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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. Purpose. The purpose of this Bill is to  
2 address the rapid and increasing loss of rural lands and to  
3 protect our scenic, historic, recreational, cultural, natural  
4 and archaeological resources that tourism depends on. As a  
5 consequence to this situation, the Legislature is currently  
6 reviewing other bills addressing the preservation of lands on  
7 the north shore owned by Kuilima Resort and the Galbraith Estate  
8 and the Ka'iwi Coast on the south shore of O'ahu.

9           The purpose of this Bill is to provide an alternative to  
10 preserving valuable lands through creating a new classification  
11 referred to as a rural legacy area which would be the "sending"  
12 area for transfer of development rights program to a "receiving"  
13 area" where the State or a county has designated for higher  
14 density to build affordable homes.

15           As part of a statewide development plan, the State land use  
16 commission would designate rural legacy areas by request from a  
17 community or by a governmental agency and higher density areas  
18 that would encourage economic and housing developments.



1 Landowners in the rural legacy areas would be allowed to sell  
2 their land's development rights to a transfer development rights  
3 (TDR) bank where the State would store and sell to landowners in  
4 a receiving area designated for high density. This would allow  
5 the State to offer compensation to landowners who are willing to  
6 retain their land classification or down zone it to conservation  
7 or preservation.

8 TDR's allows the State to raise funds to augment other  
9 resources to preserve rural lands for the public. In an effort  
10 to promote preservation actions by governmental agencies, this  
11 measure also allows for the State to automatically amend their  
12 boundary amendments to be consistent with a county's re-zoning  
13 of lands to conservation or preservation.

14 This Bill does not replace but supplements current  
15 statutory resources that are designed to preserve lands  
16 designated as valuable lands such as tax credits to landowners  
17 or moneys for purchasing lands.

18 The Legislature recognizes that TDR programs have existed  
19 since 1990's and have been used successfully in Maryland, New  
20 Jersey, Colorado and Washington. Creating such programs for  
21 our State is just another step towards preserving our valuable  
22 resources for all to enjoy.



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

4                                   **"PART**

5       §205-A     **Purpose.** The purpose of this part is to:

- 6       (a) preserve open space, scenic views, critical and  
7 sensitive areas, and natural hazard areas;
- 8       (b) protect lands and structures of aesthetic,  
9 architectural and historic significance;
- 10       (c) retain open areas in which healthful outdoor  
11 recreation can occur;
- 12       (d) ensure that the owners of preserved, conserved or  
13 protected land may make reasonable use of their property rights  
14 by transferring their right to develop to eligible zones;
- 15       (e) provide a mechanism whereby development rights may be  
16 reliably transferred; and
- 17       (f) ensure that development rights are transferred to  
18 properties in areas or districts that have adequate community  
19 facilities, including transportation, to accommodate additional  
20 development.

21       §205-B     **Authority.** The commission shall be the authority  
22 of this part.



1           **§205-C     Definitions.**

2           "Development Rights" mean the rights of the owner of a  
3 parcel of land, under land development regulations, to configure  
4 that parcel and the structures thereon to a particular density  
5 for residential uses or floor area ratio for nonresidential  
6 uses. Development rights exclude the rights to the area of or  
7 height of a sign.

8           "Density" or "Net Density" means the result of multiplying  
9 the net area in acres times 43,560 square feet per acre and then  
10 dividing the product by the required minimum number of square  
11 feet per dwelling unit required by the zoning ordinance for a  
12 specific use district. "Density" or "Net Density" is expressed  
13 as dwelling units per acre or per net acre.

14          "Floor Area" means the gross horizontal area of a floor of  
15 a building or structure measured from the exterior walls or from  
16 the centerline of party walls. "Floor Area" includes the floor  
17 area of accessory buildings and structures.

18          "Floor Area Ratio" means the maximum amount of floor area  
19 on a lot or parcel expressed as a proportion of the net area of  
20 the lot or parcel.

21          "Net Area" means the total area of a site for residential  
22 or nonresidential development, excluding street rights-of-way



1 and other publicly dedicated improvements, such as parks, open  
2 space, and stormwater detention and retention facilities, and  
3 easements, covenants, or deed restrictions, that prohibit the  
4 construction of building on any part of the site. "Net area" is  
5 expressed in either acres or square feet.

6 "Overlay District" means a district superimposed over one  
7 or more zoning districts or parts of districts that imposes  
8 additional requirements to those applicable for the underlying  
9 zone.

10 "Receiving District" means one or more districts in which  
11 the development rights of parcels in the sending district may be  
12 used.

13 "Receiving Parcel" means a parcel of land in the receiving  
14 district that is the subject of a transfer of development  
15 rights, where the owner of the parcel is receiving development  
16 rights, directly or by intermediate transfers, from a sending  
17 parcel, and on which increased density and/or intensity is  
18 allowed by reason of the transfer of development rights.

