
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

1 SECTION 1. (a) The purpose of this Act is to establish
2 new policies regarding the districting and protection of land in
3 state agricultural districts. Under this Act, all lands in
4 agricultural districts are designated "important agricultural
5 land" for the purpose of article XI, section 3, of the state
6 constitution. This Act rejects the previous approach of
7 establishing a two-tier agricultural districting and protection
8 system, one for "important agricultural land" and the second for
9 "other agricultural land".

10 (b) The most significant provision of this Act is set
11 forth in a new section that designates the land to be placed in
12 agricultural districts on July 1, 2010. Under the new section,
13 such land, deemed "important agricultural land", is identified
14 as:

- 15 (1) Certain land in the central Oahu/north shore area;
16 (2) Land within state agricultural parks;



1 (3) Other state-owned land that the department of
2 agriculture determines should remain or be included in
3 the state agricultural district; and

4 (4) Other land in the State that is within a "relevant
5 county agricultural zoning district" on July 1, 2010.

6 For land in the city and county of Honolulu and county of
7 Hawaii, each of which has more than one agricultural zoning
8 district, "relevant county agricultural zoning district" means
9 the zoning district that is most protective of agricultural use.

10 For land in the county of Maui and county of Kauai, each of
11 which has only one agricultural zoning district, "relevant
12 county agricultural zoning district" means that zoning district.

13 If either county chooses to establish another more protective
14 agriculture zoning district before June 30, 2010, then "relevant
15 county agricultural zoning district" will mean the district that
16 is more protective. Thus, this Act depends on the counties to
17 assist in the initial identification of important agricultural
18 land.

19 Notwithstanding the counties' initial involvement, this Act
20 provides that the re-designation of such land after July 1, 2010
21 shall be subject to chapter 205, Hawaii Revised Statutes. Thus,
22 the legislature intends that the land use commission will be



1 responsible for the re-designation of "important agricultural
2 land" of greater than fifteen acres and the counties will be
3 responsible for the re-designation of "important agricultural
4 land" of lesser area. As required by article XI, section 3, of
5 the Hawaii state constitution, a re-designation shall require
6 the affirmative vote of two-thirds of the members of the land
7 use commission.

8 (c) The legislature has identified the land included in
9 the agricultural district after application of the standards and
10 criteria of section 205-44. In this respect, the legislature
11 makes the following findings:

12 (1) The central Oahu/north shore area under subsection
13 (b)(1) is a vast expanse of contiguous land generally
14 recognized as having high quality soil and growing
15 conditions for crops. The inclusion of the entire
16 area in the agricultural district comports with the
17 standards and criteria of section 205-44(1), (2), (5),
18 (6), (7), and (8). The inclusion of parts of the area
19 also comports with standard and criteria of section
20 205-44(3) or (4).

21 (2) Land within state agricultural parks is expressly
22 intended for agricultural production. Inclusion of



1 each parcel of such land comports with the standard
2 and criterion of section 205-44(1).

3 (3) With respect to other state-owned land placed in the
4 agricultural district, the department of agriculture
5 is required by law to determine that inclusion of such
6 land comports with at least one of the standards and
7 criteria of section 205-44. This duty is expressly
8 delegated to the department, which the Legislature
9 finds is very capable of making the determination.

10 (4) The other land in the relevant county agricultural
11 zoning district is land recognized by the counties as
12 necessary for the preservation or operation of
13 agricultural activity. The inclusion of each parcel
14 of such land in the agricultural district comports
15 with at least one of the standards and criteria of
16 section 205-44.

17 (d) Other significant provisions of this Act are the
18 following:

19 (1) The counties are authorized to enact rezoning
20 ordinances before July 1, 2010 to include land in or
21 exclude land from the state agricultural district;



- 1 (2) The vote threshold to approve a district boundary
2 amendment that does not remove land from the state
3 agricultural district is reduced to the affirmative
4 votes of a majority of the land use commission or
5 county land use decision-making authority, as
6 appropriate;
- 7 (3) "Agricultural worker housing" is defined and made a
8 permitted use in the agricultural district and rural
9 district;
- 10 (4) A "plantation community subdivision", already a
11 permitted use in the agricultural district, is also
12 made a permitted use in the rural district;
- 13 (5) The issuance of a special permit for an unusual, but
14 reasonable, use of agricultural land requires the
15 affirmative vote of two-thirds of the relevant
16 decision-making body;
- 17 (6) The standards and criteria for the reclassification
18 and rezoning of agricultural land are reaffirmed and
19 strengthened; and
- 20 (7) Unnecessary provisions established under Act 183,
21 Session Laws of Hawaii 2005, regarding important
22 agricultural land are repealed.



