

JAN 25 2006

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 with
5 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;



1 Farm dwelling as used in this paragraph means a
2 single-family dwelling located on and used in
3 connection with a farm, including clusters of single-
4 family farm dwellings permitted within agricultural
5 parks developed by the State, or where agricultural
6 activity provides income to the family occupying the
7 dwelling;

8 (5) Public institutions and buildings which are necessary
9 for agricultural practices;

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

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



- 1 plants, or corporation yards, or other like
2 structures;
- 3 (8) Retention, restoration, rehabilitation, or improvement
4 of buildings or sites of historic or scenic interest;
- 5 (9) Roadside stands for the sale of agricultural products
6 grown on the premises;
- 7 (10) Buildings and uses, including but not limited to
8 mills, storage, and processing facilities, maintenance
9 facilities, and vehicle and equipment storage areas
10 that are normally considered directly accessory to the
11 abovementioned uses and are permitted under section
12 205-2(d);
- 13 (11) Agricultural parks; or
- 14 (12) Wind energy facilities, including the appurtenances
15 associated with the production and transmission of
16 wind generated energy; provided that such facilities
17 and appurtenances are compatible with agriculture uses
18 and cause minimal adverse impact on agricultural land.
- 19 (b) Uses not expressly permitted in subsection (a) shall
20 be prohibited, except the uses permitted as provided in sections
21 205-6 and 205-8, and construction of single-family dwellings on
22 lots existing before June 4, 1976. Any other law to the



1 contrary notwithstanding, no subdivision of land within the
2 agricultural district with soil classified by the land study
3 bureau's detailed land classification as overall (master)
4 productivity rating class A or B shall be approved by a county
5 unless the said A and B lands within the subdivision shall be
6 made subject to the restriction on uses as prescribed in this
7 section and to the condition that the uses shall be primarily in
8 pursuit of an agricultural activity.

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

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



1 enforcement officer; provided that such conditional waiver shall
2 thereafter become effective only in the event that the property
3 is subjected to foreclosure proceedings by the mortgage lender.

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

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

18 (d) In agricultural districts where lands with soil
19 classified by the land study bureau's detailed land
20 classification as overall (master) productivity rating class C,
21 D, E, or U, a single-family residential dwelling not used in
22 connection with farm use may be constructed. A proposed



1 dwelling is subject to approval of the county upon written
2 findings showing all of the following:

3 (1) The dwelling or activities associated with the
4 dwelling will not force a significant change in or
5 significantly increase the cost of accepted
6 agricultural practices on nearby lands devoted to farm
7 use, other than possible increases in property taxes
8 or other costs associated with the values of such
9 lands to the extent such values are increased by such
10 dwelling or activities.

11 (2) The dwelling complies with such other conditions as
12 the county considers necessary.

13 (e) Upon receipt of an application to construct a dwelling
14 under subsection (d) of this section, the county shall notify:

15 (1) Owners of land that is within 250 feet of the lot or
16 parcel on which the dwelling will be established; and

17 (2) Persons who have requested notice of such applications
18 and who have paid a reasonable fee imposed by the
19 county to cover the cost of such notice.

20 (f) The notice required in subsection (e) of this section
21 shall specify that persons have 15 days following the date of
22 postmark of the notice to file a written objection on the

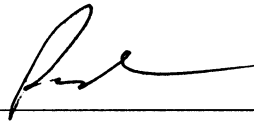


1 grounds only that the conditions in subsection (d)(1) do not
2 hold."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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

6

INTRODUCED BY:  _____



SB. NO. 2467

Report Title:

Land Use Commission; Residential Use of Marginal Agricultural Land

Description:

Allows the construction of a residential dwelling upon agricultural land found to be of marginal quality by the land study bureau's detailed land classification productivity rating, provided that certain conditions are approved by the respective county.

