

Honolulu, Hawaii

Feb 15, 2008

RE: H.B. No. 2807  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2008  
State of Hawaii

Sir:

Your Committees on Water, Land, Ocean Resources & Hawaiian Affairs and Agriculture, to which was referred H.B. No. 2807 entitled:

"A BILL FOR AN ACT RELATING TO LAND USE,"

beg leave to report as follows:

The purpose of this bill is to offer two incentives for landowners to designate their land as "important agricultural land".

The first incentive focuses on a landowner who is required to provide affordable housing by the State or a county as a condition of developing a residential or other project. "Affordable housing" means housing affordable to households earning not more than one hundred forty per cent of the median income. Usually, the affordable housing must be provided in the urban district. However, this incentive allows the landowner to fulfill the affordable housing requirement in the rural district without first applying to reclassify the land to urban. The landowner may save money because the reclassification application and processing cost would be avoided and rural land probably would be cheaper than urban land.

Under the second incentive, a landowner may submit a petition to the Land Use Commission for a declaratory order to combine a designation of "important agricultural land" with a reclassification of land to the rural district. The primary



benefit of this incentive is the reduction of the permitting time for the reclassification. The petition process is much shorter than the normal district boundary amendment process.

Your Committees received testimony in support of this bill from Alexander & Baldwin, Inc., Maui Land & Pineapple Company, Inc., Kamehameha Schools, Castle & Cooke Hawaii, and Dole Food Company Hawaii. The Department of Agriculture did not support this bill although it expressed support for the concept of incentives for the designation of "important agricultural land". The Office of Planning offered comments.

Your Committees find that Act 183, Session Laws of Hawaii 2005, establishes an orderly process for the designation of "important agricultural land" in the State. One of the major provisions of that Act requires the State and counties to provide incentives for landowners to designate their lands as "important agricultural lands". The incentives contained in this bill are among several incentives being contemplated by the House of Representatives this session.

Upon further consideration and review of this bill, your Committees have made several amendments.

A. Amendments To Affordable Housing Incentive

- (1) In section 1, the language in section 205- (a), Hawaii Revised Statutes, is clarified to read: "[i]n lieu of satisfying a state or county affordable housing assessment in the urban district, a project landowner subject to subsection (b) may fulfill the assessment by providing affordable housing in the rural district in accordance with section 205-2(c)(7)" (page 1, lines 5 to 9, of the H.D. 1). The language in the original bill was ambiguous;
- (2) In the same section, two contradictory provisions in the original bill have been deleted. One provision required the landowner to provide *more* affordable housing in the rural district than required by the state or county assessment (see the proviso on page 1, lines 8 to 10, in the original bill). The other provision required the percentage of affordable housing provided in the rural district to be *less* than required by the state or county assessment (see section 205- (b), Hawaii Revised



Statutes, on page 1, lines 11 to 13 of the original bill);

- (3) A newly inserted provision explicitly makes the affordable housing incentive available only to a landowner who has been granted a declaratory order designating all or some of the landowner's land as "important agricultural land" (section 205- (b), Hawaii Revised Statutes, on page 1, lines 10 to 13, of the H.D. 1). Under the original bill, there was no similar connection, and any landowner, even one who did not designate "important agricultural land", could have used the incentive.

A complementary amendment is made to section 205-2(c)(7). The amendment allows the affordable housing only if situated on land reclassified to the rural district under a declaratory order that also designated "important agricultural land" (page 3, lines 14 to 17, of the H.D. 1). Your Committees do not intend that this amendment be construed as precluding other types of homes permitted in the rural district, such as farm worker housing, from being sold or rented to households with not more than one hundred forty per cent of the median income;

- (4) In section 2, the language in section 205-2(c)(7), Hawaii Revised Statutes, is amended by deleting the density exemption for affordable housing in the rural district (page 3, lines 8 and 9, of the original bill). In section 3, the language in section 205-5(c)(7), Hawaii Revised Statutes, is added to require the density of the affordable housing to be established by county zoning (page 4, lines 13 and 14, of the H.D. 1). Under the original bill, the density of an affordable housing project in the rural district would have been unregulated. A landowner theoretically could have built a high density affordable housing project in that district. These amendments make it clear that the density of the affordable housing shall be subject to county zoning as provided under section 205-5(a), Hawaii Revised Statutes, (which is not amended in the H.D. 1).



B. Amendments To Combined "Important Agricultural Land"  
Designation/Rural or Urban Reclassification Incentive

Under the original bill, a landowner was able to petition the Land Use Commission to designate all or some of the landowner's land as "important agricultural land" or make such a designation in combination with a reclassification of land to the rural district.