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

4 "§205-A Agricultural district on July 1, 2010. (a)
5 Notwithstanding any other laws to the contrary, for the purposes
6 of this chapter, "relevant county agriculture zoning district"
7 means:

- 8 (1) With respect to the city and county of Honolulu, the
9 "restricted agricultural" zoning district but not the
10 "general agricultural" zoning district;
11 (2) With respect to the county of Maui, the "agricultural"
12 zoning district; provided that, if the county of Maui
13 establishes more than one agricultural zoning district
14 before July 1, 2010, the "relevant county agriculture
15 zoning district" shall mean the agriculture zoning
16 district that is identified by the county as most
17 protective of agricultural use;
18 (3) With respect to the county of Kauai, the "agriculture"
19 zoning district; provided that, if the county of Kauai
20 establishes more than one agricultural zoning district
21 before July 1, 2010, the "relevant county agriculture
22 zoning district" shall mean the agriculture zoning



1 district that is identified by the county as most
2 protective of agricultural use; and

3 (4) With respect to the county of Hawaii, the "intensive
4 agricultural" zoning district but not the "family
5 agricultural" or "agricultural" zoning district.

6 (b) On July 1, 2010, the following lands shall be included
7 in the state agricultural district:

8 (1) Land in the central Oahu/north shore area within the
9 following tax map key parcels:

10 (A) 6-1-005-001;

11 (B) 6-1-006-001, but not that portion outside the
12 restricted agricultural zoning district of the
13 city and county of Honolulu on July 1, 2008;

14 (C) 6-1-007-001;

15 (D) 6-2-009-001;

16 (E) 6-2-010-001, but not that portion outside the
17 restricted agricultural zoning district of the
18 city and county of Honolulu on July 1, 2008;

19 (F) 6-2-011-001, but not that portion outside the
20 restricted agricultural zoning district of the
21 city and county of Honolulu on July 1, 2008;

22 (G) 6-4-001-001;



- 1 (H) 6-4-001-006;
- 2 (I) 6-4-002-001;
- 3 (J) 6-4-003-001;
- 4 (K) 6-4-003-003;
- 5 (L) 6-4-004-001;
- 6 (M) 6-5-001-002;
- 7 (N) 6-5-002-011;
- 8 (O) 6-5-002-018;
- 9 (P) 6-5-002-019; and
- 10 (2) Land within the boundaries of each of the following
- 11 state agricultural parks:
- 12 (A) On the island of Oahu: Waimanalo, Waianae,
- 13 Kahuku, and Kalaeloa agricultural parks;
- 14 (B) On the island of Hawaii: Pahoā, Panaewa,
- 15 Keahole, and Hamakua agricultural parks;
- 16 (C) On the island of Kauai: Kekaha agricultural
- 17 park; and
- 18 (D) The Molokai agricultural park;
- 19 (3) Other land owned by the State that the department of
- 20 agriculture determines should remain or be included in
- 21 the state agricultural district on July 1, 2010



1 because the land comports with at least one of the
2 standards and criteria of section 205-44; and

3 (4) Other land in the State that is within a relevant
4 county agriculture zoning district on July 1, 2010.

5 (c) By October 1, 2010, the land use commission shall
6 issue maps of the state agricultural districts on each island.

7 (d) The inclusion of land into or exclusion of land from
8 the state agricultural districts on July 1, 2010, pursuant to
9 this section shall not be subject to the district boundary
10 amendment provisions of section 205-3.1 or section 205-4.

11 (e) Land within the state agricultural district on
12 June 30, 2010, that is excluded from that district on July 1,
13 2010 pursuant to subsection (b) shall be included in the state
14 rural district on July 1, 2010. The inclusion of the land into
15 the state rural district on that date shall not be subject to
16 the district boundary amendment provisions of section 205-3.1 or
17 section 205-4.

