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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1           SECTION 1. Chapter 205, Hawaii Revised Statutes, is  
2 amended by adding two new sections to part III to be  
3 appropriately designated and to read as follows:

4           "**§205-A Designation of important agricultural lands by**  
5 **landowner.** (a) Notwithstanding section 205-49(d), and section  
6 9, of Act 183, Session Laws of Hawaii 2005, the landowner of any  
7 agricultural land may petition the commission for designation of  
8 the land as important agricultural land if the land:

- 9           (1) Is within an agricultural district;  
10           (2) Is currently in agricultural use;  
11           (3) Has at least one hundred contiguous acres;  
12           (4) Is irrigated or has a dependable and adequate moisture  
13           supply; and  
14           (5) Has at least fifty per cent of the land in the  
15           contiguous area with soils classified by the land  
16           study bureau's detailed land classification as overall  
17           (master) productivity rating class A or B.



1       (b) A landowner with agricultural lands not qualifying  
2 under subsection (a) for designation as important agricultural  
3 lands or who has unique agricultural lands may petition the  
4 commission for designation of the land as important agricultural  
5 lands if the land:

6       (1) Is within an agricultural district; and

7       (2) Has been in agricultural use; or

8       (3) Has been dedicated for agricultural use for not fewer  
9 than ten years pursuant to county ordinance.

10       (c) The landowner desiring to designate land pursuant to  
11 subsection (a) or (b), shall petition the commission for  
12 designation of the land as important agricultural land. The  
13 landowner shall include with the petition all of the tax map key  
14 numbers of the land to be designated and proof of qualification  
15 for designation pursuant to subsection (a) or (b). At the time  
16 of the filing, the landowner shall also submit a copy of the  
17 petition to the department of agriculture.

18       (d) The commission shall consult with the department of  
19 agriculture and any other interested groups in its review of the  
20 petition. Notwithstanding any other law to the contrary, any  
21 proceeding pursuant to this section shall not be subject to  
22 chapter 91; provided that any public meeting and any decision-



1 making meeting of the commission pursuant to this section shall  
2 be subject to part I of chapter 92.

3 (e) Within sixty days of the acceptance of the petition,  
4 the commission shall make a finding of fact as to whether the  
5 land in the petition area:

6 (1) Meets the criteria established in subsection (a) or  
7 (b);

8 (2) Contributes to the maintenance of an agricultural land  
9 resource base in support of existing and future  
10 agricultural operations; and

11 (3) Is consistent with the objectives and policies for  
12 important agricultural lands in sections 205-42 and  
13 205-43.

14 If the commission finds that the land meets the criteria in  
15 this subsection, the commission shall approve the petition and  
16 designate the landowner's land as important agricultural land.

17 The designation shall be approved by an affirmative vote of the  
18 majority of the members to which the commission is entitled.

19 The designation shall take effect on the effective date of the  
20 commission's decision and order.



1       (f) The designation of important agricultural lands  
2 pursuant to this section shall not be considered an amendment to  
3 district boundaries under sections 205-3.1 and 205-4.

4       **§205-B Uses on and subdivision of lands designated as**  
5 **important agricultural lands.** (a) All lands designated as  
6 important agricultural lands shall be restricted to the  
7 following permitted uses:

- 8       (1) Cultivation of crops, including but not limited to  
9       flowers, vegetables, foliage, fruits, forage, fiber,  
10       and timber;
- 11       (2) Game and fish propagation;
- 12       (3) Raising of livestock, including but not limited to  
13       poultry, bees, fish, or other animal or aquatic life  
14       that are propagated for commercial or subsistence  
15       farming purposes;
- 16       (4) Public institutions and buildings that are necessary  
17       for agricultural practices;
- 18       (5) Public, private, and quasi-public utility lines and  
19       roadways, transformer stations, communications  
20       equipment buildings, solid waste transfer stations,  
21       major water storage tanks, and appurtenant small  
22       buildings such as booster pumping stations, but not



1 including offices or yards for equipment, material,  
2 vehicle storage, repair or maintenance, treatment  
3 plants, corporation yards, or other similar  
4 structures;

