

A handful of landowners who submitted comments (8%, 6 of 74) concurred with the preliminary IAL designation and expressed a desire to have their land designated as IAL. After reviewing the requests on a case-by-case basis, the City complied with five of the six landowner requests to be included in the City's IAL process. The only landowner request for IAL designation that was not met involved a parcel in the country zoning district, in which case the subject parcel and the entire subdivision surrounding the parcel was removed from the City's IAL recommendations because the country zoning was deemed inconsistent with the intent of the IAL designation.

The remaining comments (20%, 19 of 93) were from stakeholders who did not own land being recommended for IAL, including government agencies, community organizations, and concerned individuals. These comments were generalized and not specific to any of the individual parcels listed in the preliminary recommendations for IAL. Comments were mostly related to the City's land use and development policies, and the planning process being used to complete the mapping (see Appendix E for summary). Common themes reflected in the comments are listed as follows:

- Important to protect and preserve all land currently classified and/or zoned for agricultural use, particularly those which are not included in the City's recommendations for IAL designation
- Expand the inventory of land recommended for IAL designation to include land formerly used for agriculture that is currently in the State Urban District and planned for future development (Ho'opili and Koa Ridge project areas)
- Allow for more community outreach and opportunities for public discourse, and greater transparency, in the planning process
- Use IAL as a mechanism to promote food security and self-sufficiency
- Welcomes the City's effort to comply with the legal mandate for county-designated IAL.

Taking into consideration the input received through the public comments, the City conducted a thorough review of the preliminary recommendations and identified a number of refinements to prepare the final iteration for City Council approval. In addition to verifying the accuracy of the recommendations for consistency with the priority weighted criteria, the City's review sought to ensure that the recommendations demonstrated a critical mass—or concentration—of

agricultural land. Revisions made to the preliminary recommendations are listed as part of the summary of comments and actions presented in Appendix E. Parcels were either added or removed from the inventory of IAL recommendations based on comments from landowners or the City's identification of an inconsistency or oversight. While a handful of the revisions were parcels that were added because of contextual attributes or proximity to other IAL-designated parcels (i.e., critical mass), most of the revisions were parcels that were removed because the City agreed with the landowner's justification; the parcel was found to be currently designated/zoned or planned for uses other than agriculture; or the land did not demonstrate the priority weighted criteria or proximity to other agricultural lands to be considered IAL.

4.2 RELATED ISSUES AND CONCERNS

The section outlines the issues and concerns identified during the community consultations that are important considerations for the future of O'ahu's agricultural industry, and are likely to continue as topics of discussion for community members participating in the upcoming City Council and LUC proceedings related to the county designation process. These issues and concerns, while relevant to the ongoing public debate and conflicting perspectives concerning the future use of O'ahu's agricultural lands, were beyond the scope of the IAL mapping project and were not addressed as part of the City's focused effort to develop recommendations for county-designated IAL. Familiarity with these issues and concerns will be helpful in preparation for the next phase of the designation process and the public dialogue that may unfold at the City Council.



Dendrobium sp. (Orchid)
SOURCE: Starr Environmental.
www.starrenvironmental.com/images/image/?q=24706346049



Dendrobium sp. (Orchid) SOURCE: Starr Environmental.
<http://www.starrenvironmental.com/images/image/?q=24778353990>

4.2.1 EXISTING FARMS IN THE STATE URBAN DISTRICT

Per Chapter 205, HRS, land must be classified in the State Agricultural District to be designated as IAL. This requirement automatically precludes existing farms situated on land in the State Urban District from being eligible for the IAL designation and the incentives that accompany the designation.

While some of the existing farms in the State Urban District are on land identified for future urbanization according to the City's current land use policies (such as lands in Central O'ahu and 'Ewa), a number of small farms are on land no longer planned for urban uses by the State or the City, on land intended for long-term agricultural and open space use (largely because previous development proposals for these areas have been dropped and the Urban classification has been retained). These pockets of agricultural areas in Kahalu'u, Hawai'i Kai, Pālolo Valley and Wai'anae are typically characterized by small, family-owned operations run by farmers who live on their land and rely on their farms as part of their livelihood. For these small farms, conformance with the state land use classification system has not been a major deterrent, since the City's land use policies and the community's sentiments generally support farming in these areas. However, considering that the purpose of IAL is to promote viable agriculture, proponents suggested that farms in the State Urban District be granted access to the IAL incentives as a means of additional financial assistance and to support the continuation of these farms.⁹ Under the existing structure of the State land use system, farms in the Urban District that want to access the IAL incentives are required to exercise one of three actions:

- Relocate operations from land in the State Urban District to the State Agricultural District
- Petition the LUC to reclassify the land to the State Agricultural District, followed by voluntary landowner petition for IAL designation, or
- Dedicate lands for perpetual agricultural use via an agricultural or conservation easement. Although such easements provide tax relief, they do not affect a landowners' ability to qualify for IAL-related incentives.

⁹ The IAL incentives are not available to farms in the State Urban District because public funding mechanisms have resource limitations, and it is necessary to focus public investment (i.e., incentives that support infrastructure improvements) on "important" lands.

Proponents also suggested a need to inventory the existing farms in the State Urban District and the acreage currently used for agriculture, and conduct a survey of landowners/farmers in the State Urban District to identify how many would be interested in pursuing an IAL designation. Such a project would be a rigorous, labor-intensive effort involving extensive public outreach.

4.2.2 IAL DESIGNATION OF PUBLIC LANDS

Chapter 205-44.5, HRS assigns HDOA and DLNR joint responsibility to identify State-owned lands that should be designated IAL and to prepare maps delineating those lands (see Section 1.3.3. Designation of Public Lands). Although the law specifies a December 31, 2009 date for completion of this process, the State has been unable to comply with this requirement due to funding deficiencies and delays associated with land transfers between HDOA and DLNR.

Although there is no statutory requirement for the county's mapping process to consider or await the completion of the State's identification and designation of state-owned IAL, identification of the public lands with potential to be designated as IAL can be useful for decision-making when identifying county-designated IAL. Of the estimated 80,000 acres of public lands on O'ahu, approximately 14 percent, or 11,400 acres, is agricultural land eligible to be considered for IAL. A complete inventory of all lands on O'ahu with IAL potential (both privately-owned and public lands) would help to ensure contiguous blocks of agricultural land units that contribute to the critical mass, and also to discourage the fragmentation of IAL which is consistent with the State's policies for IAL (per Chapter 205-43, HRS).

4.2.3 FOOD SELF-SUFFICIENCY AND FOOD SECURITY

Perspectives about food self-sufficiency vary, from those who want to promote agriculture as a means to achieve island-wide (100 percent) food self-sufficiency and reduce Hawai'i's dependence on imported food, to those who argue that food self-sufficiency would be unprofitable and impractical for many crops as well as risky for food security. (If a hurricane or severe storm were to wipe out much of the supply of local products, logistics would not be in place for off-island suppliers to quickly meet the demand for imported products.)

In support of increased food self-sufficiency and food security, proponents have expressed concerns about overdevelopment and the potential impacts resulting from the conversion of agricultural land in 'Ewa and Central O'ahu for planned master-planned residential developments (i.e., Ho'opili and Koa Ridge). In general,

proponents of food self-sufficiency and food security also want to promote agricultural production that prioritizes growing food for local consumption (as opposed to export crops, ornamentals, or non-agricultural uses). Ensuring the long-term protection and availability of all lands in agricultural use—including those identified by long-range plans for urban uses and those not designated as IAL—is also viewed as a valuable strategy to improving both food self-sufficiency and food security.

In contrast, some policy analysts caution against the potential consequences of achieving significant food self-sufficiency and food security, as the economic costs may outweigh the benefits. An assessment of the benefits and risks associated with self-sufficiency and security included in a report on the situation and outlook for agricultural land on O'ahu (City and County of Honolulu Department of Planning and Permitting, February 2011) indicates that the agricultural industry would require substantial government subsidies to attain high levels of self-sufficiency and food security, which may prove to be unaffordable in the long term.

Since Kaua'i's IAL Study was structured to emphasize food self-sufficiency as a condition for decision-making, there were a number of questions about the City's willingness to follow Kaua'i's model or to shift the focus of the study to food crops. The City favored an inclusive approach that was impartial to the different types of agricultural producers and did not differentiate between food crops and other crops, largely under the assumption that land currently used for other crops may be converted to support food crops in the future. The preference for impartiality, without an emphasis on food self-sufficiency, is consistent with the objective of the IAL program *"to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities"* (Chapter 205-42(b), HRS). Accordingly, the crop type is secondary to the physical characteristics of the land when determining IAL.

