
A BILL FOR AN ACT

RELATING TO THE LAND USE COMMISSION.

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

1 SECTION 1. Section 205-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§205-4 Amendments to district boundaries involving land**
4 **areas greater than fifteen acres.** (a) Any department or agency
5 of the State, any department or agency of the county in which
6 the land is situated, or any person with a property interest in
7 the land sought to be reclassified, may petition the land use
8 commission for a change in the boundary of a district. This
9 section applies to all petitions for changes in district
10 boundaries of lands within conservation districts, lands
11 designated or sought to be designated as important agricultural
12 lands, and lands greater than fifteen acres in the agricultural,
13 rural, and urban districts, except as provided in section
14 201H-38. The land use commission shall adopt rules pursuant to
15 chapter 91 to implement section 201H-38.

16 (b) Upon proper filing of a petition pursuant to
17 subsection (a) the commission shall, within not less than sixty
18 and not more than one hundred and eighty days, conduct a hearing



1 on the appropriate island in accordance with the provisions of
2 sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

3 (c) Any other provision of law to the contrary
4 notwithstanding, notice of the hearing together with a copy of
5 the petition shall be served on the county planning commission
6 and the county planning department of the county in which the
7 land is located and all persons with a property interest in the
8 land as recorded in the county's real property tax records. In
9 addition, notice of the hearing shall be mailed to all persons
10 who have made a timely written request for advance notice of
11 boundary amendment proceedings, and public notice shall be given
12 at least once in the county in which the land sought to be
13 redistricted is situated as well as once statewide at least
14 thirty days in advance of the hearing. The notice shall comply
15 with section 91-9, shall indicate the time and place that maps
16 showing the proposed district boundary may be inspected, and
17 further shall inform all interested persons of their rights
18 under subsection (e).

19 (d) Any other provisions of law to the contrary
20 notwithstanding, prior to hearing of a petition the commission



1 and its staff may view and inspect any land which is the subject
2 of the petition.

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

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

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

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



1 (4) All other persons may apply to the commission for
2 leave to intervene as parties. Leave to intervene
3 shall be freely granted, provided that the commission
4 or its hearing officer if one is appointed may deny an
5 application to intervene when in the commission's or
6 hearing officer's sound discretion it appears that:

7 (A) [~~the~~] The position of the applicant for
8 intervention concerning the proposed change is
9 substantially the same as the position of a party
10 already admitted to the proceeding; and

11 (B) [~~the~~] The admission of additional parties will
12 render the proceedings inefficient and
13 unmanageable.

14 A person whose application to intervene is denied may
15 appeal [~~such~~] the denial to the circuit court pursuant
16 to section 91-14.

17 (5) The commission [~~shall~~], pursuant to chapter 91, shall
18 adopt rules governing the intervention of agencies and
19 persons under this subsection. [~~Such~~] The rules shall
20 without limitation establish:



1 (A) [~~the~~] The information to be set forth in any
2 application for intervention;

3 (B) [~~time~~] Time limits within which [~~such~~] the
4 applications shall be filed; and

5 (C) [~~reasonable~~] Reasonable filing fees to accompany
6 [~~such~~] the applications.

7 (f) Together with other witnesses that the commission may
8 desire to hear at the hearing, [~~it~~] the commission shall allow a
9 representative of a citizen or a community group to testify who
10 indicates a desire to express the view of [~~such~~] the citizen or
11 community group concerning the proposed boundary change.

12 (g) Within a period of not more than three hundred sixty-
13 five days after the proper filing of a petition, unless
14 otherwise ordered by a court, or unless a time extension, which
15 shall not exceed ninety days, is established by a two-thirds
16 vote of the members of the commission, the commission, by filing
17 findings of fact and conclusions of law, shall act to approve
18 the petition, deny the petition, or to modify the petition by
19 imposing conditions necessary to uphold the intent and spirit of
20 this chapter or the policies and criteria established pursuant
21 to section 205-17 or to assure substantial compliance with



1 representations made by the petitioner in seeking a boundary
2 change. The commission may provide by condition that absent
3 substantial commencement of use of the land in accordance with
4 ~~[such]~~ those representations, the commission shall issue and
5 serve upon the party bound by the condition an order to show
6 cause why the property should not revert to its former land use
7 classification or be changed to a more appropriate
8 classification. ~~[Such]~~ Those conditions, if any, shall run with
9 the land and be recorded in the bureau of conveyances.

10 (h) No amendment of a land use district boundary shall be
11 approved unless the commission finds upon the clear
12 preponderance of the evidence that the proposed boundary is
13 reasonable, not violative of section 205-2 and part III of this
14 chapter, and consistent with the policies and criteria
15 established pursuant to sections 205-16 and 205-17. Six
16 affirmative votes of the commission shall be necessary for any
17 boundary amendment under this section.

18 (i) Notwithstanding any other provision of law to the
19 contrary, the land use commission may vacate, void, modify, or
20 amend any land use district boundary amendment approved under
21 this section if the commission reasonably finds that there has



1 been a failure to substantially conform with the conditions or
2 requirements of the boundary amendment. When vacating, voiding,
3 modifying, or amending a land use district boundary amendment,
4 the commission shall not be obligated to repeat the boundary
5 amendment procedures described in subsections (a) to (h).

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

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

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

20 "§205-6 **Special permit.** (a) Subject to this section, the
21 county planning commission may permit certain unusual and



1 reasonable uses within agricultural and rural districts other
2 than those for which the district is classified. Any person who
3 desires to use the person's land within an agricultural or rural
4 district other than for an agricultural or rural use, as the
5 case may be, may petition the planning commission of the county
6 within which the person's land is located for permission to use
7 the person's land in the manner desired. Each county may
8 establish the appropriate fee for processing the special permit
9 petition. Copies of the special permit petition shall be
10 forwarded to the land use commission, the office of planning,
11 and the department of agriculture for their review and comment.

12 (b) The planning commission, upon consultation with the
13 central coordinating agency, except in counties where the
14 planning commission is advisory only in which case the central
15 coordinating agency, shall establish by rule or regulation, the
16 time within which the hearing and action on petition for special
17 permit shall occur. The county planning commission shall notify
18 the land use commission and [such] any persons and agencies that
19 may have an interest in the subject matter of the time and place
20 of the hearing.



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

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

16 (e) A copy of the decision, together with the complete
17 record of the proceeding before the county planning commission
18 on all special permit requests involving a land area greater
19 than fifteen acres or for lands designated as important
20 agricultural lands, shall be transmitted to the land use
21 commission within sixty days after the decision is rendered.



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

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



1 (g) Notwithstanding any other provision of law to the
2 contrary, the land use commission may vacate, void, modify, or
3 amend any special permit granted under this section if the
4 commission reasonably finds there has been a failure to
5 substantially conform with the conditions or requirements of the
6 commission's order granting the special permit. The land use
7 commission may vacate, void, modify, or amend a special permit
8 without requiring a county planning commission action."

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Land Use Commission; Boundary Amendments; Special Permit;
Conditions; Enforcement; Authority

Description:

Provides the state land use commission with the authority to amend, modify, or vacate conditions of a boundary amendment and special permit conditions granted pursuant to chapter 205, Hawaii Revised Statutes, if there has been a failure to substantially conform to the conditions or requirements imposed. Effective 7/1/2050. (SD2)

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