

# H.B. NO. 1048

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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. The legislature finds that the State's  
2 agricultural and rural areas have significant value, both  
3 economically and as open space, to Hawaii's residents and  
4 visitors. However, the state land use system does not currently  
5 promote rural and agricultural land use patterns and development  
6 practices that protect the open space character and historic  
7 form of Hawaii's rural communities and agricultural lands.

8           The state rural land use district offers an important tool  
9 for accommodating appropriately-scaled, non-agricultural rural  
10 uses such as recreational uses, the siting of agricultural  
11 support activities, and buffering agricultural and conservation  
12 district lands from urban land uses. With less than one per  
13 cent of all lands in the State classified in the rural land use  
14 district, the rural district is an underutilized tool in the  
15 statewide land use management system.

16           The purpose of this Act is to amend the rural district  
17 policies and standards to enable the rural district to play a  
18 stronger role in preserving the State's agricultural lands and  
19 rural areas as permanent features of Hawaii's landscape. This

1 Act provides broad policy and performance standards that will  
2 expand the counties' ability to plan and manage land use in  
3 rural areas while providing flexibility for accommodating rural  
4 development and rural economic opportunities within the rural  
5 landscape.

6 The legislature believes these amendments will allow the  
7 rural district to absorb development pressures that are  
8 currently directed at the agricultural district, threatening  
9 agricultural viability by increasing agricultural land values  
10 and nuisance complaints for agricultural producers.

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

14 "§46-\_\_\_\_\_ Conformance of county land use plans,  
15 ordinances, and rules with state land use district policies and  
16 standards. County plans, ordinances, and rules governing land  
17 use and development adopted pursuant to this chapter shall  
18 conform to the policies, uses, standards, and restrictions for  
19 the use, subdivision, or development of land in the urban,  
20 rural, and agricultural land use districts and for land  
21 designated as important agricultural land as set forth in  
22 chapter 205. County ordinances shall govern the permitted uses,  
23 density and dimensional lot standards, standards for  
24 infrastructure systems, and levels of service for county

1 services for lands within the state urban, rural, and  
2 agricultural districts subject to the limitations contained in  
3 chapter 205."

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

7 "§205-A Rural district; objectives and standards. (a)  
8 County ordinances and rules that define the policies, standards,  
9 and procedures for the use and development of land in the rural  
10 district, to include but not be limited to permissible uses,  
11 allowable density and lot sizes, standards for physical  
12 development, infrastructure, and service levels, and design  
13 guidelines for rural development in rural centers and the rural  
14 district, shall conform to this chapter.

15 (b) The minimum lot size and the maximum density of  
16 dwelling units in the rural district shall be determined by each  
17 county by zoning ordinance, subdivision ordinance, or other  
18 lawful means; provided that the dwelling unit density in the  
19 rural district shall not exceed one dwelling unit per two acres  
20 of gross parcel area and one dwelling unit per lot of record,  
21 unless otherwise allowed in this section.

22 (c) The county may, by ordinance, permit greater density  
23 than allowed in subsection (b) for the following:

24 (1) Development within the limits of designated rural

- 1           centers as described in subsection (e);
- 2           (2) Projects that cluster dwelling units and development  
3           on a contiguous portion of the project property and  
4           preserve no less than fifty per cent of the remainder  
5           of the property for agriculture or open space; and
- 6           (3) Legal lots of record existing on the effective date of  
7           this Act that are less than two acres, subject to  
8           county approval pursuant to section 205-8(d).
- 9           (d) Uses in the rural district shall be determined solely  
10          by the county; provided that:
- 11           (1) A range of uses, including agricultural, commercial,  
12           residential, industrial, recreational, civic and  
13           public facilities, utilities, and open space uses  
14           shall be allowed in the rural district; and
- 15           (2) The uses allowed shall be of a scale and character  
16           distinct from urban uses and consistent with the long-  
17           term maintenance of working lands, rural landscapes,  
18           and historic rural centers and communities.
- 19           (e) Rural centers shall be allowed in the rural district,  
20          as designated by the county in an adopted county general,  
21          community, or development plan. Rural centers shall be  
22          physically compact with a well-defined edge and a core area  
23          having a mix of residential uses, public and commercial  
24          services, and economic activities. Mixed uses or mixed-use



1 structures on the same lot shall be allowed in rural centers.  
2 Physical development within a rural center shall be compatible  
3 with the scale, historical character, and physical form of  
4 existing rural centers and the surrounding rural landscape.

