

1 § -1 Purpose. The legislature finds that Hawaii's
2 quality of life is dependent upon the vitality and viability of
3 its agricultural industry. The sustainability of agriculture in
4 Hawaii depends on factors relating to agricultural business
5 viability, and affordable access to productive agricultural
6 lands. The State has a compelling interest in ensuring the
7 continuance of key agricultural enterprises while providing a
8 strategic agricultural land base that is affordable to farmers,
9 the industry, and current and future agricultural entrepreneurs.

10 The voluntary acquisition of easements that restrict
11 agricultural use on lands identified and designated as important
12 agricultural lands under part III, chapter 205, will enable the
13 State to ensure that agricultural lands remain affordable and
14 protected for long-term agricultural use.

15 § -2 Agricultural land protection foundation. (a)
16 There is established the Hawaii agricultural land protection
17 foundation to assist the State in the acquisition of
18 agricultural easements. The foundation shall be placed within
19 the department of agriculture for administrative purposes.

20 (b) The foundation shall consist of seven voting members
21 and three ex officio nonvoting members; provided that:



- 1 (1) Seven voting members shall be appointed by the
2 governor as provided in section 26-34; provided that:
- 3 (A) Four members shall be farmers actively engaged in
4 or retired from farming who represent each county
5 and shall each be appointed from a list of three
6 nominees submitted by the mayor of each
7 respective county;
- 8 (B) One member shall be appointed from a list of
9 three nominees by the speaker of the house of
10 representatives;
- 11 (C) One member shall be appointed from a list of
12 three nominees by the senate president;
- 13 (D) One member shall be appointed from a list
14 submitted by the Hawaii Farm Bureau Federation;
- 15 (2) The chairperson of the board of agriculture or the
16 chairperson's designee shall serve as an ex-officio
17 nonvoting member;
- 18 (3) The director of finance or the director's designee
19 shall serve as an ex-officio nonvoting member; and
- 20 (4) The director of the office of planning or the
21 director's designee shall serve as an ex-officio
22 nonvoting member.



1 The members of the board shall elect a chairperson from among
2 the seven voting members. A majority of the members serving at
3 any one time constitutes a quorum for the transaction of
4 business.

5 (c) The members shall receive no compensation for
6 services, but shall be entitled to necessary expenses including
7 travel expenses incurred in the performance of their duties.

8 § -3 Rules and procedures of the foundation. The
9 foundation shall adopt rules pursuant to chapter 91 to carry out
10 the purposes of this chapter. The rules shall include but not
11 be limited to criteria and procedures for:

- 12 (1) Evaluation and selection criteria for the acquisition
13 of agricultural easements on important agricultural
14 land, as defined under part III, chapter 205;
- 15 (2) Acquisition of agricultural easements including
16 options for installment purchase agreements;
- 17 (3) Guidelines for county programs that would be eligible
18 for state matching funds;
- 19 (4) Management of easements by the State, counties, or
20 other nonprofit entities;
- 21 (5) Allowable uses within agricultural easements;



1 (6) Monitoring and evaluation of the agricultural land
2 protection program; and

3 (7) Administration of the agricultural land protection
4 fund.

5 § -4 Responsibilities of the foundation. (a) From
6 funds appropriated by the legislature to carry out the purposes
7 of this chapter or received from other sources, the foundation
8 may pay an amount to any owner of agricultural land identified
9 and designated as important agricultural land under part III,
10 chapter 205. The amount paid may be equitable in consideration
11 of the benefits to the public, but shall not exceed the
12 difference between the fair market value of the land and the
13 fair market value of the land restricted to agricultural
14 purposes. Title to the agricultural easement shall be held in
15 the name of the State; provided that if the county in which the
16 land is located provides financial assistance required for the
17 purchase, the county may hold title to the land jointly with the
18 State.

19 (b) The foundation shall report to the legislature its
20 findings and recommendations for any proposed amendments to this
21 chapter, including but not limited to:

- 1 (1) Developing mechanisms for long term funding for the
- 2 foundation;
- 3 (2) Developing enforcement mechanisms to ensure that the
- 4 intent of agricultural easements is met; and
- 5 (3) Developing mechanisms to enact amendments as needed to
- 6 carry out the purposes of this chapter.

