

JAN 23 2009

A BILL FOR AN ACT

RELATING TO LAND USE.

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

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

4 "§205- Satisfaction of state or county affordable
5 housing requirements in the rural district. (a) A farmer or
6 landowner subject to subsection (b) may fulfill a state or
7 county affordable housing requirement in the urban district by
8 providing affordable housing in the rural district in accordance
9 with section 205-2(c)(7).

10 (b) This section shall apply only to a farmer or landowner
11 who has been granted a declaratory order from the commission to
12 designate all or a portion of the landowner's land as important
13 agricultural land pursuant to section 205-45."

14 SECTION 2. Section 205-2, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending its title and subsection (a) to read:



1 "§205-2 Districting and classification of lands~~[-]~~;
2 criteria. (a) There shall be four major land use districts in
3 which all lands in the State shall be placed: urban, rural,
4 agricultural, and conservation. The land use commission shall
5 group contiguous land areas suitable for inclusion in one of
6 these four major districts~~[-. The commission shall set standards~~
7 ~~for determining the boundaries of each district, provided that]~~:

8 (1) In the establishment of boundaries of urban districts
9 [these], the commission shall include:

10 (A) Those lands that are now in urban use; and [a]

11 (B) A sufficient reserve area for foreseeable urban
12 growth [shall be included];

13 (2) In the establishment of boundaries for rural
14 districts[, areas], the commission shall include:

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



- 1 (B) Low-density residential lots and residential
2 subdivisions on agricultural lands existing
3 before January 1, 2009;
- 4 (C) Areas to preserve and maintain natural landscapes
5 and vistas, open space, and the rural character
6 of the area;
- 7 (D) Clusters of settlements of historic plantation
8 camp and communities that do not function as a
9 suburb of a major urban enter; and
- 10 (E) Areas not suited to agricultural and ancillary
11 activities by reason of topography and other
12 related characteristics;
- 13 (3) In the establishment of the boundaries of agricultural
14 districts the greatest possible protection shall be
15 given to those lands with a high capacity for
16 intensive cultivation; and
- 17 (4) In the establishment of the boundaries of conservation
18 districts, the "forest and water reserve zones"
19 provided in Act 234, section 2, Session Laws of Hawaii
20 1957, are renamed "conservation districts" and,
21 effective as of July 11, 1961, the boundaries of the
22 forest and water reserve zones theretofore established



1 pursuant to Act 234, section 2, Session Laws of Hawaii
2 1957, shall constitute the boundaries of the
3 conservation districts; provided that thereafter the
4 power to determine the boundaries of the conservation
5 districts shall be in the commission.

6 In establishing the boundaries of the districts in each county,
7 the commission shall give consideration to the master plan or
8 general plan of the county."

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

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

11 (1) Activities or uses as characterized by low density
12 residential lots of not more than one dwelling house
13 per one-half acre, except as provided by county
14 ordinance pursuant to section 46-4(c), in areas where
15 "city-like" concentration of people, structures,
16 streets, and urban level of services are absent [~~and~~
17 where ~~small~~];

18 (2) Small farms [~~are~~] intermixed with low density
19 residential lots, except that within a subdivision, as
20 defined in section 484-1, the commission, for good
21 cause and on petition for a special permit, may allow
22 one lot of less than one-half acre, but not less than

1 ~~[18,500]~~ eighteen thousand five hundred square feet,
2 or an equivalent residential density, within a rural
3 subdivision and permit the construction of one
4 dwelling on such lot~~[7]~~; provided that all other
5 dwellings in the subdivision shall have a minimum lot
6 size of one-half acre or 21,780 square feet~~[-~~Such
7 petition for variance may be processed under the
8 special permit procedure. ~~These districts may include~~
9 contiguous];
10 (3) Contiguous areas [which] that are not suited to low
11 density residential lots or small farms by reason of
12 topography, soils, and other related characteristics~~[-~~
13 Rural districts shall also include golf];
14 (4) Golf courses, golf driving ranges, and golf-related
15 facilities~~[.]~~;
16 (5) Agribusiness activities, including horticulture,
17 apiculture, aquaculture, plant nurseries, and the
18 raising and keeping of livestock;
19 (6) Farm worker housing; and
20 (7) Affordable housing, without a special permit; provided
21 that the housing is:

1 (A) Affordable to households with incomes at or below
2 one hundred forty per cent of the median family
3 income as determined by the United States
4 Department of Housing and Urban Development; and

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

9 (d) Agricultural districts shall include:

10 (1) Activities or uses as characterized by the cultivation
11 of crops, crops for bioenergy, orchards, forage, and
12 forestry;

13 (2) Farming activities or uses related to animal husbandry
14 and game and fish propagation;

15 (3) Aquaculture, which means the production of aquatic
16 plant and animal life within ponds and other bodies of
17 water;

18 (4) Wind generated energy production for public, private,
19 and commercial use;

20 (5) Biofuel production, as described in section 205-
21 4.5(a)(15), for public, private, and commercial use;



- 1 (6) Solar energy facilities; provided that this paragraph
2 shall apply only to land with soil classified by the
3 land study bureau's detailed land classification as
4 overall (master) productivity rating class D or E;
- 5 (7) Bona fide agricultural services and uses that support
6 the agricultural activities of the fee or leasehold
7 owner of the property and accessory to any of the
8 above activities, regardless of whether conducted on
9 the same premises as the agricultural activities to
10 which they are accessory, including farm dwellings as
11 defined in section 205-4.5(a)(4), employee housing,
12 farm buildings, mills, storage facilities, processing
13 facilities, agricultural-energy facilities as defined
14 in section 205-4.5(a)(16), vehicle and equipment
15 storage areas, roadside stands for the sale of
16 products grown on the premises, and plantation
17 community subdivisions as defined in section 205-
18 4.5(a)(12);
- 19 (8) Wind machines and wind farms;
- 20 (9) Small-scale meteorological, air quality, noise, and
21 other scientific and environmental data collection and
22 monitoring facilities occupying less than one-half

1 acre of land; provided that these facilities shall not
2 be used as or equipped for use as living quarters or
3 dwellings;

4 (10) Agricultural parks;

5 (11) Agricultural tourism conducted on a working farm, or a
6 farming operation as defined in section 165-2, for the
7 enjoyment, education, or involvement of visitors;
8 provided that the agricultural tourism activity is
9 accessory and secondary to the principal agricultural
10 use and does not interfere with surrounding farm
11 operations; and provided further that this paragraph
12 shall apply only to a county that has adopted
13 ordinances regulating agricultural tourism under
14 section 205-5; and

15 (12) Open area recreational facilities.

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

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



1 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) Within the agricultural district, all lands with soil
4 classified by the land study bureau's detailed land
5 classification as overall (master) productivity rating class A
6 or B shall be restricted to the following permitted uses:

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

10 (2) Game and fish propagation;

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

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



1 farm, or a farming operation as defined in section
2 165-2, that are necessary to the production and
3 distribution of agricultural and aquacultural
4 commodities. As used in this paragraph, "farm
5 dwelling" means a single-family dwelling used by the
6 owner or operator of the working farm or farming
7 operation;

