
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 land use law was
2 enacted ". . . to preserve, protect and encourage the
3 development of lands in the State for those uses to which they
4 are best suited for the public welfare."

5 Since the enactment of the land use law, the Hawaii state
6 planning act was enacted in 1978 to ". . . serve as a guide for
7 the future long-range development of the State." In addition,
8 the zoning enabling act directs that zoning by the counties
9 shall be accomplished within the framework of a long-range,
10 comprehensive general plan.

11 The legislature has established study groups including the
12 land evaluation and site assessment system commission and the
13 rural lands facilitator, which recommended changes to the land
14 use law. The courts have also pointed out problems with the
15 land use law.

16 Among the recommendations of the land evaluation and site
17 assessment system commission is that the land use commission be
18 responsible for the establishing of three land use districts:



1 conservation lands district, important agricultural lands
2 district, and other lands district. In 1986, the land use
3 commission estimated that the acreage requirements for
4 agricultural lands in the future, specifically the year 1995,
5 ranged from 673,000 acres to 697,000 acres. The commission
6 also recommended that the counties be responsible for regulating
7 land uses within the other lands district, which are essentially
8 rural and urban lands.

9 The rural lands facilitator reported in the group's
10 recommendations that the counties should be authorized to manage
11 land use in the rural district, and that the state should adopt
12 the principles that govern and guide the planning and management
13 of rural lands.

14 The courts have observed that among the problems with the
15 land use law are:

- 16 (1) Agricultural districts include areas that are not
17 suited to agriculture;
- 18 (2) Some unimportant agricultural land should be
19 reclassified as rural to facilitate housing
20 development for Hawaii's people;



1 (3) Of the 1,900,000 acres in the agricultural district,
2 only one quarter are classified as A or B lands, more
3 acreage than will ever be actively cultivated; and

4 (4) The special permit may not be used to circumvent
5 district boundary amendment procedures, allowing ad
6 hoc infusion of major urban uses into agricultural
7 districts.

8 The courts also found that there are conflicts caused by the use
9 of special permits and what are considered unusual and
10 reasonable uses.

11 Since the enactment of the land use law, the counties have
12 acquired the expertise that qualifies them to carry out their
13 planning and development functions. Many of the accusations
14 that the counties are too permissive of development are the
15 result of interpretations of what is allowable under the current
16 law, the use of special permits, and conflicts arising from the
17 determination of what constitutes unusual and reasonable uses.

18 The purpose of this Act is to make amendments to the land
19 use law based on the recommendations made by various study
20 groups and reports to the legislature, and the comments of the
21 courts on the land use law.



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

4 "§46- Permissible uses and infrastructure standards
5 within the rural and urban lands district. Each county shall
6 establish by ordinance permitted uses of land and standards
7 required for infrastructure systems within rural and urban
8 districts as classified under chapter 205."

9 SECTION 3. Chapter 205, Hawaii Revised Statutes, is
10 amended by adding six new sections to be appropriately
11 designated and to read as follows:

12 "§205-A Regional district boundary amendments. (a) The
13 office of planning or any county may petition the commission for
14 regional district boundary amendments to reclassify lands that
15 are appropriate to conform to findings of the office of planning
16 in its five-year boundary review pursuant to section 205-18 or
17 to conform to the long-range, comprehensive general plan
18 prepared or being prepared to guide the overall future
19 development of the county.

20 (b) At least one public hearing shall be held in the
21 county in which the regional district boundary amendment is
22 being proposed prior to the final adoption of the district



1 boundaries. The district classification maps shall be prepared
2 by the commission prior to the public hearing. Notice of the
3 hearing shall be given as provided in section 205-4.

4 (c) Interested landowners, lessees, officials, agencies,
5 and individuals may appear at the public hearing to be heard.
6 They shall further be allowed at least fifteen days following
7 the final public hearing to file with the commission a written
8 protest, comments, or recommendations. The district boundaries
9 shall be adopted in final form not more than ninety days or less
10 than forty-five days after the last public hearing of the
11 commission. The commission shall prepare and submit to the
12 county and the office of planning copies of the classification
13 maps showing the district boundaries adopted in final form.

14 §205-B Classification of agricultural lands by the
15 legislature. (a) The legislature may classify lands as
16 agricultural, where the legislature finds that the
17 classification is necessary for the protection of agricultural
18 lands, to promote diversified agriculture, or to control future
19 growth, development, and land use.

20 (b) The classification shall be by law and shall contain:

21 (1) The tax map keys of the land to be classified; and



1 (2) Proof of qualification for classification under
2 section 205-2(d).

3 §205-C Classification of agricultural lands by landowner

4 petition. (a) The owner of any agricultural land may petition
5 the commission for classification of the land as agricultural
6 land when the land does not meet all of the criteria in section
7 205-2(d), but the land:

- 8 (1) Is within an agricultural district; and
9 (2) Has been continuously in agricultural use for the past
10 ten years.

11 (b) The landowner desiring to classify land pursuant to
12 subsection (a), shall petition the commission. The landowner
13 shall include with the petition all of the tax map keys of the
14 land to be classified, proof of qualification for
15 classification, and the current use of the area to be
16 classified.

17 (c) The classification of agricultural lands pursuant to
18 this section shall not be considered an amendment to district
19 boundaries under 205-4.

20 §205-D Agricultural lands; reclassification criteria. (a)

21 The commission may reclassify agricultural lands pursuant to
22 section 205-4, when any department or agency of the State, any



1 department or agency of the county in which the land is
2 situated, or any person with a property interest in the land
3 petitions the commission and the commission finds that a
4 sufficient supply of water is no longer available to allow
5 profitable agricultural use of the land due to government
6 action, an act of God, or other cause beyond the control of the
7 farmer or landowner or that the reclassification:

8 (1) Will not harm or adversely affect the productivity or
9 viability of other existing agricultural operations;

10 (2) Will not affect the viability of other agricultural
11 operations that share infrastructure, processing,
12 marketing, or other production-related costs or
13 facilities of the agricultural operations on the land
14 proposed to be reclassified or rezoned;

15 (3) Will not cause the fragmentation of agricultural
16 operations or cause the intrusion of non-agricultural
17 uses into intact areas of lands designated as
18 important agricultural lands; and

19 (4) Is required to conform to the county general plan or
20 to facilitate a public benefit derived from a non-
21 agricultural use that overrides the agricultural lands
22 designation.



1 (b) The decision of the commission to reclassify
2 agricultural lands pursuant to this section shall be by a two-
3 thirds vote of the members to which the body is entitled.

4 §205-E Permissible uses within the urban district. Urban
5 districts shall include activities or uses as provided by
6 ordinances or regulations of the counties within which the urban
7 district is situated pursuant to the master plan or general plan
8 of the county.

9 §205-F Permissible uses within the rural district. Rural
10 districts shall include activities or uses according to the
11 criteria established in section 205-2(c) as provided by
12 ordinances or rules of the counties within which the rural
13 district is situated pursuant to the master plan or general plan
14 of the county."

