricultural lands by July 2022. See Appendix 1.

1.2. INPUT AND REVIEW PROCESS

In Fall 2019, OP convened a diverse group of stakeholders including agencies with regulatory responsibilities and private and non-profit farming interests to discuss issues and potential solutions. The Stakeholders Group included representatives from the following agencies and organizations:

- Office of Planning
- Land Use Commission
- Department of Agriculture
- Real Estate Branch, Department of Commerce and Consumer Affairs
- Bureau of Conveyances, Department of Land and Natural Resources
- Agribusiness Development Corporation
- State Senate
- State House of Representatives
- City and County of Honolulu Department of Planning and Permitting
- County of Maui Department of Planning
- Hawaii Agricultural Research Center
- Kamehameha Schools
- Hawaii Farm Bureau

- Aloun Farms
- Plasch Econ Pacific LLC
- Hawaii Cattlemen’s Council
- Land Use Research Foundation

Three Stakeholder Group meetings were held in September, November, and December 2019. The Group set generally agreed-upon agricultural policy objectives to guide the study, reviewed the regulatory processes for land subdivision and the statute governing the establishment and management of condominium property regimes, discussed issues and problems, and reviewed potential administrative and legislative solutions to identified problems.

Preliminary recommendations from the Stakeholders Group discussions were advanced with the introduction of two bills in the 2020 Legislative Session – SB 2706 introduced by Senators Gabbard, Ihara, and Ruderman, and HB2602 introduced by Representatives Cullen, Aquino, and Yamane. SB 2706 passed Third Reading in the Senate and was transmitted to the House, where it passed Second Reading but was not able to be heard in committee during the shortened legislative session. See Appendix 2 for the text of SB 2706.

A public hearing on the study findings and proposed recommendations was held on December 21, 2020. The public presentation, testimony, and comments received are provided in Appendix 3.

2. AGRICULTURAL POLICY OBJECTIVES

Food security and agricultural self-sufficiency have gained prominence in recent years as community and public policy objectives. Increasingly, the agricultural industry is being pitted against housing or renewable energy development in land use decision-making Statewide. There are more public agriculture-neighbor conflicts, including those over crops with genetically modified organisms, as well as increased competition for land between fuel and food crops.

The Act 278 Stakeholders Group included State and county agricultural land regulatory agencies, farm interest groups, and farm owners. The group discussed and set forth objectives regarding agriculture which would serve to guide identifying issues and concerns and developing recommendations. The following objectives were established:

- 1. Keep suitable agricultural lands for agriculture.** Productive agricultural lands should be preserved, recognizing that not all agricultural lands are suitable for agriculture.
- 2. Support farmers and farming.** Support the State's goals for increasing agricultural self-sufficiency and food security.
- 3. Keep agricultural lands affordable for farming.** Non-agricultural uses drive up the cost of agricultural lands making it difficult for farmers to own or lease lands. Farmers also need affordable housing for themselves and farm workers.
- 4. Enable long-term access to Agricultural lands for farmers.** Ensure an adequate supply of agricultural lands for farming and more secure and stable long term leases.
- 5. Minimize the subdivision and CPR of productive agricultural lands except for bona fide agricultural reasons.** Subdivision and CPR of agricultural lands into smaller parcels facilitate conversion to non-agricultural uses and subsequently higher land costs.

3. THE REGULATORY FRAMEWORK FOR AGRICULTURE

3.1. STATE LAND USE DISTRICTS

Agricultural lands in Hawaii are governed in accordance with the State Land Use Law, Hawaii Revised Statutes (HRS) Chapter 205, which was established "...in order to preserve, protect and encourage the development of the land in the state for those uses to which they are best suited..." The Land Use Law establishes four districts:

- **Agricultural Districts:** lands with a high capacity for intensive cultivation, characterized by cultivation of crops, orchards, forage, and forestry; animal husbandry and game and fish propagation, with a minimum lot size of one acre. In the Agricultural and Rural Districts, the Land Use Commission (LUC) establishes permissible uses and the counties, which may adopt more stringent controls, are responsible for their regulation.
- **Rural Districts:** lands composed primarily of small farms mixed with low-density residential lots with a minimum lot size of one-half acre.
- **Conservation Districts:** areas protecting watersheds and water sources; scenic areas, park lands, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry and related activities. Land uses in the Conservation District are regulated solely by the Department of Land and Natural Resources.
- **Urban Districts:** lands in urban use with sufficient reserve areas to accommodate foreseeable growth, characterized by city-like concentrations of people, structures streets and other related land uses. Land uses in the Urban District are regulated solely by the counties.

The LUC is responsible for determining the boundaries of each district and reviewing and acting upon proposed amendments to those boundaries. When the boundaries were first established in the early 1960s, lands that were not clearly Urban or Conservation were placed in the Agricultural District, including lands not used or suited for agriculture. Thus, the Agricultural District became a catch-all district for other open, transitional, and sparsely developed areas.

Special Permit. Within the Agricultural and Rural Districts, certain "unusual and reasonable" uses not otherwise allowed may be permitted by the county planning commissions through issuance of a Special Permit pursuant to HRS Section 205-6 and the guidelines established in the LUC rules. When the proposed permit area is greater than 15 acres, the approval of both the county and the LUC are required.

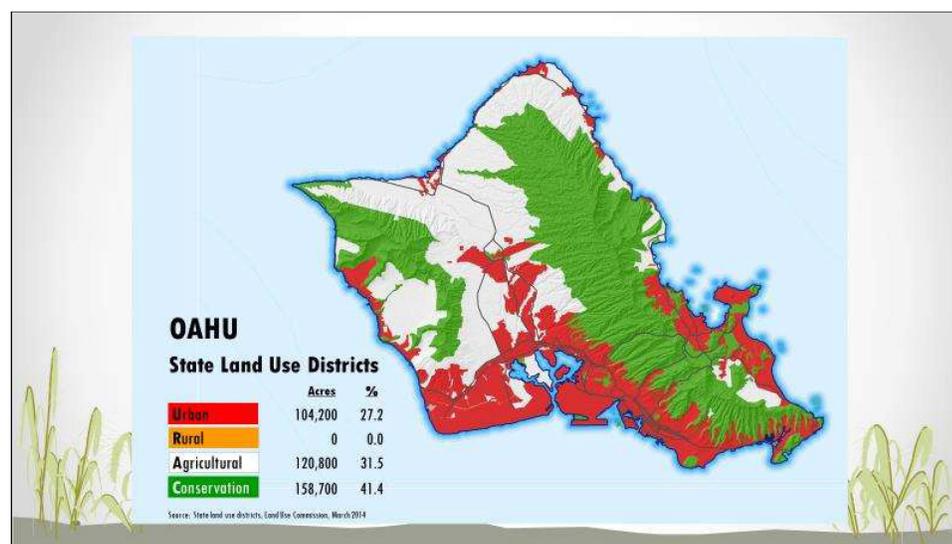
Designation of Important Agricultural Lands. The LUC is authorized to designate Important Agricultural Lands (IAL) through a voluntary or a county-initiated process subject to approval by the LUC as set forth in Part III of HRS Chapter 205. The IAL process implements Article XI, Section 3 of the Hawaii Constitution which provides that: “The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.”

Over the years, the permissible uses for the Agricultural District have been amended repeatedly to broaden the uses allowed in the Agricultural District—from 5 permitted uses in 1965 to 21 permitted uses currently—which has weakened the nexus to agricultural production and bona fide farming. Counties which are responsible for enforcement have had difficulties controlling non-farm dwellings in the Agricultural District.

On Oahu, there are approximately 120,790 acres of land within the Agricultural District, comprising 31.5% of all lands on the Island. Urban District lands encompass approximately 104,200 acres (27.2% of Oahu lands), and Conservation District lands total approximately 158,700 acres (41.4% of lands). There are no Rural District lands on Oahu. Figure 1 illustrates the general location of the three districts.

Agricultural lands voluntarily designated as IAL by major landowners total 15,205 acres on Oahu. The City completed its IAL mapping and the Honolulu City Council adopted DPP’s recommended IAL in June 2019. LUC hearings to consider the City’s proposed IAL for an additional 45,400 acres are scheduled for early 2021.

