
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. Chapter 205, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§205- Satisfaction of state or county affordable
5 housing requirements in the rural district. (a) A farmer or
6 landowner subject to subsection (b) may fulfill a state or
7 county affordable housing requirement in the urban district by
8 providing affordable housing in the rural district in accordance
9 with section 205-2(c)(7).

10 (b) This section shall apply only to a farmer or landowner
11 who has been granted a declaratory order from the commission to
12 designate all or a portion of the landowner's land as important
13 agricultural land pursuant to section 205-45."

14 SECTION 2. Section 205-2, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending its title and subsection (a) to read:



1 "§205-2 Districting and classification of lands~~[]~~;
2 criteria. (a) There shall be four major land use districts in
3 which all lands in the [~~State~~] state shall be placed: urban,
4 rural, agricultural, and conservation. The land use commission
5 shall group contiguous land areas suitable for inclusion in one
6 of these four major districts [~~. The commission shall set~~
7 ~~standards for determining the boundaries of each district,~~
8 ~~provided that~~]:

9 (1) In the establishment of boundaries of urban districts
10 [~~those~~], the commission shall include:

11 (A) Those lands that are now in urban use [~~a~~]; and

12 (B) A sufficient reserve area for foreseeable urban
13 growth [~~shall be included~~];

14 (2) In the establishment of boundaries for rural
15 districts, [~~areas~~] the commission shall include:

16 (A) Areas of land composed primarily of ranches and

17 small farms [~~mixed with very low density~~
18 ~~residential lots, which may be shown by a minimum~~
19 ~~density of not more than one house per one-half~~
20 ~~acre and a minimum lot size of not less than one-~~
21 ~~half acre shall be included, except as herein~~
22 ~~provided~~];



- 1 (B) Low-density residential lots and residential
- 2 subdivisions on agricultural lands existing
- 3 before January 1, 2008;
- 4 (C) Areas to preserve and maintain natural landscapes
- 5 and vistas, open space, and the rural character
- 6 of the area;
- 7 (D) Clusters of settlements of historic plantation
- 8 camp and communities that do not function as a
- 9 suburb of a major urban center; and
- 10 (E) Areas not suited to agricultural and ancillary
- 11 activities by reason of topography and other
- 12 related characteristics;
- 13 (3) In the establishment of the boundaries of agricultural
- 14 districts, the greatest possible protection shall be
- 15 given to those lands with a high capacity for
- 16 intensive cultivation; and
- 17 (4) In the establishment of the boundaries of conservation
- 18 districts, the "forest and water reserve zones"
- 19 provided in Act 234, section 2, Session Laws of Hawaii
- 20 1957, are renamed "conservation districts" and,
- 21 effective as of July 11, 1961, the boundaries of the
- 22 forest and water reserve zones theretofore established



1 pursuant to Act 234, section 2, Session Laws of Hawaii
2 1957, shall constitute the boundaries of the
3 conservation districts; provided that thereafter the
4 power to determine the boundaries of the conservation
5 districts shall be in the commission.

6 In establishing the boundaries of the districts in each county,
7 the commission shall give consideration to the master plan or
8 general plan of the county."

9 2. By amending subsections (c) and (d) to read:

10 "(c) Rural districts shall include [~~activities~~]:

11 (1) Activities or uses as characterized by low density
12 residential lots of not more than one dwelling house
13 per one-half acre, except as provided by county
14 ordinance pursuant to section 46-4(c), in areas where
15 "city-like" concentration of people, structures,
16 streets, and urban level of services are absent [~~, and~~
17 where small];

18 (2) Small farms [~~are~~] intermixed with low density
19 residential lots, except that within a subdivision, as
20 defined in section 484-1, the commission, for good
21 cause and on petition for a special permit, may allow
22 one lot of less than one-half acre, but not less than



