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# A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4 **"§46- Permissible uses and infrastructure standards**  
5 **within the rural and urban lands district.** Each county shall  
6 establish by ordinance permitted uses of land and standards  
7 required for infrastructure systems within rural and urban  
8 districts as classified under chapter 205."

9 SECTION 2. Chapter 205, Hawaii Revised Statutes, is  
10 amended by adding a new section to part III to be appropriately  
11 designated and to read as follows:

12 **"§205- Permissible uses within lands designated as**  
13 **important agricultural lands.** (a) All lands designated as  
14 important agricultural lands shall be restricted to the  
15 following permitted uses:

16 (1) Cultivation of crops, including but not limited to  
17 flowers, vegetables, foliage, fruits, forage, fiber,  
18 and timber;



- 1        (2) Game and fish propagation;
- 2        (3) Raising of livestock, including but not limited to
- 3        poultry, bees, fish, or other animal or aquatic life
- 4        that are propagated for economic or personal use;
- 5        (4) Public institutions and buildings that are necessary
- 6        for agricultural practices;
- 7        (5) Public, private, and quasi-public utility lines and
- 8        roadways, transformer stations, communications
- 9        equipment buildings, solid waste transfer stations,
- 10       major water storage tanks, and appurtenant small
- 11       buildings such as booster pumping stations, but not
- 12       including offices or yards for equipment, material,
- 13       vehicle storage, repair or maintenance, treatment
- 14       plants, corporation yards, or other similar
- 15       structures;
- 16       (6) Retention, restoration, rehabilitation, or
- 17       improvements of sites of historic or cultural
- 18       importance;
- 19       (7) Roadside stands for the sale of agricultural products
- 20       grown on the land;
- 21       (8) Buildings and uses, including but not limited to
- 22       mills, storage, and processing facilities, maintenance



1 facilities, and vehicle and equipment storage areas  
2 that are normally considered directly accessory to the  
3 uses permitted in this section and are permitted under  
4 section 205-2(d);

5 (9) Agricultural parks;

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

16 (11) Bio-fuels processing facilities; provided that the  
17 majority of the feedstock is grown within this state,  
18 and alternative energy generating facilities,  
19 including the appurtenances associated with the  
20 production and transmission of bio-fuels and  
21 alternative generated energy; provided further that  
22 such facilities and appurtenances are compatible with



1           agricultural uses and cause minimal adverse impact on  
2           important agricultural land.

3           (b) Uses not expressly permitted in subsection (a) shall  
4           be prohibited, except the uses permitted as provided in section  
5           205-8, and construction of single-family dwellings on lots  
6           existing before June 4, 1976. A single dwelling on not more  
7           than one acre shall be permitted for the sole use of the  
8           landowner or child of the landowner or for the use of a lessee  
9           on leased land that is used by the lessee as a working farm or a  
10           farming operation, as defined in section 165-2. No other uses  
11           shall be allowed by special permit on important agricultural  
12           lands.

13           (c) Any other law to the contrary notwithstanding, land  
14           designated as important agricultural lands shall only be  
15           subdivided as provided in section 205-4.5(e). Any deed, lease,  
16           agreement of sale, mortgage, or other instrument of conveyance  
17           covering any land within the agricultural subdivision of lands  
18           designated important agricultural lands shall expressly contain  
19           the restriction on uses, and the conditions contained in this  
20           section and the restrictions and conditions shall be  
21           encumbrances running with the land until such time that the land  
22           is no longer designated as important agricultural lands."



1 SECTION 3. Section 46-15, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The mayor of each county, after holding a public  
4 hearing on the matter and receiving the approval of the  
5 respective council, shall be empowered to designate areas of  
6 land for experimental and demonstration housing projects, the  
7 purposes of which are to research and develop ideas that would  
8 reduce the cost of housing in the State. Except as hereinafter  
9 provided, the experimental and demonstration housing projects  
10 shall be exempt from all statutes, ordinances, charter  
11 provisions, and rules or regulations of any governmental agency  
12 or public utility relating to planning, zoning, construction  
13 standards for subdivisions, development and improvement of land,  
14 and the construction and sale of homes thereon; provided that  
15 the experimental and demonstration housing projects shall not  
16 affect the safety standards or tariffs approved by the public  
17 utility [~~commissions~~] commission for such public utility.