Figure 1. State Land Use Districts on Oahu



3.2. COUNTY ZONING AND SUBDIVISION FOR AGRICULTURE

The City's Land Use Ordinance in Revised Ordinances of Honolulu (ROH) Chapter 21 provides for two zoning classes in the State Agricultural District:

AG-1 Restricted Agricultural District – to conserve and protect important agricultural lands for the performance of agricultural functions. Includes lands classified as Prime or Unique under the Agricultural Lands of Importance to the State of Hawaii (ALISH) system. Minimum lot size is 5 acres in AG-1.

AG-2 General Agricultural District – to conserve and protect agricultural activities on smaller parcels of land. Minimum lot size is 2 acres in AG-2.

All principal, accessory and conditional uses permitted in these districts along with development standards are specified in Chapter 21.

The clustering of farm dwellings is allowed with a minimum lot size of 15 acres in AG-1 (one unit per 5 acres), and 6 acres in AG-2 (one unit per 2 acres). See ROH §21-3.50-1.

Subdivision involves the division of land into two or more lots for sale, lease, or transfer of title or interest. The City's subdivision law is intended to assure an orderly arrangement of lots, streets, utilities, and other features to achieve an orderly layout and efficient use of the land. The City regulates subdivisions through ROH Chapter 22, Subdivision of Land, and Subdivision Rules and Regulations. The process involves a Preliminary Map/Tentative Approval and a Final Map/Final Approval.

For a proposed agricultural subdivision:

- Feasible agricultural use must be shown;
- Covenants are required for lot purchasers to maintain land in agricultural use;
- Verification of water availability for agriculture is required;
- Notice of restrictions to lot purchasers is required;
- Street standards may be exempted by Director, Traffic and Chief Engineer; and
- An application may be referred to the State Department of Agriculture for review and recommendations.

3.3. CONDOMINIUM PROPERTY REGIME PROCESS

A Condominium Property Regime (CPR) is a form of ownership, whereby a unit owner in a condominium is entitled to exclusive ownership and use of the unit, but the underlying land (and other common elements) is owned in common with other unit owners. While the CPR form of ownership is mostly known for low- and high-rise residential and commercial condominium developments, CPRs can also be used to establish multiple units of ownership interest in a parcel of land.

The CPR process is governed by HRS Chapter 514B, which is administered by the Department of Commerce and Consumer Affairs (DCCA) Real Estate Branch. The process for establishing a CPR consists of:

1. Recordation of documents with the Bureau of Conveyances or Land Court to create the CPR, including a Declaration, Bylaws of the unit owners' association, condominium map, master deed or lease.
2. Registration with the Real Estate Commission with the filing of a Developer's Public Report that discloses permitted uses, restrictions, warranties, and encumbrances.
3. Issuance of an effective date for registration by the Real Estate Commission which allows units to be offered for sale.

Most CPRs created for sale must register with DCCA. There is no unit size exemption to this. Unit owner associations of CPRs which have more than 6 units must also register with DCCA. Registration with DCCA is not required if units in a CPR are not sold to the public, or projects in which all units are restricted to nonresidential uses and all units are to be sold for \$1,000,000 or more, or where a developer sells their entire inventory to another developer in a bulk sale. So not every condominium formed and recorded with the Bureau of Conveyances is registered. Registration could be deferred indefinitely, such as the case with families using CPR to transfer lands to their children.

HRS Chapter 514B requires the conformance of CPRs to land use and development laws, ordinances, and regulations for the underlying State and county land use designation or zoning.

DCCA Real Estate Branch administers the public disclosure of CPR information for buyers of ownership interests in a registered CPR project. DCCA does not approve the project, does not approve the uses under the CPR, and has no role in the enforcement of land use or development regulations for CPR projects.

See: <https://cca.hawaii.gov/reb/files/2016/10/So-You-Want-To-Go-Condo.pdf>

4. ANALYSIS OF AGRICULTURAL LAND ISSUES

4.1. NON-FARM USES ON AGRICULTURAL LANDS

Agricultural District lands are in plentiful supply with the decline of plantation agriculture over the last several decades. Agricultural land values are generally lower than for urban lands in part due to the lack of infrastructure, larger parcel sizes from former agricultural use, and limitations on uses that are allowed on lands in the Agricultural District. Increasingly, however, higher value residential, commercial, and renewable energy uses have encroached or been permitted in the Agricultural District.

In a conflict between renewable energy goals and agricultural self-sufficiency, solar energy facilities are a commercial use previously prohibited or limited on the highest quality agricultural lands rated as A, B, and C by the Land Study Bureau productivity rating system. In 2014, amendments to HRS Chapter 205 allowed solar facilities by State Special Permit on B and C lands, provided there is compatible agricultural use. As a result, solar energy facilities, which confer higher land values with much greater revenue potential than farming, are permissible on over 95% of agricultural lands in the State.

Higher value residential housing uses that are not tied to farming in the Agricultural District have proliferated especially on the Neighbor Islands, mainly due to the lack of a clear definition of what constitutes a bona fide “farm” or “farm dwelling” in the State Land Use Law. HRS § 205-4.5(a)(4) defines “farm dwelling” as a single-family dwelling located on and used in connection with a farm, where agricultural activity provides income to the family occupying the dwelling. However, the amount of farm income needed to be considered a “farm dwelling” is not specified, and what constitutes a “farm” is unclear. Counties are thus faced with little guidance on how to determine whether actual farming is occurring on the parcel, making it difficult to enforce residential uses that do not have a bona fide farm component.

4.2. SUBDIVISION ISSUES

The subdivision of agricultural land into small lots has the potential for encouraging non-agricultural residential uses. On Oahu, the City’s AG-1 and AG-2 zoning districts have minimum lot sizes of 5 acres and 2 acres, respectively. This is greater than the one-acre minimum set in State law, but such lot sizes are still suitable for and allow what has been termed “gentlemen’s estate” or “rural estate” subdivisions in the Agricultural District. Other states have much higher minimums. In Oregon, by State law, the minimum lot size for designated farmland is 80 acres. In California, as a farmland protection tool, minimum lot sizes such as 80 or 160 acres are recommended to ensure that

parcel sizes remain large enough to be farmed profitably while discouraging land purchases for residential use.

The City's subdivision process requires the provision of urban-like utilities – water, sewage, drainage, irrigation, roadway, lighting, overhead poles. Adequate access is required, but allowances can be made for reduced roadway widths.

Enforcement difficulties due to conflicts with State law are also an issue. HRS § 205-4.5(f) exempts leasehold subdivisions in the Agricultural District from county subdivision standards, with the intent of relieving farmers of having to provide infrastructure at urban standards. The provision has been cited by the City as creating enforcement problems in areas like Kunia.

To facilitate agricultural activities, agricultural buildings and structures such as barns, storage sheds, and greenhouses of no more than 1,000 square feet are also exempt from building permit and building code requirements per HRS § 46-88. This has made it more difficult for the counties to pursue enforcement actions for any such structures that are subsequently used for residential purposes.

Fig. 2: Agricultural Buildings



There are relatively few agricultural subdivisions on Oahu. Likely deterrents include the subdivision requirements, in particular, the cost of required infrastructure improvements subject to City and State agency review, and the need to submit an agricultural feasibility report subject to review and recommendation by the DOA. Below are some of the agricultural subdivisions on Oahu:

- Poamoho Estates, Waialua: 15 subdivided lots, 5-acre lots, AG-1, developed in the late 1990s.

- Dillingham Ranch Subdivision, Mokuleia: proposed are 70 subdivided lots, 4 to 5-acre lots, AG-2, 694 acres, included a strong agricultural plan with agricultural incentives garnering DOA support in 2017.

Fig. 3: Dillingham Ranch Subdivision



- Kahuku Manager's Ridge, Kahuku: 6-lot subdivision, 5-acre lots, 58 acres, 2019
- Ekaha Lands Subdivision, Kunia: 38 lots, 5 to 5.9-acre lots, 206 acres, 2020

Fig. 4: Ekaha Lands Subdivision



It is anticipated that the demand for agricultural subdivisions on agriculturally zoned lands will continue to grow as former plantation agricultural lands in Central Oahu and the North Shore are marketed and sold, leading then to land subdivision and smaller lot sales. It thus becomes important to ensure that bona fide farming operations will be pursued on the smaller lots.

4.3. CONDOMINIUM PROPERTY REGIME – ISSUES

Condominium Property Regimes (CPRs) have been used as an alternative to land subdivision on agricultural lands, but there are significant differences and misperceptions about the CPR process.