19 "Sending District" means one more districts in which the  
20 development rights of parcels in the district may be designated  
21 for use in one or more receiving districts;



1 "Sending Parcel" means a parcel of land in the sending  
2 district that is the subject of a transfer of development  
3 rights, where the owner of the parcel is conveying development  
4 rights of the parcel, and on which those rights so conveyed are  
5 extinguished and may not be used by reason of the transfer of  
6 development rights; and

7 "Transfer of Development Rights" means the procedure  
8 prescribed by this part whereby the owner of a parcel in the  
9 sending district may convey development rights to the owner of a  
10 parcel in the receiving district or other person or entity,  
11 whereby the development rights so conveyed are extinguished on  
12 the sending parcel and may be exercised on the receiving parcel  
13 in addition to the development rights already existing regarding  
14 that parcel or may be held by the receiving person or entity.

15 "**Transferee**" means the person or legal entity, including a  
16 person or legal entity that owns property in a receiving  
17 district, who purchases the development rights.

18 **§205-C Districts.** (a) The commission may establish  
19 sending and receiving districts as overlays within land use  
20 district boundaries or any other provisions to effectuate their  
21 duties. The commission shall cause the official zoning district  
22 map to be amended by overlay districts to the affected



1 properties. The designation "TDR-S" shall be the title of the  
2 overlay for a sending district, and the designation "TDR-R"  
3 shall be the title of the overlay for a receiving district.

4 (b) Sending and receiving districts established pursuant to  
5 this part shall be consistent with the local comprehensive plan.

6 **§205-D Designation of Districts.** (a) The commission  
7 shall designate rural legacy areas as sending districts for  
8 the purposes of the transfer of development rights program.

9 (b) The commission shall designate zoning districts that  
10 shall be receiving districts for the purposes of the transfer  
11 of development rights program after approval by the respective  
12 county planning commission.

13 **§205-E Right to transfer development rights.** (a) Each  
14 transferor shall have the right to sever all or a portion of  
15 the rights to develop from the parcel in a sending district and  
16 to sell, trade, or barter all or a portion of those rights to a  
17 transferee consistent with the purposes of this part.

18 (b) All rights transferred under this part are  
19 extinguished upon transfer.

20 **§205-F Development Rights Bank.** A development rights  
21 bank is established within the commission and shall be called  
22 the "TDR Bank." The bank shall have the power to:



- 1 (1) purchase and sell or convey development rights;
- 2 (2) recommend to a state agency where the State should
- 3 acquire development rights by condemnation;
- 4 (3) hold indefinitely any development rights if possesses
- 5 for conservation or other purposes;
- 6 (4) receive donations of development rights from any
- 7 person or entity; and
- 8 (5) receive funding from any source, the proceeds from
- 9 the sale of development rights or grants or donations.

10 **§205-G Administration.** The commission shall adopt  
 11 rules pursuant to chapter 91 for the determination of  
 12 development rights, issuance of certificate, instruments of  
 13 transfer, application of development rights to a receiving  
 14 parcel."

15 SECTION 3. Chapter 205, Hawaii Revised Statutes, is  
 16 amended by adding a new part to be appropriately designated and  
 17 to read as follows:

18 **"PART**

19 **§205-H Rural legacy area.** (a) As used in this part,  
 20 "rural legacy area" means a land area that has significant  
 21 historic, cultural, and visual value to the State.





1           (b) The objective for the designation of a rural legacy  
2 area is to restrict the land use to its present zoning or to  
3 rezone it to preservation or conservation to preserve and  
4 perpetuate the land for the continuing benefit of the people of  
5 the State.

6           (c) A rural legacy area shall be designated through  
7 enactment of legislation or by the commission. Once designated  
8 as a rural legacy area, the uses allowed on the land shall be  
9 restricted to the permitted uses listed in section 205-4.5 or  
10 for preservation or conservation.

11           (d) A landowner with land designated in a rural legacy  
12 area shall be entitled to any incentives provided in this part  
13 or by any statute.

14           (e) Notwithstanding any law to the contrary, any land use  
15 district boundary amendment or change in zoning involving a  
16 rural legacy area shall be made by the commission.

17           (f) A rural legacy area may consist of lands in  
18 preservation, conservation, agriculture, forestry, and as  
19 determined by the legislature or the commission."

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



1           "§205-2   Districting and classification of lands.   (a)

2   There shall be [four] five major land use districts in which all  
3   lands in the State shall be placed:  urban, rural, agricultural,  
4   rural legacy area as provided for in part \_\_\_\_\_, and conservation.

5   The land use commission shall group contiguous land areas  
6   suitable for inclusion in one of these four major districts.