1 ~~[18,500]~~ eighteen thousand five hundred square feet,
2 or an equivalent residential density, within a rural
3 subdivision and permit the construction of one
4 dwelling on such lot~~[7]~~; provided that all other
5 dwellings in the subdivision shall have a minimum lot
6 size of one-half acre or ~~[21,780]~~ twenty-one thousand
7 seven hundred eighty square feet~~[-. Such petition for~~
8 ~~variance may be processed under the special permit~~
9 ~~procedure. These districts may include contiguous];~~
10 (3) Contiguous areas ~~[which]~~ that are not suited to low
11 density residential lots or small farms by reason of
12 topography, soils, and other related characteristics~~[-~~
13 ~~Rural districts shall also include golf];~~
14 (4) Golf courses, golf driving ranges, and golf-related
15 facilities[-];
16 (5) Agribusiness activities, including horticulture,
17 apiculture, aquaculture, plant nurseries, and the
18 raising and keeping of livestock;
19 (6) Farm worker housing; and
20 (7) Affordable housing, without a special permit; provided
21 that the housing is:

1 (A) Affordable to households with incomes at or below
2 one hundred forty per cent of the median family
3 income as determined by the United States
4 Department of Housing and Urban Development; and

5 (B) Situated on land reclassified to the rural
6 district under a declaratory order issued
7 pursuant to section 205-45 that also designates
8 important agricultural land.

- 9 (d) Agricultural districts shall include:
- 10 (1) Activities or uses as characterized by the cultivation
11 of crops, crops for bioenergy, orchards, forage, and
12 forestry;
- 13 (2) Farming activities or uses related to animal
14 husbandry, and game and fish propagation;
- 15 (3) Aquaculture, which means the production of aquatic
16 plant and animal life within ponds and other bodies of
17 water;
- 18 (4) Wind generated energy production for public, private,
19 and commercial use;
- 20 (5) Biofuel production as described in section
21 205-4.5(a)(15) for public, private, and commercial
22 use;



- 1 (6) Bona fide agricultural services and uses that support
- 2 the agricultural activities of the fee or leasehold
- 3 owner of the property and accessory to any of the
- 4 above activities, whether or not conducted on the same
- 5 premises as the agricultural activities to which they
- 6 are accessory, including but not limited to farm
- 7 dwellings as defined in section 205-4.5(a)(4),
- 8 ~~employee housing, farm buildings, mills, storage~~
- 9 facilities, processing facilities, vehicle and
- 10 equipment storage areas, roadside stands for the sale
- 11 of products grown on the premises, and plantation
- 12 community subdivisions as defined in section
- 13 205-4.5(a)(12);
- 14 (7) Wind machines and wind farms;
- 15 (8) Small-scale meteorological, air quality, noise, and
- 16 other scientific and environmental data collection and
- 17 monitoring facilities occupying less than one-half
- 18 acre of land; provided that these facilities shall not
- 19 be used as or equipped for use as living quarters or
- 20 dwellings;
- 21 (9) Agricultural parks;



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

11 (11) Open area recreational facilities.

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

14 ~~[Agricultural districts include areas that are not used for, or~~
15 ~~that are not suited to, agricultural and ancillary activities by~~
16 ~~reason of topography, soils, and other related~~
17 ~~characteristics.] "~~

18 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
19 amended by amending subsections (a) and (b) to read as follows:

20 "(a) Within the agricultural district, all lands with soil
21 classified by the land study bureau's detailed land



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

3 (1) Cultivation of crops, including but not limited to
4 crops for bioenergy, flowers, vegetables, foliage,
5 fruits, forage, and timber;

6 (2) Game and fish propagation;

7 (3) Raising of livestock, including but not limited to
8 poultry, bees, fish, or other animal or aquatic life
9 that are propagated for economic or personal use;

