
A BILL FOR AN ACT

RELATING TO LAND USE.

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

1 SECTION 1. 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. The counties shall
6 establish by ordinance the land uses permitted and the standards
7 required for infrastructure systems within the rural and urban
8 lands districts."

9 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
10 amended by adding a new section to part III, to be appropriately
11 designated and to read as follows:

12 "§205- Permissible uses of lands designated as
13 important agricultural lands. (a) All lands designated
14 important agricultural lands shall be restricted to the
15 following permitted uses:

16 (1) Cultivation of crops, including but not limited to
17 flowers, vegetables, foliage, fruits, forage, fiber,
18 and timber;



- 1 (2) Game and fish propagation;
- 2 (3) Raising of livestock, including but not limited to
- 3 poultry, bees, fish, or other animal or aquatic life
- 4 that are propagated for economic or personal use;
- 5 (4) Public institutions and buildings that are necessary
- 6 for agricultural practices;
- 7 (5) Public, private, and quasi-public utility lines and
- 8 roadways, transformer stations, communications
- 9 equipment buildings, solid waste transfer stations,
- 10 major water storage tanks, and appurtenant small
- 11 buildings such as booster pumping stations, but not
- 12 including offices or yards for equipment, material,
- 13 vehicle storage, repair or maintenance, treatment
- 14 plants, corporation yards, or other similar
- 15 structures;
- 16 (6) Retention, restoration, rehabilitation, or
- 17 improvements of sites of historic or cultural
- 18 importance;
- 19 (7) Roadside stands for the sale of agricultural products
- 20 grown on the lot;
- 21 (8) Buildings and uses, including but not limited to
- 22 mills, storage, and processing facilities, maintenance



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

5 (9) Agricultural parks;

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

16 (11) Bio-fuels processing facilities; provided that the
17 majority of the feedstock is grown within this state,
18 and alternative energy generating facilities,
19 including the appurtenances associated with the
20 production and transmission of bio-fuels and
21 alternative generated energy; and provided further
22 that such facilities and appurtenances are compatible



1 with agricultural uses and cause minimal adverse
2 impact on important agricultural land.

3 (b) Uses not expressly permitted in subsection (a) shall
4 be prohibited, except the uses permitted as provided in section
5 205-8, and construction of single-family dwellings on lots
6 existing before June 4, 1976. A single dwelling on not more
7 than one acre shall be permitted for the sole use of the
8 landowner or child of the landowner or for the use of a lessee
9 on leased land that is used by the lessee as a working farm or a
10 farming operation, as defined in section 165-2. No other uses
11 shall be allowed by special permit on important agricultural
12 lands.

13 (c) Any other law to the contrary notwithstanding, land
14 designated as important agricultural lands shall only be
15 subdivided as provided in section 205-4.5(e). Any deed, lease,
16 agreement of sale, mortgage, or other instrument of conveyance
17 covering any land within the agricultural subdivision of lands
18 designated important agricultural lands shall expressly contain
19 the restriction on uses and the conditions contained in this
20 section and the restrictions and conditions shall be
21 encumbrances running with the land until such time that the land
22 is no longer designated as important agricultural lands."



1 SECTION 3. Section 46-15, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The mayor of each county, after holding a public
4 hearing on the matter and receiving the approval of the
5 respective council, shall be empowered to designate areas of
6 land for experimental and demonstration housing projects, the
7 purposes of which are to research and develop ideas that would
8 reduce the cost of housing in the [~~State-~~] state. Except as
9 hereinafter provided, the experimental and demonstration housing
10 projects shall be exempt from all statutes, ordinances, charter
11 provisions, and rules or regulations of any governmental agency
12 or public utility relating to planning, zoning, construction
13 standards for subdivisions, development and improvement of land,
14 and the construction and sale of homes thereon; provided that
15 the experimental and demonstration housing projects shall not
16 affect the safety standards or tariffs approved by the public
17 utility [~~commissions~~] commission for such public utility.

