

Important Agricultural Lands Incentives

1. We support a comprehensive incentive package that provides for both farmers and landowners.
2. Landowner incentive is not a “windfall”
 - a. It saves time, which is a cost savings, but does not increase the value of the land;
 - b. It does not bypass or remove any public input;
 - c. The incentive land to be up zoned must be in the existing county growth boundary and is still subject to County review and possible denial.
3. We feel that for dedication to occur we need both the HFB and Landowner incentives.

Pending issues:

1. Perpetuity not acceptable, we can designate for 10 years or more
2. Proportion - we need a 70 % to 30% ratio
3. Future credits are needed
4. LSB land rating system should be omitted, go back to initial ALISH criteria

Proposed changes to HB 2807, HD 2:

1. Elimination of option for the affordable housing in the rural district (delete Sections 1-3);
2. Elimination of perpetuity language (deleted in Sections 4, 5, 6)
3. Change in ratio to 70-30, (Amended in Section 5)
4. Elimination of LSB land rating system (delete in Section 4),
5. Addition credits for future use. (Added to Section 5)

Report Title:

Incentives; Affordable Housing; Reclassification; Important
Agricultural Lands

Description:

~~Allows a landowner, who has been granted a declaratory order from the Land Use Commission (LUC) to designate all or some of the landowner's land as IAL, to fulfill a state or county affordable housing assessment (assessment) by providing affordable housing in lands zoned as rural in lieu of satisfying the assessment in the urban district; revises~~Revises the landowner petition process for IAL designation by specifying that a farmer or landowner may petition LUC for declaratory order to designate lands as IALs ~~in perpetuity~~ and allowing farmers or landowners that petition the LUC for declaratory order to seek, in the same petition, a reclassification of land from the agricultural district to the rural district, urban district, or a combination of both, under certain conditions.—
(~~HB2807 HD2~~)

A BILL FOR AN ACT

RELATING TO LAND USE

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

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

~~"§205- Satisfaction of state or county affordable housing requirements in the rural district. (a) In lieu of satisfying a state or county affordable housing assessment in the urban district, a project landowner subject to subsection (b) may fulfill the assessment by providing affordable housing in the rural district in accordance with section 205-2(c)(7).~~

~~(b) This section shall apply only to a project landowner who has been granted a declaratory order from the land use commission to designate all or some of the landowner's land as important agricultural land pursuant to section 205-45."~~

~~SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:~~

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

- ~~(1) Activities or uses as characterized by low density residential lots of not more than one dwelling house per one half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent[, and where small];~~
- ~~(2) Small farms [are] intermixed with low density residential lots, except that within a subdivision, as defined in section 484-1, the commission, for good cause and on petition for a special permit, may allow one lot of less than one half acre, but not less than [18,500] eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot[,] provided that all other dwellings in the subdivision shall have a minimum lot size of one half acre or [21,780] twenty one thousand seven hundred eighty square feet[. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous];~~
- ~~(3) Contiguous areas [which] that are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics[. Rural districts shall also include golf];~~
- ~~(4) Golf courses, golf driving ranges, and golf-related facilities[.];~~
- ~~(5) Agribusiness activities, including horticulture, apiculture, aquaculture, plant nurseries, and the raising and keeping of livestock;~~
- ~~(6) Farm worker housing; and~~
- ~~(7) Affordable housing, without a special permit; provided that the housing is:~~
- ~~(A) Affordable to households with incomes at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development; and~~

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

~~SECTION 3. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:~~

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

- ~~(1) Low density residential uses[;], with a minimum lot size of one-half acre and one dwelling unit per lot, except as provided in section 205-2(c);~~
- ~~(2) Agricultural uses;~~
- ~~(3) Golf courses, golf driving ranges, and golf-related facilities; [and]~~
- ~~(4) Public, quasi-public, and public utility facilities[.];~~
- ~~(5) Agribusiness activities, as provided in section 205-2(c);~~
- ~~(6) Farm worker housing; and~~
- ~~(7) Affordable housing meeting the requirements of section 205-2(c)(7), with density established by county zoning.~~

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

~~SECTION 4. Section 205-44, Hawaii Revised Statutes, is amended to read as follows:~~

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

(b) In a petition for a declaratory order submitted under section 205-45 that seeks to both designate lands as important agricultural lands and reclassify lands in the agricultural district to the rural or urban district, the lands shall be deemed qualified for designation as important agricultural land if the commission reasonably finds that the lands meet at least the criteria of subsection (c) (45), ~~(6)~~, and (87) of this section.