5 (f) Each county shall plan and manage land use and  
6 development in the rural district to achieve the following  
7 objectives:

8 (1) Long-term preservation of working lands for  
9 agriculture, ranching, and forestry;

10 (2) Avoidance of the fragmentation of working and resource  
11 lands and the prevention of residential sprawl in  
12 rural areas;

13 (3) Separation of rural and agricultural uses to buffer  
14 them from incompatible or higher-value urban-like uses  
15 to:

16 (A) Avoid nuisance conflicts between rural,  
17 agricultural, and urban uses and activities; and

18 (B) Maintain the affordability of working and  
19 resource lands for rural enterprise and rural  
20 livelihoods;

21 (4) Compact land use patterns with growth directed to  
22 rural centers and residential clusters, which have  
23 well-defined edges that delineate development from the  
24 surrounding open space or farm lands;

- 1        (5) Maintenance and enhancement of the visual character  
2        and form of development in rural areas with respect to  
3        architectural style, scale, lot coverage, and  
4        materials used, and the retention of the natural and  
5        historic features of a site;
- 6        (6) Minimal alteration and impairment of natural systems  
7        and important land forms from development, in  
8        particular, hydrologic systems, natural habitats, and  
9        natural features, including scenic vistas, steep  
10       slopes and ridges, natural hazard areas, and streams  
11       or wetlands;
- 12       (7) Preservation of the cultural heritage and resources of  
13       Hawaii's rural communities and rural areas;
- 14       (8) Rural infrastructure and service level standards that  
15       protect rural character, provide basic protection for  
16       health and the environment, and do not promote the  
17       extension of urban infrastructure and services into  
18       less-populated rural areas;
- 19       (9) Enhancement and preservation of regional open space  
20       through contiguous areas of working lands, natural  
21       areas, and open space and connected systems of  
22       recreational trails and greenways;
- 23       (10) Long-term viability of rural resource-dependent  
24       industry, such as agriculture; and

1        (11) Adoption of land use and housing strategies that  
2            ensures long-term affordability of housing for rural  
3            residents and rural livelihoods."

4            SECTION 4. Section 205-2, Hawaii Revised Statutes, is  
5 amended by amending subsections (a), (b), and (c) to read as  
6 follows:

7            "(a) There shall be four major land use districts in which  
8 all lands in the State shall be placed: urban, rural,  
9 agricultural, and conservation. The land use commission shall  
10 group contiguous land areas suitable for inclusion in one of  
11 these four major districts. The commission shall set standards  
12 for determining the boundaries of each district, provided that:

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

17            (2) In the establishment of boundaries for rural  
18            districts, areas of land [~~composed primarily of small~~  
19            ~~farms mixed with very low density residential lots,~~  
20            ~~which may be shown by a minimum density of not more~~  
21            ~~than one house per one half acre and a minimum lot~~  
22            ~~size of not less than one half acre shall be included,~~  
23            ~~except as herein provided,] used for farming,  
24            ranching, or forestry, small rural centers providing~~

1 services and housing for rural industry and residents,  
2 very low-density rural residential uses, and open  
3 space for recreational or passive use shall be  
4 included;

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

9 (4) In the establishment of the boundaries of conservation  
10 districts, the "forest and water reserve zones"  
11 provided in Act 234, section 2, Session Laws of Hawaii  
12 1957, are renamed "conservation districts" and,  
13 effective as of July 11, 1961, the boundaries of the  
14 forest and water reserve zones theretofore established  
15 pursuant to Act 234, section 2, Session Laws of Hawaii  
16 1957, shall constitute the boundaries of the  
17 conservation districts; provided that thereafter the  
18 power to determine the boundaries of the conservation  
19 districts shall be in the commission.