15 SECTION 4. Section 46-15, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The mayor of each county, after holding a public
18 hearing on the matter and receiving the approval of the
19 respective council, shall be empowered to designate areas of
20 land for experimental and demonstration housing projects, the
21 purposes of which are to research and develop ideas that would
22 reduce the cost of housing in the State. Except as hereinafter



1 provided, the experimental and demonstration housing projects
2 shall be exempt from all statutes, ordinances, charter
3 provisions, and rules or regulations of any governmental agency
4 or public utility relating to planning, zoning, construction
5 standards for subdivisions, development and improvement of land,
6 and the construction and sale of homes thereon; provided that
7 the experimental and demonstration housing projects shall not
8 affect the safety standards or tariffs approved by the public
9 utility [~~commissions~~] commission for [~~such~~] the public utility.

10 The mayor of each county with the approval of the
11 respective council may designate a county agency or official who
12 shall have the power to review all plans and specifications for
13 the subdivisions, development and improvement of the land
14 involved, and the construction and sale of homes thereon. The
15 county agency or official shall have the power to approve or
16 disapprove or to make modifications to all or any portion of the
17 plans and specifications.

18 The county agency or official shall submit preliminary
19 plans and specifications to the legislative body of the
20 respective county for its approval or disapproval. The final
21 plans and specifications for the project shall be deemed
22 approved by the legislative body if the final plans and



1 specifications do not substantially deviate from the approved
2 preliminary plans and specifications. The final plans and
3 specifications shall constitute the standards for the particular
4 project.

5 No action shall be prosecuted or maintained against any
6 county, its officials or employees, on account of actions taken
7 in reviewing, approving, or disapproving [~~such~~] any plans and
8 specifications.

9 Any experimental or demonstration housing project for the
10 purposes hereinabove mentioned may be sponsored by any state or
11 county agency or any person as defined in section 1-19.

12 The county agency or official shall apply to the state land
13 use commission for an appropriate land use district
14 classification change, except where a proposed project is
15 located on land within an urban or rural district established by
16 the state land use commission. Notwithstanding any law, rule,
17 or regulation to the contrary, the state land use commission may
18 approve the application at any time after a public hearing held
19 in the county where the land is located upon notice of the time
20 and place of the hearing being published in the same manner as
21 the notice required for a public hearing by the planning
22 commission of the appropriate county."



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

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

10 ~~+(1)]~~ (b) In the establishment of boundaries of urban
11 districts ~~[these]~~, the commission shall include:

- 12 (1) Those lands that are now in urban use; and [a]
- 13 (2) A sufficient reserve area for foreseeable urban growth
14 shall be included~~[-]~~.

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

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



- 1 (2) Low density residential lots and residential
- 2 subdivisions on agricultural lands existing before
- 3 January 1, 2009;
- 4 (3) Clusters of settlements or historic plantation camps
- 5 and communities that do not function as a suburb of a
- 6 major urban center; and
- 7 (4) Areas not suited to agricultural and ancillary
- 8 activities by reason of topography and other related
- 9 characteristics.

10 [~~(3)~~] (d) In the establishment of the boundaries of

11 agricultural districts [the greatest possible protection shall

12 be given to these lands with a high capacity for intensive

13 cultivation; and], the commission shall include lands:

- 14 (1) That are irrigated with the physical properties that
- 15 are capable of producing sustained high agricultural
- 16 yields when treated and managed according to modern
- 17 farming methods and technology with soil classified by
- 18 the land study bureau's detailed land classification
- 19 as overall (master) productivity rating class A or B,
- 20 including current or former sugarcane or pineapple
- 21 plantation lands;



- 1 (2) With soil classified by the land study bureau's
2 detailed land classification as overall (master)
3 productivity rating class C or D, which are currently
4 in production or which could be put into productive
5 use with the implementation of new agricultural
6 technologies or the development of irrigation water;
7 (3) Which are currently in agricultural production or
8 ranching and classified pursuant to section 205-C;
9 (4) Which contribute to the State's economic base and
10 produce commodities for export and local consumption;
11 and
12 (5) Which are important to agriculture because of a unique
13 quality or use.

14 All lands in agricultural districts shall be designated
15 "important agricultural lands" for the purpose of article XI,
16 section 3, of the state constitution. For the purposes of this
17 chapter, "agricultural lands", "lands in the agricultural
18 district", and similar terms shall have the same meaning as
19 "important agricultural lands".

20 [~~4~~] (e) In the establishment of the boundaries of
21 conservation districts, the commission shall include lands where



1 the greatest possible protection shall be given to valuable
2 natural resources including:

- 3 (1) Watersheds and water sources;
- 4 (2) Indigenous or endemic plants, fish and wildlife
5 including those which are threatened or endangered;
- 6 (3) Park lands, wilderness and beach reserves;
- 7 (4) Shoreline and coastal resources;
- 8 (5) Native forests and other forested areas;
- 9 (6) Wetlands, natural streams, and lakes;
- 10 (7) Scenic, historic, archaeological, and cultural areas;
- 11 (8) Recreational resources and areas highly susceptible to
12 erosion, landslides, flooding, volcanic hazards, and
13 other conditions which may threaten lives or property.

14 [the] The "forest and water reserve zones" provided in Act 234,
15 section 2, Session Laws of Hawaii 1957, are renamed
16 "conservation districts" and, effective as of July 11, 1961, the
17 boundaries of the forest and water reserve zones theretofore
18 established pursuant to Act 234, section 2, Session Laws of
19 Hawaii 1957, shall constitute the boundaries of the conservation
20 districts; provided that thereafter the power to determine the
21 boundaries of the conservation districts shall be in the
22 commission. Areas not suited to agricultural activities by



1 reason of topography or other characteristics may be included in
2 conservation districts.

3 ~~[In establishing the boundaries of the districts in each county,~~
4 ~~the commission shall give consideration to the master plan or~~
5 ~~general plan of the county.~~

6 ~~(b) Urban districts shall include activities or uses as~~
7 ~~provided by ordinances or regulations of the county within which~~
8 ~~the urban district is situated.~~

9 ~~(c) Rural districts shall include activities or uses as~~
10 ~~characterized by low density residential lots of not more than~~
11 ~~one dwelling house per one half acre, except as provided by~~
12 ~~county ordinance pursuant to section 46-4(c), in areas where~~
13 ~~"city-like" concentration of people, structures, streets, and~~
14 ~~urban level of services are absent, and where small farms are~~
15 ~~intermixed with low density residential lots except that within~~
16 ~~a subdivision, as defined in section 484-1, the commission for~~
17 ~~good cause may allow one lot of less than one-half acre, but not~~
18 ~~less than 18,500 square feet, or an equivalent residential~~
19 ~~density, within a rural subdivision and permit the construction~~
20 ~~of one dwelling on such lot, provided that all other dwellings~~
21 ~~in the subdivision shall have a minimum lot size of one-half~~
22 ~~acre or 21,780 square feet. Such petition for variance may be~~



H.B. NO. 2738

1. ~~processed under the special permit procedure. These districts~~
2. ~~may include contiguous areas which are not suited to low density~~
3. ~~residential lots or small farms by reason of topography, soils,~~
4. ~~and other related characteristics. Rural districts shall also~~
5. ~~include golf courses, golf driving ranges, and golf-related~~
6. ~~facilities.~~

7. ~~(d) Agricultural districts shall include:~~

8. ~~(1) Activities or uses as characterized by the cultivation~~
9. ~~of crops, crops for bioenergy, orchards, forage, and~~
10. ~~forestry;~~