1. A CPR is not the same as subdividing a property. Subdivision divides the property into two or more parcels, whereas CPR provides ownership of a “unit” as a percentage of common interest in the underlying property. The larger parcel remains intact and is subject to zoning setbacks and allowable structures and uses. Purchasers often think they have bought a subdivided lot since the condominium units can be defined by metes and bounds.
2. The CPR registration process is purely a disclosure process: it does not confer approval of the uses, site layout, and proposed improvements. Uses and the number of units must conform to City zoning requirements.
3. DCCA does not enforce uses under CPR. The developer must follow county ordinances including zoning.
4. The City DPP does not approve or regulate the creation or development of CPRs. DPP does regulate the permitted infrastructure and part of the CPR process requires a developer to be in compliance with City infrastructure standards. The Real Estate Commission (REC) will not issue an effective date if the developer is not in compliance.

On Agricultural District lands, CPR disclosures state the restrictions and requirements, including the need for farm plans and restrictions on farm dwellings, if any. The county may restrict the number of farm dwellings that are allowed on the larger parcel of record and individual unit lots established by CPR. But this is often not understood by buyers, who may miss reading these disclosures. The REC enforces CPRs only if it can be shown that the disclosure is inaccurate.

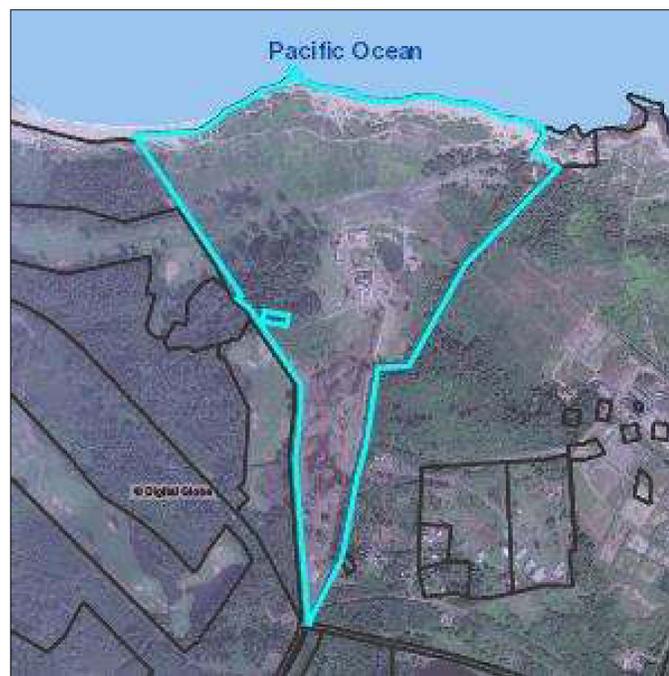
Under current law, applications for CPR registrations only require a verified statement by a county that the project as described in submitted documents does not restrict agricultural uses or activities and if existing structures are being converted into condominium that they were built according to the building code at the time of completion. No other county review or approval is required. Although the county is made aware of the project, there is no opportunity to review and identify infrastructure and environmental

constraints. Recordation of a CPR with the Bureau of Conveyances and registration with the DCCA create the ownership interest and investment-backed expectations, which make subsequent enforcement difficult for the counties.

Representative CPRs on agricultural lands:

- Marconi Point Condominium, Kahuku: 26 condominium units on 2 to 3-acre lots, AG-2, 95.6 acres

Fig. 5: Marconi Point Condominium



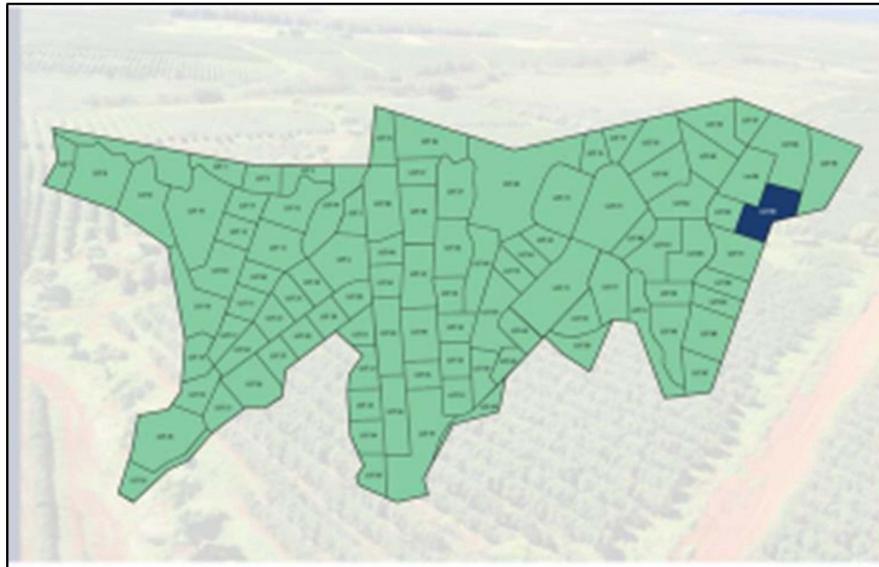
- Ohana Farm Parcels, Helemano: 35 condominium units ranging from 10 – 18 acres each, 427 acres, farm-ready with available irrigation water

Cooperative Ownership

Other ownership vehicles for lands in the Agricultural District besides subdivision and CPR have emerged, which also avoid State and county review.

- Kunia Loa Ridge, Kunia: 99 lots, 5-acre lots, leasehold, shared interest cooperative. Marketed as an agricultural subdivision, the Cooperative's covenants specify that no farm dwellings allowed, but there are 30 to 40 structures including unpermitted dwellings.

Fig.6: Kunia Loa Ridge Co-op



Cooperatives formed for land ownership transfer and development have emerged as alternate vehicles for shared ownership of a parcel among multiple owners. In a cooperative, an individual owns stock or membership and holds a proprietary lease or occupancy agreement. Under HRS Chapter 421i regarding Cooperative Housing Corporations, each tenant shareholder can occupy a dwelling unit with ownership of stock in the corporation. Cooperatives do not require a creation document and have no statutory restrictions such as that placed on CPRs. The landowner/developer can sell ownership interests, subject to mandatory disclosures in HRS § 508D.

The DCCA Real Estate Branch has also observed the emergence of other forms, such the use of limited liability companies and partnerships, to create and transfer usage of land in the Agricultural District. In these cases, a developer will sell a registered condominium unit to a limited liability entity. The directors of that limited liability entity then proceed to sell shares of the entity that come with an operating agreement that allows for exclusive use of a part of the

condominium unit to other buyers. There is no transfer of real property, only a legal right to exclusive use. This allows the transfer of usage of the condominium unit without registering new units. However, there are virtually no consumer protections as it is an internal agreement by shareholders and shareholder buyers may not fully be aware that they are not purchasing real property.

5. PROPOSED IMPROVEMENTS TO REGULATING AGRICULTURAL LANDS ON OAHU

5.1. BONA FIDE FARM DWELLING

Currently, there is no definition of what constitutes a bona fide farm dwelling, resulting in the proliferation of dwellings in the agricultural district without any significant farm component. While HRS Chapter 205 provides that farm dwellings must have agricultural activity providing income to the family occupying the dwelling, the amount of farm income needed for a “farm dwelling” is not specified, and what constitutes a “farm” is not clearly defined. Counties are faced with little guidance on how to determine whether actual farming is occurring on the parcel, making it difficult to enforce residential uses that do not have a bona fide farm component. This deficiency can be remedied by amending HRS § 205-4.5(4), the section on permissible uses within the Agricultural District in the State Land Use Law.

Issue: There is no definition of what constitutes a “farm dwelling”, resulting in the proliferation of dwellings in the agricultural district without any significant farm component.

Remedy: Clarify the requirement that a farm dwelling must be an accessory use to a farm and specify minimum income requirements.

Proposed Legislation:

Amend HRS § 205-4.5(4), setting permissible uses within the Agricultural District, to clarify what constitutes a farm dwelling as follows:

“(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 single-family dwelling located on and accessory to used in connection with a farm, 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 of not less than \$10,000 per year, as evidenced by filings of state general excise tax returns or agricultural dedication approved by the county.”

This proposed amendment was included in SB 2706 in 2020. The minimum income threshold would provide a measurable indicator of actual farming activity that must first be established as the primary use, which can then be validated by the applicant showing filings of State general excise tax returns or City-approved agricultural dedication (which lowers property taxes upon the owner’s commitment to agricultural use for 10 years).