Conducting an island-wide food self-sufficiency study is a complicated, research-driven task that is made difficult by the lack of available data. (Federal non-disclosure requirements limit access to the data needed for a comprehensive analysis, and some major farmers do not disclose their production data). While an island-wide study may be desirable, examining food self-sufficiency as a statewide issue may be more appropriate. Unlike an independent study, a comprehensive assessment allows for a coordinated effort that balances the needs of all the islands. More importantly, a statewide comprehensive analysis recognizes the

state's long-standing economic strategy to use O'ahu as a primary or secondary market for agricultural exports from the neighbor islands, where major changes in island food production can seriously affect farming activity, production levels, employment and the supporting industries on other islands.

4.2.4 COUNTY INCENTIVES

Chapter 205-46, HRS provides broad guidelines for incentives at both the State and county level, and a framework for state-administered incentive programs (see Section 1.3.4). To date, although the City has focused its' efforts on preparing recommendations for IAL identification, efforts are underway to explore suggestions and appropriate additional county incentives that can be applied to IAL-designated properties. The City is pragmatic about the practicality of the incentives, as much of the suggested additional City incentives could result in a loss of revenues needed for infrastructure maintenance and improvements, potentially leading to increases in fees and/or taxes affecting all taxpayers to replenish the loss revenues. The City currently has a number of programs available that benefit properties in agricultural use (e.g., lower property tax rate for agricultural land, property tax exemptions for certain infrastructure improvements, special water rate for agricultural properties). The City is currently collaborating among its agencies to devise additional benefits. Preference is being given to incentives that do not require significant financial outlays by the City.

IAL incentives are generally intended to benefit properties that have received an IAL designation. However, agricultural businesses that own or lease 50% of their land as IAL land, may also benefit from the IAL incentives (see State Tax Instructions, Form N-344). Certain classes of agricultural lands, including active agricultural lands in the State Urban District and lands being used for agricultural support functions (i.e., agricultural processing facilities and agricultural worker housing), are not able to qualify for an IAL designation because they do not meet the IAL eligibility requirements. Without the IAL designation, landowners and farmers who use these lands would not receive the benefits of the incentives unless they own or lease IAL lands in the amount which is greater than 50% of the area of their operations. Proponents suggested that the county incentives program be expanded to incorporate these unique types of scenarios, particularly because there is a need to promote the economic viability of such agricultural operations as well as to ensure that such areas are available for long-term agricultural use.

4.2.5 FUTURE UNANTICIPATED CONSEQUENCES OF IAL

Comments and questions received during the various meetings and written comment periods suggested a general sense of distrust and unfamiliarity with the IAL initiative. Despite the City's community outreach efforts to inform and educate the public about the intricacies of the designation, participants that took part in the community consultations were not certain that the IAL designation would be an effective tool to promote the agricultural industry. Concerns raised regarding the possibility for future unanticipated consequences as a result of the IAL program, including the potential for undesirable, negative impacts to land use, are summarized:

- Landowners need assurances that additional use restrictions will not be imposed on the IAL classification. Landowners are concerned that the IAL classification adds another layer of stringent regulation to Hawai'i's land use system.
- Is it possible that the IAL designation will encourage development of land not classified as IAL? What are the safeguards to ensure that developers do not find it easier to urbanize and rezone "unimportant" agricultural land?
- How will the IAL designation affect the cost of owning land (including property taxes), land values, and the future development potential of the land? Additional information about the availability of state and county agricultural initiatives that support the economic viability of IAL-designated properties is needed.

Besides the City and County of Honolulu, Kaua'i is the only other county to prepare recommendations for IAL designation. However, based on the City's understanding, Kaua'i County determined that it has fulfilled its IAL obligations, and Honolulu will be the first county to advance to the next step of the county designation process.

4.2.6 PUBLIC PARTICIPATION IN THE PLANNING PROCESS

Controversy and difficulty finding consensus are typical of public planning processes in today's modern world. Likewise, because the general public has grown to expect a high level of involvement in both planning and decision-making processes, outspoken criticism can be expected when processes do not provide for public outreach and participation at levels that satisfy the expectations of the

general public. Within this context, proponents in favor of greater participation expressed a desire for more outreach, additional opportunities for public input, and increased transparency in the decision-making process. Specifically, critics of the planning process wanted more community meetings spread out across the island, more outreach targeting small farmers, and more collaboration and consultation with landowners during the initial stages of the process before the public meetings. The dissatisfaction with the City's planning process was coupled with a fundamental distrust of government initiatives and a perception that public sentiments were not being considered.

The composition of the technical advisory committee was also a concern. Community members questioned the membership selection process, the interests represented by the TAC members, and the qualifications of the members. Concerns reflected biases against corporate farming interests, preferences to include more small farmers and organic farmers, and dissatisfaction about how individual landowners were represented. Recognizing the instrumental role that the TAC played in formulating the resource maps and the TAC's influence on the selection of the priority criteria, the City convened the TAC to include a broad cross-section of agricultural industry interests with balanced representation between small farmers, family farms and corporate farming operations. The composition of the TAC was also based on the statutory requirements established in HRS § 205-47(b), which specified representation from certain interest groups, including "landowners, department of agriculture, Hawai'i Farm Bureau Federation, US Department of Agriculture Natural Resources Conservation Service, the office of planning, and other agricultural organizations and interest groups."

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APPENDICES

A

Chapter 205, HRS
(State Land Use Districts and IAL)

B

Technical Advisory Committee
Meetings and Roster

C

Focus Group Meetings

D

Community Meetings

E

Landowner and Public Comments

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Criteria Weighting Methodology

H

Inventory of City Recommendations for IAL
Designation by TMK Parcel Number

A

CHAPTER 205, HRS
(STATE LAND USE DISTRICTS AND IAL)

**HAWAII REVISED STATUTES
CHAPTER 205
LAND USE COMMISSION**

Updated to include 2007 Amendments

(UNOFFICIAL)

**Part I. Generally
Section**

205-1	Establishment of the commission
205-2	Districting and classification of lands
205-3	Retention of district boundaries
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205-5.2	Designation of areas as geothermal resource subzones
205-5.3	Exploratory wells
205-6	Special permit
205-7	Adoption, amendment or repeal of rules
205-8	Nonconforming uses
205-9 to 11	Repealed
205-12	Enforcement
205-13	Penalty for violation
205-14	Adjustments of assessing practices
205-15	Conflict
205-16	Compliance with the Hawaii state plan
205-16.1, 16.2	Repealed
205-17	Land use commission decision-making criteria
205-18	Periodic review of districts

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205-31 to 37	Repealed
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Part III. Important Agricultural Lands

205-41	Declaration of policy
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205-43	Important agricultural lands; policies
205-44	Standards and criteria for the identification of important agricultural lands
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205-49	Designation of important agricultural lands; adoption of important agricultural lands maps
205-50	Standards and criteria for the reclassification or rezoning of important agricultural lands
205-51	Important agricultural lands; county ordinances
205-52	Periodic review and amendment of important agricultural lands maps

Note

Prior law: L 1961, c 187.

Law Journals and Reviews

Maha'ulepu v. Land Use Commission: A Symbol of Change; Hawaii's Land Use Law Allows Golf Course Development on Prime Agricultural Land by Special Use Permit. 13 UH L. Rev. 205.

Honolulu's Ohana Zoning Law: To Ohana or Not to Ohana. 13 UH L. Rev. 505.

The Lum Court, Land Use, and the Environment: A Survey of Hawai'i Case Law 1983 to 1991. 14 UH L. Rev. 119.

Residential Use of Hawai'i's Conservation District. 14 UH L. Rev. 633.

Dolan v. City of Tigard: Individual Property Rights v. Land Management Systems. 17 UH L. Rev. 193.

Is Agricultural Land in Hawai'i "Ripe" for a Takings Analysis? 24 UH L. Rev. 121.

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199.

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

Case Notes

Religious Land Use and Institutionalized Persons Act of 2000, assuming it was constitutional, did not facially invalidate Hawaii's land use law. 229 F. Supp. 2d 1056.

Provisions of chapter provide authority to issue special use permits for golf courses on prime agricultural lands. 71 H. 332, 790 P.2d 906.

[PART I. GENERALLY]

Law Journals and Reviews

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

§205-1 Establishment of the commission. There shall be a state land use commission, hereinafter called the commission. The commission shall consist of nine members who shall hold no other public office and shall be appointed in the manner and serve for the term set forth in section 26-34. One member shall be appointed from each of the counties and the remainder shall be appointed at large; provided that one member shall have substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural land practices. The commission shall elect its chairperson from one of its members. The members shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties. Six affirmative votes shall be necessary for any boundary amendment.

The commission shall be a part of the department of business, economic development, and tourism for administration purposes, as provided for in section 26-35.