11. ~~(2) Farming activities or uses related to animal husbandry~~
12. ~~and game and fish propagation;~~

13. ~~(3) Aquaculture, which means the production of aquatic~~
14. ~~plant and animal life within ponds and other bodies of~~
15. ~~water;~~

16. ~~(4) Wind generated energy production for public, private,~~
17. ~~and commercial use;~~

18. ~~(5) Biofuel production, as described in section 205-~~
19. ~~4.5(a)(15), for public, private, and commercial use;~~

20. ~~(6) Solar energy facilities; provided that this paragraph~~
21. ~~shall apply only to land with soil classified by the~~



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



1 ~~be used as or equipped for use as living quarters or~~
2 ~~dwellings;~~

3 ~~(10) Agricultural parks;~~

4 ~~(11) Agricultural tourism conducted on a working farm, or a~~
5 ~~farming operation as defined in section 165-2, for the~~
6 ~~enjoyment, education, or involvement of visitors;~~

7 ~~provided that the agricultural tourism activity is~~
8 ~~accessory and secondary to the principal agricultural~~
9 ~~use and does not interfere with surrounding farm~~

10 ~~operations; and provided further that this paragraph~~
11 ~~shall apply only to a county that has adopted~~
12 ~~ordinances regulating agricultural tourism under~~

13 ~~section 205-5; and~~

14 ~~(12) Open area recreational facilities.~~

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

17 ~~Agricultural districts include areas that are not used for, or~~
18 ~~that are not suited to, agricultural and ancillary activities by~~
19 ~~reason of topography, soils, and other related characteristics.~~

20 ~~(e) Conservation districts shall include areas necessary~~
21 ~~for protecting watersheds and water sources; preserving scenic~~
22 ~~and historic areas; providing park lands, wilderness, and beach~~



1 ~~reserves; conserving indigenous or endemic plants, fish, and~~
2 ~~wildlife, including those which are threatened or endangered;~~
3 ~~preventing floods and soil erosion; forestry; open space areas~~
4 ~~whose existing openness, natural condition, or present state of~~
5 ~~use, if retained, would enhance the present or potential value~~
6 ~~of abutting or surrounding communities, or would maintain or~~
7 ~~enhance the conservation of natural or scenic resources; areas~~
8 ~~of value for recreational purposes; other related activities;~~
9 ~~and other permitted uses not detrimental to a multiple use~~
10 ~~conservation concept.]"~~

11 SECTION 6. Section 205-3.1, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§205-3.1 Amendments to district boundaries.** [~~(a)~~
14 ~~District boundary amendments involving lands in the conservation~~
15 ~~district, land areas greater than fifteen acres, or lands~~
16 ~~delineated as important agricultural lands shall be processed by~~
17 ~~the land use commission pursuant to section 205-4.]~~

18 [~~(b)~~] (a) Any department or agency of the State, and
19 department or agency of the county in which the land is
20 situated, or any person with a property interest in the land
21 sought to be reclassified may petition the appropriate county
22 land use decision-making authority of the county in which the



1 land is situated for a change in the boundary of a district
2 involving lands [~~less than fifteen acres~~] presently in the rural
3 and urban districts [~~and lands less than fifteen acres in the~~
4 ~~agricultural district that are not designated as important~~
5 ~~agricultural lands~~].

6 ~~[(e)]~~ (b) District boundary amendments involving [~~land~~
7 ~~areas of fifteen acres or less, except as provided in subsection~~
8 ~~(b),~~] rural and urban districts shall be determined by the
9 appropriate county land use decision-making authority for the
10 district and shall not require consideration by the land use
11 commission [~~pursuant to section 205-4~~]; provided that [~~such~~] the
12 boundary amendments and approved uses are consistent with this
13 chapter. The appropriate county land use decision-making
14 authority may consolidate proceedings to amend state land use
15 district boundaries pursuant to this subsection, with county
16 proceedings to amend the general plan, development plan, zoning
17 of the affected land, or [~~such~~] other proceedings. Appropriate
18 ordinances and rules to allow consolidation of [~~such~~]
19 proceedings may be developed by the county land use decision-
20 making authority.

21 ~~[(d)]~~ (c) The county land use decision-making authority
22 shall serve a copy of the application for a district boundary



1 amendment to the land use commission and the [~~department of~~
2 ~~business, economic development, and tourism~~] office of planning,
3 and shall notify the commission and the [~~department~~] office of
4 the time and place of the hearing and the proposed amendments
5 scheduled to be heard at the hearing. A change in the state
6 land use district boundaries pursuant to this subsection shall
7 become effective on the day designated by the county land use
8 decision-making authority in its decision. Within sixty days of
9 the effective date of any decision to amend state land use
10 district boundaries by the county land use decision-making
11 authority, the decision and the description and map of the
12 affected property shall be transmitted to the land use
13 commission and the [~~department of business, economic~~
14 ~~development, and tourism~~] office of planning by the county
15 planning director."

16 SECTION 7. Section 205-4, Hawaii Revised Statutes, is
17 amended to read as follows:

18 1. By amending the title and subsections (a) and (b) to
19 read:

20 "§205-4 Amendments to agricultural and conservation
21 district boundaries [~~involving land areas greater than fifteen~~
22 ~~acres.~~] by the land use commission. (a) Any department or



1 agency of the State, any department or agency of the county in
2 which the land is situated, or any person with a property
3 interest in [~~the~~] agricultural land, which meet the criteria
4 established in section 205-2, or conservation land sought to be
5 reclassified, may petition the land use commission for a change
6 in the boundary of a district. This section applies to all
7 petitions for changes in district boundaries of lands within
8 conservation districts [~~, lands designated or sought to be~~
9 ~~designated as important agricultural lands, and lands greater~~
10 ~~than fifteen acres in the agricultural, rural, and urban~~
11 ~~districts, except as provided in section 201H-38. The land use~~
12 ~~commission shall adopt rules pursuant to chapter 91 to implement~~
13 ~~section 201H-38.] and lands within agricultural districts.~~

14 (b) Upon proper filing of a petition pursuant to
15 subsection (a) or as provided in section 205-A(b), the
16 commission shall, within not less than sixty and not more than
17 one hundred and eighty days, conduct a hearing on the
18 appropriate island in accordance with the provisions of sections
19 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable."

20 2. By amending subsections (e) to (j) to read:



1 "(e) Any other provisions of law to the contrary
2 notwithstanding, agencies and persons may intervene in the
3 proceedings in accordance with this subsection.

4 (1) The petitioner, the office of planning, and the county
5 planning department shall in every case appear as
6 parties and make recommendations relative to the
7 proposed boundary change.

8 (2) All departments and agencies of the State and of the
9 county in which the land is situated shall be admitted
10 as parties upon timely application for intervention.

11 (3) All persons who have some property interest in the
12 land, who lawfully reside on the land, or who
13 otherwise can demonstrate that they will be so
14 directly and immediately affected by the proposed
15 change that their interest in the proceeding is
16 clearly distinguishable from that of the general
17 public shall be admitted as parties upon timely
18 application for intervention.