18 The mayor of each county with the approval of the  
19 respective council may designate a county agency or official who  
20 shall have the power to review all plans and specifications for  
21 the subdivisions, development and improvement of the land  
22 involved, and the construction and sale of homes thereon. The



1 county agency or official shall have the power to approve or  
2 disapprove or to make modifications to all or any portion of the  
3 plans and specifications.

4 The county agency or official shall submit preliminary  
5 plans and specifications to the legislative body of the  
6 respective county for its approval or disapproval. The final  
7 plans and specifications for the project shall be deemed  
8 approved by the legislative body if the final plans and  
9 specifications do not substantially deviate from the approved  
10 preliminary plans and specifications. The final plans and  
11 specifications shall constitute the standards for the particular  
12 project.

13 No action shall be prosecuted or maintained against any  
14 county, its officials or employees, on account of actions taken  
15 in reviewing, approving, or disapproving such plans and  
16 specifications.

17 Any experimental or demonstration housing project for the  
18 purposes hereinabove mentioned may be sponsored by any state or  
19 county agency or any persons defined in section 1-19.

20 The county agency or official shall apply to the state land  
21 use commission for an appropriate land use district  
22 classification change, except where the proposed project is



1 located on land within an urban or rural district established by  
2 the state land use commission. Notwithstanding any law, rule,  
3 or regulation to the contrary, the state land use commission may  
4 approve the application at any time after a public hearing held  
5 in the county where the land is located upon notice of the time  
6 and place of the hearing being published in the same manner as  
7 the notice required for a public hearing by the planning  
8 commission of the appropriate county."

9 SECTION 4. Section 205-2, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§205-2 Districting and classification of lands.** (a)  
12 There shall be four major land use districts in which all lands  
13 in the State shall be placed: urban, rural, agricultural, and  
14 conservation. [~~The~~] By January 1, 2009, the land use commission  
15 shall group contiguous land areas suitable for inclusion in one  
16 of these four major districts. Beginning on January 1, 2009,  
17 lands in the agricultural district shall include agricultural  
18 lands not classified by the land use commission for inclusion in  
19 one of the other major districts. The commission shall set  
20 standards for determining the boundaries of each district[~~r~~];  
21 provided that:



1 (1) In the establishment of boundaries of urban districts,  
2 those lands that are now in urban use and a sufficient  
3 reserve area for foreseeable urban growth shall be  
4 included;

5 (2) In the establishment of boundaries for rural  
6 districts, areas of land composed primarily of small  
7 farms mixed with very low density residential lots,  
8 which may be shown by a minimum density of not more  
9 than one house per one-half acre and a minimum lot  
10 size of not less than one-half acre shall be included,  
11 except as herein provided; provided further that the  
12 land use commission shall give consideration to:

13 (A) Contiguous land areas with soil classified by the  
14 land study bureau's detailed land classification  
15 as overall (master) productivity rating class C,  
16 D, E, or U, not included in the agricultural  
17 district by the land use commission by January 1,  
18 2009;

19 (B) Agricultural lands with residential subdivisions  
20 existing before January 1, 2007; and





1            (C) Areas not suited to agricultural and ancillary  
2            activities by reason of topography and other  
3            related characteristics;

4            (3) In the establishment of the boundaries of agricultural  
5            districts, the greatest possible protection shall be  
6            given to those lands with a high capacity for  
7            intensive cultivation~~;~~ and], including:

8            (A) Lands with soils classified by the land study  
9            bureau's detailed land classification as overall  
10           (master) productivity rating class A or B; and