10 (4) Farm dwellings, employee housing, farm buildings, or
11 activities or uses [~~related to farming and animal~~
12 ~~husbandry. "Farm dwelling", as used in this~~
13 ~~paragraph, means a single family dwelling located on~~
14 ~~and used in connection with a farm, including clusters~~
15 ~~of single family farm dwellings permitted within~~
16 ~~agricultural parks developed by the State, or where~~
17 ~~agricultural activity provides income to the family~~
18 ~~occupying the dwelling,] that are part of a working
19 farm, or a farming operation as defined in section
20 165-2, that are necessary to the production and
21 distribution of agricultural and aquacultural
22 commodities. As used in this paragraph, "farm~~



1 dwelling" means a single-family dwelling used by the
2 owner or operator of the working farm or farming
3 operation;

4 (5) Public institutions and buildings that are necessary
5 for agricultural practices;

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

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

20 (8) Retention, restoration, rehabilitation, or improvement
21 of buildings or sites of historic or scenic interest;



- 1 (9) Roadside stands for the sale of agricultural products
2 grown on the premises;
- 3 (10) Buildings and uses, including but not limited to
4 mills, storage, and processing facilities, maintenance
5 facilities, and vehicle and equipment storage areas
6 that are normally considered directly accessory to the
7 above mentioned uses and are permitted under section
8 205-2(d);
- 9 (11) Agricultural parks;
- 10 (12) Plantation community subdivisions, which as used in
11 this paragraph means a subdivision or cluster of
12 employee housing, community buildings, and acreage
13 established on land currently or formerly owned,
14 leased, or operated by a sugar or pineapple plantation
15 and in residential use by employees or former
16 employees of the plantation; provided that the
17 employees or former employees shall have a property
18 interest in the land;
- 19 (13) Agricultural tourism conducted on a working farm, or a
20 farming operation as defined in section 165-2, for the
21 enjoyment, education, or involvement of visitors;
22 provided that the agricultural tourism activity is

1 accessory and secondary to the principal agricultural
2 use and does not interfere with surrounding farm
3 operations; and provided further that this paragraph
4 shall apply only to a county that has adopted
5 ordinances regulating agricultural tourism under
6 section 205-5;

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

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

21 For the purposes of this paragraph:



1 "Appurtenances" means operational infrastructure
2 of the appropriate type and scale for economic
3 commercial storage and distribution, and other similar
4 handling of feedstock, fuels, and other products of
5 biofuels processing facilities.

6 "Biofuel processing facility" means a facility
7 that produces liquid or gaseous fuels from organic
8 sources such as biomass crops, agricultural residues,
9 and oil crops, including palm, canola, soybean, and
10 waste cooking oils; grease; food wastes; and animal
11 residues and wastes that can be used to generate
12 energy[+]; or[+]

13 [+](16) [+]Construction and operation of wireless communication
14 antennas; provided that, for the purposes of this
15 paragraph, "wireless communication antenna" means
16 communications equipment that is either freestanding
17 or placed upon or attached to an already existing
18 structure and that transmits and receives
19 electromagnetic radio signals used in the provision of
20 all types of wireless communications services;
21 provided further that nothing in this paragraph shall
22 be construed to permit the construction of any new



1 structure that is not deemed a permitted use under
2 this subsection.

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

15 Any deed, lease, agreement of sale, mortgage, or other
16 instrument of conveyance covering any land within the
17 agricultural subdivision shall expressly contain the restriction
18 on uses and the condition, as prescribed in this section that
19 these restrictions and conditions shall be encumbrances running
20 with the land until such time that the land is reclassified to a
21 land use district other than agricultural district.



1 If the foregoing requirement of encumbrances running with
2 the land jeopardizes the owner or lessee in obtaining mortgage
3 financing from any of the mortgage lending agencies set forth in
4 the following paragraph, and the requirement is the sole reason
5 for failure to obtain mortgage financing, then the requirement
6 of encumbrances shall, insofar as such mortgage financing is
7 jeopardized, be conditionally waived by the appropriate county
8 enforcement officer; provided that the conditional waiver shall
9 become effective only in the event that the property is
10 subjected to foreclosure proceedings by the mortgage lender.