19 (4) All other persons may apply to the commission for
20 leave to intervene as parties. Leave to intervene
21 shall be freely granted, provided that the commission
22 or its hearing officer if one is appointed may deny an



1 application to intervene when in the commission's or
2 hearing officer's sound discretion it appears that:

3 (A) the position of the applicant for intervention
4 concerning the proposed change is substantially the
5 same as the position of a party already admitted to
6 the proceeding; and (B) the admission of additional
7 parties will render the proceedings inefficient and
8 unmanageable. A person whose application to intervene
9 is denied may appeal [~~such~~] the denial to the circuit
10 court pursuant to section 91-14.

11 (5) The commission shall pursuant to chapter 91 adopt
12 rules governing the intervention of agencies and
13 persons under this subsection. [~~Such~~] The rules shall
14 without limitation establish: (A) the information to
15 be set forth in any application for intervention; (B)
16 time limits within which [~~such~~] the applications shall
17 be filed; and (C) reasonable filing fees to accompany
18 [~~such~~] the applications.

19 (f) Together with other witnesses that the commission may
20 desire to hear at the hearing, it shall allow a representative
21 of a citizen or a community group to testify who indicates a



1 desire to express the view of [~~such~~] a citizen or community
2 group concerning the proposed boundary change.

3 (g) Within a period of not more than three hundred sixty-
4 five days after the proper filing of a petition, unless
5 otherwise ordered by a court, or unless a time extension, which
6 shall not exceed ninety days, is established by a two-thirds
7 vote of the members of the commission, the commission, by filing
8 findings of fact and conclusions of law, shall act to approve
9 the petition, deny the petition, or to modify the petition by
10 imposing conditions necessary to uphold the intent and spirit of
11 this chapter or the policies and criteria established pursuant
12 to section 205-17 or to assure substantial compliance with
13 representations made by the petitioner in seeking a boundary
14 change. The commission may provide by condition that absent
15 substantial commencement of use of the land in accordance with
16 [~~such~~] representations, the commission shall issue and serve
17 upon the party bound by the condition an order to show cause why
18 the property should not revert to its former land use
19 classification or be changed to a more appropriate
20 classification. [~~Such~~] The conditions, if any, shall run with
21 the land and be recorded in the bureau of conveyances.



1 (h) No amendment of a land use district boundary shall be
2 approved unless the commission finds upon the clear
3 preponderance of the evidence that the proposed boundary is
4 reasonable, not violative of section 205-2 and [~~part III of this~~
5 ~~chapter,~~] section 205-C, and consistent with the policies and
6 criteria established pursuant to sections 205-16 and 205-17.
7 Six affirmative votes of the commission shall be necessary for
8 any boundary amendment under this section.

9 (i) Parties to proceedings to amend land use district
10 boundaries may obtain judicial review thereof in the manner set
11 forth in section 91-14, provided that the court may also reverse
12 or modify a finding of the commission if [~~sueh~~] the finding
13 appears to be contrary to the clear preponderance of the
14 evidence.

15 (j) At the hearing, all parties may enter into appropriate
16 stipulations as to findings of fact, conclusions of law, and
17 conditions of reclassification concerning the proposed boundary
18 change. The commission may but shall not be required to approve
19 [~~sueh~~] the stipulations based on the evidence adduced."

20 SECTION 8. Section 205-4.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§205-4.5 Permissible uses within the agricultural
2 districts. (a) Within the agricultural district, all lands
3 [~~with soil classified by the land study bureau's detailed land~~
4 ~~classification as overall (master) productivity rating class A~~
5 ~~or B]~~ shall be restricted to the following permitted uses:

6 (1) Cultivation of crops, including crops for bioenergy,
7 flowers, vegetables, foliage, fruits, forage, and
8 timber;

9 (2) Game and fish propagation;

10 (3) Raising of livestock, including poultry, bees, fish,
11 or other animal or aquatic life that are propagated
12 for economic or personal use;

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



1 165-2, that are necessary to the production and
2 distribution of agricultural and aquaculture
3 commodities. For the purposes of this paragraph "farm
4 dwelling" means a single family dwelling used by the
5 owner or operator of the working farm or farming
6 operation.

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

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

14 ~~(7)]~~ (6) Public, private, and quasi-public utility lines
15 and roadways, transformer stations, communications
16 equipment buildings, solid waste transfer stations,
17 major water storage tanks, and appurtenant small
18 buildings such as booster pumping stations, but not
19 including offices or yards for equipment, material,
20 vehicle storage, repair or maintenance, treatment
21 plants, corporation yards, or other similar
22 structures;



H.B. NO. 2738

- 1 ~~[(8)]~~ (7) Retention, restoration, rehabilitation, or
- 2 improvement of buildings existing on January 1, 2009,
- 3 or sites of historic or scenic interest;
- 4 ~~[(9)]~~ (8) Roadside stands for the sale of agricultural
- 5 products grown on the premises;
- 6 ~~[(10)]~~ (9) Buildings and uses, including mills, storage, and
- 7 processing facilities, maintenance facilities, and
- 8 vehicle and equipment storage areas that are normally
- 9 considered directly accessory to the above-mentioned
- 10 uses and are permitted under section 205-2(d);
- 11 ~~[(11)]~~ (10) Agricultural parks;
- 12 ~~[(12)]~~ ~~Plantation community subdivisions, which as used in~~
- 13 ~~this chapter means an established subdivision or~~
- 14 ~~cluster of employee housing, community buildings, and~~
- 15 ~~agricultural support buildings on land currently or~~
- 16 ~~formerly owned, leased, or operated by a sugar or~~
- 17 ~~pineapple plantation; provided that the existing~~
- 18 ~~structures may be used or rehabilitated for use, and~~
- 19 ~~new employee housing and agricultural support~~
- 20 ~~buildings may be allowed on land within the~~
- 21 ~~subdivision as follows:~~



- 1 ~~(A) The employee housing is occupied by employees or~~
- 2 ~~former employees of the plantation who have a~~
- 3 ~~property interest in the land;~~
- 4 ~~(B) The employee housing units not owned by their~~
- 5 ~~occupants shall be rented or leased at affordable~~
- 6 ~~rates for agricultural workers; or~~
- 7 ~~(C) The agricultural support buildings shall be~~
- 8 ~~rented or leased to agricultural business~~
- 9 ~~operators or agricultural support services;]~~
- 10 ~~(13)~~ (11) Agricultural tourism conducted on a working farm,
- 11 or a farming operation as defined in section 165-2,
- 12 for the enjoyment, education, or involvement of
- 13 visitors; provided that the agricultural tourism
- 14 activity is accessory and secondary to the principal
- 15 agricultural use and does not interfere with
- 16 surrounding farm operations; and provided further that
- 17 this paragraph shall apply only to a county that has
- 18 adopted ordinances regulating agricultural tourism
- 19 under section 205-5;
- 20 ~~(14)~~ (12) Wind energy facilities, including the
- 21 appurtenances associated with the production and
- 22 transmission of wind generated energy; provided that



1 the wind energy facilities and appurtenances are
2 compatible with agriculture uses and cause minimal
3 adverse impact on agricultural land;

4 [~~(15)~~] (13) Biofuel processing facilities~~(7)~~ for public,
5 private, and commercial use, including the
6 appurtenances associated with the production and
7 refining of biofuels that is normally considered
8 directly accessory and secondary to the growing of the
9 energy feedstock; provided that biofuels processing
10 facilities and appurtenances do not adversely impact
11 agricultural land and other agricultural uses in the
12 vicinity.