5.2. SUBDIVISION PROCESS

Subdivisions in the Agricultural District which follow the City's subdivision process is the City's desired vehicle for bona fide agricultural subdivision's conformance and consistency with agricultural purposes, zoning and development standards, but there have been few agricultural subdivisions approved through this process.

To encourage greater use of agricultural subdivisions for bona fide farming, the following should be undertaken:

1. Improve education and awareness regarding the allowable deviations which may be granted for agricultural subdivisions such as: 20-foot wide roads, overhead electrical lines, fire exemptions, case-by-case reduced requirements. A brochure and educational information on the City's website could serve to improve getting the word out to landowners.
2. Agricultural cluster development should be encouraged to allow multiple farm dwellings located in a portion of the site to reduce infrastructure costs and allow larger acreage for farming. This is being proposed at the DOA Kunia Agricultural Park.

Fig. 7: State Royal Kunia Agricultural Park



Proposed Improvements to Regulating Agricultural Lands ■ 5-3

3. ROH 21-8.6o Exclusive Agricultural Sites provides a viable alternative to subdivision. Owners can lease mapped areas like a CPR with a minimum area of 5 acres per lot for a 10-year minimum term. Water system is not required, and roads and utility systems do not need to meet standards. This provision has never been used but is available and its use should be encouraged by the City.

The requirement for an agricultural feasibility report, and referral to the Department of Agriculture for review and recommendations, are important to help assure that bona fide farming operations will be implemented. Currently, the City & County of Honolulu is the only county that provides for this review by DOA.

4. Given its importance to ensuring bona fide agricultural use, the agricultural feasibility review should be required for all agricultural subdivisions. Currently, applications “may” be referred to the DOA.
5. The review process would benefit from clearer guidance as to content requirements for the agricultural feasibility plan, including:
 - Proposed agricultural activities
 - Availability and plans for source, storage and distribution of irrigation water
 - Agronomic suitability, indicators of likely profitability, and crop market information
 - Technical assistance to be made available to lot purchasers.
6. If referred to the Department of Agriculture, adequate staff resources at DOA are needed to conduct this review, especially if more agricultural subdivisions applications are submitted. The City should consider acquiring in-house agricultural staff expertise to enable qualified review.
7. Alternatively, third-party review of the agricultural feasibility report could be considered. The landowner/developer proposing subdivision would be required to pay for this review, using a list of approved qualified consultants or contractors with agricultural expertise, reporting to and under the direction of the DPP or the DOA.

5.3. CPR PROCESS

The creation and registration of a CPR for shared ownership of an agricultural property has been used to avoid the cost and regulatory requirements of the City’s subdivision process. Buyers mistakenly believe they have bought a conforming subdivided lot and can build a farm dwelling. There is no prior City review and disclosure of the adequacy of infrastructure and utility systems and environmental constraints.

Proposed Improvements to Regulating Agricultural Lands ■ 5-4

Improved education targeted to landowners, developers and potential buyers of agricultural land CPRs would be beneficial to address some of the issues of misunderstanding of allowable uses and development rights, particularly with respect to farm dwelling restrictions. Education on the benefits and allowances going through the City's subdivision process would also be helpful as discussed in the previous section regarding: 1) allowed deviations, 2) agricultural cluster development, and 3) Exclusive Agricultural Sites.

The county can also help with providing this information, as part of their review of proposed projects seeking CPR registration.

Issue: Use of the CPR process of shared ownership to avoid subdivision and County regulation. Buyers later discover there is inadequate infrastructure and they cannot build a farm dwelling.

Remedy: Require County review of project prior to CPR registration.

Proposed Legislation:

Amend HRS § 514B-52(b) of the CPR law, section on application for registration, as follows:

"An application for registration of a project in the agricultural district classified pursuant to chapter 205 shall include a verified statement, signed by an appropriate county official, that the project as described and set forth in the project's declaration, condominium map, bylaws, and house rules does not include any restrictions limiting or prohibiting agricultural uses or activities, in compliance with section 205-4.6. The statement shall also include county review on the availability of supportive infrastructure, the potential impact on governmental resources, and other requirements of county ordinances and rules. The commission shall not accept the registration of a project where a county official has not signed a verified statement."

5.4. ENFORCEMENT

The allowance of agricultural buildings and structures to be exempt from building code requirements in HRS § 46-88 has led to enforcement problems for the City in being able to investigate allegations of violations and misuse of unpermitted agricultural buildings and structures which are sometimes illegally transformed into residential uses.

Issue: Difficult for Counties to enforce unpermitted structures in the Agricultural District.

Remedy: Allow County inspections of exempted agricultural structures.

Proposed Improvements to Regulating Agricultural Lands ■ 5-5

Legislation: The Stakeholders Group reviewed two proposals strengthening county enforcement authority from previous bills introduced in 2018:

Proposal A. Amend HRS § 46-88 to allow county inspections of exempted agricultural structures (SB2452, 2018):

“(c)(11) Notwithstanding any other law to the contrary, the appropriate county fire department and county building permitting agency shall have the implicit right to enter the property, upon reasonable notice to the owner or occupier, to investigate exempted agricultural buildings for compliance with the requirements of this section;”

Proposal A was incorporated in SB 2701 HD2 introduced by Senators Gabbard, Keohokalole, and Riviere which passed the 2020 Legislature, and signed into law as Act 60, SLH 2020. Act 60 grants county agencies the right to enter property to investigate agricultural buildings and structures for violations of and compliance with building code exemption qualifications. The Act further allows the counties to apply to the district court for a warrant, and to direct a police officer to provide assistance to the department or agency in gaining entry to the property.

Proposal B. Amend HRS § 205-4.5(f)(2) to prohibit residential use of agricultural sheds and structures on leasehold subdivisions and provide county enforcement authority and fines (SB 3032, SD1 2018):

(2) 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; (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; provided that no residential or congregate use of such sheds or other structures for any length of time shall be permitted, and any violation of this paragraph shall be subject to county enforcement authority and fines pursuant to sections 46-4, 205-12; and 205-13...

Proposal B amending HRS § 205-4.5(f)(2) was included in SB 2706 in 2020, which was not acted on due to the abbreviated legislative session. This measure provides that agricultural structures on leasehold subdivisions of agricultural land are subject to county enforcement authority. Notwithstanding Act 60, this measure would bolster county authority in investigating and enforcing structures constructed on agricultural leasehold subdivisions.

5.5. OTHER OWNERSHIP VEHICLES

The emergence of other ownership vehicles notably cooperatives and limited liability companies was discussed with the Stakeholders Group, but no recommendations were formulated to oversee or regulate development of land under these forms of land ownership.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. PURSUE LEGISLATION FOR POTENTIAL REMEDIES

SB 2706 introduced in the 2020 Legislative session addresses recommendations pursuant to this Act 278 study of subdivision and CPR issues on agricultural land on Oahu. SB 2706 passed Third Reading in the Senate and was transmitted to the House, where it passed Second Reading, but the bill was not able to be heard in committee during to the shortened 2020 Legislative session.

SB 2706 addresses three major issues and recommendations of the study:

1. Defines “farm dwelling” (amends HRS § 205-4.5(4)). Farm dwellings on agricultural lands are required to be accessory to a farm, where the agricultural activity provides income of no less than \$10,000 per year to the family occupying the dwelling and verified by general excise tax return filing or agricultural tax dedication.
2. Allows county enforcement of structures on subdivided leasehold subdivisions on agricultural district lands (amends HRS § 205-4.5(f)(2)). This would bolster county authority to enforce agricultural structures exempted from building permits which have created an enforcement problem.
3. Requires county comments prior to CPR registration (amends HRS § 514B-52(b)). Applications for registration of condominium property regimes of agricultural land are to include county comments regarding the availability of supportive infrastructure, any potential impact on government plans and resources, and other requirements pursuant to county ordinances and rules. Allows counties to review and alert the buyer of infrastructure and environmental deficiencies, and conformance with county codes.

It is recommended that the SB 2706 be re-introduced for consideration in the 2021 session.

6.2. ASSESS RESULTS OF LEGISLATION AS A BASIS FOR REVISED REMEDIES

Depending on the outcome of SB 2706, the Stakeholders Group should be convened to further discuss potential remedies, especially with regard to ownership vehicles such as cooperatives involving ownership of shares in a corporation which operate with little regulatory oversight.