5 (6) Retention, restoration, rehabilitation, or  
6 improvements of sites of historic or cultural  
7 importance;

8 (7) Roadside stands for the sale of agricultural products  
9 grown on the premises and by agricultural producers in  
10 the region;

11 (8) Buildings and uses, including but not limited to  
12 mills, storage, and processing facilities, maintenance  
13 facilities, and vehicle and equipment storage areas  
14 that directly support and are accessory to the  
15 agricultural operations and activities permitted in  
16 this section;

17 (9) Agricultural parks;

18 (10) Agricultural tourism, conducted on a working farm, or  
19 a farming operation as defined in section 165-2, for  
20 the enjoyment, education, or involvement of visitors;  
21 provided that the agricultural tourism activity is  
22 accessory and secondary to the principal agricultural



1 use and does not interfere with surrounding farm  
2 operations; and provided further that this paragraph  
3 shall apply only to a county that has adopted  
4 ordinances regulating agricultural tourism under  
5 section 205-5; or

6 (11) Biofuels processing facilities; provided that the  
7 majority of the feedstock is grown within the state as  
8 determined by the department of agriculture and after  
9 an initial and nonrenewable three-year period  
10 commencing upon final approval to operate such  
11 facilities to allow the importation of feedstock and  
12 fuels, and alternative energy generating facilities,  
13 including the appurtenances associated with the  
14 production and transmission of alternative generated  
15 energy; and provided further that such facilities and  
16 appurtenances are compatible with agricultural uses  
17 and cause minimal adverse impact on important  
18 agricultural lands;

19 (12) Agricultural worker housing; provided:

20 (A) The land used for agricultural worker housing  
21 shall not exceed the lesser of two per cent of



1                   the total land area of the lot or       per cent of  
2                   the gross lot area;

3           (B) The agricultural worker housing shall be rented  
4                   solely to the agricultural workers working on the  
5                   lot and their families;

6           (C) The agricultural worker housing shall be built in  
7                   cluster fashion; provided that the cluster shall  
8                   not break up contiguous blocks of land designated  
9                   important agricultural land and infrastructure  
10                  improvements shall be restricted to the minimum  
11                  required to meet public health and safety  
12                  standards; and

13           (D) The agricultural worker housing shall not be  
14                   counted toward the maximum density of one  
15                   dwelling unit per fifty acres;

16                   or

17           (13) Farm dwellings related to farming and animal  
18                   husbandry. "Farm dwelling", as used in this  
19                   paragraph, means a single-family dwelling located on  
20                   and used in connection with a farm where agricultural  
21                   activity provides income to the family occupying the  
22                   dwelling; provided that:



- 1           (A) The maximum density shall be one farm dwelling  
2           per fifty acres;
- 3           (B) Only one farm dwelling on not more than one acre  
4           of land area shall be permitted for the sole use  
5           of the landowner or child of the landowner or for  
6           the use of a lessee on leased land that is used  
7           by the lessee as a working farm or a farming  
8           operation, as defined in section 165-2; provided  
9           further that if a lot designated important  
10           agricultural land is less than fifty acres when  
11           designated important agricultural land, one farm  
12           dwelling shall be permitted on that lot; and
- 13           (C) Infrastructure improvements shall be restricted  
14           to the minimum required to meet public health and  
15           safety standards.

16           (b) Uses not expressly permitted in subsection (a) shall  
17           be prohibited, except the uses permitted as provided in section  
18           205-8, and construction of single-family dwellings on lots  
19           existing before June 4, 1976. No other uses shall be allowed by  
20           special permit on important agricultural lands.

21           (c) Notwithstanding any other law to the contrary, the  
22           subdivision of land designated as important agricultural lands





1 shall conform to the restrictions contained in this section and  
2 section 205-4.5. Any deed, lease, agreement of sale, mortgage,  
3 agricultural easement, or other instrument of conveyance  
4 covering any land within the agricultural subdivision of lands  
5 designated important agricultural lands shall expressly contain  
6 the restriction on uses and the conditions contained in this  
7 section and the restrictions and conditions shall be  
8 encumbrances running with the land until such time that the land  
9 is no longer designated as important agricultural lands."