7   The commission shall set standards for determining the  
8   boundaries of each district, provided that:

9           (1)   In the establishment of boundaries of urban districts  
10                those lands that are now in urban use and a sufficient  
11                reserve area for foreseeable urban growth shall be  
12                included;

13           (2)   In the establishment of boundaries for rural  
14                districts, areas of land composed primarily of small  
15                farms mixed with very low density residential lots,  
16                which may be shown by a minimum density of not more  
17                than one house per one-half acre and a minimum lot  
18                size of not less than one-half acre shall be included,  
19                except as herein provided;

20           (3)   In the establishment of the boundaries of agricultural  
21                districts the greatest possible protection shall be



1 given to those lands with a high capacity for  
 2 intensive cultivation; and  
 3 (4) In the establishment of the boundaries of conservation  
 4 districts, the "forest and water reserve zones"  
 5 provided in Act 234, section 2, Session Laws of Hawaii  
 6 1957, are renamed "conservation districts" and,  
 7 effective as of July 11, 1961, the boundaries of the  
 8 forest and water reserve zones theretofore established  
 9 pursuant to Act 234, section 2, Session Laws of Hawaii  
 10 1957, shall constitute the boundaries of the  
 11 conservation districts; provided that thereafter the  
 12 power to determine the boundaries of the conservation  
 13 districts shall be in the commission.

14 In establishing the boundaries of the districts in each county,  
 15 the commission shall give consideration to the master plan or  
 16 general plan of the county.

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

20 (c) Rural districts shall include activities or uses as  
 21 characterized by low density residential lots of not more than  
 22 one dwelling house per one-half acre, except as provided by



1 county ordinance pursuant to section 46-4(c), in areas where  
2 "city-like" concentration of people, structures, streets, and  
3 urban level of services are absent, and where small farms are  
4 intermixed with low density residential lots except that within  
5 a subdivision, as defined in section 484-1, the commission for  
6 good cause may allow one lot of less than one-half acre, but not  
7 less than 18,500 square feet, or an equivalent residential  
8 density, within a rural subdivision and permit the construction  
9 of one dwelling on such lot, provided that all other dwellings  
10 in the subdivision shall have a minimum lot size of one-half  
11 acre or 21,780 square feet. Such petition for variance may be  
12 processed under the special permit procedure. These districts  
13 may include contiguous areas which are not suited to low density  
14 residential lots or small farms by reason of topography, soils,  
15 and other related characteristics. Rural districts shall also  
16 include golf courses, golf driving ranges, and golf-related  
17 facilities.

18 (d) Agricultural districts shall include:

19 (1) Activities or uses as characterized by the cultivation  
20 of crops, crops for bioenergy, orchards, forage, and  
21 forestry;



- 1           (2) Farming activities or uses related to animal  
2           husbandry, and game and fish propagation;
- 3           (3) Aquaculture, which means the production of aquatic  
4           plant and animal life within ponds and other bodies of  
5           water;
- 6           (4) Wind generated energy production for public, private,  
7           and commercial use;
- 8           (5) Biofuel production as described in section  
9           205-4.5(a)(15) for public, private, and commercial  
10          use;
- 11          (6) Bona fide agricultural services and uses that support  
12          the agricultural activities of the fee or leasehold  
13          owner of the property and accessory to any of the  
14          above activities, whether or not conducted on the same  
15          premises as the agricultural activities to which they  
16          are accessory, including but not limited to farm  
17          dwellings as defined in section 205-4.5(a)(4),  
18          employee housing, farm buildings, mills, storage  
19          facilities, processing facilities, vehicle and  
20          equipment storage areas, roadside stands for the sale  
21          of products grown on the premises, and plantation



- 1 community subdivisions as defined in section
- 2 205-4.5(a)(12);
- 3 (7) Wind machines and wind farms;
- 4 (8) Small-scale meteorological, air quality, noise, and
- 5 other scientific and environmental data collection and
- 6 monitoring facilities occupying less than one-half
- 7 acre of land; provided that these facilities shall not
- 8 be used as or equipped for use as living quarters or
- 9 dwellings;
- 10 (9) Agricultural parks;
- 11 (10) Agricultural tourism conducted on a working farm, or a
- 12 farming operation as defined in section 165-2, for the
- 13 enjoyment, education, or involvement of visitors;
- 14 provided that the agricultural tourism activity is
- 15 accessory and secondary to the principal agricultural
- 16 use and does not interfere with surrounding farm
- 17 operations; and provided further that this paragraph
- 18 shall apply only to a county that has adopted
- 19 ordinances regulating agricultural tourism under
- 20 section 205-5; and
- 21 (11) Open area recreational facilities.



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

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

6 (e) Conservation districts shall include areas necessary  
7 for protecting watersheds and water sources; preserving scenic  
8 and historic areas; providing park lands, wilderness, and beach  
9 reserves; conserving indigenous or endemic plants, fish, and  
10 wildlife, including those which are threatened or endangered;  
11 preventing floods and soil erosion; forestry; open space areas  
12 whose existing openness, natural condition, or present state of  
13 use, if retained, would enhance the present or potential value  
14 of abutting or surrounding communities, or would maintain or  
15 enhance the conservation of natural or scenic resources; areas  
16 of value for recreational purposes; other related activities;  
17 and other permitted uses not detrimental to a multiple use  
18 conservation concept."

19 SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Land use classifications

**Description:**

Sets up a process for transfer of development rights and creates a new land classification called rural legacy area.