The commission may engage employees necessary to perform its duties, including administrative personnel and an executive officer. The executive officer shall be appointed by the commission and the executive officer's position shall be exempt from civil service. Departments of the state government shall make available to the commission such data, facilities, and personnel as are necessary for it to perform its duties. The commission may receive and utilize gifts and any funds from the federal or other governmental agencies. It shall adopt rules guiding its conduct, maintain a record of its activities and accomplishments, and make recommendations to the governor and to the legislature through the governor. [L 1963, c 205, pt of §2; Supp. §98H-1; HRS §205-1; am L 1975, c 193, §2; am L 1976, c 43, §1; gen ch 1985; am L 1987, c 336, §7; am L 1990, c 293, §8; gen ch 1993; am L 2006, c 296, §1]

Note

The 2006 amendment effective on July 10, 2006, applies to next vacancy on commission. L 2006, c 296, §3.

Cross References

Commission placed in department of business, economic development, and tourism, see §26-18.

Commissions, generally, see §26-34.

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

- (1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
- (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
- (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
- (4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

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

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

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry, and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind generated energy production for public, private, and commercial use;
- (5) Biofuel production as described in section 205-4.5(a)(15) for public, private, and commercial use;
- (6) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);
- (7) Wind machines and wind farms;
- (8) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- (9) Agricultural parks;
- (10) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; and
- (11) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other

related activities; and other permitted uses not detrimental to a multiple use conservation concept. [L 1963, c 205, pt of §2; Supp, §98H-2; HRS §205-2; am L 1969, c 182, §5; am L 1975, c 193, §3; am L 1977, c 140, §1 and c 163, §1; am L 1980, c 24, §2; am L 1985, c 298, §2; am L 1987, c 82, §3; am L 1989, c 5, §2; am L 1991, c 191, §1 and c 281, §2; am L 1995, c 69, §8; am L 2005, c 205, §2; am L 2006, c 237, §3 and c 250, §1; am L 2007, c 159, §2]

Cross References

Districts, generally, see chapter 4.

Attorney General Opinions

Uses within agricultural districts. Att. Gen. Op. 62-33, 62-38.

Dwellings permissible under this section are further defined by regulations established under §205-7. Att. Gen. Op. 75-8.

Law Journals and Reviews

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

§205-3 Retention of district boundaries. Land use district boundaries existing as of June 2, 1975, shall continue in full force and effect subject to amendment as provided in this chapter or order of a court of competent jurisdiction based upon any litigation filed prior to July 1, 1975, or filed within thirty days after service of a certified copy of any final decision and order made as part of the commission's 1974 periodic boundary review, whichever occurs later. [L 1963, c 205, pt of §2; Supp, §98H-3; am L 1975, c 193, §4; HRS §205-3]

Revision Note

"June 2, 1975" substituted for "the effective date of this Act".

Attorney General Opinions

Statute contemplates and authorizes changes in classification as originally proposed and as finally adopted, and to require new notice and hearing whenever there is any change is too burdensome. Att. Gen. Op. 71-2.

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

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

in which the land is situated for a change in the boundary of a district involving lands less than fifteen acres presently in the rural and urban districts and lands less than fifteen acres in the agricultural district that are not designated as important agricultural lands.

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

(d) The county land use decision-making authority shall serve a copy of the application for a district boundary amendment to the land use commission and the department of business, economic development, and tourism and shall notify the commission and the department of the time and place of the hearing and the proposed amendments scheduled to be heard at the hearing. A change in the state land use district boundaries pursuant to this subsection shall become effective on the day designated by the county land use decision-making authority in its decision. Within sixty days of the effective date of any decision to amend state land use district boundaries by the county land use decision-making authority, the decision and the description and map of the affected property shall be transmitted to the land use commission and the department of business, economic development, and tourism by the county planning director. [L 1985, c 230, §3; am L 1987, c 336, §7; am L 1990, c 293, §8; am L 2005, c 183, §3]

Law Journals and Reviews

“Urban Type Residential Communities in the Guise of Agricultural Subdivisions:” Addressing an Impermissible Use of Hawai’i’s Agricultural District. 25 UH L. Rev. 199.

Case Notes

As section required county review of developer’s 14.5 acre change of zone request, trial court did not err in concluding that county council properly approved developer’s boundary amendment. 91 H. 94, 979 P.2d 1120.

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

(b) Upon proper filing of a petition pursuant to subsection (a) the commission shall, within not less than sixty and not more than one hundred and eighty days, conduct a hearing on the appropriate island in accordance with the provisions of sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

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

(d) Any other provisions of law to the contrary notwithstanding, prior to hearing of a petition the commission and its staff may view and inspect any land which is the subject of the petition.

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

- (1) The petitioner, the office of planning, and the county planning department shall in every case appear as parties and make recommendations relative to the proposed boundary change.
- (2) All departments and agencies of the State and of the county in which the land is situated shall be admitted as parties upon timely application for intervention.
- (3) All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.
- (4) All other persons may apply to the commission for leave to intervene as parties. Leave to intervene shall be freely granted, provided that the commission or its hearing officer if one is appointed may deny an application to intervene when in the commission’s or hearing officer’s sound discretion it appears that: (A) the position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and (B) the admission of additional parties will render the proceedings inefficient and unmanageable. A person whose application to intervene is denied may appeal such denial to the circuit court pursuant to section 91-14.
- (5) The commission shall pursuant to chapter 91 adopt rules governing the intervention of agencies and persons under this subsection. Such rules shall without limitation establish: (A) the information to be set forth in any application

for intervention; (B) time limits within which such applications shall be filed; and (C) reasonable filing fees to accompany such applications.

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

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

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

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

(j) At the hearing, all parties may enter into appropriate stipulations as to findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary change. The commission may but shall not be required to approve such stipulations based on the evidence adduced. [L 1963, c 205, pt of §2; am L 1965, c 32, §2; Supp. §98H-4; HRS §205-4; am L 1972, c 187, §2; am L 1975, c 193, §5; am L 1976, c 4, §1; am L 1985, c 230, §4; am L 1986, c 93, §1; am L 1987, c 336, §7; am L 1988, c 352, §2; am L 1989, c 261, §10; am L 1990, c 261, §1; am L 1995, c 235, §1; am L 1996, c 299, §3; am L 1997, c 350, §15; am L 1998, c 2, §60; am L 2005, c 183, §4; am L 2007, c 249, §15]

Attorney General Opinions

The commission may be empowered to impose conditions on reclassifications and to impose sanctions for violation of the conditions, and the conditions may be made to run with the land. Att. Gen. Op. 72-8.

Proposal to subdivide agricultural land into agriculturally unfeasible small lots would violate intent of chapter. Att. Gen. Op. 75-8.

Law Journals and Reviews

“Urban Type Residential Communities in the Guise of Agricultural Subdivisions:” Addressing an Impermissible Use of Hawai’i’s Agricultural District. 25 UH L. Rev. 199.

Case Notes

Proceeding for amendment to boundaries challenged by adjoining landowner is a contested case within meaning of §91-1(5). 55 H. 538, 524 P.2d 84.

Provision that commission shall render decision within forty-five and ninety days after the public hearing is mandatory and decision rendered after the time period is void. 55 H. 538, 524 P.2d 84.

The adoption or amendment of boundaries is not a rule-making process within meaning of §91-1(4). 55 H. 538, 524 P.2d 84.

Person entitled under prior law to petition for change in boundary. 57 H. 84, 549 P.2d 737.

Where landlord seeks to evict tenants who exercise their rights to appear and testify at a public hearing, defense of retaliatory eviction is available. 59 H. 104, 577 P.2d 326.

Commission rules re intervention and “final order” for purposes of appeal, construed. 63 H. 529, 631 P.2d 588.

Proposal for recreational theme park on agricultural land was more properly the subject of a boundary amendment under this section, rather than a special permit. 64 H. 265, 639 P.2d 1079.

§205-4.1 Fees. The commission may establish reasonable fees for the filing of boundary amendment petitions and petitions for intervention to cover the cost of processing thereof and for the reproduction of maps and documents. The commission also may assess a reasonable fee or require reimbursements to be made for court reporter expenses, the inexcusable absence of a party from a boundary amendment proceeding, and any other reimbursements for hearing expenses as determined by the commission. Any fees collected shall be deposited to the credit of the general fund. [L 1983, c 49, §2; am L 1999, c 260, §1]

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

- (1) Cultivation of crops, including but not limited to crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;

- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the above mentioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this paragraph means a subdivision or cluster of employee housing, community buildings, and acreage established on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation and in residential use by employees or former employees of the plantation; provided that the employees or former employees shall have a property interest in the land;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory

and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

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

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

- (16) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection.