10 SECTION 2. Section 46-4, Hawaii Revised Statutes, is  
11 amended by amending subsection (c) to read as follows:

12 "(c) Each county may adopt reasonable standards to allow  
13 the construction of two single-family dwelling units on any lot  
14 where a residential dwelling unit is permitted[-], except that  
15 this provision shall not be allowed on lands designated as  
16 important agricultural lands pursuant to chapter 205; provided  
17 further that any additional dwelling units allowed on lands  
18 classified in the state rural or agricultural land use districts  
19 shall be counted toward the maximum number of dwellings allowed  
20 per gross area under the underlying county zoning or the  
21 respective state land use district, whichever is less, unless  
22 otherwise permitted under county ordinance in a cluster



1 subdivision that preserves the remainder lands for agriculture  
2 or open space."

3 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§205-4.5 Permissible uses within the agricultural**  
6 **districts.** (a) Notwithstanding this section and any other law  
7 to the contrary, uses on lands designated as important  
8 agricultural lands shall be restricted to the uses specified in  
9 section 205-B. Within the agricultural district, all lands  
10 [~~with soil classified by the land study bureau's detailed land~~  
11 ~~classification as overall (master) productivity rating class A~~  
12 ~~or B]~~ shall be restricted to the following permitted uses:

13 (1) Cultivation of crops, including but not limited to  
14 flowers, vegetables, foliage, fruits, forage, fiber,  
15 and timber;

16 (2) Game and fish propagation;

17 (3) Raising of livestock, including but not limited to  
18 poultry, bees, fish, or other animal or aquatic life  
19 that are propagated for [~~economic or personal use,~~]  
20 agribusiness or subsistence farming purposes;

21 (4) Farm dwellings, employee housing, farm buildings, or  
22 activities or uses related to farming and animal



1 husbandry. "Farm dwelling", as used in this  
2 paragraph[~~7~~, means]:

3 (A) Means a single-family dwelling located on and  
4 used in connection with [~~a farm~~], agricultural  
5 activities, agribusiness, or subsistence farming,  
6 including clusters of single-family farm  
7 dwellings permitted within agricultural parks  
8 developed by the State, or where agricultural  
9 activity provides income to the family occupying  
10 the dwelling; and

11 (B) Excludes:

12 (i) Single-family dwellings in a subdivided  
13 development where there is little or no  
14 agricultural activity, agribusiness, or  
15 subsistence farming established; and

16 (ii) Guest cottages;

17 (5) Public institutions and buildings that are necessary  
18 for agricultural practices;

19 (6) Public and private open area types of recreational  
20 uses, including day camps, picnic grounds, parks, and  
21 riding stables, but not including dragstrips,



- 1 airports, drive-in theaters, golf courses, golf  
2 driving ranges, country clubs, and overnight camps;
- 3 (7) Public, private, and quasi-public utility lines and  
4 roadways, transformer stations, communications  
5 equipment buildings, solid waste transfer stations,  
6 major water storage tanks, and appurtenant small  
7 buildings such as booster pumping stations, but not  
8 including offices or yards for equipment, material,  
9 vehicle storage, repair or maintenance, treatment  
10 plants, corporation yards, or other similar  
11 structures;
- 12 (8) Retention, restoration, rehabilitation, or improvement  
13 of buildings or sites of historic, cultural, or scenic  
14 interest;
- 15 (9) Roadside stands for the sale of agricultural products  
16 grown on the premises;
- 17 (10) Buildings and uses, including but not limited to  
18 mills, storage, and processing facilities, maintenance  
19 facilities, and vehicle and equipment storage areas  
20 that are [~~normally considered~~] directly accessory to  
21 the [~~above mentioned uses and are~~] agricultural



1            activities permitted [~~under~~] in this section and  
2            section 205-2(d);

3            (11) Agricultural parks;

4            (12) Plantation community subdivisions, which as used in  
5            this paragraph means a subdivision or cluster of  
6            employee housing, community buildings, and acreage  
7            established on land currently or formerly owned,  
8            leased, or operated by a sugar or pineapple plantation  
9            and in residential use by employees or former  
10           employees of the plantation; provided that the  
11           employees or former employees shall have a property  
12           interest in the land;