18 The mayor of each county with the approval of the
19 respective council may designate a county agency or official who
20 shall have the power to review all plans and specifications for
21 the subdivisions, development and improvement of the land
22 involved, and the construction and sale of homes thereon. The



1 county agency or official shall have the power to approve or
2 disapprove or to make modifications to all or any portion of the
3 plans and specifications.

4 The county agency or official shall submit preliminary
5 plans and specifications to the legislative body of the
6 respective county for its approval or disapproval. The final
7 plans and specifications for the project shall be deemed
8 approved by the legislative body if the final plans and
9 specifications do not substantially deviate from the approved
10 preliminary plans and specifications. The final plans and
11 specifications shall constitute the standards for the particular
12 project.

13 No action shall be prosecuted or maintained against any
14 county, its officials or employees, on account of actions taken
15 in reviewing, approving, or disapproving such plans and
16 specifications.

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

20 The county agency or official shall apply to the state land
21 use commission for an appropriate land use district
22 classification change, except where a proposed project is



1 located on land within an urban or rural district established by
2 the state land use commission. Notwithstanding any law, rule,
3 or regulation to the contrary, the state land use commission may
4 approve the application at any time after a public hearing held
5 in the county where the land is located upon notice of the time
6 and place of the hearing being published in the same manner as
7 the notice required for a public hearing by the planning
8 commission of the appropriate county."

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

11 "**§205-2 Districting and classification of lands.** (a)
12 There shall be four major land use districts in which all lands
13 in the [~~State~~] state shall be placed: urban, rural,
14 agricultural, and conservation. [~~The~~] By January 1, 2009, the
15 land use commission shall group contiguous land areas suitable
16 for inclusion in one of these four major districts. Lands in
17 the agricultural district shall include agricultural lands not
18 classified by the land use commission for inclusion in one of
19 the other major districts by January 1, 2009. The commission
20 shall set standards for determining the boundaries of each
21 district[7]; provided that:



1 (1) In the establishment of boundaries of urban districts
2 those lands that are now in urban use and a sufficient
3 reserve area for foreseeable urban growth shall be
4 included;

5 (2) In the establishment of boundaries for rural
6 districts, areas of land composed primarily of small
7 farms mixed with very low density residential lots,
8 which may be shown by a minimum density of not more
9 than one house per one-half acre and a minimum lot
10 size of not more than one-half acre shall be included,
11 except as herein provided; provided further that the
12 land use commission shall give consideration to:

13 (A) The master plan or general plan of the county;

14 (B) Contiguous land areas with soil classified by the
15 land study bureau's detailed land classification
16 as overall (master) productivity rating class C,
17 D, E, or U, not included in the agricultural
18 district by the land use commission by January 1,
19 2009;

20 (C) Agricultural lands with residential subdivisions
21 existing before January 1, 2007; and



1 (D) Areas not suited to agricultural and ancillary
2 activities by reason of topography and other
3 related characteristics;

4 (3) In the establishment of the boundaries of agricultural
5 districts, the greatest possible protection shall be
6 given to those lands with a high capacity for
7 intensive cultivation[+], including:

8 (A) Lands with soils classified by the land study
9 bureau's detailed land classification as overall
10 (master) productivity rating class A or B; and

11 (B) Lands in active agricultural production on
12 January 1, 2007, with soil classified by the land
13 study bureau's detailed land classification as
14 overall (master) productivity rating class C, D,
15 E, or U; and

16 (4) In the establishment of the boundaries of conservation
17 districts, the greatest possible protection shall be
18 given to valuable natural resources, including:

19 (A) Watersheds and water sources;

20 (B) Indigenous or endemic plants, fish and wildlife
21 including those which are threatened or
22 endangered;



- 1 (C) Park lands, wilderness, and beach reserves;
- 2 (D) Shoreline and coastal resources;
- 3 (E) Native forests and other forested areas;
- 4 (F) Wetlands, natural streams, and lakes;
- 5 (G) Scenic, historic, archaeological, and cultural
- 6 areas; and
- 7 (H) Recreational resources and areas highly
- 8 susceptible to erosion, landslides, flooding,
- 9 volcanic hazards, and other conditions which may
- 10 threaten lives or property.