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

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

- (1) Land currently used for agricultural production;
- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;

(4) Land ~~with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating:~~

~~(A) Class A or B; or~~

~~(B) Class C or D if the land is currently in~~

~~agricultural production or could be put into~~

~~productive agricultural use with the~~

~~implementation of new technology or development~~

~~of irrigation water; [(4)] (5) Land types~~

associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;

- ~~†(5)†~~ ~~(6)~~ Land with sufficient quantities of water to support viable agricultural production;
- ~~†(6)†~~ ~~(7)~~ Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;
- ~~†(7)†~~ ~~(8)~~ Land that contributes to maintaining a critical land mass important to agricultural operating productivity; ~~[and]~~
- ~~†(8)†~~ ~~(9)~~ Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power[-]; and
- (10) Land that, although unsuited for agricultural use because of topography, is part of a tax map key parcel, most of which is comprised of land meeting at least one of the standards and criteria listed in this subsection. Land under this paragraph shall be designated as important agricultural land only if the entire tax map key parcel is so designated."

SECTION 5. Section 205-45, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]~~§205-45~~[+]~~ **Petition by farmer or landowner.** (a) A farmer or landowner with lands qualifying under section 205-44 may file with the commission a petition for declaratory ~~[ruling~~
~~with the commission]~~ order to designate the lands as important agricultural lands in perpetuity. The petition may be filed at any time in the designation process.

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

- (1) Land sought to be reclassified to the rural or urban district is within the same county as the land sought to be designated as important agricultural lands;
- (2) Reclassification of the land to the rural or urban district is consistent with the relevant county general, development, and community plans; and

(3) Total acreage of the land sought to be designated or reclassified in the petition complies with the following proportions:

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

(B) The remainder of the acreage is sought to be reclassified to the rural or urban district;

provided further that the commission shall, at the petitioner's request, allow the petitioner to utilize earned credits from the designation of important agricultural lands for the reclassification of the petitioner's lands from agricultural to rural and/or urban in subsequent years until the earned credits are exhausted.

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

(1) Tax map keys of the land to be designated as important agricultural lands and, if applicable, the land to be reclassified from the agricultural district to the

rural or urban district, along with verification and authorization from the applicable landowners;

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

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

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

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

If the petition also seeks the reclassification of land to the rural or urban district, the commission shall review the petition and accompanying submissions to evaluate the suitability of the land for the reclassification in accordance with section 205-2; consistency of the reclassification with the

relevant county general, development, and community plans; and compliance with the other provisions of subsection (b).

If the commission, after its review [~~and evaluation~~], finds that the [~~lands qualify for~~] designation [~~as important agricultural lands under this part,~~] and, if applicable, reclassification sought in the petition should be approved, the commission shall vote, by a two-thirds majority of the members of the commission, to issue a declaratory order designating the petitioner's identified lands as important agricultural lands[-] and, if applicable, reclassifying the petitioner's identified land from the agricultural district to the rural or urban district.

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

~~[(d) Designating important agricultural lands by the commission]~~ (e) The designation or reclassification of land pursuant to subsection (a) or (b) shall not be [considered as an-

~~amendment to district boundaries under]~~ subject to the district boundary amendment procedures of sections 205-3.1 and 205-4 or become effective prior to legislative enactment of protection and incentive measures for important agricultural land and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

~~[(e)]~~ (f) Farmers or landowners with lands qualifying under section 205-44 may file petitions for a declaratory ~~[ruling]~~ order to designate lands as important agricultural lands following the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

~~(g) After a declaratory order designates any land as important agricultural land pursuant to this section, the commission shall not remove that designation from any land so designated in the order.~~ (h) The commission may adopt rules pursuant to chapter 91 to effectuate this section."