11           (B) Lands in active agricultural production on  
12           January 1, 2007, with soil classified by the land  
13           study bureau's detailed land classification as  
14           overall (master) productivity rating class C, D,  
15           E, or U;

16           (4) In the establishment of the boundaries of conservation  
17           districts, the greatest possible protection shall be  
18           given to valuable natural resources, including but not  
19           limited to:

20           (A) Watersheds and water sources;



- 1           (B) Indigenous or endemic plants, fish, and wildlife,  
2           including those which are threatened or  
3           endangered;
- 4           (C) Park lands, wilderness, and beach reserves;
- 5           (D) Shoreline and coastal resources;
- 6           (E) Native forests and other forested areas;
- 7           (F) Wetlands, natural streams, and lakes;
- 8           (G) Scenic, historic, archaeological, and cultural  
9           areas;
- 10          (H) Recreational resources and areas highly  
11          susceptible to erosion, landslides, flooding,  
12          volcanic hazards, and other conditions which may  
13          threaten lives or property.
- 14          The "forest and water reserve zones" provided in Act  
15          234, section 2, Session Laws of Hawaii 1957, are  
16          renamed "conservation districts" and, effective as of  
17          July 11, 1961, the boundaries of the forest and water  
18          reserve zones theretofore established pursuant to Act  
19          234, section 2, Session Laws of Hawaii 1957, shall  
20          constitute the boundaries of the conservation  
21          districts; provided that thereafter the power to



1           determine the boundaries of the conservation districts  
2           shall be in the commission.

3 In establishing the boundaries of the districts in each county,  
4 the commission shall give consideration to the master plan or  
5 general plan of the county.

6           (b) Urban districts shall include activities or uses as  
7 provided by ordinances or regulations of the county within which  
8 the urban district is situated.

9           (c) Rural districts shall include ~~[activities or uses as~~  
10 ~~characterized by low density residential lots of not more than~~  
11 ~~one dwelling house per one-half acre, except as provided by~~  
12 ~~county ordinance pursuant to section 46-4(c), in areas where~~  
13 ~~"city-like" concentration of people, structures, streets, and~~  
14 ~~urban level of services are absent, and where small farms are~~  
15 ~~intermixed with low density residential lots except that within~~  
16 ~~a subdivision, as defined in section 484-1, the commission for~~  
17 ~~good cause may allow one lot of less than one-half acre, but not~~  
18 ~~less than 18,500 square feet, or an equivalent residential~~  
19 ~~density, within a rural subdivision and permit the construction~~  
20 ~~of one dwelling on such lot, provided that all other dwellings~~  
21 ~~in the subdivision shall have a minimum lot size of one-half~~  
22 ~~acre or 21,780 square feet. Such petition for variance may be~~



1 ~~processed under the special permit procedure. These districts~~  
2 ~~may include contiguous areas which are not suited to low density~~  
3 ~~residential lots or small farms by reason of topography, soils,~~  
4 ~~and other related characteristics. Rural districts shall also~~  
5 ~~include golf courses, golf driving ranges, and golf-related~~  
6 ~~facilities.]:~~

- 7       (1) Small agricultural or farming operations;
- 8       (2) Public institutions and buildings;
- 9       (3) Public and private open area types of recreational  
10       uses, including campgrounds, picnic grounds, overnight  
11       camps, parks, riding stables, golf courses, golf  
12       driving ranges, golf-related facilities and country  
13       clubs;
- 14       (4) Educational institutions;
- 15       (5) Public utilities;
- 16       (6) Low density retail and commercial facilities; and
- 17       (7) Low density residential subdivisions with not more  
18       than one dwelling unit per one-half acre;

19 provided that the permissible uses described in this subsection  
20 may be further defined by each county by zoning ordinance.