11 The mortgage lending agencies referred to in the preceding
12 paragraph are the Federal Housing Administration, Federal
13 National Mortgage Association, Veterans Administration, Small
14 Business Administration, United States Department of
15 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
16 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
17 other federal, state, or private mortgage lending agency
18 qualified to do business in Hawaii, and their respective
19 successors and assigns."

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



1 "(c) Unless authorized by special permit issued pursuant
2 to this chapter, only the following uses shall be permitted
3 within rural districts:

4 (1) Low density residential uses[+], with a minimum lot
5 size of one-half acre and one dwelling unit per lot,
6 except as provided in section 205-2(c);

7 (2) Agricultural uses;

8 (3) Golf courses, golf driving ranges, and golf-related
9 facilities; [~~and~~]

10 (4) Public, quasi-public, and public utility
11 facilities[~~-~~];

12 (5) Agribusiness activities, as provided in section
13 205-2(c);

14 (6) Farm worker housing; and

15 (7) Affordable housing meeting the requirements of section
16 205-2(c)(7), with density established by county
17 zoning.

18 ~~[In addition, the minimum lot size for any low density~~
19 ~~residential use shall be one-half acre and there shall be but~~
20 ~~one dwelling house per one-half acre, except as provided for in~~
21 ~~section 205-2.]"~~



1 SECTION 5. Section 205-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§205-6 Special permit.** (a) Subject to this section, the
4 county planning commission may permit certain unusual and
5 reasonable uses within [~~agricultural and~~] rural districts other
6 than those for which the district is classified. Any person who
7 desires to use the person's land within [~~an agricultural or~~] a
8 rural district other than for [~~an agricultural or~~] a rural use[~~7~~
9 ~~as the case may be,~~] may petition the planning commission of the
10 county within which the person's land is located for permission
11 to use the person's land in the manner desired. Each county may
12 establish the appropriate fee for processing the special permit
13 petition. Copies of the special permit petition shall be
14 forwarded to the land use commission[~~7~~] and the office of
15 planning[~~7~~, ~~and the department of agriculture~~] for their review
16 and comment.

17 (b) The planning commission, upon consultation with the
18 central coordinating agency, except in counties where the
19 planning commission is advisory only in which case the central
20 coordinating agency, shall establish by rule or regulation, the
21 time within which the hearing and action on petition for special
22 permit shall occur. The county planning commission shall notify



1 the land use commission and such persons and agencies that may
2 have an interest in the subject matter of the time and place of
3 the hearing.

4 (c) The county planning commission may, under such
5 protective restrictions as may be deemed necessary, permit the
6 desired use, but only when the use would promote the
7 effectiveness and objectives of this chapter [~~; provided that a~~
8 ~~use proposed for designated important agricultural lands shall~~
9 ~~not conflict with any part of this chapter~~]. A decision in
10 favor of the applicant shall require a majority vote of the
11 total membership of the county planning commission.

12 (d) Special permits for land the area of which is greater
13 than fifteen acres [~~or for lands designated as important~~
14 ~~agricultural lands~~] shall be subject to approval by the land use
15 commission. The land use commission may impose additional
16 restrictions as may be necessary or appropriate in granting the
17 approval, including the adherence to representations made by the
18 applicant.

19 (e) A copy of the decision, together with the complete
20 record of the proceeding before the county planning commission
21 on all special permit requests involving a land area greater
22 than fifteen acres [~~or for lands designated as important~~



1 ~~agricultural lands,~~] shall be transmitted to the land use
2 commission within sixty days after the decision is rendered.

3 Within forty-five days after receipt of the complete record
4 from the county planning commission, the land use commission
5 shall act to approve, approve with modification, or deny the
6 petition. A denial either by the county planning commission or
7 by the land use commission, or a modification by the land use
8 commission, as the case may be, of the desired use shall be
9 appealable to the circuit court of the circuit in which the land
10 is situated and shall be made pursuant to the Hawaii rules of
11 civil procedure.