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

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that these restrictions and conditions shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

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

The mortgage lending agencies referred to in the preceding paragraph are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration,

Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

(c) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

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

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

(f) Notwithstanding any other law to the contrary, agricultural lands may be subdivided and leased for the agricultural uses or activities permitted in subsection (a); provided that:

- (1) The principal use of the leased land is agriculture;
- (2) No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of storage sheds, equipment sheds, or other structures appropriate to the agricultural activity carried on within the lot; and
- (3) The lease term for a subdivided lot shall be for at least as long as the greater of:
 - (A) The minimum real property tax agricultural dedication period of the county in which the subdivided lot is located; or
 - (B) Five years.

Lots created and leased pursuant to this section shall be legal lots of record for mortgage lending purposes and shall be exempt from county subdivision standards. [L 1976, c 199, §1; am L 1977, c 136, §1; am L 1980, c 24, §3; am L 1982, c 217, §1; am L 1991, c 281, §3; am L 1997, c 258, §11; am L 2005, c 205, §3; am L 2006, c 237, §4, c 250, §2, and c 271, §1; am L 2007, c 159, §3 and c 171, §1]

Law Journals and Reviews

Avoiding the Next Hoku'i'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

Case Notes

Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), assuming it was constitutional, did not facially invalidate Hawai'i's land use law, where plaintiffs challenged this section and §205-6 to the extent the sections required a religious organization to obtain a special use permit, as violations of the "equal terms" and "nondiscrimination" provisions of the RLUIPA. 229 F. Supp. 2d 1056.

"Communications equipment buildings" and "utility lines" in subsection (a)(7) do not encompass "telecommunications antennas" or "transmission antennas" such as a cellular telephone tower; public utility thus had to apply for a special permit under §205-6 to place the tower in a state agricultural district. 90 H. 384, 978 P.2d 822.

Under subsection (a)(4) and (10), a chimney and garage are permitted as accessories to a farm dwelling; however, utilizing the chimney to conceal an antenna and the garage to house communication equipment were not permitted uses under either paragraph (4) or (10). 106 H. 343, 104 P.3d 930.

Under the circumstances of the case, the residence and the chimney with the concealed antenna constituted a "communications equipment building" and, thus, were permitted uses under subsection (a)(7); also, as the garage was not abnormally large and was designed specifically to store the communications equipment for the concealed antenna, utilizing the permitted garage structure to house the communications equipment for the antenna was a permitted use under subsection (a)(7). 106 H. 343, 104 P.3d 930.

§205-4.6 Private restrictions on agricultural uses and activities; not allowed.

Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4; except that restrictions taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements shall not be subject to this section.

For purposes of this section, "agricultural leases" means leases where the leased land is primarily utilized for purposes set forth in section 205-4.5(a). [L Sp 2003, c 5, §2; am L 2004, c 170, §1]

Law Journals and Reviews

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199.

§205-5 Zoning. (a) Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C.

(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a

working farm, or farming operation as defined in section 165-2; provided that agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation. Ordinances shall include but not be limited to:

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

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements.

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

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

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2. [L 1963, c 205, pt of §2; Supp. §98H-5; HRS §205-5; am L 1969, c 232, §1; am L 1977, c 140, §2; am L 1978, c 165, §1; am L 1991, c 281, §4; am L 1994, c 270, §2; am L 2005, c 205, §4; am L 2006, c 237, §5 and c 250, §3]

Attorney General Opinions

Minimum lot size in agricultural districts. Att. Gen. Op. 62-33.

Cited in opinion that enforcement of land uses in conservation districts lies with department of land and natural resources, and not with counties. Att. Gen. Op. 70-22.

Law Journals and Reviews

“Urban Type Residential Communities in the Guise of Agricultural Subdivisions:” Addressing an Impermissible Use of Hawai‘i’s Agricultural District. 25 UH L. Rev. 199.

§205-5.1 Geothermal resource subzones. (a) Geothermal resource subzones may be designated within the urban, rural, agricultural, and conservation land use districts established under section 205-2. Only those areas designated as geothermal resource subzones may be utilized for geothermal development activities in addition to those uses permitted in each land use district under this chapter. Geothermal development activities may be permitted within urban, rural, agricultural, and conservation land use districts in accordance with this chapter. “Geothermal development activities” means the exploration, development, or production of electrical energy from geothermal resources and direct use applications of geothermal resources; provided that within the urban, rural, and agricultural land use districts, direct use applications of geothermal resources are permitted both within and outside of areas designated as geothermal resource subzones pursuant to section 205-5.2 if such direct use applications are in conformance with all other applicable state and county land use regulations and are in conformance with this chapter.

(b) The board of land and natural resources shall have the responsibility for designating areas as geothermal resource subzones as provided under section 205-5.2; except that the total area within an agricultural district which is the subject of a geothermal mining lease approved by the board of land and natural resources, any part or all of which area is the subject of a special use permit issued by the county for geothermal development activities, on or before May 25, 1984, is designated as a geothermal resource subzone for the duration of the lease. The designation of geothermal resource subzones shall be governed exclusively by this section and section 205-5.2, except as provided therein. The board shall adopt, amend, or repeal rules related to its authority to designate and regulate the use of geothermal resource subzones in the manner provided under chapter 91.

The authority of the board to designate geothermal resource subzones shall be an exception to those provisions of this chapter and of section 46-4 authorizing the land use commission and the counties to establish and modify land use districts and to regulate uses therein. The provisions of this section shall not abrogate nor supersede the provisions of chapters 182, 183, and 183C.

(c) The use of an area for geothermal development activities within a geothermal resource subzone shall be governed by the board within the conservation district and, except as herein provided, by state and county statutes, ordinances, and rules not inconsistent herewith within agricultural, rural, and urban districts, except that no land use commission approval or special use permit procedures under section 205-6 shall be required for the use of such subzones.

In the absence of provisions in the county general plan and zoning ordinances specifically relating to the use and location of geothermal development activities in an agricultural, rural, or urban district, the appropriate county authority may issue a geothermal resource permit to allow geothermal development activities. "Appropriate county authority" means the county planning commission unless some other agency or body is designated by ordinance of the county council. Such uses as are permitted by county general plan and zoning ordinances, by the appropriate county authority, shall be deemed to be reasonable and to promote the effectiveness and objectives of this chapter. Chapters 177, 178, 182, 183, 183C, 205A, 226, 342, and 343 shall apply as appropriate. If provisions in the county general plan and zoning ordinances specifically relate to the use and location of geothermal development activities in an agricultural, rural, or urban district, the provisions shall require the appropriate county authority to conduct a public hearing on any application for a geothermal resource permit to determine whether the use is in conformity with the criteria specified in subsection (e) for granting geothermal resource permits; provided that within the urban, rural, and agricultural land use districts, direct use applications of geothermal resources are permitted without any application for a geothermal resource permit both within and outside of areas designated as geothermal resource subzones pursuant to section 205-5.2 if such direct use applications are in conformance with all other applicable state and county land use regulations and are in conformance with this chapter.

(d) If geothermal development activities are proposed within a conservation district, with an application with all required data, the board of land and natural resources shall conduct a public hearing and, upon appropriate request for mediation from any party who submitted comment at the public hearing, the board shall appoint a mediator within five days. The board shall require the parties to participate in mediation. The mediator shall not be a member of the board or its staff. The mediation period shall not extend beyond thirty days after the date mediation started, except by order of the board. Mediation shall be confined to the issues raised at the public hearing by the party requesting mediation. The mediator will submit a written recommendation to the board, based upon any mediation agreement reached between the parties for consideration by the board in its final decision. If there is no mediation agreement, the board may have a second public hearing to receive additional comment related to the mediation issues. Within ten days after the second public hearing, the board may receive additional written comment on the issues raised at the second public hearing from any party.

The board shall consider the comments raised at the second hearing before rendering its final decision. The board shall then determine whether, pursuant to board rules, a conservation district use permit shall be granted to authorize the geothermal development activities described in the application. The board shall grant a conservation district use permit if it finds that the applicant has demonstrated that:

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property; and
- (2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection; or
- (3) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

A decision shall be made by the board within six months of the date a complete application was filed; provided that the time limit may be extended by agreement between the applicant and the board.

(e) If geothermal development activities are proposed within agricultural, rural, or urban districts and such proposed activities are not permitted uses pursuant to county general plan and zoning ordinances, then after receipt of a properly filed and completed application, including all required supporting data, the appropriate county authority shall conduct a public hearing. Upon appropriate request for mediation from any party who submitted comment at the public hearing, the county authority shall appoint a mediator within five days. The county authority shall require the parties to participate in mediation. The mediator shall not be an employee of any county agency or its staff. The mediation period shall not extend beyond thirty days after mediation started, except by order of the county authority. Mediation shall be confined to the issues raised at the public hearing by the party requesting mediation. The mediator will submit a written recommendation to the county authority, based upon any mediation agreement reached between the parties for consideration by the county authority in its final decision. If there is no mediation agreement, the county authority may have a second public hearing to receive additional comment related to the mediation issues. Within ten days after the second public hearing, the county authority may receive additional written comment on the issues raised at the second public hearing from any party.

