
A BILL FOR AN ACT

RELATING TO THE PROTECTION OF TARO LANDS.

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

1 SECTION 1. The legislature finds that taro lands are
2 essential as culturally important agricultural lands for
3 Hawaii's future food security, representing the smallest portion
4 of agricultural lands but the highest-yielding stable food crop
5 acreage in the State. The legislature also finds that the taro
6 security and purity task force established under Act 211,
7 Session Laws of Hawaii 2008, reported to the legislature in the
8 2010 legislative report *E ola hou ke kalo; ho'i hou ka 'āina*
9 *lē'ia: The taro lives; abundance returns to the land* and
10 recommended improved protections for taro-growing lands,
11 including lo'i (wet fields and terraces), mala (dry fields and
12 terraces), kuana or paepae pohaku (stone walls), and 'auwai
13 (irrigation ditches). The task force found that these key
14 structural elements for viable taro production represent the
15 fastest dwindling subset of agricultural land as the lands are
16 destroyed, severed, and built upon by private and public
17 development because of gaps in land use, historic preservation,



1 and planning laws and policies. Current department of
2 agriculture class designations for intensive agricultural lands
3 do not adequately recognize productive taro lands or protect
4 them for future use. Existing policies do not encourage state
5 or private landowners to protect or rehabilitate ancient taro
6 infrastructure.

7 The purpose of this Act is to improve protections for taro
8 lands and ancient agricultural structures.

9 SECTION 2. Section 171-10, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§171-10 Classes of lands.** The board of land and natural
12 resources shall classify all public lands and in doing so be
13 guided by the following classifications:

14 1. Intensive agricultural use

15 (A) First class--Lands highly productive of intensive
16 crops such as sugarcane, pineapples, truck crops, and orchard
17 crops.

18 (B) Second class--Lands having medium productivity for
19 intensive crops.

20 (C) Third class--Lands having fair to marginal
21 productivity for intensive crops.

22 (U) Unique class--Taro lands.



1 2. Special livestock use

2 (A) First class--Lands highly suitable for special
3 livestock uses such as swine, dairy, and poultry production. In
4 making the determination, consideration shall be given to
5 drainage, climate, topography, proximity to market, and
6 transportation and compatibility to adjoining land use, among
7 other considerations. "Dairy" as used for disposition purposes
8 means a "dry lot" dairy without allowance for grazing.

9 (B) Second class--Lands suitable for special livestock
10 uses, but inferior to those of first class.

11 3. Pasture use

12 (A) First class--Lands having a potentially high economic
13 animal unit carrying capacity and capable of correspondingly
14 high liveweight gains per acre per year, such as, less than five
15 acres per animal unit per year and more than one hundred pounds
16 live beef gains per animal unit per acre per year.

17 (B) Second class--Lands having a potentially medium
18 economic animal unit carrying capacity and capable of moderate
19 liveweight gains per acre per year, such as, five to twenty
20 acres per animal unit per year and twenty to one hundred pounds
21 live beef gains per animal unit per acre per year.



1 (C) Third class--Lands having a relatively low animal unit
2 carrying capacity and producing correspondingly low liveweight
3 gains per acre per year, such as, more than twenty acres per
4 animal unit per year and less than twenty pounds average live
5 beef gains per animal unit per acre per year.

6 4. Commercial timber use

7 (A) First class--Lands of high suitability for growth of
8 merchantable timber having mean annual growth potential under
9 normal forest management practices with yields exceeding amounts
10 such as one thousand board feet per acre, and with location and
11 terrain presenting favorable logging, transportation, and
12 marketing conditions.

13 (B) Second class--Lands of high suitability for growth of
14 merchantable timber having mean annual growth potential under
15 normal forest management practices with yields exceeding amounts
16 such as one thousand board feet per acre, and with location and
17 terrain presenting less favorable logging, transportation, and
18 marketing conditions.

19 (C) Third class--Lands of medium suitability for growth of
20 merchantable timber having mean annual growth potential in
21 amounts such as five hundred to one thousand board feet per acre
22 under normal forest management practices, and with location and



1 terrain presenting favorable logging, transportation, and
2 marketing conditions.

