
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. Section 205-4.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§205-4.5 Permissible uses within the agricultural**
4 **districts.** (a) Within the agricultural district, all lands
5 with soil classified by the land study bureau's detailed land
6 classification as overall (master) productivity rating class A
7 or B shall be restricted to the following permitted uses:

8 (1) Cultivation of crops, including but not limited to
9 flowers, vegetables, foliage, fruits, forage, and
10 timber;

11 (2) Game and fish propagation;

12 (3) Raising of livestock, including but not limited to
13 poultry, bees, fish, or other animal or aquatic life
14 that are propagated for economic or personal use;

15 (4) Farm dwellings, employee housing, farm buildings, or
16 activity or uses related to farming and animal
17 husbandry. Farm dwelling as used in this paragraph
18 means a single-family dwelling located on and used in



1 connection with a farm, including clusters of single-
2 family farm dwellings permitted within agricultural
3 parks developed by the State, or where agricultural
4 activity provides income to the family occupying the
5 dwelling;

6 (5) Public institutions and buildings that are necessary
7 for agricultural practices;

8 (6) Public and private open area types of recreational
9 uses including day camps, picnic grounds, parks, and
10 riding stables, but not including dragstrips,
11 airports, drive-in theaters, golf courses, golf
12 driving ranges, country clubs, and overnight camps;

13 (7) Public, private, and quasi-public utility lines and
14 roadways, transformer stations, communications
15 equipment buildings, solid waste transfer stations,
16 major water storage tanks, and appurtenant small
17 buildings such as booster pumping stations, but not
18 including offices or yards for equipment, material,
19 vehicle storage, repair or maintenance, or treatment
20 plants, or corporation yards, or other like
21 structures;



- 1 (8) Retention, restoration, rehabilitation, or improvement
2 of buildings or sites of historic or scenic interest;
- 3 (9) Roadside stands for the sale of agricultural products
4 grown on the premises;
- 5 (10) Buildings and uses, including but not limited to
6 mills, storage, and processing facilities, maintenance
7 facilities, and vehicle and equipment storage areas
8 that are normally considered directly accessory to the
9 abovementioned uses and are permitted under section
10 205-2(d);
- 11 (11) Agricultural parks; or
- 12 (12) Wind energy facilities, including the appurtenances
13 associated with the production and transmission of
14 wind generated energy; provided that such facilities
15 and appurtenances are compatible with agriculture uses
16 and cause minimal adverse impact on agricultural land.
- 17 (b) Uses not expressly permitted in subsection (a) shall
18 be prohibited, except the uses permitted as provided in sections
19 205-6 and 205-8, and construction of single-family dwellings on
20 lots existing before June 4, 1976. Any other law to the
21 contrary notwithstanding, no subdivision of land within the
22 agricultural district with soil classified by the land study



1 bureau's detailed land classification as overall (master)
2 productivity rating class A or B shall be approved by a county
3 unless the said A and B lands within the subdivision shall be
4 made subject to the restriction on uses as prescribed in this
5 section and to the condition that the uses shall be primarily in
6 pursuit of an agricultural activity.

7 Any deed, lease, agreement of sale, mortgage, or other
8 instrument of conveyance covering any land within the
9 agricultural subdivision shall expressly contain the restriction
10 on uses and the condition, as prescribed in this section that
11 [†]the[†] restriction and condition shall be encumbrances
12 running with the land until such time that the land is
13 reclassified to a land use district other than agricultural
14 district.

15 If the foregoing requirement of encumbrances running with
16 the land jeopardizes the owner or lessee from obtaining mortgage
17 financing from any of the mortgage lending agencies set forth
18 hereinbelow, and the requirement is the sole reason for failure
19 to obtain mortgage financing, then such requirement of
20 encumbrances shall, insofar as the mortgage financing is so
21 jeopardized, be conditionally waived by the appropriate county
22 enforcement officer; provided that the conditional waiver shall



1 thereafter become effective only in the event that the property
2 is subjected to foreclosure proceedings by the mortgage lender.

3 The mortgage lending agencies mentioned hereinabove are the
4 Federal Housing Administration, Federal National Mortgage
5 Association, Veterans Administration, Small Business
6 Administration, United States Department of Agriculture, Federal
7 Land Bank of Berkeley, Federal Intermediate Credit Bank of
8 Berkeley, Berkeley Bank for Cooperatives, and any other federal,
9 state, or private mortgage lending agency qualified to do
10 business in Hawaii, and their respective successors and assigns.

11 (c) Within the agricultural district all lands, with soil
12 classified by the land study bureau's detailed land
13 classification as overall (master) productivity rating class C,
14 D, E, or U shall be restricted to the uses permitted for
15 agricultural districts as set forth in section 205-5(b).

16 (d) Notwithstanding any other provision of this chapter to
17 the contrary, golf courses and golf driving ranges approved by a
18 county before July 1, 2005, for development within the
19 agricultural district shall be permitted uses within the
20 agricultural district.



1 (e) It shall be presumed that a subdivision or development
2 in an agricultural district does not consist of or contain farm
3 dwellings if it includes any of the following:

4 (1) House lots situated along golf course fairways;
5 (2) A gated entry, including but not limited to automatic
6 or manual gates and security guard stations, limiting
7 access to residents and guests only, and not the
8 general public;

9 (3) Restrictive covenants that restrict agricultural uses
10 otherwise permitted by this chapter and relevant
11 zoning laws; or

12 (4) Private country club facilities, members'
13 accommodations, lodgings, hotels, or other resort
14 facilities;

15 provided that the presumption may be rebutted if the subdivision
16 or development has developed, implemented, and maintained an
17 agricultural plan that demonstrates that agriculture is an
18 actual and significant component of each lot."

19 SECTION 2. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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

2

INTRODUCED BY:

Tony Wata

JAN 25 2006



H.B.M. 3153

Report Title:

Land Use; Agricultural Subdivisions

Description:

Raises a presumption that a subdivision in the agricultural district does not consist of farm dwellings if certain "urban-like" features are contained in the subdivision.