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

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property;
- (2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection; and
- (3) That there are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

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

(f) Requests for mediation shall be received by the board or county authority within five days after the close of the initial public hearing. Within five days thereafter, the board or county authority shall appoint a mediator. Any person submitting an appropriate request for mediation shall be notified by the board or county authority of the date, time, and place of the mediation conference by depositing such notice in the mail to the return address stated on the request for mediation. The notice shall be mailed no later than ten days before the start of the mediation conference. The conference shall be held on the island where the public hearing is held.

(g) Any decision made by an appropriate county authority or the board pursuant to a public hearing or hearings under this section may be appealed directly on the record to the intermediate appellate court for final decision and shall not be subject to a contested case hearing. Sections 91-14(b) and (g) shall govern the appeal, notwithstanding the lack of a contested case hearing on the matter. The appropriate county authority or the board shall provide a court reporter to produce a transcript of the proceedings at all public hearings under this section for purposes of an appeal.

(h) For the purposes of an appeal from a decision from a public hearing, the record shall include:

- (1) The application for the permit and all accompanying supporting documents, including but not limited to: reports, studies, affidavits, statements, and exhibits.
- (2) Staff recommendations submitted to the members of the agency in consideration of the application.
- (3) Oral and written public testimony received at the public hearings.
- (4) Written transcripts of the proceedings at the public hearings.
- (5) The written recommendation received by the agency from the mediator with any mediation agreement.
- (6) A statement of relevant matters noticed by the agency members at the public hearings.
- (7) The written decision of the agency issued in connection with the application and public hearings.
- (8) Other documents required by the board or county authority. [L 1983, c 296, pt of §3; am L 1984, c 151, §2; am L 1985, c 226, §1; am L 1986, c 167, §1, c 187, §1, and c 290, §1; am L 1987, c 372, §§2, 3 and c 378, §1; am L 1995, c 69, §9; am L 2006, c 91, §1]

Note

Chapters 177, 178, and 342 referred to in text are repealed.

Case Notes

Constitutional even though not subject to a contested case hearing; purpose is to assist in the location of geothermal resources development in areas of the lowest potential environmental impact. 8 H. App. 183, 797 P.2d 59.

Satisfies the United States Constitution. 8 H. App. 203, 797 P.2d 69.

Aggrieved party was not barred by exhaustion of remedies doctrine from applying to court for relief where section's appeal provisions were inapplicable and no other administrative recourse was afforded. 9 H. App. 143, 827 P.2d 1149.

§205-5.2 Designation of areas as geothermal resource subzones. (a) Beginning in 1983, the board of land and natural resources shall conduct a county-by-county assessment of areas with geothermal potential for the purpose of designating geothermal resource subzones. This assessment shall be revised or updated at the discretion of the board, but at least once each five years beginning in 1988. Any property owner or person with an interest in real property wishing to have an area designated as a geothermal resource subzone may submit a petition for a geothermal resource subzone designation in the form and manner established by rules and regulations adopted by the board. An environmental impact statement as defined under chapter 343 shall not be required for the assessment of areas under this section.

(b) The board's assessment of each potential geothermal resource subzone area shall examine factors to include, but not be limited to:

- (1) The area's potential for the production of geothermal energy;
- (2) The prospects for the utilization of geothermal energy in the area;
- (3) The geologic hazards that potential geothermal projects would encounter;
- (4) Social and environmental impacts;
- (5) The compatibility of geothermal development and potential related industries with present uses of surrounding land and those uses permitted under the general plan or land use policies of the county in which the area is located;
- (6) The potential economic benefits to be derived from geothermal development and potential related industries; and
- (7) The compatibility of geothermal development and potential related industries with the uses permitted under chapter 183C and section 205-2, where the area falls within a conservation district.

In addition, the board shall consider, if applicable, objectives, policies, and guidelines set forth in part I of chapter 205A, and chapter 226.

(c) Methods for assessing the factors in subsection (b) shall be left to the discretion of the board and may be based on currently available public information.

(d) After the board has completed a county-by-county assessment of all areas with geothermal potential or after any subsequent update or review, the board shall compare all areas showing geothermal potential within each county, and shall propose areas for potential designation as geothermal resource subzones based upon a preliminary finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Once a proposal is made, the board shall conduct public hearings pursuant to this subsection, notwithstanding any contrary provision related to public hearing procedures. Contested case procedures are not applicable to these hearings.

- (1) Hearings shall be held at locations which are in close proximity to those areas proposed for designation. A public notice of hearing, including a description of the proposed areas, an invitation for public comment, and a statement of the date, time, and place where persons may be heard shall be given and mailed no less than twenty days before the hearing. The notice shall be given on three separate days statewide and in the county in which the hearing is to be held. Copies of the

notice shall be mailed to the department of business, economic development, and tourism, to the planning commission and planning department of the county in which the proposed areas are located, and to all owners of record of real estate within, and within one thousand feet of, the area being proposed for designation as a geothermal resource subzone. The notification shall be mailed to the owners and addresses as shown on the current real property tax rolls at the county real property tax office. Upon that action, the requirement for notification of owners of land is completed. For the purposes of this subsection, notice to one co-owner shall be sufficient notice to all co-owners;

- (2) The hearing shall be held before the board, and the authority to conduct hearings shall not be delegated to any agent or representative of the board. All persons and agencies shall be afforded the opportunity to submit data, views, and arguments either orally or in writing. The department of business, economic development, and tourism and the county planning department shall be permitted to appear at every hearing and make recommendations concerning each proposal by the board; and
- (3) At the close of the hearing, the board may designate areas as geothermal resource subzones or announce the date on which it will render its decision. The board may designate areas as geothermal resource subzones only upon finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Upon request, the board shall issue a concise statement of its findings and the principal reasons for its decision to designate a particular area.
- (e) The designation of any geothermal resource subzone may be withdrawn by the board of land and natural resources after proceedings conducted pursuant to chapter 91. The board shall withdraw a designation only upon finding by a preponderance of the evidence that the area is no longer suited for designation; provided that the designation shall not be withdrawn for areas in which active exploration, development, production or distribution of electrical energy from geothermal sources or direct use applications of geothermal resources are taking place.
- (f) This Act shall not apply to any active exploration, development or production of electrical energy from geothermal sources or direct use applications of geothermal resources taking place on June 14, 1983, provided that any expansion of such activities shall be carried out in compliance with its provisions. [L 1983, c 296, pt of §3; am L 1986, c 124, §1, c 187, §2, and c 290, §2; am L 1987, c 336, §7 and c 378, §2; am L 1990, c 293, §8; am L 1995, c 11, §10 and c 69, §10; am L 1998, c 2, §61]

Note

In subsection (f) "This Act" refers to L 1983, c 296.

Case Notes

Statute sufficiently clear to comport with due process. 69 H. 255, 740 P.2d 28.

[§205-5.3] Exploratory wells. Notwithstanding section 205-5.1(a), (d), and (e), or any other provision of law, any exploratory well drilled for scientific purposes or to determine the economic viability of a geothermal resource, may be permitted outside of a designated geothermal resource subzone, regardless of land use classification, provided that the activity is limited to exploration only. All applicable state and county permits shall be required to drill such exploratory wells which shall not be exempt from the requirements of the environmental impact statement law, chapter 343. [L 1990, c 207, §2]

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

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

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

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

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

Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be

appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

(f) Land uses substantially involving or supporting educational ecotourism, related to the preservation of native Hawaiian endangered, threatened, proposed, and candidate species, that are allowed in an approved habitat conservation plan under section 195D-21 or safe harbor agreement under section 195D-22, which are not identified as permissible uses within the agricultural district under sections 205-2 and 205-4.5, may be permitted in the agricultural district by special permit under this section, on lands with soils classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U. [L 1963, c 205, pt of §2; Supp, §98H-6; HRS §205-6; am L 1970, c 136, §1; am L 1976, c 4, §2; am L 1978, c 166, §1; am L 1979, c 221, §1; gen ch 1985; am L 1998, c 237, §6; am L 2005, c 183, §5]

Rules of Court

Appeal to circuit court, see HRCP rule 72.

Attorney General Opinions

Special permits cannot be granted to authorize uses which have effect of making boundary change or creating new district. Att. Gen. Op. 63-37.

Authority of land use commission to modify permit approved by county commission discussed. Att. Gen. Op. 68-30.