20 In establishing the boundaries of the districts in each county,  
21 the commission shall give consideration to the [~~master plan or~~]  
22 general plan [~~of~~] or community and development plans adopted by  
23 the county.

24 (b) Urban districts shall include activities or uses as

1 provided by ordinances or [~~regulations~~] rules of the county  
2 within which the urban district is situated.

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

1 the district, which is to:

2       (1) Protect and enhance the character, economies, and  
3       physical form of Hawaii's rural areas and rural  
4       communities;

5       (2) Maintain rural landscapes and working lands for  
6       farming, ranching, and forestry as permanent features  
7       of Hawaii's island landscapes; and

8       (3) Minimize residential sprawl and the extension of urban  
9       infrastructure into rural areas.

10 Land use in the rural district shall be characterized by a  
11 regional pattern of predominantly open landscapes of farmland,  
12 contiguous open space, and natural areas, with small mixed-use  
13 rural centers and low-density residential settlements  
14 interspersed in the physical landscape, and a level of physical  
15 infrastructure and services substantially lower than in urban  
16 areas."

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

19       "~~§205-5 [Zoning.]~~ County land use plans, ordinances, and  
20 rules; consistency with this chapter; zoning. (a) County land  
21 use plans, zoning, and development standards adopted by  
22 ordinance or rule shall conform to and implement the objectives,  
23 policies, and standards for the land use districts and important  
24 agricultural lands set forth in this chapter. Except as

1 ~~[herein]~~ provided~~[7]~~ in this chapter, the powers granted to  
2 counties under section 46-4 shall govern the zoning within the  
3 urban, rural, and agricultural districts~~[, other than in~~  
4 ~~conservation districts]~~. Conservation districts shall be  
5 governed by the department of land and natural resources  
6 pursuant to chapter 183C.

7 (b) Within agricultural districts, uses compatible ~~[to]~~  
8 with the activities described in ~~[section]~~ sections 205-2 and  
9 205-4.5 as determined by the commission shall be permitted;  
10 provided that accessory agricultural uses and services described  
11 in sections 205-2 and 205-4.5 may be further defined by each  
12 county by zoning ordinance. Each county shall adopt ordinances  
13 setting forth procedures and requirements, including provisions  
14 for enforcement, penalties, and administrative oversight, for  
15 the review and permitting of agricultural tourism uses and  
16 activities as an accessory use on a working farm, or farming  
17 operation as defined in section 165-2; provided that  
18 agricultural tourism activities shall not be permissible in the  
19 absence of a bona fide farming operation. Ordinances shall  
20 include but not be limited to:

- 21 (1) Requirements for access to a farm, including road  
22 width, road surface, and parking;
- 23 (2) Requirements and restrictions for accessory facilities  
24 connected with the farming operation, including gift

1 shops and restaurants; provided that overnight  
2 accommodations shall not be permitted;

3 (3) Activities that may be offered by the farming  
4 operation for visitors;

5 (4) Days and hours of operation; and

6 (5) Automatic termination of the accessory use upon the  
7 cessation of the farming operation.

8 Each county may require an environmental assessment under  
9 chapter 343 as a condition to any agricultural tourism use and  
10 activity. Other uses may be allowed by special permits issued  
11 pursuant to this chapter.

12 The minimum lot size in agricultural districts shall be  
13 determined by each county by zoning ordinance, subdivision  
14 ordinance, or other lawful means; provided that the minimum lot  
15 size for any agricultural use shall not be less than one acre,  
16 except as provided herein. If the county finds that  
17 unreasonable economic hardship to the owner or lessee of land  
18 cannot otherwise be prevented or where land utilization is  
19 improved, the county may allow lot sizes of less than the  
20 minimum lot size as specified by law for lots created by a  
21 consolidation of existing lots within an agricultural district  
22 and the resubdivision thereof; provided that the consolidation  
23 and resubdivision do not result in an increase in the number of  
24 lots over the number existing prior to consolidation; and



1 provided further that in no event shall a lot which is equal to  
2 or exceeds the minimum lot size of one acre be less than that  
3 minimum after the consolidation and resubdivision action. The  
4 county may also allow lot sizes of less than the minimum lot  
5 size as specified by law for lots created or used for plantation  
6 community subdivisions as defined in section 205-4.5(a)(12), for  
7 public, private, and quasi-public utility purposes, and for lots  
8 resulting from the subdivision of abandoned roadways and  
9 railroad easements.

