

ACT 271

H.B. NO. 2146

A Bill for an Act Relating to Land Use.

Be It Enacted by the Legislature of the State of Hawaii:

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

“§205-4.5 Permissible uses within the agricultural districts. (a) Within the agricultural district, all lands with soil classified by the land study bureau’s

detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry. Farm dwelling as used in this paragraph means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, [øf] treatment plants, [øf] corporation yards, or other like structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the abovementioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks; or
- (12) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.

(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless ~~the said~~ those A and B lands within the subdivision ~~shall be~~ are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that ~~[[the]¹ restriction and condition]~~ these restrictions and conditions shall be encumbrances

running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee ~~[from]~~ in obtaining mortgage financing from any of the mortgage lending agencies set forth ~~[hereinbelow,]~~ in the following paragraph, and the requirement is the sole reason for failure to obtain mortgage financing, then ~~[such]~~ the requirement of encumbrances shall, insofar as ~~[the]~~ such mortgage financing is ~~[se]~~ jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that the conditional waiver shall ~~[thereafter]~~ become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies ~~[mentioned hereinabove]~~ referred to in the preceding paragraph are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

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

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

(e) Notwithstanding any other law to the contrary, agricultural lands may be subdivided and leased for the agricultural uses or activities permitted in subsection (a); provided that:

- (1) The principal use of the leased land is agriculture;
- (2) No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of storage sheds, equipment sheds, or other structures appropriate to the agricultural activity carried on within the lot; and
- (3) The lease term for a subdivided lot shall be for at least as long as the greater of:
 - (A) The minimum real property tax agricultural dedication period of the county in which the subdivided lot is located; or
 - (B) Five years.

Lots created and leased pursuant to this section shall be legal lots of record for mortgage lending purposes and shall be exempt from county subdivision standards."

SECTION 2. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider's subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;

- (3) Where the division of lands is a leasehold agricultural lot within state agricultural districts on which no dwelling structures are constructed as provided in section 205-4.5(e);
- [(3)] (4) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;
- [(4)] (5) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;
- [(5)] (6) Pursuant to court order;
- [(6)] (7) By any government or government agency;
- [(7)] (8) As cemetery lots or interests; or
- [(8)] (9) Registered as a condominium property regime pursuant to chapter ~~[514A.]~~ 514B.''

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

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved July 4, 2006.)

Note

- 1. So in original.