13 For the purposes of this paragraph:

14 "Appurtenances" means operational infrastructure
15 of the appropriate type and scale for economic
16 commercial storage and distribution, and other similar
17 handling of feedstock, fuels, and other products of
18 biofuels processing facilities.

19 "Biofuel processing facility" means a facility
20 that produces liquid or gaseous fuels from organic
21 sources such as biomass crops, agricultural residues,
22 and oil crops, including palm, canola, soybean, and



H.B. NO. 2738

1 waste cooking oils; grease; food wastes; and animal
2 residues and wastes that can be used to generate
3 energy;

4 [~~(16)~~] (14) Agricultural-energy facilities, including
5 appurtenances necessary for an agricultural-energy
6 enterprise; provided that the primary activity of the
7 agricultural-energy enterprise is agricultural
8 activity. To be considered the primary activity of an
9 agricultural-energy enterprise, the total acreage
10 devoted to agricultural activity shall be not less
11 than ninety per cent of the total acreage of the
12 agricultural-energy enterprise. The agricultural-
13 energy facility shall be limited to lands owned,
14 leased, licensed, or operated by the entity conducting
15 the agricultural activity.

16 As used in this paragraph:

17 "Agricultural activity" means any activity
18 described in paragraphs (1) to (3) of this subsection.

19 "Agricultural-energy enterprise" means an
20 enterprise that integrally incorporates an
21 agricultural activity with an agricultural-energy
22 facility.



1 "Agricultural-energy facility" means a facility
2 that generates, stores, or distributes renewable
3 energy as defined in section 269-91 or renewable fuel
4 including electrical or thermal energy or liquid or
5 gaseous fuels from products of agricultural activities
6 from agricultural lands located in the State.

7 "Appurtenances" means operational infrastructure
8 of the appropriate type and scale for the economic
9 commercial generation, storage, distribution, and
10 other similar handling of energy, including equipment,
11 feedstock, fuels, and other products of agricultural-
12 energy facilities;

13 [~~(17)~~] (15) Construction and operation of wireless
14 communication antennas; provided that, for the
15 purposes of this paragraph, "wireless communication
16 antenna" means communications equipment that is either
17 freestanding or placed upon or attached to an already
18 existing 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



H.B. NO. 2738

1 structure that is not deemed a permitted use under
2 this subsection; ~~[or]~~
3 ~~[(18)]~~ (16) Agricultural education programs conducted on a
4 farming operation as defined in section 165-2, for the
5 education and participation of the general public;
6 provided that the agricultural education programs are
7 accessory and secondary to the principal agricultural
8 use of the parcels or lots on which the agricultural
9 education programs are to occur and do not interfere
10 with surrounding farm operations. For the purposes of
11 this section, "agricultural education programs" means
12 activities or events designed to promote knowledge and
13 understanding of agricultural activities and practices
14 conducted on a farming operation as defined in section
15 165-2~~[-]~~; or
16 (17) Solar energy facilities; provided that this paragraph
17 shall apply only to land with soil classified by the
18 land study bureau's detailed land classification as
19 overall (master) productivity rating B, C, or D that
20 is not irrigated; provided further that the solar
21 energy facility shall be the primary power source for
22 farming operation as defined in section 165-2 in the



1 vicinity of the land on which the solar energy
2 facility is situated.

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



H.B. NO. 2738

1 ~~D, E, or U shall be restricted to the uses permitted for~~
2 ~~agricultural districts as set forth in section 205-5(b).~~

3 ~~(d) Notwithstanding any other provision of this chapter to~~
4 ~~the contrary, golf courses and golf driving ranges approved by a~~
5 ~~county before July 1, 2005, for development within the~~
6 ~~agricultural district shall be permitted uses within the~~
7 ~~agricultural district.~~

8 ~~(e) Notwithstanding any other provision of this chapter to~~
9 ~~the contrary, plantation community subdivisions as defined in~~
10 ~~this section shall be permitted uses within the agricultural~~
11 ~~district, and section 205-8 shall not apply.]~~

12 ~~[~~(f)~~]~~ (c) Notwithstanding any other law to the contrary,
13 agricultural lands may be subdivided and leased for the
14 agricultural uses or activities permitted in subsection (a);
15 provided that:

- 16 (1) The principal use of the leased land is agriculture;
- 17 (2) No permanent or temporary dwellings or farm dwellings,
18 including trailers and campers, are constructed on the
19 leased area. This restriction shall not prohibit the
20 construction of storage sheds, equipment sheds, or
21 other structures appropriate to the agricultural
22 activity carried on within the lot; and



1 (3) The lease term for a subdivided lot shall be for at
2 least as long as the greater of:

3 (A) The minimum real property tax agricultural
4 dedication period of the county in which the
5 subdivided lot is located; or

6 (B) Five years.

7 Lots created and leased pursuant to this section shall be legal
8 lots of record for mortgage lending purposes and shall be exempt
9 from county subdivision standards."

10 SECTION 9. Section 205-4.6, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§205-4.6 Private restrictions on agricultural uses and**
13 **activities; not allowed.** Agricultural uses and activities as
14 defined in [~~sections 205-2(d) and~~] section 205-4.5(a) on lands
15 classified as agricultural shall not be restricted by any
16 private agreement contained in any deed, agreement of sale, or
17 other conveyance of land recorded in the bureau of conveyances
18 after July 8, 2003, that subject [~~such~~] the agricultural lands
19 to any servitude, including but not limited to covenants,
20 easements, or equitable and reciprocal negative servitudes. Any
21 [~~such~~] private restriction limiting or prohibiting agricultural
22 use or activity shall be voidable, subject to special



1 restrictions enacted by the county ordinance pursuant to section
2 46-4; except that restrictions taken to protect environmental or
3 cultural resources, agricultural leases, utility easements, and
4 access easements shall not be subject to this section.

5 For purposes of this section, "agricultural leases" means
6 leases where the leased land is primarily utilized for purposes
7 set forth in section 205-4.5(a)."

8 SECTION 10. Section 205-5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§205-5 Zoning. (a) Except as [~~herein~~] provided[~~7~~] in
11 this chapter, the powers granted to counties under section 46-4
12 shall govern the zoning within the urban, rural, and
13 agricultural districts [~~7, other than in conservation districts~~].
14 Conservation districts shall be governed by the department of
15 land and natural resources pursuant to chapter 183C.

16 (b) Within agricultural districts, uses compatible [~~to~~]
17 with the activities described in section [205-2] 205-4.5 as
18 determined by the commission shall be permitted; provided that
19 accessory agricultural uses and services described in [~~sections~~
20 ~~205-2 and~~] section 205-4.5 may be further defined by each county
21 by zoning ordinance. Each county shall adopt ordinances setting
22 forth procedures and requirements, including provisions for



1 enforcement, penalties, and administrative oversight, for the
2 review and permitting of agricultural tourism uses and
3 activities as an accessory use on a working farm, or farming
4 operation as defined in section 165-2; provided that
5 agricultural tourism activities shall not be permissible in the
6 absence of a bona fide farming operation. Ordinances shall
7 include but not be limited to:

- 8 (1) Requirements for access to a farm, including road
9 width, road surface, and parking;
- 10 (2) Requirements and restrictions for accessory facilities
11 connected with the farming operation, including gift
12 shops and restaurants; provided that overnight
13 accommodations shall not be permitted;
- 14 (3) Activities that may be offered by the farming
15 operation for visitors;
- 16 (4) Days and hours of operation; and
- 17 (5) Automatic termination of the accessory use upon the
18 cessation of the farming operation.