13           [+](13)[+] Agricultural tourism conducted on a working  
14           farm, or a farming operation as defined in section  
15           165-2, for the enjoyment, education, or involvement of  
16           visitors; provided that the agricultural tourism  
17           activity is accessory and secondary to the principal  
18           agricultural use and does not interfere with  
19           surrounding farm operations; and provided further that  
20           this paragraph shall apply only to a county that has  
21           adopted ordinances regulating agricultural tourism  
22           under section 205-5; or



1       [+] (14) [+] Wind energy facilities, including the  
2            appurtenances associated with the production and  
3            transmission of wind generated energy; provided that  
4            such facilities and appurtenances are compatible with  
5            agriculture uses and cause minimal adverse impact on  
6            agricultural land.

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



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

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

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



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

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

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

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

21 ~~[(f)]~~ (e) Notwithstanding any other law to the contrary,  
22 agricultural lands may be subdivided and leased for the





1 agricultural uses or activities permitted in subsection (a);  
2 provided that:

3 (1) The principal use of the leased land is [~~agriculture,~~]  
4 for agricultural activity or agribusiness;

5 (2) No permanent or temporary dwellings or farm dwellings,  
6 including trailers and campers, are constructed on the  
7 leased area. This restriction shall not prohibit the  
8 construction of storage sheds, equipment sheds, or  
9 other structures appropriate to the agricultural  
10 activity carried on within the lot; and

11 (3) The lease term for a subdivided lot shall be for at  
12 least as long as the greater of:

13 (A) The minimum real property tax agricultural  
14 dedication period of the county in which the  
15 subdivided lot is located; or

16 (B) Five years.

17 Lots created and leased pursuant to this section shall be legal  
18 lots of record for mortgage lending purposes and shall be exempt  
19 from county subdivision standards.

20 (f) For the purposes of this chapter, the following terms  
21 shall have the following meanings:



1       "Agribusiness" means a business licensed for the production  
2 and sale of products from the cultivation of crops, propagation  
3 of fish or game, or raising of livestock, including but not  
4 limited to the processing of farm products or the manufacturing  
5 of farm equipment and fertilizers.

6       "Agricultural activity" means activities involved in the  
7 cultivation of crops, propagation of fish or game, or raising of  
8 livestock.

9       "Approval" means final approval granted for a proposed  
10 subdivision where the actual division of land into small parcels  
11 is sought, approval of a building permit, or approval of a farm  
12 plan, as the context may require.

13       "Subdivision" means the division of improved or unimproved  
14 land into two or more lots, parcels, sites, or other divisions  
15 of land and for the purpose, whether immediate or future, of  
16 sale, lease, rental, transfer of title to or interest in, any or  
17 all such lots, parcels, sites, or other divisions of land or  
18 interests in land. The term may include a consolidation and  
19 resubdivision and, when appropriate to the context, shall relate  
20 to the land subdivided.

21       "Subsistence farming" means agricultural activity or  
22 agricultural practices that produce food or products primarily



1 for consumption by the family working the land, and where the  
2 family is dependent on this activity to meet a significant  
3 portion of the family's nutritional needs. De minimis  
4 agriculture shall not be evidence of subsistence farming."

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

7 "(a) Subject to this section, the county planning  
8 commission may permit certain unusual and reasonable uses within  
9 agricultural and rural districts other than those for which the  
10 district is classified[-]; provided that uses within lands  
11 designated as important agricultural lands pursuant to section  
12 205-A shall be limited to uses in section 205-B. Any person who  
13 desires to use the person's land within an agricultural or rural  
14 district other than for an agricultural or rural use, as the  
15 case may be, may petition the planning commission of the county  
16 within which the person's land is located for permission to use  
17 the person's land in the manner desired. Each county may  
18 establish the appropriate fee for processing the special permit  
19 petition. Copies of the special permit petition shall be  
20 forwarded to the land use commission, the office of planning,  
21 and the department of agriculture for their review and comment."