The Stakeholders Group will also need to be broadened to include Neighbor Island counties, as Act 278 requires all counties to adopt supplemental rules governing CPRs, including agricultural lands held in CPRs, by July 2022.

7. ACKNOWLEDGEMENTS

The participation and contributions of the Act 278 Stakeholders Group are gratefully acknowledged:

<u>Name</u>	<u>Organization</u>
Aaron Setogawa	Office of Planning
Alan Gottlieb	Hawaii Cattleman's Council
Alec Sou	Aloun Farms
Brian Miyamoto	Hawaii Farm Bureau
Brandon Soo	C&C Dept. of Planning and Permitting
Bruce Plasch	Plasch Econ Pacific LLC
Carole Richelieu	Real Estate Commission
Dana Sato	Kamehameha Schools
Daniel Orodener	Land Use Commission
Dathan Choy	Real Estate Commission
David Arakawa	Land Use Research Foundation
David Cho	State Senate
Earl Yamamoto	Department of Agriculture
Franz Krintz	C&C Dept. of Planning and Permitting
James Nakatani	Agribusiness Development Corporation
Jennifer Barra	Senator Laura Thielen
Jordan Hart	County of Maui Planning Department
Kathy Sokugawa	C&C Dept. of Planning and Permitting
Leslie Kobata	Bureau of Conveyances
Lorene Maki	Office of Planning
Mario Siu-Li	C&C Dept. of Planning and Permitting
Marissa Harman	Kamehameha Schools
Mark Anthony Clemente	Senator Gil Riviere
Mary Alice Evans	Office of Planning
Morris Atta	Department of Agriculture
Myra Kaichi	Agribusiness Development Corporation
Patricia Moy	Dept of Commerce and Consumer Affairs
Phyllis Shimabukuro-Geiser	Department of Agriculture
Po-Yung Lai	C&C of Honolulu
Rachele Lamosan	Hawaii Farm Bureau
Raymond Young	C&C Dept. of Planning and Permitting
Rebecca Crall	Representative DeCoite

<u>Name</u>	<u>Organization</u>
Representative Lynn DeCoite	State House of Representatives
Rock Riggs	Senator Mike Gabbard
Rodney Funakoshi	Office of Planning
Ruby Edwards	Office of Planning
Scott Derrickson	Land Use Commission
Senator Donovan Dela Cruz	State Senate
Senator Gil Riviere	State Senate
Senator Mike Gabbard	State Senate
Sommerset Wong	Kamehameha Schools
Stephanie Whalen	Hawaii Agricultural Research Center

APPENDICES

- A. Act 278, SLH 2019
- B. Senate Bill 2706, HD2 (2020)
- C. Public Hearing, December 21, 2020 (notice, presentation, minutes)



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

GOV. MSG. NO. 1398

July 10, 2019

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Re: SB381 SD2 HD1 CD1

Pursuant to Section 16 of Article III of the State Constitution, SB381 SD2 HD1 CD1, entitled "A BILL FOR AN ACT RELATING TO AGRICULTURAL LANDS" became law as ACT 278 on July 10, 2019.

This bill directs the Office of Planning, Land Use Commission, Real Estate Commission, and Honolulu Department of Planning and Permitting to study land subdivision and condominium property regime (CPR) laws and require counties to adopt supplemental rules for CPRs that involve agricultural lands.

Although this will address the inappropriate use of existing subdivision or CPR laws in state agricultural districts, the study is limited to the City & County of Honolulu. Since this issue occurs in all four counties, it would be more appropriate to do the study with input from all counties.

The Honorable Ronald D. Kouchi
The Honorable Scott K. Saiki
July 10, 2019
Page Two

For the foregoing reasons, I allowed SB381 SD2 HD1 CD1 to become law without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a prominent flourish at the end.

DAVID Y. IGE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The office of planning, in consultation with
2 the land use commission, the real estate commission, and the
3 department of planning and permitting of the city and county of
4 Honolulu shall study the land subdivision and condominium
5 property regime laws as they relate to agricultural land on Oahu
6 and how these laws interact with city and county of Honolulu
7 zoning ordinances, to:

8 (1) Determine whether they contain potential ambiguities,
9 omissions, or other deficiencies through which a
10 landowner might develop land contrary to the
11 legislative intent of those laws; and

12 (2) Propose legislation to remedy any deficiencies found.

13 SECTION 2. In conducting its research for the study
14 required in section 1, the office of planning shall conduct a
15 public hearing to gather information from the general public.

16 SECTION 3. The office of planning shall submit a report of
17 its findings and recommendations, including any proposed



1 legislation, to the legislature no later than twenty days prior
2 to the regular session of 2021.

3 SECTION 4. Section 514B-6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[-]§514B-6[-] Supplemental county rules governing a
6 condominium property regime. [~~Whenever any county deems it~~
7 ~~proper, the county may]~~ No later than July 1, 2022, the counties
8 shall adopt supplemental rules governing condominium property
9 regimes, including agricultural lands that are held in
10 condominium property regimes, established under this chapter in
11 order to implement this program; provided that any of the
12 supplemental rules adopted shall not conflict with this chapter
13 or with any of the rules adopted by the commission to implement
14 this chapter."

15 SECTION 5. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

APPROVED this day of , 2019

GOVERNOR OF THE STATE OF HAWAII

S.B. No. 381, S.D. 2, H.D. 1, C.D. 1

THE SENATE OF THE STATE OF HAWAI'I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.


President of the Senate



Clerk of the Senate

SB No. 381, SD 2, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. The purpose of this Act is to amend certain
2 land subdivision and condominium property regime laws related to
3 agricultural land, as recommended by the office of planning in
4 its study of subdivision and condominium property regimes on
5 agricultural lands on Oahu conducted pursuant to Act 278,
6 Session Laws of Hawaii 2019.

7 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsection (a) to read:

10 "(a) Within the agricultural district, all lands with soil
11 classified by the land study bureau's detailed land
12 classification as overall (master) productivity rating class A
13 or B and for solar energy facilities, class B or C, shall be
14 restricted to the following permitted uses:

15 (1) Cultivation of crops, including crops for bioenergy,
16 flowers, vegetables, foliage, fruits, forage, and
17 timber;



- 1 (2) Game and fish propagation;
- 2 (3) Raising of livestock, including poultry, bees, fish,
3 or other animal or aquatic life that are propagated
4 for economic or personal use;
- 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 a single-family dwelling located on
9 and ~~[used in connection with]~~ accessory to a farm,
10 including clusters of single-family farm dwellings
11 permitted within agricultural parks developed by the
12 State, or where agricultural activity provides income
13 of no less than \$10,000 a year to the family occupying
14 the dwelling; provided that agricultural activity
15 income shall be determined by any state general excise
16 tax return filing or agricultural dedication for the
17 parcel or lot of record approved by the county in
18 which the dwelling and agricultural activity are
19 located;
- 20 (5) Public institutions and buildings that are necessary
21 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) Agricultural-based commercial operations as described
18 in section 205-2(d)(15);
- 19 (10) Buildings and uses, including mills, storage, and
20 processing facilities, maintenance facilities,
21 photovoltaic, biogas, and other small-scale renewable



1 energy systems producing energy solely for use in the
2 agricultural activities of the fee or leasehold owner
3 of the property, and vehicle and equipment storage
4 areas that are normally considered directly accessory
5 to the above-mentioned uses and are permitted under
6 section 205-2(d);

7 (11) Agricultural parks;

8 (12) Plantation community subdivisions, which as used in
9 this chapter means an established subdivision or
10 cluster of employee housing, community buildings, and
11 agricultural support buildings on land currently or
12 formerly owned, leased, or operated by a sugar or
13 pineapple plantation; provided that the existing
14 structures may be used or rehabilitated for use, and
15 new employee housing and agricultural support
16 buildings may be allowed on land within the
17 subdivision as follows:

18 (A) The employee housing is occupied by employees or
19 former employees of the plantation who have a
20 property interest in the land;

- 1 (B) The employee housing units not owned by their
2 occupants shall be rented or leased at affordable
3 rates for agricultural workers; or
- 4 (C) The agricultural support buildings shall be
5 rented or leased to agricultural business
6 operators or agricultural support services;
- 7 (13) Agricultural tourism conducted on a working farm, or a
8 farming operation as defined in section 165-2, for the
9 enjoyment, education, or involvement of visitors;
10 provided that the agricultural tourism activity is
11 accessory and secondary to the principal agricultural
12 use and does not interfere with surrounding farm
13 operations; and provided further that this paragraph
14 shall apply only to a county that has adopted
15 ordinances regulating agricultural tourism under
16 section 205-5;
- 17 (14) Agricultural tourism activities, including overnight
18 accommodations of twenty-one days or less, for any one
19 stay within a county; provided that this paragraph
20 shall apply only to a county that includes at least
21 three islands and has adopted ordinances regulating



1 agricultural tourism activities pursuant to section
2 205-5; provided further that the agricultural tourism
3 activities coexist with a bona fide agricultural
4 activity. For the purposes of this paragraph, "bona
5 fide agricultural activity" means a farming operation
6 as defined in section 165-2;

7 (15) Wind energy facilities, including the appurtenances
8 associated with the production and transmission of
9 wind generated energy; provided that the wind energy
10 facilities and appurtenances are compatible with
11 agriculture uses and cause minimal adverse impact on
12 agricultural land;

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

21 For the purposes of this paragraph:



1 "Appurtenances" means operational infrastructure
2 of the appropriate type and scale for economic
3 commercial storage and distribution, and other similar
4 handling of feedstock, fuels, and other products of
5 biofuel processing facilities.

