

THE BUFFER BILL

by Robert H. Thomas

Farmers and ranchers should be aware of a new law passed by the Legislature last session that adds another layer of protection for Hawaii agriculture.

A new section was added to the Land Use Law (chapter 205) requiring that before the State Land Use Commission approves a petition for a “boundary amendment” (a change in the state’s land use designation for a parcel), for lands “contiguous or adjacent to” land designated agricultural, it must include two conditions.

First, the conditions must prohibit any action that would interfere with or “restrain” farming operations, as long as those farming operations are consistent with generally accepted agricultural and management practices. This requirement mirrors the language in Hawaii’s Right to Farm Act, which prohibits nuisance lawsuits against farmers and ranchers who employ generally accepted practices. In other words, farmers and ranchers determine what are the best agricultural and management practices.

“Farming operation” is also defined by reference to the Right to Farm Act, which defines the term broadly to include agriculture, aquaculture, and ranching operations, among others. Also included are accessory uses such roadside stands, fertilizer application, and labor operations.

Second, all prospective developers or purchasers of the land must be notified about the requirements of the Right to Farm act, and that notice must be included in any real estate disclosures.

The intent behind the new law is to prevent farmers and ranchers from having to absorb all of the impacts when non-agricultural interests move next to or near land designated for agricultural uses. Previously, when non-agricultural interests moved next to a farm, for example, the farmer may have been called upon to establish a buffer on his land to protect his new neighbor from things such as spray drift or other common agricultural practices.

The new law makes it necessary to take the farmer into consideration, and to provide notice to all involved, in order to foster discussion and prevent farmers and ranchers from having to bear the entire burden of encroaching urban uses.

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