19 Each county may require an environmental assessment under
20 chapter 343 as a condition to any agricultural tourism use and
21 activity. ~~[Other uses may be allowed by special permits issued
22 pursuant to this chapter. The minimum lot size in agricultural~~



1 ~~districts shall be determined by each county by zoning~~
2 ~~ordinance, subdivision ordinance, or other lawful means;~~
3 ~~provided that the minimum lot size for any agricultural use~~
4 ~~shall not be less than one acre, except as provided herein. If~~
5 ~~the county finds that unreasonable economic hardship to the~~
6 ~~owner or lessee of land cannot otherwise be prevented or where~~
7 ~~land utilization is improved, the county may allow lot sizes of~~
8 ~~less than the minimum lot size as specified by law for lots~~
9 ~~created by a consolidation of existing lots within an~~
10 ~~agricultural district and the resubdivision thereof; provided~~
11 ~~that the consolidation and resubdivision do not result in an~~
12 ~~increase in the number of lots over the number existing prior to~~
13 ~~consolidation; and provided further that in no event shall a lot~~
14 ~~which is equal to or exceeds the minimum lot size of one acre be~~
15 ~~less than that minimum after the consolidation and resubdivision~~
16 ~~action. The county may also allow lot sizes of less than the~~
17 ~~minimum lot size as specified by law for lots created or used~~
18 ~~for plantation community subdivisions as defined in section 205-~~
19 ~~4.5(a)(12), for public, private, and quasi-public utility~~
20 ~~purposes, and for lots resulting from the subdivision of~~
21 ~~abandoned roadways and railroad easements.~~



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

- 4 ~~(1) Low density residential uses;~~
- 5 ~~(2) Agricultural uses;~~
- 6 ~~(3) Golf courses, golf driving ranges, and golf-related~~
7 ~~facilities; and~~
- 8 ~~(4) Public, quasi-public, and public utility facilities.~~

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

13 SECTION 11. Section 205-5.1, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending subsection (a) to read:

16 "(a) Geothermal resource subzones may be designated within
17 the [~~urban,~~] rural[~~, agricultural,~~] and conservation land use
18 districts established under section 205-2. Only those areas
19 designated as geothermal resource subzones may be utilized for
20 geothermal development activities in addition to those uses
21 permitted in each land use district under this chapter.

22 Geothermal development activities may be permitted within



1 [urban~~7~~] rural[~~7~~agricultural~~7~~] and conservation land use
2 districts in accordance with this chapter. "Geothermal
3 development activities" means the exploration, development, or
4 production of electrical energy from geothermal resources and
5 direct use applications of geothermal resources; provided that
6 within the urban, rural, and agricultural land use districts,
7 direct use applications of geothermal resources are permitted
8 both within and outside of areas designated as geothermal
9 resource subzones pursuant to section 205-5.2 if such direct use
10 applications are in conformance with all other applicable state
11 and county land use regulations and are in conformance with this
12 chapter."

13 2. By amending subsection (c) to read: .

14 "(c) The use of an area for geothermal development
15 activities within a geothermal resource subzone shall be
16 governed by the board within the conservation district and,
17 except as herein provided, by state and county statutes,
18 ordinances, and rules not inconsistent herewith within
19 [~~agricultural7~~] a rural[~~7~~and urban districts~~7~~] district, except
20 that no land use commission approval or special use permit
21 procedures under section 205-6 shall be required for the use of
22 such subzones. In the absence of provisions in the county



1 general plan and zoning ordinances specifically relating to the
2 use and location of geothermal development activities in [an
3 ~~agricultural,~~] a rural [~~, or urban~~] district, the appropriate
4 county authority may issue a geothermal resource permit to allow
5 geothermal development activities. "Appropriate county
6 authority" means the county planning commission unless some
7 other agency or body is designated by ordinance of the county
8 council. Such uses as are permitted by county general plan and
9 zoning ordinances, by the appropriate county authority, shall be
10 deemed to be reasonable and to promote the effectiveness and
11 objectives of this chapter. Chapters 177, 178, 182, 183, 183C,
12 205A, 226, 342, and 343 shall apply as appropriate. If
13 provisions in the county general plan and zoning ordinances
14 specifically relate to the use and location of geothermal
15 development activities in [~~an agricultural,~~] a rural [~~, or urban~~]
16 district, the provisions shall require the appropriate county
17 authority to conduct a public hearing on any application for a
18 geothermal resource permit to determine whether the use is in
19 conformity with the criteria specified in subsection (e) for
20 granting geothermal resource permits; provided that within the
21 [~~urban,~~] rural [~~, and agricultural land use districts,~~] district,
22 direct use applications of geothermal resources are permitted



1 without any application for a geothermal resource permit both
2 within and outside of areas designated as geothermal resource
3 subzones pursuant to section 205-5.2 if such direct use
4 applications are in conformance with all other applicable state
5 and county land use regulations and are in conformance with this
6 chapter."

7 3. By amending subsection (e) to read:

8 "(e) If geothermal development activities are proposed
9 within [~~agricultural,~~] a rural [~~, or urban districts~~] district
10 and [~~such~~] the proposed activities are not permitted uses
11 pursuant to county general plan and zoning ordinances, then
12 after receipt of a properly filed and completed application,
13 including all required supporting data, the appropriate county
14 authority shall conduct a public hearing. Upon appropriate
15 request for mediation from any party who submitted comment at
16 the public hearing, the county authority shall appoint a
17 mediator within five days. The county authority shall require
18 the parties to participate in mediation. The mediator shall not
19 be an employee of any county agency or its staff. The mediation
20 period shall not extend beyond thirty days after mediation
21 started, except by order of the county authority. Mediation
22 shall be confined to the issues raised at the public hearing by



1 the party requesting mediation. The mediator will submit a
2 written recommendation to the county authority, based upon any
3 mediation agreement reached between the parties for
4 consideration by the county authority in its final decision. If
5 there is no mediation agreement, the county authority may have a
6 second public hearing to receive additional comment related to
7 the mediation issues. Within ten days after the second public
8 hearing, the county authority may receive additional written
9 comment on the issues raised at the second public hearing from
10 any party.

11 The county authority shall consider the comments raised at
12 the second hearing before rendering its final decision. The
13 county authority shall then determine whether a geothermal
14 resource permit shall be granted to authorize the geothermal
15 development activities described in the application. The
16 appropriate county authority shall grant a geothermal resource
17 permit if it finds that applicant has demonstrated that:

18 (1) The desired uses would not have unreasonable adverse
19 health, environmental, or socio-economic effects on
20 residents or surrounding property;

21 (2) The desired uses would not unreasonably burden public
22 agencies to provide roads and streets, sewers, water,



1 drainage, school improvements, and police and fire
2 protection; and

3 (3) That there are reasonable measures available to
4 mitigate the unreasonable adverse effects or burdens
5 referred to above.