6 "Biofuel processing facility" means a facility
7 that produces liquid or gaseous fuels from organic
8 sources such as biomass crops, agricultural residues,
9 and oil crops, including palm, canola, soybean, and
10 waste cooking oils; grease; food wastes; and animal
11 residues and wastes that can be used to generate
12 energy;

13 (17) Agricultural-energy facilities, including
14 appurtenances necessary for an agricultural-energy
15 enterprise; provided that the primary activity of the
16 agricultural-energy enterprise is agricultural
17 activity. To be considered the primary activity of an
18 agricultural-energy enterprise, the total acreage
19 devoted to agricultural activity shall be not less
20 than ninety per cent of the total acreage of the
21 agricultural-energy enterprise. The agricultural-



1 energy facility shall be limited to lands owned,
2 leased, licensed, or operated by the entity conducting
3 the agricultural activity.

4 As used in this paragraph:

5 "Agricultural activity" means any activity
6 described in paragraphs (1) to (3) of this subsection.

7 "Agricultural-energy enterprise" means an
8 enterprise that integrally incorporates an
9 agricultural activity with an agricultural-energy
10 facility.

11 "Agricultural-energy facility" means a facility
12 that generates, stores, or distributes renewable
13 energy as defined in section 269-91 or renewable fuel
14 including electrical or thermal energy or liquid or
15 gaseous fuels from products of agricultural activities
16 from agricultural lands located in the State.

17 "Appurtenances" means operational infrastructure
18 of the appropriate type and scale for the economic
19 commercial generation, storage, distribution, and
20 other similar handling of energy, including equipment,



1 feedstock, fuels, and other products of agricultural-
2 energy facilities;

3 (18) Construction and operation of wireless communication
4 antennas, including small wireless facilities;
5 provided that, for the purposes of this paragraph,
6 "wireless communication antenna" means communications
7 equipment that is either freestanding or placed upon
8 or attached to an already existing structure and that
9 transmits and receives electromagnetic radio signals
10 used in the provision of all types of wireless
11 communications services; provided further that "small
12 wireless facilities" shall have the same meaning as in
13 section 206N-2; provided further that nothing in this
14 paragraph shall be construed to permit the
15 construction of any new structure that is not deemed a
16 permitted use under this subsection;

17 (19) Agricultural education programs conducted on a farming
18 operation as defined in section 165-2, for the
19 education and participation of the general public;
20 provided that the agricultural education programs are
21 accessory and secondary to the principal agricultural



1 use of the parcels or lots on which the agricultural
2 education programs are to occur and do not interfere
3 with surrounding farm operations. For the purposes of
4 this paragraph, "agricultural education programs"
5 means activities or events designed to promote
6 knowledge and understanding of agricultural activities
7 and practices conducted on a farming operation as
8 defined in section 165-2;

9 (20) Solar energy facilities that do not occupy more than
10 ten per cent of the acreage of the parcel, or twenty
11 acres of land, whichever is lesser or for which a
12 special use permit is granted pursuant to section
13 205-6; provided that this use shall not be permitted
14 on lands with soil classified by the land study
15 bureau's detailed land classification as overall
16 (master) productivity rating class A;

17 (21) Solar energy facilities on lands with soil classified
18 by the land study bureau's detailed land
19 classification as overall (master) productivity rating
20 B or C for which a special use permit is granted
21 pursuant to section 205-6; provided that:



- 1 (A) The area occupied by the solar energy facilities
2 is also made available for compatible
3 agricultural activities at a lease rate that is
4 at least fifty per cent below the fair market
5 rent for comparable properties;
- 6 (B) Proof of financial security to decommission the
7 facility is provided to the satisfaction of the
8 appropriate county planning commission prior to
9 date of commencement of commercial generation;
10 and
- 11 (C) Solar energy facilities shall be decommissioned
12 at the owner's expense according to the following
13 requirements:
- 14 (i) Removal of all equipment related to the
15 solar energy facility within twelve months
16 of the conclusion of operation or useful
17 life; and
- 18 (ii) Restoration of the disturbed earth to
19 substantially the same physical condition as
20 existed prior to the development of the
21 solar energy facility.



1 For the purposes of this paragraph, "agricultural
2 activities" means the activities described in
3 paragraphs (1) to (3);

4 (22) Geothermal resources exploration and geothermal
5 resources development, as defined under section 182-1;
6 or

7 (23) Hydroelectric facilities, including the appurtenances
8 associated with the production and transmission of
9 hydroelectric energy, subject to section 205-2;
10 provided that the hydroelectric facilities and their
11 appurtenances:

12 (A) Shall consist of a small hydropower facility as
13 defined by the United States Department of
14 Energy, including:

15 (i) Impoundment facilities using a dam to store
16 water in a reservoir;

17 (ii) A diversion or run-of-river facility that
18 channels a portion of a river through a
19 canal or channel; and

20 (iii) Pumped storage facilities that store energy
21 by pumping water uphill to a reservoir at



1 higher elevation from a reservoir at a lower
2 elevation to be released to turn a turbine
3 to generate electricity;

4 (B) Comply with the state water code, chapter 174C;

5 (C) Shall, if over five hundred kilowatts in
6 hydroelectric generating capacity, have the
7 approval of the commission on water resource
8 management, including a new instream flow
9 standard established for any new hydroelectric
10 facility; and

11 (D) Do not impact or impede the use of agricultural
12 land or the availability of surface or ground
13 water for all uses on all parcels that are served
14 by the ground water sources or streams for which
15 hydroelectric facilities are considered."

16 2. By amending subsection (f) to read:

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

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



1 (2) No permanent or temporary dwellings or farm dwellings,
2 including trailers and campers, are constructed on the
3 leased area. This restriction shall not prohibit the
4 construction of storage sheds, equipment sheds, or
5 other structures appropriate to the agricultural
6 activity carried on within the lot; ~~and~~ provided
7 that any violation of this paragraph shall be subject
8 to county enforcement authority and fines pursuant to
9 sections 46-4, 205-12, and 205-13; and

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

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

15 (B) Five years.

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

19 SECTION 3. Section 514B-52, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



1 "(b) An application for registration of a project in the
2 agricultural district classified pursuant to chapter 205 shall
3 include a verified statement, signed by an appropriate county
4 official, that the project as described and set forth in the
5 project's declaration, condominium map, bylaws, and house rules
6 does not include any restrictions limiting or prohibiting
7 agricultural uses or activities, in compliance with section
8 205-4.6. The statement shall also include the applicant's
9 assessment and county comments regarding the availability of
10 supportive infrastructure, any potential impact on governmental
11 plans and resources, sensitive environmental resources, and any
12 other requirements pursuant to county ordinances and rules. The
13 commission shall not accept the registration of a project where
14 a county official has not signed a verified statement."

