July 11, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 11, 2011, the following bill was signed into law:

SB631 SD1 HD2 CD1 RELATING TO RENEWABLE ENERGY.
Act 217 (11)

NEIL ABERCROMBIE
Governor, State of Hawaii
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the development of renewable energy in Hawaii is crucial to the energy security and energy independence of the State. Increased energy efficiency and use of renewable energy resources will achieve broad societal benefits, including resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

The legislature also finds that Hawaii's dependence on petroleum makes the State extremely vulnerable to supply disruption, international market dysfunction, and many other factors beyond the control of the State. Continued consumption of conventional petroleum fuel and price volatility can negatively impact the viability of agricultural operations.

The legislature further finds that allowing renewable energy facilities within the agricultural district furthers and is consistent with the purposes, standards, and criteria for uses within agricultural lands. Renewable energy facilities...
increase the State's energy self sufficiency and agricultural sustainability.

The purpose of this Act is to increase, with certain limitations, the areas within agricultural lands in which solar energy facilities may be constructed.

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) Solar energy facilities; provided that [this].
(A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D or E; and

(B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten percent of the acreage of the parcel, or twenty acres of land, whichever is lesser;

(7) 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, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy 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);

(8) Wind machines and wind farms;

(9) 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;

(10) Agricultural parks;

(11) 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

(12) 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 crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
2. Game and fish propagation;
3. Raising of livestock, including 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 mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; 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 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;

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; [ex]

(18) Agricultural education programs conducted on a farming
operation as defined in section 165-2, for the
education and participation of the general public;
provided that the agricultural education programs are
accessory and secondary to the principal agricultural
use of the parcels or lots on which the agricultural
education programs are to occur and do not interfere
with surrounding farm operations. For the purposes of
this section, "agricultural education programs" means
activities or events designed to promote knowledge and
understanding of agricultural activities and practices
conducted on a farming operation as defined in section
165-2 [••]; or

(19) Solar energy facilities that do not occupy more than
ten per cent of the acreage of the parcel, or twenty
acres of land, whichever is lesser; provided that this
use shall not be permitted on lands with soil
classified by the land study bureau's detailed land
classification as overall (master) productivity rating
class A."
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 11th day of JUL, 2011

[Signature]

GOVERNOR OF THE STATE OF HAWAII