1 SECTION 5. Section 205-44, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 " ~~[§]~~ **§205-44** ~~[§]~~ **Standards and criteria for the**  
4 **identification of important agricultural lands.** ~~[The]~~ Except as  
5 provided in section 205-A, the standards and criteria in this  
6 section shall be used to identify important agricultural lands.  
7 Lands identified as important agricultural lands by the  
8 commission need not meet every standard and criteria listed  
9 below. Rather, lands meeting any of the criteria below shall be  
10 given initial consideration; provided that the designation of  
11 important agricultural lands shall be made by weighing the  
12 standards and criteria with each other to meet the  
13 constitutionally mandated purposes in article XI, section 3, of  
14 the state constitution and the objectives and policies for  
15 important agricultural lands in sections 205-42 and 205-43. The  
16 standards and criteria shall be as follows:

- 17 (1) Land currently used for agricultural production;
- 18 (2) Land with soil qualities and growing conditions that  
19 support agricultural production of food, fiber, or  
20 fuel- and energy-producing crops;
- 21 (3) Land identified under agricultural productivity rating  
22 systems, such as the agricultural lands of importance



- 1 to the State of Hawaii (ALISH) system adopted by the  
2 board of agriculture on January 28, 1977;
- 3 (4) Land types associated with traditional native Hawaiian  
4 agricultural uses, such as taro cultivation, or unique  
5 agricultural crops and uses, such as coffee,  
6 vineyards, aquaculture, and energy production;
- 7 (5) Land with sufficient quantities of water to support  
8 viable agricultural production;
- 9 (6) Land whose designation as important agricultural lands  
10 is consistent with general, development, and community  
11 plans of the county;
- 12 (7) Land that contributes to maintaining a critical land  
13 mass important to agricultural operating productivity;  
14 and
- 15 (8) Land with or near support infrastructure conducive to  
16 agricultural productivity, such as transportation to  
17 markets, water, or power."

18 SECTION 6. Section 205-49, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§205-49[+] **Designation of important agricultural lands**  
21 ~~[, adoption of important agricultural lands maps.]~~ **by the land**  
22 **use commission.** (a) The commission shall identify potential



1 important agricultural lands based on the standards and criteria  
2 in section 205-44 and the intent of this part, except lands that  
3 have been designated, through the state land use, zoning, or  
4 county planning process, for urban use by the State or county.

5 (b) Lands to be considered for designation as important  
6 agricultural lands shall be identified by the commission in  
7 consultation and cooperation with landowners, the department of  
8 agriculture, office of planning, and agricultural interest  
9 groups, including representatives from the Hawaii Farm Bureau  
10 Federation and other agricultural organizations, Natural  
11 Resources Conservation Service of the United States Department  
12 of Agriculture, the office of planning, and other groups as  
13 deemed necessary by the commission.

14 ~~[(a)](c)~~ After receipt of ~~[the maps of eligible important~~  
15 ~~agricultural lands from the counties and]~~ the recommendations of  
16 the department of agriculture ~~[and]~~, the office of planning,  
17 ~~landowners, and agricultural interest groups,~~ the commission  
18 shall then proceed to identify and designate important  
19 agricultural lands~~[, subject to section 205-45]~~. The decision  
20 shall consider ~~[the county maps of eligible important~~  
21 ~~agricultural lands; declaratory orders issued by the commission~~  
22 ~~designating important agricultural lands during the three year~~



1 ~~period following the enactment of legislation establishing~~  
 2 ~~incentives and protections contemplated under section 205-46, as~~  
 3 ~~provided in section 9 of Act 183, Session Laws of Hawaii 2005,]~~  
 4 landowner position statements and representations[+] and any  
 5 other relevant information.