12 ~~[(f) Land uses substantially involving or supporting
13 educational ecotourism, related to the preservation of native
14 Hawaiian endangered, threatened, proposed, and candidate
15 species, that are allowed in an approved habitat conservation
16 plan under section 195D-21 or safe harbor agreement under
17 section 195D-22, which are not identified as permissible uses
18 within the agricultural district under sections 205-2 and 205-
19 4.5, may be permitted in the agricultural district by special
20 permit under this section, on lands with soils classified by the
21 land study bureau's detailed land classification as overall
22 (master) productivity rating class C, D, E, or U.]"~~



1 SECTION 6. Section 205-44, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~+~~]**§205-44**[~~+~~] **Standards and criteria for the**
4 **identification of important agricultural lands.** (a) The
5 standards and criteria in this section shall be used to identify
6 important agricultural lands. Lands identified as important
7 agricultural lands need not meet every standard and criteria
8 listed [~~below.~~] in subsection (c). Rather, lands meeting any of
9 the criteria [~~below~~] in subsection (c) shall be given initial
10 consideration; provided that the designation of important
11 agricultural lands shall be made by weighing the standards and
12 criteria with each other to meet the constitutionally mandated
13 purposes in article XI, section 3, of the [~~state constitution~~]
14 Hawaii Constitution and the objectives and policies for
15 important agricultural lands in sections 205-42 and 205-43.

16 (b) In a petition for a declaratory order submitted under
17 section 205-45 that seeks to both designate lands as important
18 agricultural lands and reclassify lands in the agricultural
19 district to the rural, conservation, or urban district, the
20 lands shall be deemed qualified for designation as important
21 agricultural land if the commission reasonably finds that the



1 lands meet at least the criteria of subsection (c)(5) and (7) of
2 this section.

3 If a petition seeks to only designate land as important
4 agricultural lands, then the commission shall evaluate the lands
5 in accordance with subsection (a).

6 (c) The standards and criteria shall be as follows:

7 (1) Land currently used for agricultural production;

8 (2) Land with soil qualities and growing conditions that
9 support agricultural production of food, fiber, or
10 fuel- and energy-producing crops;

11 (3) Land identified under agricultural productivity rating
12 systems, such as the agricultural lands of importance
13 to the State of Hawaii (ALISH) system adopted by the
14 board of agriculture on January 28, 1977;

15 (4) Land types associated with traditional native Hawaiian
16 agricultural uses, such as taro cultivation, or unique
17 agricultural crops and uses, such as coffee,
18 vineyards, aquaculture, and energy production;

19 (5) Land with sufficient quantities of water to support
20 viable agricultural production;



1 (6) Land whose designation as important agricultural lands
2 is consistent with general, development, and community
3 plans of the county;

4 (7) Land that contributes to maintaining a critical land
5 mass important to agricultural operating productivity;
6 [and]

7 (8) Land with or near support infrastructure conducive to
8 agricultural productivity, such as transportation to
9 markets, water, or power[-]; and

10 (9) Land that, although unsuited for agricultural use
11 because of topography, is part of a tax map key
12 parcel, most of which is comprised of land meeting at
13 least one of the standards and criteria listed in this
14 subsection. Land under this paragraph shall be
15 designated as important agricultural land only if the
16 entire tax map key parcel is so designated."

17 SECTION 7. Section 205-45, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~f~~]**\$205-45**[~~t~~] **Petition by farmer or landowner.** (a) A
20 farmer or landowner with lands qualifying under section 205-44
21 may file with the commission a petition for declaratory [~~ruling~~
22 ~~with the commission~~] order to designate the lands as important



1 agricultural lands. The petition may be filed at any time in
2 the designation process.