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

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

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



- 1 plants, corporation yards, or other similar
2 structures;
- 3 (8) Retention, restoration, rehabilitation, or improvement
4 of buildings or sites of historic or scenic interest;
- 5 (9) Roadside stands for the sale of agricultural products
6 grown on the premises;
- 7 (10) Buildings and uses, including mills, storage, and
8 processing facilities, maintenance facilities, and
9 vehicle and equipment storage areas that are normally
10 considered directly accessory to the above-mentioned
11 uses and are permitted under section 205-2(d);
- 12 (11) Agricultural parks;
- 13 (12) Plantation community subdivisions, which as used in
14 this chapter means an established subdivision or
15 cluster of employee housing, community buildings, and
16 agricultural support buildings on land currently or
17 formerly owned, leased, or operated by a sugar or
18 pineapple plantation; provided that the existing
19 structures may be used or rehabilitated for use, and
20 new employee housing and agricultural support
21 buildings may be allowed on land within the
22 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) Agricultural tourism conducted on a working farm, or a
- 11 farming operation as defined in section 165-2, for the
- 12 enjoyment, education, or involvement of visitors;
- 13 provided that the agricultural tourism activity is
- 14 accessory and secondary to the principal agricultural
- 15 use and does not interfere with surrounding farm
- 16 operations; and provided further that this paragraph
- 17 shall apply only to a county that has adopted
- 18 ordinances regulating agricultural tourism under
- 19 section 205-5;
- 20 (14) Wind energy facilities, including the appurtenances
- 21 associated with the production and transmission of
- 22 wind generated energy; provided that the wind energy

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

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

12 For the purposes of this paragraph:

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

18 "Biofuel processing facility" means a facility
19 that produces liquid or gaseous fuels from organic
20 sources such as biomass crops, agricultural residues,
21 and oil crops, including palm, canola, soybean, and
22 waste cooking oils; grease; food wastes; and animal



1 residues and wastes that can be used to generate
2 energy;

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

15 As used in this paragraph:

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

18 "Agricultural-energy enterprise" means an
19 enterprise that integrally incorporates an
20 agricultural activity with an agricultural-energy
21 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; or

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



1 structure that is not deemed a permitted use under
2 this subsection.

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



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

4 (1) Low density residential uses[+], with a minimum lot
5 size of one-half acre and one dwelling unit per lot,
6 except as provided in section 205-2(c);

7 (2) Agricultural uses;

8 (3) Golf courses, golf driving ranges, and golf-related
9 facilities; [and]

10 (4) Public, quasi-public, and public utility
11 facilities[.];

12 (5) Agribusiness activities, as provided in section 205-
13 2(c);

14 (6) Farm worker housing; and

15 (7) Affordable housing meeting the requirements of section
16 205-2(c)(7), with density established by county
17 zoning.

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.] "~~



1 SECTION 5. Section 205-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§205-6 Special permit. (a) Subject to this section, the
4 county planning commission may permit certain unusual and
5 reasonable uses within [~~agricultural and~~] rural districts other
6 than those for which the district is classified. Any person who
7 desires to use the person's land within [~~an agricultural or~~] a
8 rural district other than for [~~an agricultural or~~] a rural use [~~7~~
9 ~~as the case may be,~~] may petition the planning commission of the
10 county within which the person's land is located for permission
11 to use the person's land in the manner desired. Each county may
12 establish the appropriate fee for processing the special permit
13 petition. Copies of the special permit petition shall be
14 forwarded to the land use commission[~~7~~] and the office of
15 planning [~~7~~ ~~and the department of agriculture~~] for their review
16 and comment.

17 (b) The planning commission, upon consultation with the
18 central coordinating agency, except in counties where the
19 planning commission is advisory only in which case the central
20 coordinating agency, shall establish by rule or regulation, the
21 time within which the hearing and action on petition for special
22 permit shall occur. The county planning commission shall notify



1 the land use commission and [~~such~~] persons and agencies that may
2 have an interest in the subject matter of the time and place of
3 the hearing.

4 (c) The county planning commission [~~may~~], under such
5 protective restrictions as may be deemed necessary, may permit
6 the desired use, but only when the use would promote the
7 effectiveness and objectives of this chapter[~~; provided that a~~
8 ~~use proposed for designated important agricultural lands shall~~
9 ~~not conflict with any part of this chapter~~]. A decision in
10 favor of the applicant shall require a majority vote of the
11 total membership of the county planning commission.