6 In designating important agricultural lands in the [State,  
 7 ~~pursuant to the recommendations of individual counties,]~~ state,  
 8 the commission shall consider the extent to which:

- 9 (1) The proposed lands meet the standards and criteria  
 10 under section 205-44;
- 11 (2) The proposed designation is necessary to meet the  
 12 objectives and policies for important agricultural  
 13 lands in sections 205-42 and 205-43; and
- 14 (3) The commission has designated lands as important  
 15 agricultural lands, pursuant to section [~~205-45,~~] 205-  
 16 A; provided that if the majority of landowners'  
 17 landholdings is already designated as important  
 18 agricultural lands, excluding lands held in the  
 19 conservation district, pursuant to section [~~205-45]~~  
 20 205-A or any other provision of this part, the  
 21 commission shall not designate any additional lands of



1           that landowner as important agricultural lands except  
2           by a petition pursuant to section [~~205-45.~~] 205-A.

3           Any decision regarding the designation of lands as  
4 important agricultural lands and the adoption of maps of those  
5 lands pursuant to this section shall be based upon written  
6 findings of fact and conclusions of law, presented in at least  
7 one public hearing conducted in the county where the land is  
8 located in accordance with chapter 91, that the subject lands  
9 meet the standards and criteria set forth in section 205-44 [~~and~~  
10 ~~shall be approved by two-thirds of the membership to which the~~  
11 ~~commission is entitled].~~

12           [~~(b)~~] (d) Copies of the maps of important agricultural  
13 lands adopted by the commission under this section shall be  
14 transmitted to each county planning department and county  
15 council, the department of agriculture, the agribusiness  
16 development corporation, the office of planning, and other state  
17 agencies involved in land use matters. The maps of important  
18 agricultural lands adopted by the commission shall guide all  
19 decision-making on the proposed reclassification or rezoning of  
20 important agricultural lands, state agricultural development  
21 programs, and other state and county land use planning and  
22 decision-making.





1        ~~[(e)]~~ (e) The ~~[land use]~~ commission shall have the sole  
2 authority to interpret the adopted map boundaries delineating  
3 the important agricultural lands.

4        ~~[(d)]~~ The land use commission may designate lands as  
5 important agricultural lands and adopt maps for a designation  
6 pursuant to:

- 7        ~~(1) A farmer or landowner petition for declaratory ruling~~  
8                ~~under section 205-45 at any time; or~~
- 9        ~~(2) The county process for identifying and recommending~~  
10                ~~lands for important agricultural lands under section~~  
11                ~~205-47 no sooner than three years,~~  
12 ~~after the enactment of legislation establishing incentives and~~  
13 ~~protections contemplated under section 205-46, as provided in~~  
14 ~~section 9 of Act 183, Session Laws of Hawaii 2005.] "~~

15        SECTION 7. Section 205-50, Hawaii Revised Statutes, is  
16 amended to read as follows:

17        "[~~+~~] **§205-50** [~~+~~] **Standards and criteria for the**  
18 **reclassification or rezoning of important agricultural lands.**

19        (a) Any land use district boundary amendment or change in  
20 zoning involving important agricultural lands identified  
21 pursuant to this chapter shall be subject to this section.



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

5       ~~(e)]~~ (b) Any decision by the ~~[land use]~~ commission or  
6 county pursuant to this section shall specifically consider the  
7 following standards and criteria:

8       (1) The relative importance of the land for agriculture  
9       based on the stock of similarly suited lands in the  
10       area and the ~~[State]~~ state as a whole;

11       (2) The proposed district boundary amendment or zone  
12       change will not harm the productivity or viability of  
13       existing agricultural activity in the area, or  
14       adversely affect the viability of other agricultural  
15       activities or operations that share infrastructure,  
16       processing, marketing, or other production-related  
17       costs or facilities with the agricultural activities  
18       on the land in question;

19       (3) The district boundary amendment or zone change will  
20       not cause the fragmentation of or intrusion of  
21       nonagricultural uses into largely intact areas of  
22       lands identified by the State as important



1 agricultural lands that create residual parcels of a  
2 size that would preclude viable agricultural use;

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

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

10 [~~(d)~~] (c) Any decision pursuant to this section shall be  
11 based upon a determination that:

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

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

19 [~~(e)~~] (d) The standards and criteria of this section shall  
20 be in addition to:



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

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

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

13 [~~(g)~~] (f) A [~~farmer or~~] landowner with qualifying lands  
14 may also petition the [~~land use~~] commission to remove the  
15 "important agricultural lands" designation from lands if a  
16 sufficient supply of water is no longer available to allow  
17 profitable farming of the land due to governmental actions, acts  
18 of God, or other causes beyond the farmer's or landowner's  
19 reasonable control."