3 (b) Any law to the contrary notwithstanding, within the
4 same petition for declaratory order as described in subsection
5 (a), the petitioner may seek a reclassification of land in the
6 agricultural district to the rural, urban, or conservation
7 district, or a combination thereof; provided that:

8 (1) The land sought to be reclassified to the rural,
9 urban, or conservation district is within the same
10 county as the land sought to be designated as
11 important agricultural lands;

12 (2) The reclassification of the land to the rural, urban,
13 or conservation district is consistent with the
14 relevant county general and development plans; and

15 (3) The total acreage of the land sought to be designated
16 or reclassified in the petition complies with the
17 following proportions:

18 (A) At least eighty per cent of the total acreage is
19 sought to be designated as important agricultural
20 land; and



1 (B) The remainder of the acreage is sought to be
2 reclassified to the rural, urban, or conservation
3 district.

4 ~~[(b)]~~ (c) The petition for declaratory ~~[ruling]~~ order
5 shall be submitted in accordance with subchapter 14 of the
6 commission's rules and shall include:

7 (1) Tax map ~~[keys]~~ key numbers of the land to be
8 designated as important agricultural lands and, if
9 applicable, the land to be reclassified from the
10 agricultural district to the rural, urban, or
11 conservation district, along with verification and
12 authorization from the applicable landowners;

13 (2) Proof of qualification for designation as important
14 agricultural lands under section 205-44, respecting a
15 regional perspective; ~~[and]~~

16 (3) The current or planned agricultural use of the area
17 sought to be designated~~[-]~~ as important agricultural
18 lands; and

19 (4) If applicable, the current or planned use of the area
20 sought to be reclassified to the rural, urban, or
21 conservation district.



1 ~~[-e-]~~ (d) The commission shall review the petition and the
2 accompanying submissions to evaluate the qualifications of the
3 land for designation as important agricultural lands in
4 accordance with section 205-44.

5 If the petition also seeks the reclassification of land to
6 the rural, urban, or conservation district, the commission shall
7 review the petition and accompanying submissions to evaluate:

8 (1) The suitability of the land for the reclassification
9 in accordance with section 205-2;

10 (2) The consistency of the reclassification with the
11 relevant county general and development plans; and

12 (3) Compliance with the other provisions of subsection
13 (b).

14 If the commission, after its review ~~[and evaluation]~~, finds
15 that the ~~[lands qualify for]~~ designation ~~[as important~~
16 ~~agricultural lands under this part,]~~ and, if applicable,
17 reclassification sought in the petition should be approved, the
18 commission shall vote, by a two-thirds majority of the members
19 of the commission, to issue a declaratory order designating the
20 petitioner's identified lands as important agricultural lands~~[-]~~
21 and, if applicable, reclassifying the petitioner's identified



1 land from the agricultural district to the rural, urban, or
2 conservation district.

3 With respect to a petition that seeks to both designate
4 important agricultural lands and reclassify agricultural lands
5 to the rural, urban, or conservation district, if the commission
6 finds that either the designation or reclassification as
7 proposed by the petitioner should not be approved, the
8 commission shall deny the petition in its entirety.

9 [~~(d)~~ Designating important agricultural lands by the
10 ~~commission]~~ (e) The designation or reclassification of land
11 pursuant to subsection (a) or (b) shall not be [considered as an
12 amendment to district boundaries under] subject to the district
13 boundary amendment procedures of sections 205-3.1 and 205-4 or
14 become effective prior to legislative enactment of protection
15 and incentive measures for important agricultural land and
16 agricultural viability, as provided in section 9 of Act 183,
17 Session Laws of Hawaii 2005.

18 [~~(e)~~] (f) Farmers or landowners with lands qualifying
19 under section 205-44 may file petitions for a declaratory
20 [~~ruling~~] order to designate lands as important agricultural
21 lands following the legislative enactment of protection and
22 incentive measures for important agricultural lands and



1 agricultural viability, as provided in section 9 of Act 183,
2 Session Laws of Hawaii 2005.