Land use commission is not authorized to review county planning commission's denial of request for modification of special permit. Att. Gen. Op. 77-4.

Law Journals and Reviews

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199.

Case Notes

Where plaintiffs alleged violations of Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and made other claims based on county planning commission's denial of a special use permit sought under this section: among other things, no Eleventh Amendment immunity for the county; RLUIPA, assuming it was constitutional, did not facially invalidate Hawaii's land use law; strict scrutiny test would apply in assessing county's past actions in further proceedings in the case. 229 F. Supp. 2d 1056.

Former provision requiring that a public hearing on an application for a special permit be held within one hundred twenty days was directory not mandatory. 62 H. 666, 619 P.2d 95.

Validity of attaching conditions for approval of special permit. 62 H. 666, 619 P.2d 95.

Recreational theme park on agricultural land was not "unusual and reasonable use" which would qualify for special permit. 64 H. 265, 639 P.2d 1079.

"Communications equipment buildings" and "utility lines" in §205-4.5(a)(7) do not encompass "telecommunications antennas" or "transmission antennas" such as a cellular telephone tower; public utility thus had to apply for a special permit under this section to place the tower in a state agricultural district. 90 H. 384, 978 P.2d 822.

§205-7 Adoption, amendment or repeal of rules. The land use commission shall adopt, amend or repeal rules relating to matters within its jurisdiction in the manner prescribed in chapter 91. [L 1963, c 205, pt of §2; Supp, §98H-7; HRS §205-7; am L 1975, c 193, §6]

Cross References

Administrative procedure, see chapter 91.

§205-8 Nonconforming uses. The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although the use, including lot size, does not conform to this chapter; provided that no nonconforming building shall be replaced, reconstructed, or enlarged or changed to another nonconforming use and no nonconforming use of land shall be expanded or changed to another nonconforming use. In addition, if any nonconforming use of land or building is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited. [L 1963, c 205, pt of §2; Supp, §98H-8; HRS §205-8]

§§205-9 to 11 REPEALED. L 1975, c 193, §§7 to 9.

§205-12 Enforcement. The appropriate officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the land use commission and the restriction on use and the condition relating to agricultural districts under section 205-4.5 and shall report to the commission all violations. [L 1963, c 205, pt of §2; Supp, §98H-12; HRS §205-12; am L 1976, c 199, §2]

Attorney General Opinions

Counties' responsibility for enforcement includes taking necessary actions against violators; such enforcement covers all land use district classifications and land use district regulations, except those relating to conservation districts. Att. Gen. Op. 70-22.

Law Journals and Reviews

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199.

§205-13 Penalty for violation. Any person who violates any provision under section 205-4.5, or any regulation established relating thereto, shall be fined not more than \$5,000, and

any person who violates any other provision of this chapter, or any regulation established relating thereto, shall be fined not more than \$1,000.

If any person cited for a violation under this chapter fails to remove such violation within six months of such citation and the violation continues to exist, such person shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

Prior to the issuance of any citation for a violation, the appropriate enforcement officer or agency shall notify the violator and the mortgagee, if any, of such violation, and the violator or the mortgagee, if any, shall have not more than sixty days to cure the violation before citation for a violation is issued. [L 1963, c 205, pt of §2; Supp. §98H-13; HRS §205-13; am L 1976, c 199, §3]

§205-14 Adjustments of assessing practices. Upon the adoption of district boundaries, certified copies of the classification maps showing the district boundaries shall be filed with the department of taxation. Thereafter, the department of taxation shall, when making assessments of property within a district, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted. [L 1963, c 205, pt of §2; Supp. §98H-14; HRS §205-14]

§205-15 Conflict. Except as specifically provided by this chapter and the rules adopted thereto, neither the authority for the administration of chapter 183C nor the authority vested in the counties under section 46-4 shall be affected. [L 1963, c 205, pt of §2; Supp. §98H-15; HRS §205-15; am L 1995, c 11, §11 and c 69, §11]

§205-16 Compliance with the Hawaii state plan. No amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawaii state plan. [L 1975, c 193, §12; am L 1985, c 230, §5]

§§205-16.1, 16.2 REPEALED. L 1985, c 230, §§6, 7.

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

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards;
- (3) The impact of the proposed reclassification on the following areas of state concern:
 - (A) Preservation or maintenance of important natural systems or habitats;
 - (B) Maintenance of valued cultural, historical, or natural resources;

- (C) Maintenance of other natural resources relevant to Hawaii's economy, including agricultural resources;
- (D) Commitment of state funds and resources;
- (E) Provision for employment opportunities and economic development; and
- (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;
- (4) The standards and criteria for the reclassification or rezoning of important agricultural lands in section 205-50; and
- (5) The representations and commitments made by the petitioner in securing a boundary change. [L 1985, c 230, §1; am L 1990, c 261, §2; am L 2005, c 183, §6]

Case Notes

In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the land use commission, in its review of a petition for reclassification of district boundaries, must, at a minimum, make specific findings and conclusions as to the identity and scope of the valued cultural, historical, or natural resources, the extent those resources will be affected or impaired by the proposed action, and any feasible action the commission may take to reasonably protect such native Hawaiian rights if they are found to exist. 94 H. 31, 7 P.3d 1068.

Where land use commission allowed petitioner to direct the manner in which customary and traditional native Hawaiian practices would be preserved and protected by the proposed development, prior to any specific findings and conclusions by the commission as to the effect of the proposed reclassification on such practices, the commission failed to satisfy its statutory and constitutional obligations; in delegating its duty to protect native Hawaiian rights, the commission delegated a non-delegable duty and thereby acted in excess of its authority. 94 H. 31, 7 P.3d 1068.

Where land use commission failed to enter any definitive findings or conclusions as to the extent of the native Hawaiian practitioners' exercise of customary and traditional practices in the subject area nor made any specific findings or conclusions regarding the effects on or the impairment of any Hawaii constitution, article XII, §7 uses, or the feasibility of the protection of those uses, the commission, as a matter of law, failed to satisfy its statutory and constitutional obligations. 94 H. 31, 7 P.3d 1068.

§205-18 Periodic review of districts. The office of planning shall undertake a review of the classification and districting of all lands in the State, within five years from December 31, 1985, and every fifth year thereafter. The office, in its five-year boundary review, shall focus its efforts on reviewing the Hawaii state plan, county general plans, and county development and community plans. Upon completion of the five-year boundary review, the office shall submit a report of the findings to the commission. The office may initiate state land use boundary amendments which it deems appropriate to conform to these plans. The office may seek

assistance of appropriate state and county agencies and may employ consultants and undertake studies in making this review. [L 1985, c 230, §2; am L 1987, c 336, §7; am L 1988, c 352, §3; am L 1996, c 299, §3]

PART II. SHORELINE SETBACKS

§§205-31 to 37 REPEALED. L 1986, c 258, §3.

Cross References

For present provisions, see §§205A-41 to 49.

[PART III.] IMPORTANT AGRICULTURAL LANDS

Cross References

Acquisition of resource value lands, see chapter 173A.

Legacy land conservation commission, see §§173A-2.4 to 2.6.

Law Journals and Reviews

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

[§205-41] Declaration of policy. It is declared that the people of Hawaii have a substantial interest in the health and sustainability of agriculture as an industry in the State. There is a compelling state interest in conserving the State's agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use to achieve the purposes of:

- (1) Conserving and protecting agricultural lands;
- (2) Promoting diversified agriculture;
- (3) Increasing agricultural self-sufficiency; and
- (4) Assuring the availability of agriculturally suitable lands,

pursuant to article XI, section 3, of the Hawaii state constitution. [L 2005, c 183, pt of §2]

Note

L 2005, c 183, §§9 and 10 provide:

“SECTION 9. (a) It is the intent of this Act [enacting sections 205-41 to 52 and amending sections 205-3.1, 4, 6, and 17, Hawaii Revised Statutes]:

- (1) That agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for

agricultural use shall be developed concurrently with the process of identifying important agricultural lands as required under section 2 of this Act [sections 205-41 to 52]; and

- (2) That the designation of important agricultural lands and adoption of maps by the land use commission pursuant to section 2 of this Act [sections 205-41 to 52] shall take effect only upon the enactment of legislation establishing incentives and protections for important agricultural lands contemplated by section [205-46] and shall be satisfied by:
 - (A) Providing a declaration of satisfaction within the Act that establishes incentives for important agricultural lands; or
 - (B) Having the legislature adopt a concurrent resolution declaring the satisfaction of implementing incentives for important agricultural lands by identifying the specific measures or Acts that establish incentives for important agricultural lands.