6 Unless there is a mutual agreement to extend, a decision
7 shall be made on the application by the appropriate county
8 authority within six months of the date a complete application
9 was filed; provided that the time limit may be extended by
10 agreement between the applicant and the appropriate county
11 authority."

12 SECTION 12. Section 205-8, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§205-8 Nonconforming uses[-]; structures or lot sizes in
15 the rural and agricultural districts. (a) The lawful use of
16 land or buildings existing on the date of establishment of any
17 interim agricultural district and rural district in final form
18 may be continued although the use, including lot size, does not
19 conform to this chapter; provided that no nonconforming building
20 shall be replaced, reconstructed, or enlarged or changed to
21 another nonconforming use and no nonconforming use of land shall
22 be expanded or changed to another nonconforming use. In



H.B. NO. 2138

1 addition, if any nonconforming use of land or building is
2 discontinued or held in abeyance for a period of one year, the
3 further continuation of such use shall be prohibited.

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

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

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

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

19 (3) If two or more contiguous lots are under the same
20 ownership, the lots shall be subject to the minimum
21 lot size or maximum density standards of this chapter,
22 and any nonconforming lot shall not be considered as a



1 separate parcel of land for the purposes of sale or
2 development and shall be combined to create one or
3 more conforming lots."

4 SECTION 13. Section 205-17, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§205-17 Land use commission decision-making criteria.** In
7 its review of any petition for reclassification of district
8 boundaries pursuant to this chapter, the commission shall
9 specifically consider the following:

10 (1) The extent to which the proposed reclassification
11 conforms to the applicable goals, objectives, and
12 policies of the Hawaii state plan and relates to the
13 applicable priority guidelines of the Hawaii state
14 plan and the adopted functional plans;

15 (2) The extent to which the proposed reclassification
16 conforms to the applicable district standards;

17 (3) The impact of the proposed reclassification on the
18 following areas of state concern:

19 (A) Preservation or maintenance of important natural
20 systems or habitats;

21 (B) Maintenance of valued cultural, historical, or
22 natural resources;



1 (C) Maintenance of other natural resources relevant
2 to Hawaii's economy, including agricultural
3 resources;

4 (D) Commitment of state funds and resources;

5 (E) Provision for employment opportunities and
6 economic development; and

7 (F) Provision for housing opportunities for all
8 income groups, particularly the low, low-
9 moderate, and gap groups;

10 (4) . The standards and criteria for the reclassification or
11 rezoning of [~~important~~] agricultural lands in section
12 [~~205-50;~~] 205-D;

13 (5) The county general plan and all community,
14 development, or community development plans adopted
15 pursuant to the county general plan, as they relate to
16 the land that is the subject of the reclassification
17 petition; and

18 (6) The representations and commitments made by the
19 petitioner in securing a boundary change."

20 SECTION 14. Section 205-18, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§205-18 **Periodic review of districts.** The office of
2 planning shall undertake a review of the classification and
3 districting of all lands in the State, within five years from
4 December 31, 1985, and every fifth year thereafter. The office,
5 in its five-year boundary review, shall focus its efforts on
6 reviewing the Hawaii state plan, county general plans, and
7 county development and community plans. Upon completion of the
8 five-year boundary review, the office shall submit a report of
9 the findings to the commission. The office may initiate state
10 land use boundary amendments pursuant to section 205-A, which it
11 deems appropriate to conform to these plans. The office may
12 seek assistance of appropriate state and county agencies and may
13 employ consultants and undertake studies in making this review."

14 SECTION 15. Section 226-7, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) To achieve the agriculture objectives, it shall be
17 the policy of this State to:

- 18 (1) Establish a clear direction for Hawaii's agriculture
19 through stakeholder commitment and advocacy[-];
- 20 (2) Encourage agriculture by making best use of natural
21 resources[-], promoting the retention of agricultural
22 lands in blocks of contiguous, intact, and functional



1 land units large enough to allow flexibility in
2 agricultural production and management, and limiting
3 physical improvements on agricultural lands to the
4 basic level of infrastructure to maintain
5 affordability of those lands for agricultural
6 purposes;

7 (3) Provide the governor and the legislature with
8 information and options needed for prudent decision
9 making for the development of agriculture[-];

10 (4) Establish strong relationships between the
11 agricultural and visitor industries for mutual
12 marketing benefits[-];

13 (5) Foster increased public awareness and understanding of
14 the contributions and benefits of agriculture as a
15 major sector of Hawaii's economy[-];

16 (6) Seek the enactment and retention of federal and state
17 legislation that benefits Hawaii's agricultural
18 industries[-];

19 (7) Strengthen diversified agriculture by developing an
20 effective promotion, marketing, and distribution
21 system between Hawaii's producers and consumer markets



- 1 locally, on the continental United States, and
2 internationally[-];
- 3 (8) Support research and development activities that
4 strengthen economic productivity in agriculture,
5 stimulate greater efficiency, and enhance the
6 development of new products and agricultural by-
7 products[-];
- 8 (9) Enhance agricultural growth and long-term dedication
9 of agricultural lands by providing public incentives
10 and encouraging private initiatives[-];
- 11 (10) Assure the availability of agriculturally suitable
12 lands with adequate water to accommodate present and
13 future needs[-] by promoting the maintenance of
14 irrigation systems and other essential agricultural
15 infrastructure systems;
- 16 (11) Discourage the fragmentation of agricultural lands and
17 the conversion of those lands to nonagricultural use;
- 18 ~~(11)~~ (12) Increase the attractiveness and opportunities for
19 an agricultural education and livelihood[-];
- 20 ~~(12)~~ (13) Expand Hawaii's agricultural base by promoting
21 growth and development of flowers, tropical fruits and



H.B. NO. 2738

- 1 plants, livestock, feed grains, forestry, food crops,
- 2 aquaculture, and other potential enterprises[-];
- 3 [~~(13)~~] (14) Promote economically competitive activities that
- 4 increase Hawaii's agricultural self-sufficiency[-];
- 5 [~~(14)~~] (15) Promote and assist in the establishment of sound
- 6 financial programs for diversified agriculture[-];
- 7 [~~(15)~~] (16) Institute and support programs and activities to
- 8 assist the entry of displaced agricultural workers
- 9 into alternative agricultural or other employment[-];
- 10 and
- 11 [~~(16)~~] (17) Facilitate the transition of agricultural lands
- 12 in economically nonfeasible agricultural production to
- 13 economically viable agricultural uses."