7 § -5 **Functions: agricultural preservation advisory**
8 **board.** The foundation shall serve as an agricultural
9 preservation advisory board for each county. The purpose of
10 serving this function shall be:

- 11 (1) To assist each county in identifying priority
- 12 standards and criteria for agricultural land
- 13 preservation;
- 14 (2) To assist each county in identifying long-term funding
- 15 mechanisms;
- 16 (3) To identify monitoring mechanisms for preserving
- 17 agricultural lands;
- 18 (4) To promote the preservation of agriculture within each
- 19 county by providing information and assistance to
- 20 farmers relating to the designation of important
- 21 agricultural lands and the purchase of easements; and

1 (5) To perform other related duties for each county, as
2 necessary.

3 § -6 State matching of county agricultural land

4 protection purchases; guidelines. The board of agriculture
5 shall adopt guidelines and procedures pursuant to chapter 91 for
6 county purchases of agricultural easements that are matched by
7 state agricultural land protection funds. State funds requested
8 as a match for county or other sources of funding shall only be
9 used by entities participating in an agricultural land
10 protection program adopted by each county that meets these
11 guidelines. The foundation shall coordinate and cooperate with
12 the board of agriculture to carry out the purposes of this
13 section.

14 § -7 Eligibility for tax incentives. The sale or the
15 donation of any agricultural easement on important agricultural
16 lands that is acquired or whose acquisition is matched with
17 state funds pursuant to this chapter shall entitle the landowner
18 to be eligible to the extent allowable for tax incentives
19 enacted to promote the protection of important agricultural
20 land. An agricultural business with agricultural operations on
21 important agricultural lands with an agricultural easement that
22 is acquired or whose acquisition is matched with state funds

1 pursuant to this chapter shall be eligible for tax incentives
2 enacted to promote long-term agricultural use of important
3 agricultural lands.

4 § -8 Use of land for which easement purchased. Uses on
5 lands subject to an agricultural easement shall be restricted to
6 agricultural uses, and normal agricultural operations including
7 but not limited to the sale of farm products produced on the
8 land with the easement purchased.

9 § -9 Termination of easement. (a) The easement
10 purchased under this chapter shall be held by the State in
11 perpetuity. If circumstances have changed and farming is no
12 longer feasible on the land under easement, then the easement
13 may be terminated only in the manner and at the time specified
14 under this section. Notwithstanding any other law to the
15 contrary, any easement purchased under this chapter that is to
16 be matched by funds from the federal farm and ranch lands
17 protection program pursuant to 7 Code of Federal Regulations
18 Part 1491, as amended, shall be held by the State in perpetuity.

19 (b) At any time after thirty years from the date of
20 purchase of an easement, the landowner may request that the
21 easement be reviewed for possible termination of the easement.
22 Upon a request for review, an inquiry shall be conducted by the



1 foundation to determine whether conditions on the land subject
2 to an agricultural easement have changed so significantly that
3 agricultural production is no longer viable and it has become
4 impossible to fulfill the easement's purposes. The inquiry
5 shall be concluded and a decision reached by the foundation
6 within one hundred eighty days after the request for
7 termination, and shall include:

8 (1) An on-site inspection of the land; and

9 (2) A public hearing conducted by the foundation within
10 the county containing the land after adequate public
11 notice.

12 (c) In deciding whether to approve the request for
13 termination, the foundation shall receive the recommendations
14 from farming organizations in the county the land is situated.
15 The decision of the foundation shall be made after the public
16 hearing required under subsection (b).

17 (d) Upon the affirmative vote of a majority of the
18 foundation, and upon the approval of the chairperson of the
19 board of agriculture and the comptroller, the request for
20 termination shall be forwarded to the legislature for action to
21 affirm by a concurrent resolution.