21       (d) Agricultural districts shall include:



- 1        (1) All lands with soil classified by the land study
- 2                bureau's detailed land classification as overall
- 3                (master) productivity rating class A or B;
- 4        (2) Important agricultural lands designated pursuant to
- 5                part III;
- 6        (3) Lands classified by the land use commission as
- 7                agricultural by January 1, 2009, with soil classified
- 8                by the land study bureau's detailed land
- 9                classification as overall (master) productivity rating
- 10               class C, D, E, or U;
- 11        [~~+1~~] (4) Activities or uses as characterized by the
- 12                cultivation of crops, orchards, forage, and forestry;
- 13        [~~+2~~] (5) Farming activities or uses related to animal
- 14                husbandry, and game and fish propagation;
- 15        [~~+3~~] (6) Aquaculture, which means the production of
- 16                aquatic plant and animal life within ponds and other
- 17                bodies of water;
- 18        [~~+4~~] (7) Wind generated energy production for public,
- 19                private, and commercial use;
- 20        [~~+5~~] (8) Bona fide agricultural services and uses that
- 21                support the agricultural activities of the fee or
- 22                leasehold owner of the property and accessory to any



1 of the above activities, whether or not conducted on  
2 the same premises as the agricultural activities to  
3 which they are accessory, including but not limited to  
4 farm dwellings as defined in section 205-4.5(a)(4),  
5 employee housing, farm buildings, mills, storage  
6 facilities, processing facilities, vehicle and  
7 equipment storage areas, roadside stands for the sale  
8 of products grown on the premises, and plantation  
9 community subdivisions as defined in section 205-  
10 4.5(a)(12);

11 [~~+6~~] (9) Wind machines and wind farms;

12 [~~+7~~] (10) Small-scale meteorological, air quality, noise,  
13 and other scientific and environmental data collection  
14 and monitoring facilities occupying less than one-half  
15 acre of land; provided that these facilities shall not  
16 be used as or equipped for use as living quarters or  
17 dwellings;

18 [~~+8~~] (11) Agricultural parks; and

19 [~~+9~~] (12) Agricultural tourism conducted on a working  
20 farm, or a farming operation as defined in section  
21 165-2, for the enjoyment, education, or involvement of  
22 visitors; provided that the agricultural tourism



1 activity is accessory and secondary to the principal  
 2 agricultural use and does not interfere with  
 3 surrounding farm operations; and provided further that  
 4 this paragraph shall apply only to a county that has  
 5 adopted ordinances regulating agricultural tourism  
 6 under section 205-5[~~;~~ and  
 7 ~~(10) Open area recreational facilities].~~

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

10 Lands designated as important agricultural lands pursuant to  
 11 part III shall be used for the permissible uses specified in  
 12 section 205- . Agricultural districts may include areas that  
 13 are not used for or that are not suited to, agricultural and  
 14 ancillary activities by reason of topography, soils, and other  
 15 related characteristics.

16 (e) Conservation districts shall include areas necessary  
 17 [~~for protecting~~] to:

18 (1) Protect watersheds and water sources; [~~preserving~~]

19 (2) Preserve scenic and historic areas; [~~providing~~]

20 (3) Provide park lands, wilderness, and beach reserves;

21 [~~conserving~~]



- 1        (4)    Conserve indigenous or endemic plants, fish, and  
2                    wildlife, including those which are threatened or  
3                    endangered; [~~preventing~~]
- 4        (5)    Prevent floods and soil erosion;
- 5        (6)    Provide forestry;
- 6        (7)    Retain open space areas whose existing openness,  
7                    natural condition, or present state of use, if  
8                    retained, would enhance the present or potential value  
9                    of abutting or surrounding communities, or would  
10                   maintain or enhance the conservation of natural or  
11                   scenic resources;
- 12       (8)    Provide areas of value for recreational purposes;  
13 other related activities; and other permitted uses not  
14 detrimental to a multiple use conservation concept."