The following amendments are made to section 205-45, Hawaii Revised Statutes, as set forth in section 5 of the H.D. 1.

- (5) In section 205-45(a), Hawaii Revised Statutes, language is added to require a petitioner to propose the designation of "important agricultural lands in perpetuity" (page 8, line 1, of the H.D. 1). Complementary language is added in section 205-45(g), Hawaii Revised Statutes, to provide that, after making the "important agricultural land" designation for a petitioner, the Land Use Commission "shall not remove" the designation (page 11, lines 19 to 22, of the H.D. 1). A new section 6 also amends section 205-52, Hawaii Revised Statutes, to prohibit the removal of an "important agricultural land" designation that was approved through a declaratory order (page 12, lines 15-21 and page 13, lines 1-2 of the H.D. 1);
- (6) Section 205-45(b), Hawaii Revised Statutes, adds language authorizing provisions with regard to the petition to seek the combined designation of "important agricultural land" and reclassification of land by:
  - (A) Allowing the petition to seek the reclassification of land to the urban district as well as rural district (page 8, lines 6 and 7, of the H.D. 1);
  - (B) Requiring the rural or urban district reclassification to be consistent with relevant county development or community plans as well as the county general plan (page 8, lines 11 to 13, of the H.D. 1); and
  - (C) Requiring the total acreage in the petition to comply with the following proportion: at least eighty per cent of the total acreage shall be proposed for designation as "important agricultural



land" and the remainder shall be proposed for reclassification to the rural or urban district (page 8, lines 14 to 21, of the H.D. 1);

- (7) Section 205-45(c), Hawaii Revised Statutes, is amended by adding a new paragraph (4) requiring the petition to include, if applicable, "the current or planned use of the area sought to be reclassified to the rural or urban district" (page 9, lines 15 to 17, of the H.D. 1);
- (8) Section 205-45(d), Hawaii Revised Statutes, is amended by clarifying the requirements for the Land Use Commission's evaluation of a petition. Under the amendment, when a petition seeks to reclassify land to the rural or urban district, the Commission is required to evaluate the following:
  - (A) The suitability of the land for reclassification to the rural or urban district in accordance with section 205-2, Hawaii Revised Statutes;
  - (B) The consistency of the reclassification with the relevant county general, development, and community plans; and
  - (C) The compliance with other provisions, such as the "80-20" proportion now required for the petition (page 10, lines 1 to 7, of the H.D. 1). Another amendment deletes the term "automatic" in reference to the reclassification of land to the rural or urban district (page 4, line 22 of H.B. No. 2807 (the original bill)). The deletion is intended to dispel the notion that the Land Use Commission will not have any discretion over its decision regarding the reclassification;
- (9) Section 205-45(d), Hawaii Revised Statutes, is further amended by adding a statement that, if the Land Use Commission finds that land either should not be granted the "important agricultural land" designation or rural or urban reclassification, the Commission shall deny the petition in its entirety (page 10, line 18, to page 11, line 2, of the H.D. 1). By this amendment, your Committees intend to prevent the situation under which the Commission approves an important agricultural land designation, but denies the accompanying rural or urban



reclassification. Your Committees also intend to prevent the reverse situation;

- (10) Section 205-45(e), Hawaii Revised Statutes, is clarified by stating that the petition process shall not be subject to the normal district boundary amendment procedures (page 11, lines 4 to 7, of the H.D. 1);
- (11) Section 205-45, Hawaii Revised Statutes, also is amended by substituting "declaratory order" for "declaratory ruling". "Declaratory order" is the term used in the Land Use Commission's administrative rules;
- (12) In addition to the amendments to section 205-45, Hawaii Revised Statutes, a new section 4 is added that amends section 205-44, Hawaii Revised Statutes, which lists the standards and criteria for designation of "important agricultural land". The amendments provide that, in a petition seeking to both designate "important agricultural land" and reclassify land to the rural or urban district, the land shall be designated as "important agricultural land" only if it meets at least three of the standards and criteria. The three are that the land:
  - (A) Has class A or B soil or class C or D soil that is in current agricultural production or may be placed in productive agriculture use with new technology or irrigation;
  - (B) Is supported by sufficient water for viable agricultural production; and
  - (C) Contributes to maintaining a critical land mass for agricultural productivity (page 5, lines 11 to 17, of the H.D. 1). If the land does not meet all three criteria, the Commission shall deny the petition. Your Committees realize that the standards and criteria are general, but intend that the Commission use its reasonable discretion and judgment in applying the standards and criteria.