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



1 In establishing the boundaries of the districts in each county,
2 the commission shall give consideration to the master plan or
3 general plan of the county.

4 (b) Urban districts shall include activities or uses as
5 provided by ordinances or regulations of the counties within
6 which the urban district is situated.

7 (c) Rural districts shall include ~~[activities or uses as~~
8 ~~characterized by low]~~:

9 (1) Small agricultural or farming operations;

10 (2) Public institutions and buildings;

11 (3) Public and private open area types of recreational
12 uses, including campgrounds, picnic grounds, overnight
13 camp, parks, riding stables, golf courses, golf
14 driving ranges, and country clubs;

15 (4) Educational institutions;

16 (5) Public utilities;

17 (6) Low density retail and commercial facilities; and

18 (7) Low density residential lots of not more than one
19 dwelling house per one-half acre~~[, except as provided~~
20 ~~by county ordinance pursuant to section 46-4(e), in~~
21 ~~areas where "city like" concentrations of people,~~
22 ~~structures, streets, and urban level of services are~~



1 ~~absent, and where small farms are intermixed with low~~
2 ~~density residential lots except that within a~~
3 ~~subdivision, as defined in section 484 1, the~~
4 ~~commission for good cause may allow one lot of less~~
5 ~~than one half acre, but not less than 18,500 square~~
6 ~~feet, or an equivalent residential density, within a~~
7 ~~rural subdivision and permit the construction of one~~
8 ~~dwelling on such lot, provided that all other~~
9 ~~dwellings in the subdivision shall have a minimum lot~~
10 ~~size of one half acre or 21,780 square feet. Such~~
11 ~~petition for variance may be processed under the~~
12 ~~special permit procedure. These districts may include~~
13 ~~contiguous areas which are not suited to low density~~
14 ~~residential lots or small farms by reason of~~
15 ~~topography, soils, and other related characteristics.~~
16 ~~Rural districts shall also include golf courses, golf~~
17 ~~driving ranges, and golf related facilities.];~~

18 provided that the permissible uses described in this subsection
19 may be further defined by each county by zoning ordinance.

20 (d) Agricultural districts shall include all lands with
21 soil classified by the land study bureau's detailed land
22 classification as overall (master) productivity rating class A



1 or B, important agricultural lands designated pursuant to part
2 III, and lands classified by the land use commission as
3 agricultural by January 1, 2009, with soil classified by the
4 land study bureau's detailed land classification as overall
5 (master) productivity rating class C, D, E, or U, and shall
6 include:

- 7 (1) Activities or uses as characterized by the cultivation
8 of crops, orchards, forage, and forestry;
- 9 (2) Farming activities or uses related to animal
10 husbandry, and game and fish propagation;
- 11 (3) Aquaculture, which means the production of aquatic
12 plant and animal life within ponds and other bodies of
13 water;
- 14 (4) Wind generated energy production for public, private,
15 and commercial use;
- 16 (5) Bona fide agricultural services and uses that support
17 the agricultural activities of the fee or leasehold
18 owner of the property and accessory to any of the
19 above activities, whether or not conducted on the same
20 premises as the agricultural activities to which they
21 are accessory, including but not limited to farm
22 dwellings as defined in section 205-4.5(a)(4),



1 employee housing, farm buildings, mills, storage
2 facilities, processing facilities, vehicle and
3 equipment storage areas, roadside stands for the sale
4 of products grown on the premises, and plantation
5 community subdivisions as defined in section 205-
6 4.5(a)(12);

7 (6) Wind machines and wind farms;

8 (7) Small-scale meteorological, air quality, noise, and
9 other scientific and environmental data collection and
10 monitoring facilities occupying less than one-half
11 acre of land; provided that these facilities shall not
12 be used as or equipped for use as living quarters or
13 dwellings;

14 (8) Agricultural parks; and

15 (9) Agricultural tourism conducted on a working farm, or a
16 farming operation as defined in section 165-2, for the
17 enjoyment, education, or involvement of visitors;
18 provided that the agricultural tourism activity is
19 accessory and secondary to the principal agricultural
20 use and does not interfere with surrounding farm
21 operations; and provided further that this paragraph
22 shall apply only to a county that has adopted



1 ordinances regulating agricultural tourism under
2 section 205-5 [~~7~~ and
3 ~~(10) Open area recreational facilities~~].