SECTION 6. Section 205-50, Hawaii Revised Statutes, is amended as follows:

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

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

- (1) The relative importance of the land for agriculture based on the stock of similarly suited lands in the area and the State as a whole;
- (2) The proposed district boundary amendment or zone change will not harm the productivity or viability of ~~existing~~ agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;
- (3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as important agricultural lands that create residual parcels of a size that would preclude viable agricultural use;

(4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes; ~~and~~

(5) The impact of the proposed district boundary amendment or zone change on the necessity and capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area~~;~~ ~~and~~

~~(6) Whether the important agricultural land was designated as such in perpetuity by a declaratory order issued under section 205-45.~~

(d) Any decision pursuant to this section shall be based upon a determination that:

(1) On balance, the public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes; ~~and~~

(2) The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands~~;~~ ~~and~~

~~(3) The district boundary amendment does not remove the important agricultural land designation from land so designated in perpetuity by a declaratory order issued under section 205-45."~~

2. By amending subsection (g) to read:

"(g) A farmer or landowner with qualifying lands may also petition the land use commission to remove the "important agricultural lands" designation from lands that were not designated by a declaratory order issued under section 205-45 if a sufficient supply of water is no longer available to allow profitable farming of the land due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control."

SECTION 7. Section 205-52, Hawaii Revised Statutes, is amended to read as follows:

"~~[†]~~§205-52~~[‡]~~ **Periodic review and amendment of important agricultural lands maps.** The maps delineating important agricultural lands shall be reviewed in conjunction with the county general plan and community and development plan revision process, or at least once every ten years following the adoption of the maps by the land use commission; provided that the maps shall not be reviewed more than once every five years. Any review and amendment of the maps of important agricultural lands shall be conducted in accordance with this part. In these periodic reviews ~~[or petitions by the farmers or landowners for~~

~~declaratory rulings], the "important agricultural lands" designation [shall] may be removed from those [~~important agricultural lands where the commission has issued a declaratory order that a sufficient supply of water is no longer available to allow profitable farming of these lands due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control.~~] lands that were so designated by district boundary amendment and not a declaratory order issued under section 205-45."~~

SECTION 8. The legislature declares that this Act establishes incentives for the designation of important agricultural land in satisfaction of section 205-46, Hawaii Revised Statutes, and section 9 of Act 183, Session Laws of Hawaii 2005.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

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Padding cell	

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Total changes	64



COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

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House Committee on Water, Land and Hawaiian Affairs

Chair: Rep. Ken Ito

Vice-Chair: Rep. Jon Riki Karamatsu

House Committee on Agriculture

Chair: Rep. Clift Tsuji

Vice-Chair: Rep. Tom Brower

DATE: Friday, March 14, 2008

TIME: 9:15 a.m. PLACE: State Capitol Conference Room 325

Testimony of Robin Puanani Danner, President & CEO Council for Native Hawaiian Advancement

Support for SB 2907, Relating to Establishing a Division of Agriculture within DHHL

Honorable Representatives and Members of the Committee:

The Council for Native Hawaiian Advancement (CNHA) is a community development nonprofit with a mission of enhancing the well being of Hawaii through the cultural, economic and community development of Native Hawaiians. We achieve our mission through capacity building of community based organizations, training and technical assistance, leadership development and convening our community around topical and important policy issues.

Mahalo for the opportunity to provide testimony on SB 2907, to establish a division within the state of Hawaii, Department of Hawaiian Home Lands for agricultural and pastoral homesteading.

We strongly support this legislation and the adequate appropriation of funds within the DHHL operating budget for the following reasons:

1) Represents two of the three Priorities under the HHCA. The Hawaiian Homes Commission Act principle purposes are Residential, Agriculture and Pastoral homesteading for beneficiaries of the Act. Over the nearly 50-year history, since passage of the Admissions Act wherein the state of Hawaii become responsible for the administration of the HHCA, the agricultural and pastoral priorities have not kept pace with the advances made in the area of residential homesteading. In fact, these two priorities have been stymied by the wholesale leasing of agricultural lands to commercial interests more than 50 years ago. As these agricultural leases expire, we have an opportunity to breathe new life into two of the original purposes of the HHCA - farming and pastoral homesteading. We believe that

the existence of a Division within DHHL, dedicated entirely to these two priorities is the foundation necessary to begin reaching the potential of the HHCA as was originally envisioned by the Congress in 1920 and the state of Hawaii in 1959.