3 (D) Fourth class--Lands of medium suitability for growth
4 of merchantable timber having mean annual growth potential in
5 amounts such as five hundred to one thousand board feet per acre
6 under normal forest management practices, and with location and
7 terrain presenting less favorable logging, transportation, and
8 marketing conditions.

9 (E) Fifth class--Lands of relatively low suitability for
10 growth of merchantable timber having mean annual growth
11 potential less than an amount such as five hundred board feet
12 per acre, and with location and terrain presenting favorable
13 logging, transportation, and marketing conditions.

14 (F) Sixth class--Lands of relatively low suitability for
15 growth of merchantable timber having mean annual growth
16 potential less than an amount such as five hundred board feet
17 per acre, and with location and terrain presenting less
18 favorable logging, transportation, and marketing conditions.

19 5. Quarry use

20 Lands having sufficient quantity and quality of rock,
21 gravel, and sand for purpose of commercial use.



1 6. Mining use

2 Lands bearing sufficient quantity and quality of mineral
3 products for purpose of commercial mining and use.

4 7. Recreational use

5 Lands suitable for use and development as parks,
6 playgrounds, historical sites, natural area, camp grounds,
7 wildlife refuge, scenic sites, and other such uses.

8 8. Watershed use

9 Lands suitable for the use and development as watersheds or
10 for the development of water, and requiring necessary
11 restrictions on other uses.

12 9. Residential use

13 Lands suitable and economically feasible for residential
14 development and use.

15 10. Commercial and industrial use

16 Lands suitable and economically feasible for commercial and
17 industrial development and use.

18 11. Hotel, apartment, and motel use

19 Lands suitable and economically feasible for hotel,
20 apartment, and motel development and use.



1 12. Resort use
 2 Lands suitable and economically feasible for resort
 3 development and use.

4 13. Unclassified uses
 5 Lands not otherwise classifiable under the foregoing
 6 sections."

7 SECTION 3. Section 205-3.5, Hawaii Revised Statutes, is
 8 amended by amending its title and subsection (a) to read as
 9 follows:

10 "~~§~~205-3.5~~§~~ **Reclassification of land contiguous to an**
 11 **agricultural district; approval conditions.** (a) Any decision
 12 approving a petition for a boundary amendment pursuant to this
 13 chapter where lands in the petition area are contiguous or
 14 adjacent to lands in the agricultural district, shall include
 15 the following conditions in the decision granting approval:

16 (1) A prohibition on any action that would interfere with
 17 or restrain farming operations~~+~~, including blockage
 18 disturbance or destruction of traditional 'auwai
 19 irrigation ditches that may cross property boundaries;
 20 provided the farming operations are conducted in a
 21 manner consistent with generally accepted agricultural



1 and management practices on adjacent or contiguous
2 lands in the agricultural district; and
3 (2) Notification to all prospective developers or
4 purchasers of land or interest in land in the petition
5 area and subsequent notification to lessees or tenants
6 of the land, that farming operations and practices on
7 adjacent or contiguous land in the agricultural
8 district are protected under chapter 165, the Hawaii
9 right to farm act, and that the notice shall be
10 included in any disclosure required for the sale or
11 transfer of real property or any interest in real
12 property."

13 SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is
14 amended by amending subsections (a), (b), and (c) to read as
15 follows:

16 "(a) Within the agricultural district, all lands with soil
17 classified by the land study bureau's detailed land
18 classification as overall (master) productivity rating class A
19 [~~or~~], B, or U shall be restricted to the following permitted
20 uses:



- 1 (1) Cultivation of crops, including crops for bioenergy,
2 flowers, vegetables, foliage, fruits, forage, and
3 timber;
- 4 (2) Game and fish propagation;
- 5 (3) Raising of livestock, including poultry, bees, fish,
6 or other animal or aquatic life that are propagated
7 for economic or personal use;
- 8 (4) Farm dwellings, employee housing, farm buildings, or
9 activities or uses related to farming and animal
10 husbandry. "Farm dwelling", as used in this
11 paragraph, means a single-family dwelling located on
12 and used in connection with a farm, including clusters
13 of single-family farm dwellings permitted within
14 agricultural parks developed by the State, or where
15 agricultural activity provides income to the family
16 occupying the dwelling;
- 17 (5) Public institutions and buildings that are necessary
18 for agricultural practices;
- 19 (6) Public and private open area types of recreational
20 uses, including day camps, picnic grounds, parks, and
21 riding stables, but not including dragstrips,



- 1 airports, drive-in theaters, golf courses, golf
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and
4 roadways, transformer stations, communications
5 equipment buildings, solid waste transfer stations,
6 major water storage tanks, and appurtenant small
7 buildings such as booster pumping stations, but not
8 including offices or yards for equipment, material,
9 vehicle storage, repair or maintenance, treatment
10 plants, corporation yards, or other similar
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement
13 of buildings, walls, terraces, and supporting
14 structures for lo'i taro fields, or sites of historic
15 or scenic interest;
- 16 (9) Agricultural-based commercial operations as described
17 in section [†]205-2(d)(15)[†];
- 18 (10) Buildings and uses, including mills, storage, and
19 processing facilities, maintenance facilities,
20 photovoltaic, biogas, and other small-scale renewable
21 energy systems producing energy solely for use in the
22 agricultural activities of the fee or leasehold owner



1 of the property, and vehicle and equipment storage
2 areas that are normally considered directly accessory
3 to the above-mentioned uses and are permitted under
4 section 205-2(d);

5 (11) Agricultural parks;

6 (12) Plantation community subdivisions, which as used in
7 this chapter means an established subdivision or
8 cluster of employee housing, community buildings, and
9 agricultural support buildings on land currently or
10 formerly owned, leased, or operated by a sugar or
11 pineapple plantation; provided that the existing
12 structures may be used or rehabilitated for use, and
13 new employee housing and agricultural support
14 buildings may be allowed on land within the
15 subdivision as follows:

16 (A) The employee housing is occupied by employees or
17 former employees of the plantation who have a
18 property interest in the land;

19 (B) The employee housing units not owned by their
20 occupants shall be rented or leased at affordable
21 rates for agricultural workers; or



1 (C) The agricultural support buildings shall be
2 rented or leased to agricultural business
3 operators or agricultural support services;

4 (13) 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;

14 (14) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural
22 activity. For the purposes of this paragraph, "bona



1 fide agricultural activity" means a farming operation
2 as defined in section 165-2;

3 (15) Wind energy facilities, including the appurtenances
4 associated with the production and transmission of
5 wind generated energy; provided that the wind energy
6 facilities and appurtenances are compatible with
7 agriculture uses and cause minimal adverse impact on
8 agricultural land;

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

17 For the purposes of this paragraph:

18 "Appurtenances" means operational infrastructure
19 of the appropriate type and scale for economic
20 commercial storage and distribution, and other similar
21 handling of feedstock, fuels, and other products of
22 biofuel processing facilities.



1 "Biofuel processing facility" means a facility
2 that produces liquid or gaseous fuels from organic
3 sources such as biomass crops, agricultural residues,
4 and oil crops, including palm, canola, soybean, and
5 waste cooking oils; grease; food wastes; and animal
6 residues and wastes that can be used to generate
7 energy;

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

20 As used in this paragraph:

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



1 "Agricultural-energy enterprise" means an
2 enterprise that integrally incorporates an
3 agricultural activity with an agricultural-energy
4 facility.