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

- 13 ~~(1) Low density residential uses;~~
- 14 ~~(2) Agricultural uses;~~
- 15 ~~(3) Golf courses, golf driving ranges, and golf related~~  
16 ~~facilities; and~~
- 17 ~~(4) Public, quasi-public, and public utility facilities.~~

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.] "~~

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

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1           "(a) Subject to this section, the county planning  
2 commission may permit certain unusual and reasonable uses within  
3 the agricultural [~~and rural districts~~] district other than those  
4 for which the district is classified. Any person who desires to  
5 use the person's land within an agricultural [~~or rural~~] district  
6 [~~other than~~] for [~~an agricultural or rural use, as the case may~~  
7 ~~be,~~] a use other than a use permitted under sections 205-2(d)  
8 and 205-4.5, may petition the planning commission of the county  
9 within which the person's land is located for permission to use  
10 the person's land in the manner desired[-]; provided that the  
11 use is not prohibited in sections 205-2 and 205-4.5. Each  
12 county may establish the appropriate fee for processing the  
13 special permit petition. Copies of the special permit petition  
14 shall be forwarded to the land use commission, the office of  
15 planning, and the department of agriculture for their review and  
16 comment."

17           SECTION 7. Section 205-8, Hawaii Revised Statutes, is  
18 amended to read as follows:

19           "§205-8 Nonconforming uses[-], structures, or lot sizes in  
20 the rural and agricultural districts. (a) The lawful use of  
21 land or buildings existing on the date of establishment of any  
22 interim agricultural district and rural district in final form  
23 may be continued although the use, including lot size, does not  
24 conform to this chapter; provided that no nonconforming building

1 shall be replaced, reconstructed, or enlarged or changed to  
2 another nonconforming use and no nonconforming use of land shall  
3 be expanded or changed to another nonconforming use. In  
4 addition, if any nonconforming use of land or building is  
5 discontinued or held in abeyance for a period of one year, the  
6 further continuation of such use shall be prohibited.

7 (b) A lawful use or structure made nonconforming by an  
8 amendment to this chapter may be continued as a legal  
9 nonconforming use or structure; provided that no legal  
10 nonconforming use or structure shall be replaced, reconstructed,  
11 or enlarged or changed to another nonconforming use, except as  
12 provided by county ordinance adopted pursuant to section 46-  
13 4(a).

14 (c) A legal lot of record approved by a county before the  
15 effective date of an amendment to this chapter that renders the  
16 lot size or dwelling unit density of the lot nonconforming, may  
17 be used; provided that:

18 (1) The proposed use shall be subject to county review and  
19 decision-making pursuant to subsection (d);

20 (2) No additional nonconforming lot shall be created from  
21 the existing lot of record; and

22 (3) If two or more contiguous lots are under the same  
23 ownership, the lots shall be subject to the minimum  
24 lot size or maximum density standards of this chapter,

1           and any nonconforming lot shall not be considered as a  
2           separate parcel of land for the purposes of sale or  
3           development and shall be combined to create one or  
4           more conforming lots.

