June 5, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 5, 2008, the following bill was signed into law:

SB2849 SD1 HD1 CD1 A BILL FOR AN ACT RELATING TO
AGRICULTURAL LANDS.
(Act 145)

Sincerely,

LINDA LINGLE
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

SECTION 1. The legislature finds that Hawaii’s dependence on petroleum for over ninety per cent of its energy needs is more than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel and price volatility can negatively impact the viability of agricultural operations.

At the same time, Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature further finds that increased energy efficiency and use of renewable energy resources would increase Hawaii’s energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.
To shape Hawaii's energy and agricultural future and achieve the goal of energy and food self-sufficiency for the state, our efforts must continue on all fronts, integrating new and evolving technologies, seizing upon opportunities to become more economically diversified, and providing incentives and assistance to address barriers. It is crucial to address the negative impacts that rising and volatile petroleum prices have on fuel and fertilizer.

The purpose of this Act is to:

(1) Permit the use of lands in agricultural land use districts for agricultural-energy facilities when the production, storage, and distribution of renewable energy are integrated with an agricultural activity; and

(2) Allow existing structures on plantation community subdivisions to be used or rehabilitated for employee rental housing at affordable rates for agricultural workers and agricultural support buildings for agricultural business operators and support services.

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Agricultural districts shall include:
(1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;

(2) Farming activities or uses related to animal husbandry, and game and fish propagation;

(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind generated energy production for public, private, and commercial use;

(5) Biofuel production as described in section 205-4.5(a)(15) for public, private, and commercial use;

(6) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including [but not limited to] farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities,
facilities as defined in section 205-4.5(a)(16),
vehicle and equipment storage areas, roadside stands
for the sale of products grown on the premises, and
plantation community subdivisions as defined in
section 205-4.5(a)(12);
(7) Wind machines and wind farms;
(8) Small-scale meteorological, air quality, noise, and
other scientific and environmental data collection and
monitoring facilities occupying less than one-half
acre of land; provided that these facilities shall not
be used as or equipped for use as living quarters or
dwellings;
(9) Agricultural parks;
(10) Agricultural tourism conducted on a working farm, or a
farming operation as defined in section 165-2, for the
enjoyment, education, or involvement of visitors;
provided that the agricultural tourism activity is
accessory and secondary to the principal agricultural
use and does not interfere with surrounding farm
operations; and provided further that this paragraph
shall apply only to a county that has adopted
ordinances regulating agricultural tourism under section 205-5; and

(11) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d).

Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics."

SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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] crops for bioenergy, 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 activities 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, treatment
plants, corporation yards, or other similar
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
[above-mentioned] above-mentioned uses and are
permitted under section 205-2(d);

(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in
this [paragraph] chapter means [a] an established
subdivision or cluster of employee housing, community
buildings, and [area-estabished] agricultural
support buildings on land currently or formerly owned,
leased, or operated by a sugar or pineapple plantation
[and in residential use]; provided that the existing
structures may be used or rehabilitated for use, and
new employee housing and agricultural support
buildings may be allowed on land within the
subdivision as follows:

(A) The employee housing is occupied by employees or
former employees of the plantation[; provided
that the employees or former employees shall] who
have a property interest in the land;

(B) The employee housing units not owned by their
occupants shall be rented or leased at affordable
rates for agricultural workers; or

(C) The agricultural support buildings shall be
rented or leased to agricultural business
operators or agricultural support services;

(13) Agricultural tourism conducted on a working farm, or a
farming operation as defined in section 165-2, for the
enjoyment, education, or involvement of visitors;
provided that the agricultural tourism activity is
accessory and secondary to the principal agricultural
use and does not interfere with surrounding farm
operations; and provided further that this paragraph
shall apply only to a county that has adopted
ordinances regulating agricultural tourism under section 205-5;

(14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;

(15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuels processing facilities.
"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy.

(16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.
"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

or

[4(16)]] (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already
existing structure and that transmits and receives
electromagnetic radio signals used in the provision of
all types of wireless communications services; provided
further that nothing in this paragraph shall be
construed to permit the construction of any new
structure that is not deemed a permitted use under this
subsection."

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

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

APPROVED this 5 day of JUN, 2008

[Signature]
GOVERNOR OF THE STATE OF HAWAII