14 SECTION 16. Section 226-103, Hawaii Revised Statutes, is
 15 amended by amending subsection (d) to read as follows:

16 "(d) Priority guidelines to promote the growth and
 17 development of diversified agriculture and aquaculture:

- 18 (1) Identify, conserve, and protect agricultural and
- 19 aquacultural lands of importance and initiate
- 20 affirmative and comprehensive programs to promote
- 21 economically productive agricultural and aquacultural
- 22 uses of such lands[-];



H.B. NO. 2738

- 1 (2) Assist in providing adequate, reasonably priced water
2 for agricultural activities[-];
- 3 (3) Encourage public and private investment to increase
4 water supply and to improve transmission, storage, and
5 irrigation facilities in support of diversified
6 agriculture and aquaculture[-];
- 7 (4) Assist in the formation and operation of production
8 and marketing associations and cooperatives to reduce
9 production and marketing costs[-];
- 10 (5) Encourage and assist with the development of a
11 waterborne and airborne freight and cargo system
12 capable of meeting the needs of Hawaii's agricultural
13 community[-];
- 14 (6) Seek favorable freight rates for Hawaii's agricultural
15 products from interisland and overseas transportation
16 operators[-];
- 17 (7) Encourage the development and expansion of
18 agricultural and aquacultural activities which offer
19 long-term economic growth potential and employment
20 opportunities[-];



- 1 (8) Continue the development of agricultural parks and
2 other programs to assist small independent farmers in
3 securing agricultural lands and loans[-];
- 4 (9) Require agricultural uses in agricultural subdivisions
5 and closely monitor the uses in these subdivisions[-];
- 6 (10) Support the continuation of land currently in use for
7 diversified agriculture[-]; and
- 8 (11) Direct nonagricultural uses and activities from
9 agricultural lands to other areas and ensure that uses
10 on agricultural lands are actually agricultural uses."

11 SECTION 17. Section 205-6, Hawaii Revised Statutes, is
12 repealed.

13 ~~["§205-6 Special permit. (a) Subject to this section,~~
14 ~~the county planning commission may permit certain unusual and~~
15 ~~reasonable uses within agricultural and rural districts other~~
16 ~~than those for which the district is classified. Any person who~~
17 ~~desires to use the person's land within an agricultural or rural~~
18 ~~district other than for an agricultural or rural use, as the~~
19 ~~case may be, may petition the planning commission of the county~~
20 ~~within which the person's land is located for permission to use~~
21 ~~the person's land in the manner desired. Each county may~~
22 ~~establish the appropriate fee for processing the special permit~~



1 ~~petition. Copies of the special permit petition shall be~~
2 ~~forwarded to the land use commission, the office of planning,~~
3 ~~and the department of agriculture for their review and comment.~~

4 ~~(b) The planning commission, upon consultation with the~~
5 ~~central coordinating agency, except in counties where the~~
6 ~~planning commission is advisory only in which case the central~~
7 ~~coordinating agency, shall establish by rule or regulation, the~~
8 ~~time within which the hearing and action on petition for special~~
9 ~~permit shall occur. The county planning commission shall notify~~
10 ~~the land use commission and such persons and agencies that may~~
11 ~~have an interest in the subject matter of the time and place of~~
12 ~~the hearing.~~

13 ~~(c) The county planning commission may, under such~~
14 ~~protective restrictions as may be deemed necessary, permit the~~
15 ~~desired use, but only when the use would promote the~~
16 ~~effectiveness and objectives of this chapter; provided that a~~
17 ~~use proposed for designated important agricultural lands shall~~
18 ~~not conflict with any part of this chapter. A decision in favor~~
19 ~~of the applicant shall require a majority vote of the total~~
20 ~~membership of the county planning commission.~~

21 ~~(d) Special permits for land the area of which is greater~~
22 ~~than fifteen acres or for lands designated as important~~



1 ~~agricultural lands shall be subject to approval by the land use~~
2 ~~commission. The land use commission may impose additional~~
3 ~~restrictions as may be necessary or appropriate in granting the~~
4 ~~approval, including the adherence to representations made by the~~
5 ~~applicant.~~

6 ~~(e) A copy of the decision, together with the complete~~
7 ~~record of the proceeding before the county planning commission~~
8 ~~on all special permit requests involving a land area greater~~
9 ~~than fifteen acres or for lands designated as important~~
10 ~~agricultural lands, shall be transmitted to the land use~~
11 ~~commission within sixty days after the decision is rendered.~~

12 ~~Within forty-five days after receipt of the complete record~~
13 ~~from the county planning commission, the land use commission~~
14 ~~shall act to approve, approve with modification, or deny the~~
15 ~~petition. A denial either by the county planning commission or~~
16 ~~by the land use commission, or a modification by the land use~~
17 ~~commission, as the case may be, of the desired use shall be~~
18 ~~appealable to the circuit court of the circuit in which the land~~
19 ~~is situated and shall be made pursuant to the Hawaii rules of~~
20 ~~civil procedure.~~

21 ~~(f) Land uses substantially involving or supporting~~
22 ~~educational ecotourism, related to the preservation of native~~



1 ~~Hawaiian endangered, threatened, proposed, and candidate~~
2 ~~species, that are allowed in an approved habitat conservation~~
3 ~~plan under section 195D-21 or safe harbor agreement under~~
4 ~~section 195D-22, which are not identified as permissible uses~~
5 ~~within the agricultural district under sections 205-2 and 205-~~
6 ~~4.5, may be permitted in the agricultural district by special~~
7 ~~permit under this section, on lands with soils classified by the~~
8 ~~land study bureau's detailed land classification as overall~~
9 ~~(master) productivity rating class C, D, E, or U."]~~

10 SECTION 18. Section 205-14, Hawaii Revised Statutes, is
11 repealed.

12 [~~"§205-14 Adjustments of assessing practices. Upon the~~
13 ~~adoption of district boundaries, certified copies of the~~
14 ~~classification maps showing the district boundaries shall be~~
15 ~~filed with the department of taxation. Thereafter, the~~
16 ~~department of taxation shall, when making assessments of~~
17 ~~property within a district, give consideration to the use or~~
18 ~~uses that may be made thereof as well as the uses to which it is~~
19 ~~then devoted."]~~

20 SECTION 19. Chapter 205, part III, Hawaii Revised
21 Statutes, is repealed.



1 SECTION 20. The land use commission, with the counties and
2 office of planning, shall reclassify agricultural and rural
3 lands pursuant to section 205-A, Hawaii Revised Statutes, using
4 the criteria in section 205-2, by December 31, 2012.

5 The commission shall submit a preliminary report on the
6 progress of the reclassification to the legislature not later
7 than twenty days prior to the convening of the 2011 regular
8 session, and a final report no later than twenty days prior to
9 the convening of the 2013 regular session.

10 SECTION 21. This Act shall not invalidate county zoning in
11 effect on the effective date of this Act, and all county
12 ordinances and rules applicable to the underlying county zoning
13 shall remain in full force and effect. The lawful use of land
14 or buildings and legal lots of record existing in the rural or
15 agricultural districts on the effective date of this Act may be
16 continued.

17 SECTION 22. This Act does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun before its effective date.

20 SECTION 23. In codifying the new sections added by section
21 3 of this Act, the revisor of statutes shall substitute the



H.B. NO. 2738

1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 24. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 25. This Act shall take effect upon its approval.

6

INTRODUCED BY:

Calvin K. H. Boy
K. H.

JAN 26 2010



Report Title:

Land Use

Description:

Amends provisions of the land use law by authorizing the counties to regulate uses on urban and rural lands; provides for voluntary agricultural classification by a landowner; authorizes the counties and the office of planning to petition the land use commission for district boundary amendments; provides reclassification criteria for the land use commission; limits the uses in the agricultural district; and eliminates the use of special permits for nonagricultural uses in the agricultural or rural districts and the provisions relating to the identification of important agricultural lands.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