2) Dedicated Talent and Resources. The establishment of a full division within DHHL, funded properly in the annual operating budget, creates fertile ground for the best ideas and for programs to be fostered and developed that advance agricultural and pastoral programming across the state. With this level of presence, amidst other divisions that focus entirely on the needs of residential homesteading and even commercial revenue generation to sustain the trust, a division dedicated entirely to agriculture and pastoral priorities is a critical and vital need that will bring needed balance to the trust in its land management approaches. The time for dedicated talent and resources to these two areas of priorities is long overdue.

3) Provides Sustainability Opportunities for the Entire State. As our state faces critical sustainability choices today, that will impact future generations, the agricultural and pastoral priorities contained in the HHCA, are an opportunity not just for the beneficiaries, but for the entire state. If we can pilot our best agricultural and pastoral ideas within the parameters of the HHCA on Hawaiian Home Lands for which they were set-a-side, we have a tremendous opportunity to replicate the best practices we achieve, in the rest of the state. In short, making agriculture and pastoral homesteading a priority inside DHHL, and directing adequate resources and talent to these areas, meets our obligation under the HHCA and also presents a pathway to contributing to the sustainability challenges of the rest of our state.

In closing, I'd like to reference the original resolution proposed by the Hawaiian Homes Commission in 1998, establishing an Agricultural Task Force and enclosed for your convenience. The content of this resolution further articulates and validates the intent of SB 2907, and indeed the Task Force was formed and issued a report of findings available by contacting the Planning Division at DHHL. Ten years later, the issues and opportunities remain open and we believe can only be furthered by establishing a strong Agricultural and Pastoral Homesteading Division at DHHL. It is time to seize the moment and embrace the values and priorities of agricultural and pastoral homesteading.

Please accept this testimony in support of this legislation and our gratitude for its introduction.

Enclosure: 1998 Hawaiian Homes Commission Resolution Establishing an Agricultural Task Force

Proposed Resolution Authorizing a Hawaiian Homes Agricultural Task Force
July 1998

WHEREAS the Department of Hawaiian Home Lands, pursuant to Section 207(a) of the Hawaiian Homes Commission Act, has awarded a total of 1,043 agricultural leases to date; and

WHEREAS less than 5% of these agricultural leaseholds are currently in farm production by Hawaiian Homesteaders; and

WHEREAS the standard DHHL agricultural lease requires the lessee to farm at least two-thirds of the leasehold; and

WHEREAS non-Native Hawaiian agricultural ventures have in the past established highly successful farming businesses on DHHL lands as third-party lessees; and

WHEREAS in 1996 the Supreme Court of Hawai'i ruled in Bush v. Watson that such third-party leases to non-Native Hawaiians were void because they violated the Hawaiian Homes Commission Act; and

WHEREAS there is a substantial potential market for Hawai'i-grown produce, as evidenced by the fact that the state currently imports over 60% of all produce consumed in Hawai'i; and

WHEREAS Section 219.1 of the Hawaiian Homes Commission Act authorizes the Department "to carry on any activities it deems necessary to assist the lessees in obtaining maximum utilization of the leased lands, including taking any steps necessary to develop these lands for their highest and best use commensurate with the purposes for which the land is being leased . . . and assisting the lessees in all phases of farming, ranching, and aquaculture operations and the marketing of their agricultural or aquacultural produce and livestock"; and

WHEREAS the Department currently provides no assistance to Homestead farmers other than a single, contracted University of Hawai'i Cooperative Extension position on each of the islands of Hawai'i, Kaua'i and Moloka'i; and

WHEREAS there are a number of successful Hawaiian Homestead farmers throughout the state whose expertise has not yet been sought in any formal way by the Department;

NOW THEREFORE BE IT RESOLVED:

THAT the Department of Hawaiian Home Lands shall convene an Agricultural Task Force composed of active commercial Hawaiian Homestead farmers, appropriate DHHL staff, at least one Hawaiian Homes Commissioner, and the University of Hawai'i Cooperative Extension agents who serve our Homestead farmers in their respective communities; and

THAT the purpose of the Agricultural Task Force shall be to create a strategic plan for successful farming of Hawaiian Home Lands agricultural lots; and

THAT this Task Force shall be constituted and convened no later than November 1, 1998.