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

6 Agricultural districts include areas that are not used for, or
7 that are not suited to, agricultural and ancillary activities by
8 reason of topography, soils, and other related characteristics.

9 (e) Conservation districts shall include areas necessary
10 for protecting watersheds and water sources; preserving scenic
11 and historic areas; providing park lands, wilderness, and beach
12 reserves; conserving indigenous or endemic plants, fish, and
13 wildlife, including those which are threatened or endangered;
14 preventing floods and soil erosion; providing forestry;
15 retaining open space areas whose existing openness, natural
16 condition, or present state of use, if retained, would enhance
17 the present or potential value of abutting or surrounding
18 communities, or would maintain or enhance the conservation of
19 natural or scenic resources; providing areas of value for
20 recreational purposes; other related activities; and for
21 providing other permitted uses not detrimental to a multiple use
22 conservation concept.



1 SECTION 5. Section 205-3.1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§205-3.1 Amendments to district boundaries. (a)

4 District boundary amendments involving lands in the conservation
5 district, land areas greater than fifteen acres, or lands
6 delineated as important agricultural lands shall be processed by
7 the land use commission pursuant to section 205-4.

8 (b) Any department or agency of the State, and department
9 or agency of the county in which the land is situated, or any
10 person with a property interest in the land sought to be
11 reclassified under this section may petition the appropriate
12 county land use decision-making authority of the county in which
13 the land is situated for a change in the boundary of a district
14 involving lands less than fifteen acres presently in the rural
15 and urban districts and lands less than fifteen acres in the
16 agricultural district that are not designated as important
17 agricultural lands.

18 (c) Any person with a property interest in agricultural
19 land meeting the criteria in section 205-2(a)(2) for rural lands
20 may petition the appropriate county land use decision-making
21 authority of the county in which the land is situated for a
22 change in the boundary of a district involving lands less than



1 fifteen acres to rural, if the person has dedicated lands for
2 agricultural use pursuant to county ordinance or has designated
3 lands as important agricultural lands pursuant to part III.

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

18 ~~(d)~~ (e) The county land use decision-making authority
19 shall serve a copy of the application for a district boundary
20 amendment to the land use commission and the department of
21 business, economic development, and tourism and shall notify the
22 commission and the department of the time and place of the



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

12 SECTION 6. Section 205-4, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Any department or agency of the State, any department
15 or agency of the county in which the land is situated, or any
16 person with a property interest in the land sought to be
17 reclassified, may petition the land use commission for a change
18 in the boundary of a district. Any person with a property
19 interest in agricultural land meeting the criteria in section
20 205-2(a)(2) for rural lands may petition the land use commission
21 for a change in the boundary of a district involving lands
22 greater than fifteen acres to rural, if the person has



1 designated other lands as important agricultural lands pursuant
 2 to part III. This section applies to all petitions for changes
 3 in district boundaries of lands within conservation districts,
 4 lands designated or sought to be designated as important
 5 agricultural lands, and lands greater than fifteen acres in the
 6 agricultural, rural, and urban districts, except as provided in
 7 section 201G-118. The land use commission shall adopt rules
 8 pursuant to chapter 91 to implement section 201G-118."

9 SECTION 7. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 8. This Act shall take effect upon its approval.

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Report Title:

Land use; Important Agricultural Lands

Description:

Requires the Land Use Commission to review and reclassify the land use laws, including the criteria for and uses in the four land use districts; giving the county authority to reclassify qualifying agricultural lands of less than fifteen acres to the rural classification, if the applicant has dedicated agricultural lands or important agricultural lands, and likewise for the Land Use Commission for lands greater than fifteen acres, if the applicant has important agricultural lands; and allowing county experimental/demonstration housing projects on rural lands.

