

**A BILL FOR AN ORDINANCE TO ADD A NEW ARTICLE TO CHAPTER 9,
KAUA'I COUNTY CODE 1987, AS AMENDED, ENTITLED TEMPORARY
MORATORIUM ON CREATION OF NEW AGRICULTURAL SUBDIVISIONS**

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

SECTION 1. Purpose, Intent, and Findings. The Constitution of the State of Hawai'i has articulated the importance of conserving and protecting agricultural land, promoting increased agricultural self-sufficiency, and ensuring the availability of agriculturally suitable lands. The purpose of this Bill is to honor this Constitutional mandate and to preserve our remaining agricultural lands while the County Council and Planning Department work to develop legislation and regulations that will preserve and protect existing agricultural lands in the County. Toward this end, the County believes that the institution of a temporary moratorium on the subdivision of agricultural lands is warranted.

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 land in the County, such as (1) the creation of residential condominium property regimes on agricultural land, (2) the increase in density on agricultural land in the form of additional dwelling units, and (3) the maintenance of commercial activities on agricultural lands.

Third, the County Council believes that the preservation and protection of agricultural land is of sufficient concern to merit legislation that will protect important agricultural lands in the County. Measures necessary for their preservation and protection, including a statement of permitted uses and a procedure for reviewing and allowing such uses must be developed expeditiously by the County Council and the Planning Department.

Fourth, the impending County legislation will also have the effect of causing landowners to seek approval for development permits to develop their lands in order to avoid the potential restrictions and other consequences that will or may arise out of such impending County legislation and regulations. The threat of accelerated

applications for development permits and the accelerated development of agricultural lands in the County creates an emergency that warrants the enactment of this Bill as an ordinance of the County. Failure to impose proper regulations will allow development to proceed and for new, non-agricultural uses in the County to become established during any such consideration in a manner that may irreversibly change the character of the County's agriculture districts to the possible detriment of the County and its residents.

In order to prevent such irreversible changes in the character of the County's agricultural districts, a moratorium is required to temporarily allow time for the County to complete its legislation and regulation changes.

Fifth, the enactment of an ordinance that imposes a temporary moratorium on certain development activity on agricultural lands in the County serves the best interests of the County and its residents. Without a moratorium, the availability of agricultural lands may be severely curtailed or limited to the degree of rendering any impending County ordinances and regulations practically useless, leaving little or no agricultural lands for County ordinances and regulations to preserve or to protect.

SECTION 2. Chapter 9 of the Kaua'i County Code 1987 is hereby amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE 6. TEMPORARY MORATORIUM ON CREATION OF
NEW AGRICULTURAL SUBDIVISIONS**

**Sec. 9-6.1 Applications for Subdivisions on Agricultural Zoned
Lands; Length of Moratorium.**

Notwithstanding any provision in this Code to the contrary, and subject to the exceptions in Sec. 9-6.3, no County department, agency, or board shall approve an application for the subdivision of land located in the State Agricultural Land Use District beginning from the effective date of this Ordinance. The moratorium shall be temporary and shall terminate on the later of (1) December 31, 2008, or (2) until the County, acting through the Council or the Planning Commission as the case may be, adopts legislation or rules and regulations to protect the County's remaining agricultural lands.

Sec. 9-6.2 Extension of Moratorium.

The Council of the County of Kaua'i may extend the termination date of the temporary moratorium if the Council finds, after first holding a public hearing, that the problems giving rise to the need for the temporary moratorium continue to exist and that reasonable progress is being made by the County, acting through County Council and the Planning Department, to

adopt ordinances and regulations to preserve and to protect use of the agricultural lands located in the State Agricultural Land Use District for agricultural uses.

Sec. 9-6.3 Exceptions.

The only exceptions to this moratorium are: (1) an application may be approved if the proposed subdivision is for the sole and exclusive purpose of the development of affordable housing; (2) all subdivision applications that have already received tentative approval; and (3) subdivision applications involving government agencies.”

SECTION 3. Severability. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the 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 severable.

SECTION 4. This Ordinance shall take effect upon its approval.

INTRODUCED BY:

JOANN A. YUKIMURA
(By Request)

DATE OF INTRODUCTION:
January 17, 2008
Līhu‘e, Kaua‘i, Hawai‘i