

1 residential. Moreover, these developments place restrictive
2 covenants, including imposing height restriction on growing
3 crops in agricultural subdivisions and other private agreements
4 that restrict or even prohibit bona fide agricultural activities
5 on agricultural lands. Such practices and covenants are
6 repugnant to public policy as enunciated by Article XI, section
7 3, of the State Constitution.

8 Section 1-5, Hawaii Revised Statutes, grants individuals
9 the ability to contract away any of their legal rights so long
10 as the renouncement does not affect others' rights and "is not
11 contrary to the public good." The legislature finds that
12 restrictive covenants against agriculture uses are contrary to
13 the public good because the intent of the State Constitution,
14 and the intent of land use laws, as shown below by their
15 history, demonstrate that these covenants dismantle the
16 protections and conservation that are embodied in Hawaii's laws.

17 In 1961, the State of Hawaii was revolutionary in its
18 approach to planning and growth when it passed the Land Use Law,
19 chapter 205, Hawaii Revised Statutes. In passing the Land Use
20 Law, the senate noted in Senate Standing Committee Report
21 No. 580, on Senate Bill 937:



1 established to preserve and protect prime
2 agricultural land from infringement by none-
3 agricultural [sic] uses, the possibility of
4 land speculation through inflated or
5 artificial land prices may jeopardize the
6 existence of major agricultural companies or
7 activities. The most effective protection
8 for prime agricultural lands, preservation
9 of open space and direction for urban
10 growth, is through state zoning.

11 Also important to note is that chapter 205, Hawaii Revised
12 Statutes, was specifically enacted in an effort to manage growth
13 on islands of limited resources. Act 187, Session Laws of
14 Hawaii 1961, reads:

15 Scattered subdivisions with expensive, yet
16 reduced, public services; the shifting of
17 prime agricultural lands into nonrevenue
18 [sic] producing residential uses when other
19 lands are available that could serve
20 adequately the urban needs; . . . these are
21 evidences of the need for public concern and
22 action.



1 In 1976, the legislature noted, in Senate Standing
2 Committee Report No. 662-76, on House Bill 3262-76, that the
3 requirements of the Land Use Law had been skirted, and as such,
4 it amended the Land Use Law to clarify that urban type
5 residential subdivisions are not authorized on agricultural
6 land.

7 The purpose of the agricultural district
8 classification is to control the uses of the
9 land for agricultural purposes. This
10 purpose is being frustrated by the
11 development of urban type residential
12 communities in the guise of agricultural
13 subdivisions. To discourage abuse of this
14 purpose, the bill, as amended, more clearly
15 defines the uses permitted within the
16 agricultural district. Except for such uses
17 permitted under special use permits in
18 Section 205-6, and for nonconforming uses
19 permitted in section 205-8, uses not
20 permitted shall be prohibited.

21 Most revealing as to the efforts to curb against
22 development upon agricultural lands is the procedural history



1 for the enactment of Article XI, section 3, of the State
2 Constitution. Fearing that urbanization and abuses would weaken
3 the protections meant to be provided to agricultural lands, the
4 committee deleted language referring to farm and home ownership,
5 and instead focused on the need to protect and promote
6 agricultural lands.

7 The State Constitutional Convention of 1978 noted in its
8 proceedings:

9 Your Committee deleted the provision in
10 Section 5 of Article X dealing with the use
11 of public lands for farm and home ownership.
12 It was generally understood, based on a
13 letter opinion by the attorney general, that
14 the phrase "farm and home ownership" meant
15 both farm or home ownership. The
16 inconsistency of this interpretation, with a
17 renewed emphasis on preserving valuable and
18 important agricultural lands, and the
19 recommendation of the chairman of the board
20 of agriculture convinced your Committee to
21 delete the provision on farm and home
22 ownership.



1 In response to increasing concerns
2 regarding the future of agriculture in the
3 State, your Committee has amended Section 5
4 of Article X, entitled "Farm and Home
5 Ownership," by revising it to "Agricultural
6 Lands" and by amending it to provide policy
7 direction to the State. Moreover, the
8 section has been amended to safeguard
9 existing agricultural lands designated by
10 the state Department of Agriculture as
11 "prime," "unique" or "other important" and
12 classified as agricultural by the state Land
13 Use Commission. Thus the reclassification
14 of these lands will now require, in addition
15 to approval by the state Land Use Commission
16 or other body assigned this function, the
17 approval of the legislature by two thirds of
18 each house.

19 Your Committee provided further
20 protection for important agricultural lands
21 by requiring that the lands be protected and
22 maintained for bona fide or good faith



1 agricultural use and that only support
2 facilities necessary for agricultural use of
3 such lands be permitted.

4 While Article XI, section 3, of the Hawaii State
5 Constitution was adopted in 1978, and at that time the concern
6 was over the large prime agricultural parcels of the sugar and
7 pineapple industries, since that time, the focus of concern has
8 shifted, for we have seen subdivisions and gentleman farmer
9 estates, with golf courses, orchards, and gated communities
10 proliferate upon agricultural lands. Thus, whereas previously
11 the concern was over the promotion of the agricultural industry
12 through its lands, we currently are dealing with a planning
13 issue of urban-like uses occupying agricultural lands. It is
14 for these reasons that the legislature finds that the courts of
15 this State should not be availed upon to enforce these private
16 agreements that contravene public policy.

17 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
18 amended by adding a new section to be appropriately designated
19 and to read as follows:

20 "§205- Private restrictions on agricultural uses and
21 activities; not allowed. Agricultural uses and activities as
22 defined in sections 205-2(d) and 205-4.5(a) on lands classified

1 as agricultural shall not be restricted by any private agreement
2 contained in any deed, lease, agreement of sale, or other
3 conveyance of land recorded in the bureau of conveyances after
4 the effective date of this section, that subject such
5 agricultural lands to any servitude, including but not limited
6 to covenants, easements, or equitable and reciprocal negative
7 servitudes. Any such private restriction limiting or
8 prohibiting agricultural use or activity shall be voidable
9 subject to special restrictions enacted by the county ordinance
10 pursuant to section 46-4, except that restrictions taken to
11 protect environmental or cultural resources shall not be void or
12 voidable."

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall not be applied so as to impair
15 any contract existing as of the effective date of this Act in a
16 manner violative of either the Hawaii Constitution or Article I,
17 section 10, of the United States Constitution.

18 SECTION 5. This Act shall take effect upon its approval.