C. Other Amendments

- (13) Section 4 also adds a new criterion for designating "important agricultural land". Under the new criterion,



land may be designated if, although unsuited for agricultural use because of topography, it is part of a tax map key parcel, most of which meets at least one of the other criterion for designation (page 7, lines 10 to 16, of the H.D. 1). In such a case, the entire parcel must be designated as important agricultural land. This amendment addresses the situation of a large agricultural parcel that is interspersed with gullies or hills that cannot be cultivated. It may be impractical to carve out the gullies and hills from the parcel. This amendment is intended to allow the entire parcel, even the hills and gullies, to be designated as important agricultural land; and

- (14) A new section 7 is added to declare that the Act establishes incentives for the designation of important agricultural lands (page 13, lines 3 to 7, of the H.D. 1). The declaration is intended to satisfy provisions in section 205-46, Hawaii Revised Statutes, and section 9 of Act 183, Session Laws of Hawaii 2005.

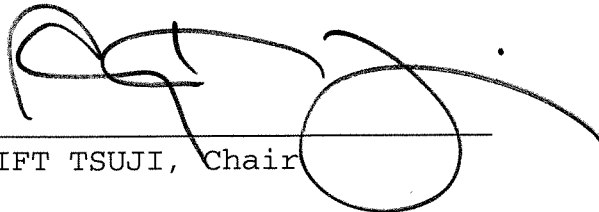
Your Committees do not intend for this bill to be construed as affecting section 205-49(a)(3), Hawaii Revised Statutes, which is not being amended. Under that existing section, the Land Use Commission cannot designate more than a majority of a landowner's land as important agricultural land unless the landowner petitions for a larger percentage.

Through this bill, your Committees intend to create incentives that balance the State's interest and desire for the designation of "important agricultural land" with the landowners' need and desire for more development opportunities. Your Committees realize that this bill is controversial, but find that it should move forward for further consideration. To ameliorate some of the concerns about this bill, your Committees have expressly made the rural or urban reclassification subject to consistency with county general, development, or community plans.

As affirmed by the records of votes of the members of your Committees on Water, Land, Ocean Resources & Hawaiian Affairs and Agriculture that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2807, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 2807, H.D. 1, and be referred to the Committee on Finance.



Respectfully submitted on  
behalf of the members of the  
Committees on Water, Land,  
Ocean Resources & Hawaiian  
Affairs and Agriculture,



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CLIFT TSUJI, Chair



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KEN ITO, Chair





State of Hawaii  
House of Representatives  
The Twenty-fourth Legislature

**HSCP 667**

**Record of Votes of the Committee on Water, Land, Ocean Resources & Hawaiian Affairs**

<b>Bill/Resolution No.:</b> HB 2807	<b>Committee Referral:</b> WLH/AGR, FIN	<b>Date:</b> 2/13/08		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
<b>The recommendation is to:</b> <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
WLH Members	Ayes	Ayes (WR)	Nays	Excused
1. ITO, Ken (C)	/			
2. KARAMATSU, Jon Riki (VC)	/			
3. CARROLL, Mele	/			
4. MAGAOAY, Michael Y.	/			
5. MORITA, Hermina M.		/		
6. SAGUM, Roland D., III	/			
7. SAIKI, Scott K.	/			
8. THIELEN, Cynthia		/		
<b>TOTAL (8)</b>	6	2	0	0
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <span style="margin-left: 150px;">committee acronym(s)</span>				
<b>Vice Chair's or designee's signature:</b> _____ <i>JRK</i> _____				
<b>Distribution:</b> Original (White) – Committee    Duplicate (Yellow) – Chief Clerk's Office				

State of Hawaii  
House of Representatives  
The Twenty-fourth Legislature

**HSCR1007**

**Record of Votes of the Committee on Agriculture**

Bill/Resolution No.: HB 2807	Committee Referral: WLH/AGR, FIN	Date: 2/13/08		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
AGR Members	Ayes	Ayes (WR)	Nays	Excused
1. TSUJI, Clift (C)	/			
2. BROWER, Tom (VC)	/			
3. BERG, Lyla B., Ph.D.		/		
4. CHANG, Jerry L.	/			
5. HANOHANO, Faye P.	/			
6. HERKES, Robert N.	/			
7. MANAHAN, Joey	/			
8. WAKAI, Glenn	/			
9. YAMANE, Ryan I.	/			
10. YAMASHITA, Kyle T.	/			
11. CHING, Corinne W.L.	/			
12. MEYER, Colleen Rose		/		
<b>TOTAL (12)</b>	<b>10</b>	<b>2</b>	<b>Ø</b>	<b>Ø</b>
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: small;">committee acronym(s)</div>				
Vice Chair's or designee's signature: <u>Tom Brower</u>				
Distribution:    Original (White) – Committee    Duplicate (Yellow) – Chief Clerk's Office				