12 (d) Special permits for land the area of which is greater
13 than fifteen acres [~~or for lands designated as important~~
14 ~~agricultural lands~~] shall be subject to approval by the land use
15 commission. The land use commission may impose additional
16 restrictions as may be necessary or appropriate in granting the
17 approval, including the adherence to representations made by the
18 applicant.

19 (e) A copy of the decision, together with the complete
20 record of the proceeding before the county planning commission
21 on all special permit requests involving a land area greater
22 than fifteen acres [~~or for lands designated as important~~



1 agricultural lands,] shall be transmitted to the land use
2 commission within sixty days after the decision is rendered.

3 Within forty-five days after receipt of the complete record
4 from the county planning commission, the land use commission
5 shall act to approve, approve with modification, or deny the
6 petition. A denial either by the county planning commission or
7 by the land use commission, or a modification by the land use
8 commission, as the case may be, of the desired use shall be
9 appealable to the circuit court of the circuit in which the land
10 is situated and shall be made pursuant to the Hawaii rules of
11 civil procedure.

12 ~~[(f) Land uses substantially involving or supporting
13 educational ecotourism, related to the preservation of native
14 Hawaiian endangered, threatened, proposed, and candidate
15 species, that are allowed in an approved habitat conservation
16 plan under section 195D-21 or safe harbor agreement under
17 section 195D-22, which are not identified as permissible uses
18 within the agricultural district under sections 205-2 and 205-
19 4.5, may be permitted in the agricultural district by special
20 permit under this section, on lands with soils classified by the
21 land study bureau's detailed land classification as overall
22 (master) productivity rating class C, D, E, or U.]"~~



1 SECTION 6. Section 205-44, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§205-44 Standards and criteria for the identification of
4 important agricultural lands. (a) The standards and criteria
5 in this section shall be used to identify important agricultural
6 lands. Lands identified as important agricultural lands need
7 not meet every standard and criteria listed in subsection (c).
8 Rather, lands meeting any of the criteria in subsection (c)
9 shall be given initial consideration; provided that the
10 designation of important agricultural lands shall be made by
11 weighing the standards and criteria with each other to meet the
12 constitutionally mandated purposes in article XI, section 3, of
13 the Hawaii Constitution and the objectives and policies for
14 important agricultural lands in sections 205-42 and 205-43.

15 (b) In a petition for a declaratory order submitted under
16 section 205-45 that seeks to both designate lands as important
17 agricultural lands and reclassify lands in the agricultural
18 district to the rural, conservation, or urban district, the
19 lands shall be deemed qualified for designation as important
20 agricultural land if the commission reasonably finds that the
21 lands meet at least the criteria of subsection (c) (5) and (7) of
22 this section.



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

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

5 (1) Land currently used for agricultural production;

6 (2) Land with soil qualities and growing conditions that
7 support agricultural production of food, fiber, or
8 fuel- and energy-producing crops;

9 (3) Land identified under agricultural productivity rating
10 systems, such as the agricultural lands of importance
11 to the State of Hawaii (ALISH) system adopted by the
12 board of agriculture on January 28, 1977;

13 (4) Land types associated with traditional native Hawaiian
14 agricultural uses, such as taro cultivation, or unique
15 agricultural crops and uses, such as coffee,
16 vineyards, aquaculture, and energy production;

17 (5) Land with sufficient quantities of water to support
18 viable agricultural production;

19 (6) Land whose designation as important agricultural lands
20 is consistent with general, development, and community
21 plans of the county;



1 (7) Land that contributes to maintaining a critical land
2 mass important to agricultural operating productivity;
3 [~~and~~]

4 (8) Land with or near support infrastructure conducive to
5 agricultural productivity, such as transportation to
6 markets, water, or power[.]; and

7 (9) Land that, although unsuited for agricultural use
8 because of topography, is part of a tax may key
9 parcel, most of which is comprised of land meeting at
10 least one of the standards and criteria listed in this
11 subsection. Land under this paragraph shall be
12 designated as important agricultural land only if the
13 entire tax may key parcel is so designated."