20 SECTION 8. Section 205-52, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           " ~~[†]§205-52[†]~~ **Periodic review and amendment of important**  
2 **agricultural lands maps.** The maps delineating important  
3 agricultural lands shall be reviewed in conjunction with the  
4 county general plan and community and development plan revision  
5 process, or at least once every ten years following the adoption  
6 of the maps by the ~~[land use]~~ commission; provided that the maps  
7 shall not be reviewed more than once every five years. Any  
8 review and amendment of the maps of important agricultural lands  
9 shall be conducted in accordance with this part. ~~[In these~~  
10 ~~periodic reviews or petitions by the farmers or landowners for~~  
11 ~~declaratory rulings, the "important agricultural lands"~~  
12 ~~designation shall be removed from those important agricultural~~  
13 ~~lands where the commission has issued a declaratory order that a~~  
14 ~~sufficient supply of water is no longer available to allow~~  
15 ~~profitable farming of these lands due to governmental actions,~~  
16 ~~acts of God, or other causes beyond the farmer's or landowner's~~  
17 ~~reasonable control.] "~~

18           SECTION 9. Section 205-45, Hawaii Revised Statutes, is  
19 repealed:

20           ~~" **[§205-45] Petition by farmer or landowner.** (a) A farmer~~  
21 ~~or landowner with lands qualifying under section 205-44 may file~~



1 ~~a petition for declaratory ruling with the commission at any~~  
2 ~~time in the designation process.~~

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

6 ~~(1) Tax map keys of the land to be designated along with~~  
7 ~~verification and authorization from the applicable~~  
8 ~~landowners;~~

9 ~~(2) Proof of qualification for designation under section~~  
10 ~~205-44, respecting a regional perspective; and~~

11 ~~(3) The current or planned agricultural use of the area to~~  
12 ~~be designated.~~

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



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

8       ~~(e) Farmers or landowners with lands qualifying under section~~  
9 ~~205-44 may file petitions for a declaratory ruling to designate~~  
10 ~~lands as important agricultural lands following the legislative~~  
11 ~~enactment of protection and incentive measures for important~~  
12 ~~agricultural lands and agricultural viability, as provided in~~  
13 ~~section 9 of Act 183, Session Laws of Hawaii 2005." ]~~

14       SECTION 10. Section 205-47, Hawaii Revised Statutes, is  
15 repealed.

16       ~~["**[§205-47] Identification of important agricultural lands,**~~  
17 ~~**county process.** (a) Each county shall identify and map potential~~  
18 ~~important agricultural lands within its jurisdiction based on~~  
19 ~~the standards and criteria in section 205-44 and the intent of~~  
20 ~~this part, except lands that have been designated, through the~~  
21 ~~state land use, zoning, or county planning process, for urban~~  
22 ~~use by the State or county.~~



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

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

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





1 ~~Upon identification of potential lands to be recommended to~~  
2 ~~the county council as potential important agricultural lands,~~  
3 ~~the counties shall take reasonable action to notify each owner~~  
4 ~~of those lands by mail or posted notice on the affected lands to~~  
5 ~~inform them of the potential designation of their lands.~~

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

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

19 ~~(e) The important agricultural lands maps shall be submitted~~  
20 ~~to the county council for decision making. The county council~~  
21 ~~shall adopt the maps, with or without changes, by resolution.~~



1 ~~The adopted maps shall be transmitted to the land use commission~~  
2 ~~for further action pursuant to section 205-48." ]~~

3 SECTION 11. Section 205-48, Hawaii Revised Statutes, is  
4 repealed.

5 [ "~~§205-48~~ ~~Receipt of maps of eligible important~~  
6 ~~agricultural lands; land use commission.~~ (a) ~~The land use~~  
7 ~~commission shall receive the county recommendations and maps~~  
8 ~~delineating those lands eligible to be designated important~~  
9 ~~agricultural lands no sooner than the effective date of the~~  
10 ~~legislative enactment of protection and incentive measures for~~  
11 ~~important agricultural lands and agricultural viability, as~~  
12 ~~provided in section 9 of Act 183, Session Laws of Hawaii 2005.~~