1 (e) If the request for termination is approved, an
2 appraisal of the land shall be ordered by the foundation at the
3 expense of the landowner requesting termination of the easement.
4 No more than one hundred eighty days following the appraisal,
5 the landowner may repurchase the easement by paying to the
6 foundation the difference between the fair market value and the
7 agricultural value of the subject land, as determined by the
8 appraisal. For purposes of this section, the agricultural value
9 is the price as of the valuation date that a vendor, willing but
10 not obligated to sell, would accept, and that a purchaser,
11 willing but not obligated to buy, would pay for comparable land
12 that is restricted to agricultural use.

13 (f) In the case of the termination of an easement that was
14 originally purchased under a matching purchase, the foundation
15 shall deposit the state portion of the repurchase payment
16 received under subsection (e) that is equal to the percentage of
17 the original easement purchase price contributed by the State in
18 the agricultural land protection fund. The foundation shall
19 also distribute to the contributing county the portion of the
20 repurchase payment that is equal to the percentage of the
21 original easement purchase price contributed by the county.



1 (g) If the request for termination is denied, or if the
2 landowner fails to repurchase the easement within one hundred
3 eighty days of the appraisal, the landowner may not again
4 request termination of the easement until five years after the
5 last request for termination.

6 § -10 Agricultural land protection fund. (a) There is
7 established in the state treasury the agricultural land
8 protection fund, into which shall be deposited funds from state,
9 federal, or private grants and appropriations, which shall be a
10 permanent source of funds to be restricted to program
11 expenditures as authorized under this chapter.

12 (b) Moneys in the agricultural land protection fund shall
13 be used to purchase agricultural easements or to match funds for
14 the purchase of agricultural easements of important agricultural
15 lands to be enrolled in the state agricultural land protection
16 program pursuant to section -4.

17 (c) The fund shall be administered by the department of
18 agriculture. Appropriations or authorizations from the fund
19 shall be expended by the board of agriculture. The department
20 may contract with other public or private entities for the
21 provision of all or a portion of the services necessary for the
22 administration and implementation of the fund. The department



1 may set fees or charges for fund management or technical
2 assistance provided under this section.

3 (d) All interest earned on the deposit of investment of
4 the moneys in the funds shall become a part of the fund.

5 § -11 Annual report. The foundation shall submit to the
6 governor and the legislature no later than twenty days prior to
7 the commencement of the 2008 regular session a report of its
8 interim findings and recommendations including any proposed
9 legislation. A final report shall be submitted to the governor
10 and the legislature no later than twenty days prior to the
11 commencement of the 2009 regular session. After that, the
12 foundation shall submit to the governor and the legislature no
13 later than twenty days prior to the commencement of each regular
14 session, a complete report describing the activities and
15 easements acquired and fund administration pursuant to this
16 chapter."

17 SECTION 3. Section 198-1, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§198-1 Conservation easement defined. For the purposes
20 of this chapter, a "conservation easement" is an interest in
21 real property created by deed, restrictions, covenants, or
22 conditions, the purpose of which is to:



- 1 (1) Preserve and protect land predominantly in its
- 2 natural, scenic, forested, or open-space condition;
- 3 (2) Preserve and protect the structural integrity and
- 4 physical appearance of cultural landscapes, resources,
- 5 and sites which perpetuate indigenous native Hawaiian
- 6 culture; [~~or~~]
- 7 (3) Preserve and protect historic properties as defined in
- 8 section 6E-2, and traditional and family
- 9 cemeteries[~~-~~]; or
- 10 (4) In case of agricultural land, restrict use of the
- 11 affected land to agricultural uses, and forbid or
- 12 limit activities and uses that would adversely affect
- 13 the land's current and future use for agriculture. A
- 14 conservation easement on agricultural land shall be
- 15 known as an "agricultural easement" for the purposes
- 16 of this chapter and other programs and incentives
- 17 relating to easements for agricultural purposes."

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

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

21

INTRODUCED BY: *Russell Koff*



Report Title:

Important Agricultural Lands

Description:

Establishes a state agricultural land protection program for the voluntary acquisition of agricultural easements on lands designated as important agricultural lands.

