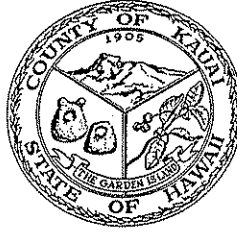


COUNTY COUNCIL

Bill "Kaipo" Asing, Chair
Jay Furfaro, Vice Chair
Tim Bynum
Dickie Chang
Daryl W. Kaneshiro
Lani T. Kawahara
Derek S. K. Kawakami



Council Services Division
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**OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUA'I**

July 1, 2010

Bill "Kaipo" Asing, Council Chair
and Members of the Kaua'i County Council
3371-A Wilcox Road
Lihu'e, Hawai'i 96766

Dear Council Chair Asing and Councilmembers:

Attached for your consideration is a proposed bill that I am requesting to be placed on the July 14, 2010 Council Meeting agenda. The purpose of this bill is to amend Chapter 8, relating to the Comprehensive Zoning Ordinance (CZO), specifically to Sec. 8-7.7 by requiring that a Class IV zoning permit be obtained in order to subdivide land in the State Land Use Agricultural District.

This bill also adds a new section to Chapter 9 of the Kaua'i County Code, relating to the subdivision of land. Specifically, the bill adds a new Section 9-2.15, which requires that a proposed subdivision comply with Chapter 205 of the Hawai'i Revised Statutes, or a finding from the Planning Commission that the proposed subdivision's agricultural and master plan meets certain criteria designed to ensure that the subdivision will be used for agricultural purposes.

Your attention and consideration of this matter is appreciated.

Sincerely,

Tim Bynum
Councilmember

cc: July 14, 2010 Council Agenda

ORDINANCE NO. _____

BILL NO. _____

A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 8 AND 9 OF THE KAUAI
COUNTY CODE 1987, AS AMENDED, RELATING TO THE
SUBDIVISION OF AGRICULTURAL LAND

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE
OF HAWAII:

SECTION 1. Findings and Purpose:

The Constitution of the State of Hawai'i has articulated the importance of conserving and protecting agricultural lands, promoting increased agricultural self-sufficiency, and ensuring the availability of agriculturally suitable lands. The purpose of this Bill is to honor this Constitutional mandate to bring about long term policies to manage and maintain the viability of agricultural land.

First, it is increasingly apparent that more stringent controls on the use of agricultural land are required to ensure the viability of agricultural production in the County. With the passage of time, some of the assumptions underlying past legislation governing the use of agricultural lands, such as Hawai'i Revised Statutes (HRS) chapter 205, have changed or new circumstances have arisen that demonstrate HRS chapter 205, as currently drafted and executed, cannot meet the concerns of the County regarding the use, preservation, and protection of agricultural lands for agricultural purposes.

Second, the public record contains numerous references to problems and inconsistencies in the regulation of agricultural lands in the County, particularly the proliferation of "gentlemen farm estates" on agricultural land and the speculative nature of investing in Agricultural zoned land to realize a profit through luxury home development which in nature and price run counter to the purpose of agriculture zoned land.

Third, the proliferation of agricultural subdivisions has led to development in lands never intended for such densities and a sprawling of development, all of which overtaxes the County's infrastructure in terms of roads, water, wastewater and other services.

Fourth, the County Council believes that the preservation and protection of agricultural land is of sufficient concern to merit legislation that allows for greater review, public comment, conditioning, and if necessary denial of subdivision of agricultural land.

Fifth, the amendment of the CZO to move the subdivision of agricultural land to a Class IV permit process allows the full Planning Commission to review, condition, and if necessary deny subdivisions of agricultural land as appropriate as the subdivision of agricultural land results in a gain in density and entitlements.

SECTION 2. The Section 8-7.7 of the Kaua'i County Code is amended to read as follows:

"Sec. 8-7.7 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any Agriculture District except in accordance with a valid zoning permit. The following zoning permits, in accordance Article 19, shall be required for the following activities.

(1) Class I Permit. A Class I Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is not large enough to qualify for more than one (1) dwelling unit under the density provisions of this Article; and

(B) the construction or development does not require a Use Permit or a Variance Permit.

(2) Class II Permit. A Class II Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is qualified for more than one (1) dwelling unit; and

(B) the constraint or development does not require a Use Permit or a Variance Permit.

(3) Class III Permit. A Class III Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development of a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit shall be obtained for construction [for] or other development on a parcel where:

(A) [for] construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance or a use permit is required [.] ; or

(B) the applicant seeks approval of the subdivision of a parcel located within the State Land Use District Agricultural.

(5) To obtain any permit, the applicant shall show compliance with the Standards established in this Article and shall submit a plot plan and other information as required by Sec. 8-3.8(d).”

SECTION 3. Chapter 9, Kaua’i County Code, as amended, is amended by adding a new section to read as follows:

“Sec. 9-2.15 Agricultural Subdivisions

(1) Any subdivision on land within the State Land Use Agricultural District shall be consistent with the goals of HRS 205, Section 8-7 of the Kaua’i County Code, and the General Plan.

(2) Any subdivision of land within the State Land Use Agricultural District shall be required to obtain a Class IV Permit.

(3) The Planning Commission shall not approve any subdivision unless the Planning Commission makes a finding that the agricultural and development master plan satisfactorily details the nature of the proposed operation, which shall include:

i) An agricultural plan detailing the farming activity;

ii) A proposed source of water sufficient to accommodate the proposed farming activity;

iii) A business plan including feasibility and demand for the proposed farming activity and any concurrent but related non-agricultural operations such as agrotourism;

iv) An analysis of prime agricultural land based on soils, slope, exposure etc. and dedication of such areas for agriculture operations; and

v) Building envelopes for farm dwellings, barns, storage sheds and any other agriculturally related building or structure laid out to preserve continuous tracts prime land for agriculture operations.

vi) Design standards, including maximum farm dwelling size that preserves the agricultural character of land.”

SECTION 4. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 5. This Ordinance shall take effect upon its approval.

INTRODUCED BY:



TIM BYNUM

Date of Introduction:

Līhu'e, Kaua'i, Hawai'i