15        SECTION 5.    Section 205-3.1, Hawaii Revised Statutes, is  
16 amended to read as follows:

17        "**§205-3.1    Amendments to district boundaries.**    (a)  
18 District boundary amendments involving lands in the conservation  
19 district, land areas greater than fifteen acres, or lands  
20 delineated as important agricultural lands shall be processed by  
21 the land use commission pursuant to section 205-4.





1           (b) Any department or agency of the State, and department  
2 or agency of county in which the land is situated, or any person  
3 with a property interest in the land sought to be reclassified  
4 under this section may petition the appropriate county land use  
5 decision-making authority of the county in which the land is  
6 situated for a change in the boundary of a district involving  
7 lands less than fifteen acres presently in the rural and urban  
8 districts and lands less than fifteen acres in the agricultural  
9 district that are not designated as important agricultural  
10 lands.

11           (c) Any person with a property interest in agricultural  
12 land meeting the criteria in section 205-2(a)(2) for rural lands  
13 may petition the appropriate county land use decision-making  
14 authority of the county in which the land is situated for a  
15 change in the boundary of a district involving lands less than  
16 fifteen acres to rural, if the person has dedicated lands for  
17 agricultural use pursuant to county ordinance or has designated  
18 lands as important agricultural lands pursuant to part III.

19           [~~(e)~~] (d) District boundary amendments involving land areas  
20 of fifteen acres or less, except as provided in subsection (b),  
21 shall be determined by the appropriate county land use decision-  
22 making authority for the district and shall not require



1 consideration by the land use commission pursuant to section  
2 205-4; provided that such boundary amendments and approved uses  
3 are consistent with this chapter. The appropriate county land  
4 use decision-making authority may consolidate proceedings to  
5 amend state land use district boundaries pursuant to this  
6 subsection, with county proceedings to amend the general plan,  
7 development plan, zoning of the affected land, or such other  
8 proceedings. Appropriate ordinances and rules to allow  
9 consolidation of such proceedings may be developed by the county  
10 land use decision-making authority.

11 [~~(d)~~] (e) The county land use decision-making authority  
12 shall serve a copy of the application for a district boundary  
13 amendment to the land use commission and the department of  
14 business, economic development, and tourism and shall notify the  
15 commission and the department of the time and place of the  
16 hearing and the proposed amendments scheduled to be heard at the  
17 hearing. A change in the state land use district boundaries  
18 pursuant to this subsection shall become effective on the day  
19 designated by the county land use decision-making authority in  
20 its decision. Within sixty days of the effective date of any  
21 decision to amend state land use district boundaries by the  
22 county land use decision-making authority, the decision and the



1 description and map of the affected property shall be  
2 transmitted to the land use commission and the department of  
3 business, economic development, and tourism by the county  
4 planning director."

5 SECTION 6. Section 205-4, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) Any department or agency of the State, any department  
8 or agency of the county in which the land is situated, or any  
9 person with a property interest in the land sought to be  
10 reclassified, may petition the land use commission for a change  
11 in the boundary of a district. Any person with a property  
12 interest in agricultural land meeting the criteria in section  
13 205-2(a)(2) for rural lands may petition the land use commission  
14 for a change in the boundary of a district involving lands  
15 greater than fifteen acres to rural, if the person has  
16 designated other lands as important agricultural lands pursuant  
17 to part III. This section applies to all petitions for changes  
18 in district boundaries of lands within conservation districts,  
19 lands designated or sought to be designated as important  
20 agricultural lands, and lands greater than fifteen acres in the  
21 agricultural, rural, and urban districts, except as provided in



# H.B. NO. 1901

1 section 201G-118. The land use commission shall adopt rules  
2 pursuant to chapter 91 to implement section 201G-118."

3 SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect upon its approval.

6

INTRODUCED BY:

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JAN 24 2007



**Report Title:**

Land use

**Description:**

- (1) Sets forth permissible uses on important agricultural lands;
- (2) Requires counties to adopt by ordinance permissible uses and infrastructure standards within rural and urban districts; and
- (3) Makes comprehensive amendments to land use law to improve use of rural and agricultural lands.