5           (d) Each county may adopt, by ordinance, procedures for  
6           the use of dwelling unit density of a legal nonconforming lot  
7           that exceeds the maximum density for the rural and agricultural  
8           districts set forth in this chapter; provided that, for the  
9           purposes of this section, "dwelling unit density" shall mean the  
10           number of dwelling units permitted by the underlying county  
11           zoning on the effective date of an act that renders the  
12           allowable lot density nonconforming. The county may adopt a cap  
13           on the total amount of density that is allowed in excess of the  
14           district density standards of this chapter. Except as provided  
15           in section 205-A(c)(3), the additional dwelling units or density  
16           credits from legal nonconforming lots may be permitted, as  
17           determined by the county, only as follows:

- 18           (1) In projects in the urban district;  
19           (2) In existing or new rural centers as defined and  
20           designated by the county in an adopted county general,  
21           community, or development plan;  
22           (3) In projects that cluster dwelling units and structures  
23           on a portion of the property, and preserve no less  
24           than fifty per cent of the remainder of the property

1           as contiguous open lands for agricultural use or open  
2           space; or

3           (4) Through a county variance procedure, which allows the  
4           county to balance the higher density proposed with the  
5           protection and preservation of rural character and  
6           long-term use of rural and agricultural lands."

7           SECTION 8. This Act shall not invalidate county zoning in  
8 effect on the effective date of this Act, and all county  
9 ordinances and rules applicable to the underlying county zoning  
10 shall remain in full force and effect. The lawful use of land  
11 or buildings and legal lots of record existing in the rural or  
12 agricultural district on the effective date of this Act may be  
13 continued; provided that any proposed use of an existing lot of  
14 record that would exceed the maximum density allowed for the  
15 land use district shall be subject to county review and  
16 decision-making as provided in section 7 of this Act.

17           SECTION 9. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun, before its effective date.

20           SECTION 10. In codifying the new section added by section  
21 3 and referenced in section 7 of this Act, the revisor of  
22 statutes shall substitute the appropriate section number for the  
23 letter used in designating the new section in this Act.

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1 SECTION 11. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 12. This Act shall take effect on July 1, 2009.

4  
5  
6

INTRODUCED BY: \_\_\_\_\_

*Calvin K. Y. Song*

BY REQUEST

JAN 26 2009

**Report Title:**

Land Use

**Description:**

Amends chapters 46 and 205, Hawaii Revised Statutes, to give the counties greater authority and flexibility to define uses and regulate land use in the State Rural District consistent with broad State policies and standards.

JUSTIFICATION SHEET

DEPARTMENT Business, Economic Development, and  
Tourism/Office of Planning

TITLE: A BILL FOR AN ACT RELATING TO LAND USE.

PURPOSE: The purpose of this bill is to enable broader use of the rural district to protect valued agricultural lands. The bill provides stronger policy guidance and standards to aid the counties in preserving the State's rural heritage and rural lands while allowing greater flexibility for rural development and rural economic opportunities. The bill broadens the uses allowed in the rural district, permits clustered development and rural villages within the rural district, requires county land use ordinances to conform with the state land use law, and grandfathers existing lots that may not conform to the amended standards.

MEANS: Add new sections to chapters 46 and 205 and amend sections 205-2, 205-5, 205-6(a), and 205-8, Hawaii Revised Statutes.

JUSTIFICATION: Less than one percent of all lands in the State is in the state rural district. The rural district is an underutilized tool in the statewide land use management system. The definition and description of the rural district in the state land use law needs to be amended to expand and enhance utilization of the rural district to allow for non-agricultural rural uses, the buffering of agricultural and conservation lands from urban land uses, and more effective preservation of the State's rural heritage and open space resources.

The creation of a more viable rural district would help absorb development pressures that are currently directed at the agricultural district. Moreover, once important



agricultural lands are identified, marginal or already developed land in the state agricultural district may be appropriate to transfer to the rural district. Thus, it is even more important to provide policy guidance and standards that will ensure that rural lands do not become suburbanized.

Impact on the public: Expanded uses of the rural district and subsequent use of appropriate rural policies and standards could improve preservation of rural areas and character while offering opportunities for more affordable housing in rural centers and mitigating the cost of rural infrastructure and services.

Impact on the department and other agencies: May require rule changes by the land use commission; no other impact foreseen on other state agencies. County planning departments would have increased flexibility in managing rural areas, and may need to amend or adopt ordinances to conform to the new rural district standards.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BED-103.

OTHER AFFECTED  
AGENCIES: Land Use Commission, Office of Planning,  
County Planning Departments.

EFFECTIVE DATE: July 1, 2009.