14 SECTION 7. Section 205-45, Hawaii Revised Statutes, is
15 amended to read as follows:"

16 "§205-45 **Petition by farmer or landowner.** (a) A farmer
17 or landowner with lands qualifying under section 205-44 may file
18 with the commission a petition for declaratory order to
19 designate the lands as important agricultural lands. The
20 petition may be filed at any time in the designation process.

21 (b) Any law to the contrary notwithstanding, within the
22 same petition for declaratory order as described in subsection



1 (a), the petitioner may seek a reclassification of land in the
2 agricultural district to the rural, urban, or conservation
3 district, or a combination thereof; provided that:

4 (1) The land sought to be reclassified to the rural,
5 urban, or conservation district is within the same
6 county as the land sought to be designated as
7 important agricultural lands;

8 (2) If the reclassification of the land is proposed to the
9 urban district, that reclassification to urban is
10 consistent with the relevant county general and
11 community, development, or community development
12 plans; and

13 (3) The total acreage of the land sought to be designated
14 or reclassified in the petition complies with the
15 following proportions:

16 (A) At least [~~eighty-five~~] eighty per cent of the
17 total acreage is sought to be designated as
18 important agricultural land; and

19 (B) The remainder of the acreage is sought to be
20 reclassified to the rural, urban, or conservation
21 district.



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

4 (1) Tax map key numbers of the land to be designated as
5 important agricultural lands and, if applicable, the
6 land to be reclassified from the agricultural district
7 to the rural, urban, or conservation district, along
8 with verification and authorization from the
9 applicable landowners;

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

13 (3) The current or planned agricultural use of the area
14 sought to be designated as important agricultural
15 lands; and

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

19 (d) Prior to the commission considering a petition for a
20 declaratory order to designate important agricultural land in
21 combination with the reclassification of agricultural land to
22 the rural, urban, or conservation district, the petitioner shall



1 submit to the commission a certification issued by the
2 department of agriculture as to the quality of the land for
3 which designation as important agricultural land is being
4 sought.

5 (e) The commission shall review the petition and the
6 accompanying submissions to evaluate the qualifications of the
7 land for designation as important agricultural lands in
8 accordance with section 205-44.

9 If the petition also seeks the reclassification of land to
10 the rural, urban, or conservation district, the commission shall
11 review the petition and accompanying submissions to evaluate:

12 (1) The suitability of the land for the reclassification
13 in accordance with section 205-2;

14 (2) If the reclassification of the land is proposed to the
15 urban district, that reclassification to urban is
16 consistent with the relevant county general and
17 community, development, or community development
18 plans; and

19 (3) Compliance with the other provisions of subsection
20 (b).

21 If the commission, after its review, finds that the
22 designation and, if applicable, reclassification sought in the



1 petition should be approved, the commission shall vote, by a
2 two-thirds majority of the members of the commission, to issue a
3 declaratory order designating the petitioner's identified lands
4 as important agricultural lands and, if applicable,
5 reclassifying the petitioner's identified land from the
6 agricultural district to the rural, urban, or conservation
7 district. The commission may include reasonable conditions in
8 the declaratory order.

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

15 (f) The designation or reclassification of land pursuant
16 to subsection (a) or (b) shall not be subject to the district
17 boundary amendment procedures of sections 205-3.1 and 205-4 or
18 become effective prior to legislative enactment of protection
19 and incentive measures for important agricultural land and
20 agricultural viability, as provided in section 9 of Act 183,
21 Session Laws of Hawaii 2005.



1 (g) Farmers or landowners with lands qualifying under
2 section 205-44 may file petitions for a declaratory order to
3 designate lands as important agricultural lands following the
4 legislative enactment of protection and incentive measures for
5 important agricultural lands and agricultural viability, as
6 provided in section 9 of Act 183, Session Laws of Hawaii 2005.