18 (f) After July 1, 2010, any land included in the state
19 agricultural or rural district pursuant to this section shall be
20 subject to the district boundary amendment provisions of this
21 chapter.



1 §205-B County zoning map amendments before June 30, 2010.

2 (a) For the purposes of this section, "rezoning ordinance"
3 means an ordinance amending a zoning map or the narrative of a
4 zoning code or land use ordinance.

5 (b) Each county, on its own initiative or upon application
6 of a person, may review, process, and act upon any proposed
7 rezoning ordinance that, on July 1, 2010, will include land in
8 or exclude land from the "relevant county agricultural zoning
9 district" pursuant to section 205-A(b) (2); provided that:

10 (1) A county through a rezoning ordinance shall not.
11 include land that is in the state urban, rural, or
12 conservation district on June 30, 2010 in the relevant
13 county agricultural zoning district;

14 (2) The rezoning ordinance shall take effect on July 1,
15 2010 so that the subject land is included in or
16 excluded from the state agricultural district on that
17 date in accordance with section 205-A(b) (2);

18 (3) When including land in the relevant county
19 agricultural zoning district by a rezoning ordinance,
20 the county shall find that the inclusion comports with
21 at least one of the standards and criteria of section
22 205-44; and

1 (4) No rezoning ordinance enacted by any county shall
 2 affect the inclusion into the state agricultural
 3 district of the central Oahu/north shore area
 4 identified under section 205-A(b)(1), the state
 5 agricultural park land identified under section 205-
 6 A(b)(2), or the state-owned land identified by the
 7 department of agriculture under section 205-A(b)(3).

8 (c) The county of Maui and the county of Kauai may also
 9 create through a rezoning ordinance more than one agricultural
 10 zoning district to separate land to be included in the state
 11 agricultural district from other agricultural land.

12 (d) No rezoning ordinance enacted pursuant to this section
 13 shall be deemed a "proposed action" requiring the preparation of
 14 an environmental assessment or environmental impact statement,
 15 notwithstanding section 343-5(a) or any other provision of
 16 chapter 343.

17 (e) This section shall be repealed on July 1, 2010."

18 SECTION 3. Section 205-1, Hawaii Revised Statutes, is
 19 amended to read as follows:

20 "**§205-1 Establishment of the commission.** There shall be a
 21 state land use commission, hereinafter called the commission.
 22 The commission shall consist of nine members who shall hold no



1 other public office and shall be appointed in the manner and
2 serve for the term set forth in section 26-34. One member shall
3 be appointed from each of the counties and the remainder shall
4 be appointed at large; provided that one member shall have
5 substantial experience or expertise in traditional Hawaiian land
6 usage and knowledge of cultural land practices. The commission
7 shall elect its chairperson from one of its members. The
8 members shall receive no compensation for their services on the
9 commission, but shall be reimbursed for actual expenses incurred
10 in the performance of their duties. [~~Six affirmative votes~~
11 ~~shall be necessary for any boundary amendment.~~]

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

15 The commission may engage employees necessary to perform
16 its duties, including administrative personnel and an executive
17 officer. The executive officer shall be appointed by the
18 commission and the executive officer's position shall be exempt
19 from civil service. Departments of the state government shall
20 make available to the commission such data, facilities, and
21 personnel as are necessary for it to perform its duties. The
22 commission may receive and utilize gifts and any funds from the



1 federal or other governmental agencies. It shall adopt rules
2 guiding its conduct, maintain a record of its activities and
3 accomplishments, and make recommendations to the governor and to
4 the legislature through the governor."

5 SECTION 4. Section 205-2, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending subsection (a) to read:

8 "(a) There shall be four major land use districts in which
9 all lands in the State shall be placed: urban, rural,
10 agricultural, and conservation. The land use commission shall
11 group contiguous land areas suitable for inclusion in one of
12 these four major districts. The commission shall set standards
13 for determining the boundaries of each district, provided that:

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

18 (2) In the establishment of boundaries for rural
19 districts, areas of land composed primarily of small
20 farms mixed with very low density residential lots,
21 which may be shown by a minimum density of not more
22 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[+] in this chapter;