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

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

17 (18) Construction and operation of wireless communication
18 antennas; provided that, for the purposes of this
19 paragraph, "wireless communication antenna" means
20 communications equipment that is either freestanding
21 or placed upon or attached to an already existing
22 structure and that transmits and receives



1 electromagnetic radio signals used in the provision of
2 all types of wireless communications services;
3 provided further that nothing in this paragraph shall
4 be construed to permit the construction of any new
5 structure that is not deemed a permitted use under
6 this subsection;

7 (19) Agricultural education programs conducted on a farming
8 operation as defined in section 165-2, for the
9 education and participation of the general public;
10 provided that the agricultural education programs are
11 accessory and secondary to the principal agricultural
12 use of the parcels or lots on which the agricultural
13 education programs are to occur and do not interfere
14 with surrounding farm operations. For the purposes of
15 this section, "agricultural education programs" means
16 activities or events designed to promote knowledge and
17 understanding of agricultural activities and practices
18 conducted on a farming operation as defined in section
19 165-2;

20 (20) Solar energy facilities that do not occupy more than
21 ten per cent of the acreage of the parcel, or twenty
22 acres of land, whichever is lesser; provided that this



1 use shall not be permitted on lands with soil
2 classified by the land study bureau's detailed land
3 classification as overall (master) productivity rating
4 class A; or

5 [†](21)[†] Geothermal resources exploration and geothermal
6 resources development, as defined under section 182-1.

7 (b) Uses not expressly permitted in subsection (a) shall
8 be prohibited, except the uses permitted as provided in sections
9 205-6 and 205-8, and construction of single-family dwellings on
10 lots existing before June 4, 1976. Any other law to the
11 contrary notwithstanding, no subdivision of land within the
12 agricultural district with soil classified by the land study
13 bureau's detailed land classification as overall (master)
14 productivity rating class A [~~or~~], B, or U shall be approved by a
15 county unless those A [~~and~~], B, or U lands within the
16 subdivision are made subject to the restriction on uses as
17 prescribed in this section and to the condition that the uses
18 shall be primarily in pursuit of an agricultural activity.

19 Any deed, lease, agreement of sale, mortgage, or other
20 instrument of conveyance covering any land within the
21 agricultural subdivision shall expressly contain the restriction
22 on uses and the condition, as prescribed in this section that



1 these restrictions and conditions shall be encumbrances running
2 with the land until such time that the land is reclassified to a
3 land use district other than agricultural district. Taro lands
4 with U agricultural designations shall not be reclassified.

5 If the foregoing requirement of encumbrances running with
6 the land jeopardizes the owner or lessee in obtaining mortgage
7 financing from any of the mortgage lending agencies set forth in
8 the following paragraph, and the requirement is the sole reason
9 for failure to obtain mortgage financing, then the requirement
10 of encumbrances shall, insofar as such mortgage financing is
11 jeopardized, be conditionally waived by the appropriate county
12 enforcement officer; provided that the conditional waiver shall
13 become effective only in the event that the property is
14 subjected to foreclosure proceedings by the mortgage lender.

15 The mortgage lending agencies referred to in the preceding
16 paragraph are the Federal Housing Administration, Federal
17 National Mortgage Association, Veterans Administration, Small
18 Business Administration, United States Department of
19 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
20 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
21 other federal, state, or private mortgage lending agency



1 qualified to do business in Hawaii, and their respective
2 successors and assigns.

3 (c) 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 C,
6 D, or E [~~or U~~] shall be restricted to the uses permitted for
7 agricultural districts as set forth in section 205-5(b)."

8 SECTION 5. Section 226-7, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Planning for the State's economy with regard to
11 agriculture shall be directed towards achievement of the
12 following objectives:

13 (1) Viability of Hawaii's sugar and pineapple industries.

14 (2) Growth and development of diversified agriculture
15 throughout the State.

16 (3) An agriculture industry that continues to constitute a
17 dynamic and essential component of Hawaii's strategic,
18 economic, and social well-being.

19 (4) Growth and perpetuation of taro."



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2013.
4

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H.B. NO. 734

Report Title:

Taro Lands; Protection; Unique Land Use

Description:

Amends land use classifications to add taro lands to unique agricultural lands. Requires retention of supporting structures for taro fields. Adds growth and perpetuation of taro and crops native to Hawaii to agricultural planning policies. Effective July 1, 2013.

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