7 (h) A petitioner granted a declaratory order that
8 designates important agricultural land, whether or not combined
9 with the reclassification of land to the rural, urban, or
10 conservation district, shall earn credits if the amount of land
11 reclassified to the rural, urban, or conservation district is
12 less than fifteen per cent of the total acreage of land subject
13 to the order. The "total acreage of land subject to the order"
14 means the total acreage designated as important agricultural
15 land and, if applicable, reclassified to the rural, urban, or
16 conservation district by the declaratory order.

17 The credits shall equal the difference between the
18 following, rounded to the nearer tenth of an acre:

19 (1) The number that is [~~fifteen~~] twenty per cent of the
20 total acreage of land subject to the order; less

21 (2) The amount of the petitioner's land that is
22 reclassified from the agricultural district to the



1 rural, urban, or conservation district by the
2 declaratory order.

3 A petitioner with credits earned within a county may
4 petition the commission for a declaratory order to reclassify
5 any of the petitioner's other land in the same county from the
6 agricultural district to the rural, urban, or conservation
7 district until the credits are exhausted or expired. The
8 "petitioner's other land in the same county" means land owned by
9 the petitioner that is in the same county as the land designated
10 or reclassified under the petition. The commission may issue
11 the declaratory order if it finds that the land is suitable for
12 reclassification in accordance with section 205-2 and that the
13 reclassification is consistent with the relevant county general
14 and community, development, or community development plans. The
15 petitioner may petition for such reclassification until all of
16 the petitioner's credits are exhausted. [~~Any unexhausted
17 credits shall expire and become unusable ten years after the
18 granting of the declaratory order that designated the important
19 agricultural land and, if applicable, reclassified land to the
20 rural, urban, or conservation district.~~

21 ~~A petitioner with unused and unexhausted credits shall not~~
22 ~~transfer the credits to another person.]~~



1 A petitioner with unused credits may transfer the credits
2 to another person at no charge or for compensation mutually
3 agreed upon. The person receiving the unused credits may
4 petition the commission for a declaratory order to reclassify
5 the person's land from the agricultural district to the rural,
6 urban, or conservation district, subject to the same provisions
7 applicable to the petitioner who transferred the credits.

8 (i) Notwithstanding any other law to the contrary, the
9 land use commission may grant declaratory orders pursuant to
10 this section before the commission receives from any county a
11 map delineating recommended important agricultural lands.

12 ~~[(j) Land designated as important agricultural land~~
13 ~~pursuant to a declaratory order that both designates land as~~
14 ~~important agricultural land and reclassifies land in the~~
15 ~~agricultural district to the rural, urban, or conservation~~
16 ~~district, or a combination thereof pursuant to this section~~
17 ~~shall be redesignated only with the prior authorization of the~~
18 ~~legislature. The authorization shall be expressed by the~~
19 ~~adoption of a concurrent resolution approved by a two-thirds~~
20 ~~vote of each house of the legislature voting separately. When~~
21 ~~making its decision, the legislature shall consider the~~
22 ~~standards and criteria in section 205-50.~~



1 ~~(k)~~] (j) The commission may adopt rules pursuant to
2 chapter 91 to effectuate this section. "

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect upon its approval.

6

INTRODUCED BY:

Norman Salcedo



Report Title:

Land Use Commission; Rural District; Important Agricultural Lands.

Description:

Expands permitted uses in rural district to include agribusiness activities, farm worker housing, and limited affordable housing. Redefines "farm dwelling". Limits use of special permit to rural district. Amends section 205-45 (land use law; petition by farmer or landowner)by: (1) changing ratio of IAL designed land to other reclassified lands from 85:15 to 80:20; (2) repealing time limit on unexhausted credits; and (3) allowing transfer of unexhausted credits.