3 (g) A petitioner granted a declaratory order that
4 designates important agricultural land, whether or not combined
5 with the reclassification of land to the rural, urban, or
6 conservation district, shall earn credits if the amount of land
7 reclassified to the rural, urban, or conservation district is
8 less than twenty per cent of the total acreage of land subject
9 to the order. The "total acreage of land subject to the order"
10 means the total acreage designated as important agricultural
11 land and, if applicable, reclassified to the rural, urban, or
12 conservation district by the declaratory order.

13 The credits shall equal the difference between the
14 following, rounded to the nearer tenth of an acre:

- 15 (1) The number that is twenty per cent of the total
16 acreage of land subject to the order; and
17 (2) Less the amount of the petitioner's land that is
18 reclassified from the agricultural district to the
19 rural, urban, or conservation district by the
20 declaratory order.

21 In the future, a petitioner with credits earned within a
22 county may petition the commission for a declaratory order to



1 reclassify any of the petitioner's other land in the same county
2 from the agricultural district to the rural, urban, or
3 conservation district. The "petitioner's other land in the same
4 county" means land owned by the petitioner that is in the same
5 county as the land designated or reclassified under the
6 petition. The commission may issue the declaratory order if it
7 finds that the land is suitable for reclassification in
8 accordance with section 205-2 and that the reclassification is
9 consistent with the relevant county general and development
10 plans. The petitioner may petition for such reclassification
11 until all of the petitioner's credits are exhausted.

12 A petitioner with unused credits may transfer the credits
13 to another person at no charge or for compensation mutually
14 agreed upon. The person receiving the unused credits may
15 petition the commission for a declaratory order to reclassify
16 the person's land from the agricultural district to the rural,
17 urban, or conservation district, subject to the same provisions
18 applicable to the petitioner who transferred the credits.

19 (h) Notwithstanding any other law to the contrary, the
20 land use commission may grant declaratory orders pursuant to
21 this section before the commission receives from any county a
22 map delineating recommended important agricultural lands.



1 (i) The commission may adopt rules pursuant to chapter 91
2 to effectuate this section."

3 SECTION 8. Section 205-50, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read:

5 "(c) Any decision by the land use commission or county
6 pursuant to this section shall specifically consider the
7 following standards and criteria:

8 (1) The relative importance of the land for agriculture
9 based on the stock of similarly suited lands in the
10 area and the [~~State~~] state as a whole;

11 (2) The proposed district boundary amendment or zone
12 change will not harm the productivity or viability of
13 existing agricultural activity in the area, or
14 adversely affect the viability of other agricultural
15 activities or operations that share infrastructure,
16 processing, marketing, or other production-related
17 costs or facilities with the agricultural activities
18 on the land in question;

19 (3) The district boundary amendment or zone change will
20 not cause the fragmentation of or intrusion of
21 nonagricultural uses into largely intact areas of
22 lands identified by the State as important



- 1 agricultural lands that create residual parcels of a
 2 size that would preclude viable agricultural use;
- 3 (4) The public benefit to be derived from the proposed
 4 action is justified by a need for additional lands for
 5 nonagricultural purposes; [~~and~~]
- 6 (5) The impact of the proposed district boundary amendment
 7 or zone change on the necessity and capacity of state
 8 and county agencies to provide and support additional
 9 agricultural infrastructure or services in the
 10 area[]; and
- 11 (6) Whether the important agricultural land was designated
 12 as such by a declaratory order issued under section
 13 205-45."

14 SECTION 9. The legislature declares that this Act
 15 establishes incentives for the designation of important
 16 agricultural land in satisfaction of section 205-46, Hawaii
 17 Revised Statutes, and section 9 of Act 183, Session Laws of
 18 Hawaii 2005.

19 SECTION 10. Statutory material to be repealed is bracketed
 20 and stricken. New statutory material is underscored.

21 SECTION 11. This Act shall take effect upon its approval.



Report Title:

Land Use; Residential Lot Size; Rural Districts; Agricultural Districts

Description:

Amends the land use laws relating to agricultural districts and rural districts to protect and maintain viable agricultural productivity. Offers incentives to designate lands as important agricultural lands. (SB546 HD1)