(b) Pursuant to section [205-46], Hawaii Revised Statutes, the department of agriculture, with the assistance of the department of taxation, shall contract appropriate meeting facilitation and cost-benefit analysis services to develop and recommend a package of proposals for agricultural incentives and other measures that promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands.

The department of agriculture, in consultation with the department of taxation, shall use consultants to promote a facilitated meeting process and deliberation and seek the assistance and input from the Hawaii Farm Bureau Federation, landowners, affected state and county agencies, other stakeholders, and persons with relevant expertise that are necessary to develop and implement a comprehensive and integrated framework of incentives and programs that will promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use in Hawaii, including tax policy, agricultural business development and financing, marketing, and agricultural land use techniques. The meeting facilitators shall ensure that stakeholder discussions are inclusive and use a consistent voting procedure.

The department of agriculture shall report stakeholder findings and recommendations, including proposed legislation and a recommended minimum criteria for determining when the “enactment of legislation establishing incentives and protection” has occurred for the purposes of this Act, to the legislature no later than twenty days before the convening of the regular session of 2007. The report shall include an analysis of the impacts and benefits of its recommendations, a record of the stakeholder group's

process and deliberations, and shall provide the supporting rationale for the incentives being proposed.

(c) Incentives and other programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use in Hawaii by farmers and landowners to be considered by the department of agriculture shall include but not be limited to the following:

- (1) Assistance in identifying federal, state, and private grant and loan resources for agricultural business planning and operations, assistance with grant and loan application processes, and the processing of grants and loans;
- (2) Real property tax systems that support the needs of agriculture, including property tax assessment of land and improvements used or held only for use in agriculture based on agricultural use value rather than fair market value;
- (3) Reduced infrastructure requirements and facilitated building permit processes for the construction of dedicated agricultural structures;
- (4) Tax incentives that include but are not limited to:
 - (A) Tax credits for the sale or donation of agricultural easements on important agricultural lands; and
 - (B) General excise tax exemption for retail sales of farm produce;
- (5) Incentives that promote investment in agricultural businesses or value-added agricultural development, and other agricultural financing mechanisms;
- (6) Incentives and programs that promote long-term or permanent agricultural land protection, and the establishment of a dedicated funding source for these programs;
- (7) Establishment of a permanent state revolving fund, escalating tax credits based on the tax revenues generated by increased investment or agricultural activities conducted on important agricultural lands, and dedicated funding sources to provide moneys for incentives and other programs;
- (8) Establishment of a means to analyze the conformity of state-funded projects with the intent and purposes of part I of this Act [sections 205-41 to 52], and a mechanism for mitigation measures when projects are not in conformance;
- (9) Institution of a requirement for the preparation of an agricultural impact statement that would include mitigation measures for adverse impacts for proposed state or county

rulemaking that may affect agricultural activities, operations, and agricultural businesses on important agricultural lands; and

- (10) Other programs to carry out the intent of part I of this Act [sections 205-41 to 52].

SECTION 10. Within one year of the adoption of maps of important agricultural lands by the land use commission for the lands within the jurisdiction of each county, all state agencies shall report to the department of agriculture on the impact of projects and programs on the designated important agricultural lands and sustained agricultural use of these lands. State agencies shall develop implementation programs, as needed, to ensure that their programs are supportive of agriculture and consistent with the intent and purposes of this Act."

[§205-42] Important agricultural lands; definition and objectives. (a) As used in this part, unless the context otherwise requires, "important agricultural lands" means those lands, identified pursuant to this part, that:

- (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;
 - (2) Contribute to the State's economic base and produce agricultural commodities for export or local consumption; or
 - (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.
- (b) The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations. To achieve this objective, the State shall:
- (1) Promote agricultural development and land use planning that delineates blocks of productive agricultural land and areas of agricultural activity for protection from the encroachment of nonagricultural uses; and
 - (2) Establish incentives that promote:
 - (A) Agricultural viability;
 - (B) Sustained growth of the agriculture industry; and
 - (C) The long-term agricultural use and protection of these productive agricultural lands. [L 2005, c 183, pt of §2]

[§205-43] Important agricultural lands; policies. State and county agricultural policies, tax policies, land use plans, ordinances, and rules shall promote the long-term viability of agricultural use of important agricultural lands and shall be consistent with and implement the following policies:

- (1) Promote the retention of important agricultural lands in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management;
- (2) Discourage the fragmentation of important agricultural lands and the conversion of these lands to nonagricultural uses;
- (3) Direct nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses;
- (4) Limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes;
- (5) Provide a basic level of infrastructure and services on important agricultural lands limited to the minimum necessary to support agricultural uses and activities;
- (6) Facilitate the long-term dedication of important agricultural lands for future agricultural use through the use of incentives;
- (7) Facilitate the access of farmers to important agricultural lands for long-term viable agricultural use; and
- (8) Promote the maintenance of essential agricultural infrastructure systems, including irrigation systems. [L 2005, c 183, pt of §2]

[§205-44] Standards and criteria for the identification of important agricultural lands. The standards and criteria in this section shall be used to identify important agricultural lands. Lands identified as important agricultural lands need not meet every standard and criteria listed below. Rather, lands meeting any of the criteria below shall be given initial consideration; provided that the designation of important agricultural lands shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the state constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43. The standards and criteria shall be as follows:

- (1) Land currently used for agricultural production;
- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;
- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;
- (5) Land with sufficient quantities of water to support viable agricultural production;
- (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;

- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power. [L 2005, c 183, pt of §2]

[§205-45] Petition by farmer or landowner. (a) A farmer or landowner with lands qualifying under section 205-44 may file a petition for declaratory ruling with the commission at any time in the designation process.

(b) The petition for declaratory ruling shall be submitted in accordance with subchapter 14 of the commission's rules and shall include:

- (1) Tax map keys of the land to be designated along with verification and authorization from the applicable landowners;
- (2) Proof of qualification for designation under section 205-44, respecting a regional perspective; and
- (3) The current or planned agricultural use of the area to be designated.

(c) The commission shall review the petition and the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 205-44. If the commission, after its review and evaluation, finds that the lands qualify for designation as important agricultural lands under this part, the commission shall vote, by a two-thirds majority of the members of the commission, to issue a declaratory order designating the lands as important agricultural lands.

(d) Designating important agricultural lands by the commission shall not be considered as an amendment to district boundaries under sections 205-3.1 and 205-4 or become effective prior to legislative enactment of protection and incentive measures for important agricultural land and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

(e) Farmers or landowners with lands qualifying under section 205-44 may file petitions for a declaratory ruling to designate lands as important agricultural lands following the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005. [L 2005, c 183, pt of §2]

Note

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

Designations made pursuant to this section take effect at any time after incentives and protections for important agricultural lands and agricultural viability are enacted. L 2005, c 183, §14(1).

Land use commission rules, see chapter 15-15, Hawaii Administrative Rules.

[§205-46] Incentives for important agricultural lands. (a) To achieve the long-term agricultural viability and use of important agricultural lands, the State and each county shall ensure that their:

- (1) Agricultural development, land use, water use, regulatory, tax, and land protection policies; and
- (2) Permitting and approval procedures,

enable and promote the economic sustainability of agriculture.

Agricultural operations occurring on important agricultural lands shall be eligible for incentives and protections provided by the State and counties pursuant to this section to promote the viability of agricultural enterprise on important agricultural lands and to assure the availability of important agricultural lands for long-term agricultural use.

(b) State and county incentive programs shall provide preference to important agricultural lands and agricultural businesses on important agricultural lands. The State and each county shall cooperate in program development to prevent duplication of and to streamline and consolidate access to programs and services for agricultural businesses located on important agricultural lands.

(c) Incentive and protection programs shall be designed to provide a mutually supporting framework of programs and measures that enhance agricultural viability on important agricultural lands, including but not limited to:

- (1) Grant assistance;
- (2) Real property tax systems that support the needs of agriculture, including property tax assessments based on agricultural use valuation;
- (3) Reduced infrastructure requirements and facilitated building permit processes for dedicated agricultural structures;
- (4) Tax incentives to offset operational costs, promote agricultural business viability, and promote the long-term protection of important agricultural lands;
- (5) Agricultural business planning, marketing, and implementation grants;
- (6) Tax incentives and programs for equity investments and financing for agricultural operations, including agricultural irrigation systems;
- (7) Other programs and mechanisms that promote investment in agricultural businesses or agricultural land protection, such as the purchase of development rights;
- (8) State funding mechanisms to fund business viability and land protection programs;
- (9) Water regulations and policies that provide farmers of important agricultural lands access to adequate and cost-effective sources of water;
- (10) Other measures that would ensure that state capital investments, projects, programs, and rules are consistent with this part; and

- (11) Agricultural education and training for new farmers; upgrading the skills of existing farmers and other agriculture-related employees through the use of mentoring, business incubators, and public or private scholarships; and increasing the returns of farming by adding value to food processing and other tools and methods.