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Agricultural Lands; Land Subdivisions; Condominium Property Regime

Description:

Amends certain land subdivision and condominium property regime laws related to agricultural land, as recommended pursuant to Act 278, Session Laws of Hawaii 2019, to ensure condominium property regime projects within the agricultural district are used for agricultural purposes. Effective 7/1/2050. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





**DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
STATE OF HAWAII OFFICE OF PLANNING**

**DAVID Y. IGE
GOVERNOR**

**MIKE MCCARTNEY
DIRECTOR**

**MARY ALICE EVANS
OFFICE OF PLANNING DIRECTOR**

FOR IMMEDIATE RELEASE

December 10, 2020

PUBLIC HEARING ON ACT 278, STUDY OF AGRICULTURAL SUBDIVISIONS

December 21, 2020

HONOLULU - The State Office of Planning (OP) will be holding a public hearing on Act 278, Session Laws of Hawaii 2019, which requires OP to study land subdivision and condominium property regime (CPR) laws related to agricultural land on Oahu. The study addresses the inappropriate use of existing subdivisions and CPRs in the State Agricultural District to allow small lot, non-farm residential uses.

Act 278 directs OP to conduct a public hearing to gather information from the general public, and to submit a report of its findings and recommendations including any proposed legislation at least 20 days prior to the 2021 legislative session.

The public hearing will be held on Monday December 21, 2020 at 1:30 pm via Zoom video teleconference. You may join the hearing at:

<https://zoom.us/meeting/register/tJMsc6vpjouGtyZGtp4hjc34eRVuyZve0Rv>.

OP conducted the study in coordination with the State Land Use Commission, State Department of Agriculture, State Real Estate Commission, and the City & County of

Honolulu Department of Planning and Permitting. A stakeholders group was convened in Fall 2019 comprised of agencies with regulatory responsibilities and private and non-profit farming interests to discuss issues and potential solutions.

The public hearing will include a presentation of major findings and recommendations of the study. A preliminary draft report will be made available on OP's website prior to the hearing, at <http://planning.hawaii.gov/lud/>.

#

Media Contact:

Rodney Funakoshi
Rodney.y.funakoshi@hawaii.gov
(808) 587-2885

Act 278 Study of Subdivision and CPR on Agricultural Lands on Oahu

Office of Planning, State of Hawaii
Public Hearing
December 21, 2020

1

Act 278 Mandate

- Act 278, SLH 2019 (SB 381, SD2 HD1 CD1)
- Directs OP, LUC, REC and City DPP to study land subdivision and condominium property regime laws related to agricultural land and report findings to the Legislature (*prior to 2021 session*). Requires counties to adopt supplemental rules on CPRs on agricultural lands (*by July 2022*).

3

Agenda

- Introduction
- Agricultural Goals
- Subdivision, CPR and Land Use Issues
- Potential Solutions
- Proposed Legislation
- Next Steps

2

Stakeholders Group

- Office of Planning
- Department of Agriculture
- C&C Dept. Planning & Permitting
- Real Estate Commission, DCCA
- Land Use Commission
- Bureau of Conveyances
- Agribusiness Development Corp
- County of Maui Planning
- Hawaii Farm Bureau
- Legislators
 - Sen. Gabbard
 - Sen. Dela Cruz
 - Sen. Riviere
 - Rep. DeCoite
- Aloun Farms
- Hawaii Cattlemen's Council
- Kamehameha Schools
- Hawaii Agricultural Research Center
- Plasch Econ Pacific
- Land Use Research Foundation

4

Objectives

What Are We Trying to Achieve?

1. Keep Suitable Agricultural lands for Agriculture
2. Support farmers and farming
3. Keep Agricultural lands affordable for farming
4. Enable long-term access to agricultural lands for farmers
5. Minimize subdivision and CPR of productive ag lands except for bona fide ag reasons

5

C&C of Honolulu Land Use Ordinance

- AG-1 Restricted Agricultural District
 - Prime/Unique ALISH
 - 5-acre minimum lot area
- AG-2 General Agricultural District
 - 2-acre minimum lot area
 - 3-acre minimum for livestock production

7

OAHU

State Land Use Districts

	Acres	%
Urban	104,200	27.2
Rural	0	0.0
Agricultural	120,800	31.5
Conservation	158,700	41.4

Source: State land use districts, Land Use Commission, March 2014

6

Subdivision Process

- Division of land into 2 or more lots for sale, lease, transfer of title or interest
 - Preliminary Map / Tentative Approval
 - Final Map / Final Approval
- Agricultural subdivision:
 - Must show feasible agricultural use
 - Covenants require lot purchasers to maintain ag use
 - Verify water availability for agriculture
 - Notice of restrictions to lot purchasers
 - Consultation with Dept. of Agriculture
 - May be exempted from street standards

8

Subdivisions

Dillingham Ranch, Mokuleia

- 694 acres, mostly low quality
- 70 lots, avg. 5.1 acre
- 1 farm dwelling/lot
- 11 lots dedicated to ag: cattle ranch, equestrian, palm, mango orchards, hydroponics
- Hydroponic training program
- Fruit orchards on lots required w/ \$12,000 subsidy
- Community objections despite DOA ok



CPR/Ownership

Process for establishing CPR ownership

1. Record w/Bureau of Conveyances/Land Court
 - Declaration
 - Bylaws
 - Condo map
 - Master deed/lease
2. Register w/Real Estate Commission
 - Developers Public Report (description, permitted uses, restrictions)
 - Upon issuance, units can be sold

9

11

CPR

- Condominium Property Regime (CPR) is an alternative to land subdivision
- Allows exclusive use of land unit within parcel with ownership of common elements – underlying property, roadways, utilities proportionately shared
- CPR is ownership vehicle, doesn't regulate use
- CPRs must follow county ordinances, including zoning

CPRs

Marconi Point Condominium

- Kahuku
- 95.6 acres, AG-2 zone
- 26 condominium units
- 2-3 acre lots
- Agricultural land condo with restrictions on farm dwellings



10

12

Subdivision Issues

- Subdivision into small lots has potential for encouraging non-agricultural residential uses
- Subdivision infrastructure requirements (roads, drainage, utilities) greatly increase cost of developing ag land
- Enforcement difficulties:
 - Exemptions for leasehold subdivisions from county subdivision standards (HRS 205-4.5f)
 - Exemptions for ag structures less than 1,000 sf from building permit (HRS 46-88)

13

Cooperative Ownership

- Emergence of cooperative ownership vehicles which avoid State and county review
- LLCs and partnerships to create and transfer use of land
- No transfer of real property, only a legal right to exclusive use

15

CPR Issues

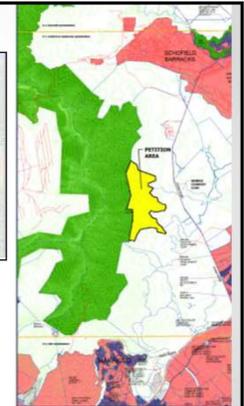
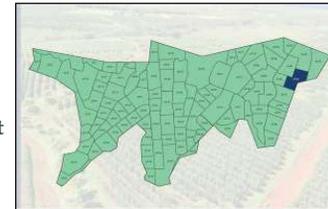
- Misperception : Ownership vs. Use – CPR is for ownership, doesn't regulate use (farm dwelling, uses, enforcement)
- Metes and bounds can be set for units, but purchasers often think it's a subdivided lot
- Disclosures can require farm plans, farm dwelling restrictions—often buyers not aware
- Enforcement difficulties - Real Estate Commission enforces only if disclosures are inaccurate

14

Co-op

Kunia Loa Ridge, Kunia

- 854 acres
- 99 lots, 5 acres ea., leasehold, shares interest
- CC&R w/no farm dwellings allowed
- Marketed as "agricultural subdivision"
- City fines ongoing



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Agricultural Land Use Issues

- Use of agricultural land for non-farm uses – higher value residential without farming
 - No clear definition of “farm dwelling” in State Land Use Law.
 - Single-family dwelling is allowed if family derives farm income, but amount is not specified
- Enforcement difficulties for non-permitted uses

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Solutions Subdivision

- City Subdivision
 1. Clarify allowed deviations for ag subdivisions: roads, overhead electrical lines, fire exemptions, other
 2. Ag feasibility review is critical: acquire in-house City expertise or allow third-party review
 3. Encourage agricultural clusters
 - AG-1 (Restricted Ag): 15 acres min., 1 unit per 5 acres
 - AG-2 (General Ag): 6 acres min., 1 unit per 2 acres
 - Each dwelling unit can be on 5,000 sf lot

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Solutions Land Use

To address agricultural land use issues:

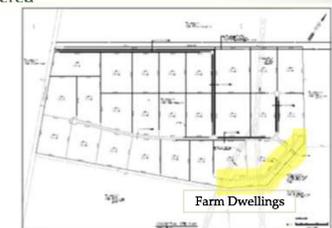
1. Define and clarify what constitutes a bona fide farm dwelling use
2. Establish farm activity first, then can allow housing
3. Allow county enforcement of unpermitted dwelling structures