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

19 (c) ~~State agency review shall be based on an evaluation of~~  
20 ~~the degree that the:~~

21 (1) ~~County recommendations result in an identified~~  
22 ~~resource base that meets the definition of important~~



1           ~~agricultural land and the objectives and policies for~~  
2           ~~important agricultural lands in sections 205-42 and~~  
3           ~~205-43; and~~

4           ~~(2) County has met the minimum standards and criteria for~~  
5           ~~the identification and mapping process in sections~~  
6           ~~205-44 and 205-47." ]~~

7           SECTION 12. Section 205-51, Hawaii Revised Statutes, is  
8           repealed.

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

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

20           ~~(1) None of the resulting lots shall be used solely for~~  
21           ~~residential occupancy; and~~



1       ~~(2) The leasehold lots shall return to the original lot of~~  
2           ~~record upon expiration or termination of the lease." ]~~

3           SECTION 13. Act 183, Session Laws of Hawaii 2005, is  
4 amended as follows:

5           1. By amending section 9(a) to read:

6           "(a) It is the intent of this Act:

7           (1) That agricultural incentive programs to promote  
8           agricultural viability, sustained growth of the  
9           agricultural industry, and the long-term use and  
10          protection of important agricultural lands for  
11          agricultural use shall be developed concurrently with  
12          the process of identifying important agricultural  
13          lands as required under section 2 of this Act; and

14          (2) That, except for the designation of important  
15          agricultural lands by a landowner pursuant to section  
16          205-A, which shall take effect as provided in section  
17          205-A, the designation of important agricultural lands  
18          ~~[and adoption of maps]~~ by the ~~[land use]~~ commission  
19          pursuant to section 2 of this Act shall take effect  
20          only upon the enactment of legislation establishing  
21          incentives and protections for important agricultural



1 lands contemplated by section 205-F and shall be  
2 satisfied by:

3 (A) Providing a declaration of satisfaction within the  
4 Act that establishes incentives for important  
5 agricultural lands; or

6 (B) Having the legislature adopt a concurrent  
7 resolution declaring the satisfaction of  
8 implementing incentives for important  
9 agricultural lands by identifying the specific  
10 measures or Acts that establish incentives for  
11 important agricultural lands."

12 2. By amending section 10 to read:

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



1           3. By repealing sections 7 and 8.

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

10           ~~SECTION 8. There is appropriated out of the general~~  
11 ~~revenues of the State of Hawaii the sum of \$75,000, or so much~~  
12 ~~thereof as may be necessary for fiscal year 2005-2006, for~~  
13 ~~grants-in-aid to the counties for the identification and mapping~~  
14 ~~of important agricultural lands pursuant to section 2 of this~~  
15 ~~Act.~~

16           ~~The sum appropriated shall be expended by the department of~~  
17 ~~business, economic development, and tourism for the disbursement~~  
18 ~~of funds by the land use commission to each county for the~~  
19 ~~identification of important agricultural lands pursuant to this~~  
20 ~~Act.~~

21           ~~The land use commission shall submit annual reports on the~~  
22 ~~progress of the counties in identifying and mapping important~~



1 ~~agricultural lands to the legislature no later than twenty days~~  
2 ~~before the convening of the regular sessions of 2006 through~~  
3 ~~2009." ]~~

4 SECTION 14. In codifying the new sections added by section  
5 1 of this Act, the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 15. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 16. This Act shall take effect upon its approval.



**Report Title:**

Important Agricultural Lands

**Description:**

Expedites the designation of important agricultural lands by the land use commission by repealing the existing landowner/farmer process and the county process, and allowing the land use commission to initiate the designation process and allowing landowners to petition the land use commission for designation. Allows the landowner petition for important agricultural land designation to take effect without the legislative enactment of incentive/protection legislation. Establishes a list of permitted uses for important agricultural lands. Revises the list of permitted uses for agricultural lands. (HB1922 HD1)