(d) State and county agencies shall review the protection and incentive measures enacted for important agricultural lands and agricultural viability pursuant to this chapter at least every five years to:

- (1) Determine their effectiveness in sustaining agriculture in Hawaii, assuring agricultural diversification, and increasing agricultural self-sufficiency;
- (2) Determine whether the effectiveness of tax credits or incentive programs will be enhanced by creating revolving funds or increasing rates based upon the tax revenues generated by enhanced investment and agricultural activities on important agricultural lands; and
- (3) Modify measures and programs as needed.

(e) This section shall apply only to those lands designated as important agricultural lands pursuant to sections 205-45 and 205-49. [L 2005, c 183, pt of §2]

[§205-47] Identification of important agricultural lands; county process. *[See note below.]* (a) Each county shall identify and map potential important agricultural lands within its jurisdiction based on the standards and criteria in section 205-44 and the intent of this part, except lands that have been designated, through the state land use, zoning, or county planning process, for urban use by the State or county.

(b) Each county shall develop maps of potential lands to be considered for designation as important agricultural lands in consultation and cooperation with landowners, the department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations, the United States Department of Agriculture – Natural Resources Conservation Service, the office of planning, and other groups as necessary.

(c) Each county, through its planning department, shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process. The planning departments may also establish one or more citizen advisory committees on important agricultural lands to provide further public input, utilize an existing process (such as general plan, development plan, community plan), or employ appropriate existing and adopted general plan, development plan, or community plan maps.

(d) The counties shall take notice of those lands that have already been designated as important agricultural lands by the commission.

Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, the counties shall take reasonable action to notify each

owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands.

In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports, and is consistent with the:

- (1) Standards and criteria set forth in section 205-44;
- (2) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
- (3) Comments received from government agencies and others identified in subsection (b);
- (4) Viability of existing agribusinesses; and
- (5) Representations or position statements of the owners whose lands are subject to the potential designation.

(e) The important agricultural lands maps shall be submitted to the county council for decision-making. The county council shall adopt the maps, with or without changes, by resolution. The adopted maps shall be transmitted to the land use commission for further action pursuant to section 205-48. [L 2005, c 183, pt of §2]

Note

L 2005, c 183, §7 provides:

"SECTION 7. Each county shall submit its report and maps with recommendations for lands eligible for designation as important agricultural lands to the land use commission no later than sixty months from the date of county receipt of state funds appropriated for the identification process. Upon receipt of the county maps, the land use commission shall review and adopt maps designating important agricultural lands to the State in accordance with section [205-49]."

Designations made pursuant to this section take effect three years after incentives and protections for important agricultural lands and agricultural viability are enacted. L 2005, c 183, §14(2).

[§205-48] Receipt of maps of eligible important agricultural lands; land use commission. (a) The land use commission shall receive the county recommendations and maps delineating those lands eligible to be designated important agricultural lands no sooner than the effective date of the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

(b) The department of agriculture and the office of planning shall review the county report and recommendations and provide comments to the land use commission within forty-five days of the receipt of the report and maps by the land use commission. The land use commission may also consult with the department of agriculture and the office of planning as needed.

- (c) State agency review shall be based on an evaluation of the degree that the:
- (1) County recommendations result in an identified resource base that meets the definition of important agricultural land and the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
- (2) County has met the minimum standards and criteria for the identification and mapping process in sections 205-44 and 205-47. [L 2005, c 183, pt of §2]

Note

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

L 2005, c 183, §8 provides:

"SECTION 8. ...The land use commission shall submit annual reports on the progress of the counties in identifying and mapping important agricultural lands to the legislature no later than twenty days before the convening of the regular sessions of 2006 through 2009."

[§205-49] Designation of important agricultural lands; adoption of important agricultural lands maps. (a) After receipt of the maps of eligible important agricultural lands from the counties and the recommendations of the department of agriculture and the office of planning, the commission shall then proceed to identify and designate important agricultural lands, subject to section 205-45. The decision shall consider the county maps of eligible important agricultural lands; declaratory orders issued by the commission designating important agricultural lands during the three year period following the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005; landowner position statements and representations; and any other relevant information.

In designating important agricultural lands in the State, pursuant to the recommendations of individual counties, the commission shall consider the extent to which:

- (1) The proposed lands meet the standards and criteria under section 205-44;
- (2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
- (3) The commission has designated lands as important agricultural lands, pursuant to section 205-45; provided that if the majority of landowners' landholdings is already designated as important agricultural lands, excluding lands held in the conservation district, pursuant to section 205-45 or any other provision of this part, the commission shall not designate any additional lands of that landowner as important agricultural lands except by a petition pursuant to section 205-45.

Any decision regarding the designation of lands as important agricultural lands and the adoption of maps of those lands pursuant to this section shall be based upon written findings of fact and conclusions of law, presented in at least one public hearing conducted in the county where the land is located in accordance with chapter 91, that the subject lands meet the standards

and criteria set forth in section 205-44 and shall be approved by two-thirds of the membership to which the commission is entitled.

(b) Copies of the maps of important agricultural lands adopted under this section shall be transmitted to each county planning department and county council, the department of agriculture, the agribusiness development corporation, the office of planning, and other state agencies involved in land use matters. The maps of important agricultural lands shall guide all decision-making on the proposed reclassification or rezoning of important agricultural lands, state agricultural development programs, and other state and county land use planning and decision-making.

(c) The land use commission shall have the sole authority to interpret the adopted map boundaries delineating the important agricultural lands.

(d) The land use commission may designate lands as important agricultural lands and adopt maps for a designation pursuant to:

- (1) A farmer or landowner petition for declaratory ruling under section 205-45 at any time; or
- (2) The county process for identifying and recommending lands for important agricultural lands under section 205-47 no sooner than three years,

after the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005. [L 2005, c 183, pt of §2]

Note

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

[§205-50] Standards and criteria for the reclassification or rezoning of important agricultural lands. (a) Any land use district boundary amendment or change in zoning involving important agricultural lands identified pursuant to this chapter shall be subject to this section.

(b) Upon acceptance by the county for processing, any application for a special permit involving important agricultural lands shall be referred to the department of agriculture and the office of planning for review and comment.

(c) Any decision by the land use commission or county pursuant to this section shall specifically consider the following standards and criteria:

- (1) The relative importance of the land for agriculture based on the stock of similarly suited lands in the area and the State as a whole;
- (2) The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;

(3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as important agricultural lands that create residual parcels of a size that would preclude viable agricultural use;

(4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes; and

(5) The impact of the proposed district boundary amendment or zone change on the necessity and capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area.

(d) Any decision pursuant to this section shall be based upon a determination that:

(1) On balance, the public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes; and

(2) The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands.

(e) The standards and criteria of this section shall be in addition to:

(1) The decision-making criteria of section 205-17 governing decisions of the land use commission under this chapter; and

(2) The decision-making criteria adopted by each county to govern decisions of county decision-making authorities under this chapter.

(f) Any decision of the land use commission and any decision of any county on a land use district boundary amendment or change in zoning involving important agricultural lands shall be approved by the body responsible for the decision by a two-thirds vote of the membership to which the body is entitled.

(g) A farmer or landowner with qualifying lands may also petition the land use commission to remove the "important agricultural lands" designation from lands if a sufficient supply of water is no longer available to allow profitable farming of the land due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control. [L 2005, c 183, pt of §2]

[§205-51] Important agricultural lands; county ordinances. (a) Each county shall adopt ordinances that reduce infrastructure standards for important agricultural lands no later than the effective date of the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

(b) For counties without ordinances adopted pursuant to subsection (a), important agricultural lands designated pursuant to this part may be subdivided without county processing or standards; provided that:

- (1) None of the resulting lots shall be used solely for residential occupancy; and
- (2) The leasehold lots shall return to the original lot of record upon expiration or termination of the lease. [L 2005, c 183, pt of §2]

Note

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

[§205-52] Periodic review and amendment of important agricultural lands maps.

The maps delineating important agricultural lands shall be reviewed in conjunction with the county general plan and community and development plan revision process, or at least once every ten years following the adoption of the maps by the land use commission; provided that the maps shall not be reviewed more than once every five years. Any review and amendment of the maps of important agricultural lands shall be conducted in accordance with this part. In these periodic reviews or petitions by the farmers or landowners for declaratory rulings, the “important agricultural lands” designation shall be removed from those important agricultural lands where the commission has issued a declaratory order that a sufficient supply of water is no longer available to allow profitable farming of these lands due to governmental actions, acts of God, or other causes beyond the farmer’s or landowner’s reasonable control. [L 2005, c 183, pt of §2]