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Subdivisions

Royal Kunia Agricultural Park (planned)

- State Department of Agriculture
- 150 acres
- 25 lots, 5 to 7 acres ea.
- 25 farm dwellings, clustered
- Prime soil
- Reliable irrigation
- Pending funding



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Solutions CPR/Ownership

- Improving CPR/Ownership
 1. Undertake education to clarify restrictions, esp. dwellings
 2. Allow City review of project for infrastructure, other site constraints prior to CPR registration
 3. No available avenue to address other ownership vehicles such as Co-op and LLC

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Proposed Legislation

SB 2706 was introduced in the 2020 Legislative session to address Act 278 Study recommendations:

1. Defines "farm dwelling": must be accessory use to a farm, farm income of at \$10,000 per year required
2. Allows county enforcement of structures on leasehold subdivisions
3. Requires county comments be included prior to CPR registration

Recommendation: Re-introduce SB 2706 in the 2021 Legislative Session

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Solutions Enforcement

Allow enforcement of unpermitted dwelling structures in Ag District

- Act 60 SLH 2020 amends HRS 46-88 to allow county inspections of exempted ag structures
- Amend HRS 205-4.5(f)(2) to prohibit residential use of sheds or structures, with violations subject to county enforcement authority.

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Next Steps

Re-convene Stakeholders Group following 2021 Legislative Session:

- Assess action taken at 2021 Legislative Session
- Discuss how to handle cooperatives
- Broaden Group to include Neighbor Island counties

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Public Hearing Act 278 (SLH 2019) Study of Land Subdivision and Condominium Property
Regimes (CPR) related to Agricultural Land on Oahu
State of Hawaii Office of Planning
Monday, December 21, 2020 1:30 p.m.
Zoom Video Conference
Summary Minutes

ATTENDANCE: 30 attendees

Mary Alice Evans-Office of Planning (OP)	Rodney Funakoshi, OP	Ruby Edwards, OP
Justine Nihipali, OP	Lorene Maki, OP Carl Miura, OP	Kathy Sokugawa, Department of Planning and Permitting (DPP)
Mario Siu-Li, DPP	Raymond Young, DPP	Brandon Soo, DPP
Dawn Apuna, Deputy Attorney General	Phyllis Shimabukuro-Geiser, Department of Agriculture (DOA)	Morris Atta, DOA
Earl Yamamoto, DOA	Dathan Choy, Real Estate Commission (REC)	Carole Richelieu, REC
Representative David Tarnas	Senator Gil Riviere, Mark Clemente	Senator Mike Gabbard, Rock Riggs
Racquel Achiu	Micah Munekata	Alan Gottlieb
Sommerset Wong	David Arakawa, LURF	Adam Buote
Legacy Land	Boyd Ready	Stuart Jones

- I. Mary Alice Evans, OP Director, called the hearing to order at 1:30 pm, with self-introductions from attendees, and stated the purpose of the hearing.

- II. Rodney Funakoshi presented a summary of the Act 278 Study draft report, findings, and recommendations. The presentation covered the mandate for Act 278, background information, and the issues that the task force identified with agricultural subdivisions and Condominium Property Regimes (CPR). The presentation also brought up examples of the issues. Slides included:
 1. Act 278 Mandate
 2. Stakeholders Group
 3. Objectives: What are we trying to Achieve?
 4. State Land Use Districts on Oahu
 5. City and County of Honolulu Land Use Ordinance, Agriculture District Zones
 6. City's Subdivision Process
 7. Subdivisions on Ag lands: Example: Dillingham Ranch, Mokuleia
 8. CPR Process as an alternative to land subdivision. Example: Marconi Point Condominium, Kahuku.
 9. Subdivision Issues: encouraging non-ag uses, requirements, enforcement difficulties.

10. CPR issues, misperception: ownership vs. use. CPR is for ownership, not to regulate uses.
11. Other forms of Ownership. LLC's and partnerships to create and transfer lands
12. Co-Ops. Kunia Loa Ridge, Kunia
13. Ag land use issues
14. Solutions for Subdivision
15. Ag Subdivisions: Royal Kunia Ag Park with cluster concept.
16. Solutions for CPR/Ownership
17. Solutions Enforcement. Act 60, SLH 2020 was passed to allow county inspections of agriculture structures.
18. Proposed Legislation. SB2706 introduced in 2020 Legislative session to address Act 278 Study Recommendations:
 - a. Define Farm Dwellings.
 - b. Allow county enforcement of structures on leasehold subdivisions.
 - c. CPR: require applicant assessment and county comments on infrastructure
Re-introduce bill next session. Senator Gabbard will introduce bill.
19. Next Steps: re-convene stakeholders group following 2021 Leg. Session, include Neighbor Island counties, assess action taken at 2021 Leg session, discuss how to handle cooperatives.
20. Online link to report: Act 278 Study of Subdivision and CPR on Ag lands
www.planning.hawaii.gov/lud/

III. No written testimony has been received.

IV. Public comments:

- Senator Gil Riviere: Thank you for having the meeting, am very interested in the subject. Recommends that county planning department comments on Ag CPRs should be clearly appended to the final developers public report and related condo documents. It is important to make this part of the disclosure process for anyone buying or reviewing the condo documents.
- Racquel Achiu: CPR issues on the North Shore are severe. Appreciate this issue being considered, but should also include a public hearing for the community -- Neighborhood Board or some other venue, as massive amounts of land are involved that impacts communities and surrounding ag farmers.
- David Arakawa. Thank you to OP and other stakeholders on this task force. Land Use Research Foundation (LURF) represents large landowners. They don't sell agricultural lands for residential uses. Supports most of the recommendations. Agrees with Sen. Riviere and the DPP director that there should be a more robust handling of disclosures and limitations on ag use in CPRs. Opposes subdivision on agricultural lands. Subdivision regulations have additional expenses and costs, maybe EIS and archaeological study, those are huge expenses to bear. Neighbors that sue can hold up subdivision. But willing to work with DPP to work on improving subdivision process, disclosures and other ownership types. LURF believes there should be more objectives.

- Add objective: Farmers also need affordable housing for themselves and farm workers.
- Opposes Objective No. 5 to minimize lot sizes. The evil is not the size of the parcel but misuse of the land. What is the definition of smaller parcel? Nalo farms operated on 14 acres. Should not profile ag operations to size of parcel.
- Farmers don't need more regulations on subdivision approval.
- Add objective: State and county agencies should enforce agricultural uses on agricultural lands.
- Add objective: Sellers and buyers should be held accountable. Sales professionals should provide disclosures and deed restrictions and buyers should sign acknowledgements of permitted uses and limited infrastructure. Disciplinary action needed for non-compliance and coordinated efforts on enforcement.
- State and City should identify rural lands to provide opportunities for people who want to live a rural lifestyle, to reduce pressure of using good ag lands for residential uses.

- Kathy Sokugawa: When DPP gets proposal for an Ag CPR, all that's required by State law is to verify that Ag use is not prohibited and they comply with zoning. But the City also comments extensively on other City requirements and copies the Real Estate Commission if they want to attach the comments to the CPR documents.
- Racquel Achiu: Should consider requiring dedicating ag lands to ag use as is done for real property tax purposes which is for 10 years. Dedication process might be an avenue to allow for stronger enforcement.
- Dathan Choy: Including the county comment letter in the CPR would probably not be an issue. But a public hearing for CPR could create questions of infringement on private property rights. CPR is not the same as subdivision or zoning which affects the use.
- David Arakawa: Agree that CPR is ownership vehicle, such that public hearing would be problematic. CPR is for owning land, not uses.
- Carol Richelieu: The point of the developer's report is disclosure, and for the first-time buyer only. Subsequent sales are not required and may not have appropriate disclosures.
- Mario Siu Li: In reviewing the disclosure documents for CPRs, seems attorneys don't know what to disclose or developers don't provide enough, so DPP points out insufficient information and other concerns. DPP is trying to provide more robust comments on the projects.

V. Rodney Funakoshi: Any further comments will be accepted by December 24. A summary of the public hearing will be provided the Report will be finalized and submitted to the Legislature by the end of the year.

VI. Mary Alice Evans: There being no further comments, attendees were thanked and the public hearing was closed at 2:35 pm.