(3) In the establishment and amendment of the boundaries
of agricultural districts [~~the greatest possible
protection shall be given to those lands with a high
capacity for intensive cultivation;~~], section 205-A
shall apply on July 1, 2010, and section 205-50 shall
apply thereafter. All lands in agricultural districts
shall be designated "important agricultural lands" for
the purpose of article XI, section 3, of the state
constitution. For the purposes of this chapter,
"agricultural lands", "lands in the agricultural
district", and similar terms shall have the same
meaning as "important agricultural lands" as defined
in section 205-42; 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



1 1957, shall constitute the boundaries of the
2 conservation districts; provided that thereafter the
3 power to determine the boundaries of the conservation
4 districts shall be in the commission.

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

8 2. By amending subsections (c) and (d) to read:

9 "(c) Rural districts shall include [~~activities~~]:

10 (1) Activities or uses as characterized by low density
11 residential lots of not more than one dwelling house
12 per one-half acre, except as provided by this section
13 or county ordinance pursuant to section 46-4(c), in
14 areas where "city-like" concentration of people,
15 structures, streets, and urban level of services are
16 absent, and where small farms are intermixed with low
17 density residential lots except that within a
18 subdivision, as defined in section 484-1, the
19 commission for good cause may allow one lot of less
20 than one-half acre, but not less than 18,500 square
21 feet, or an equivalent residential density, within a
22 rural subdivision and permit the construction of one



1 dwelling on such lot, provided that all other
 2 dwellings in the subdivision shall have a minimum lot
 3 size of one-half acre or 21,780 square feet. Such
 4 petition for variance may be processed under the
 5 special permit procedure[~~-. These districts may~~
 6 ~~include contiguous~~];

7 (2) Contiguous areas [~~which~~] that are not suited to low
 8 density residential lots or small farms by reason of
 9 topography, soils, and other related characteristics[~~-~~
 10 ~~Rural districts shall also include golf~~];

11 (3) Golf courses, golf driving ranges, and golf-related
 12 facilities[~~-~~];

13 (4) Plantation community subdivisions, as defined in
 14 section 205-4.5(a)(12), with higher residential
 15 densities than specified under paragraph (1); and

16 (5) Agricultural worker housing, as defined under section
 17 205-4.5(a)(4), with higher residential densities than
 18 specified under paragraph (1).

19 (d) Agricultural districts shall include:

20 (1) Activities or uses as characterized by the cultivation
 21 of crops, crops for bioenergy, orchards, forage, and
 22 forestry;



- 1 (2) Farming activities or uses related to animal
- 2 husbandry, and game and fish propagation;
- 3 (3) Aquaculture, which means the production of aquatic
- 4 plant and animal life within ponds and other bodies of
- 5 water;
- 6 (4) Wind generated energy production for public, private,
- 7 and commercial use;
- 8 (5) Biofuel production as described in section
- 9 205-4.5(a)(15) for public, private, and commercial
- 10 use;
- 11 (6) Bona fide agricultural services and uses that support
- 12 the agricultural activities of the fee or leasehold
- 13 owner of the property and accessory to any of the
- 14 above activities, whether or not conducted on the same
- 15 premises as the agricultural activities to which they
- 16 are accessory, including but not limited to farm
- 17 dwellings and agricultural worker housing as defined
- 18 in section 205-4.5(a)(4), [~~employee housing,~~] farm
- 19 buildings, mills, storage facilities, processing
- 20 facilities, vehicle and equipment storage areas,
- 21 roadside stands for the sale of products grown on the



1 premises, and plantation community subdivisions [~~as~~
2 ~~defined in section 205-4.5(a)(12)~~];

3 (7) Wind machines and wind farms;

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

10 (9) Agricultural parks;

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

21 (11) Open area recreational facilities.



1 Agricultural districts shall not include golf courses and golf
2 driving ranges, except as provided in section [~~205-4.5(d).~~]
3 205-4.5(c). Agricultural districts also shall not include areas
4 that are [~~not used~~] unsuited for[~~, or that are not suited to,~~]
5 agricultural and ancillary activities by reason of topography,
6 soils, and other related characteristics."

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

9 "**§205-3.1 Amendments to district boundaries.** (a)

10 District boundary amendments involving lands in the conservation
11 district[~~]~~ or land areas greater than fifteen acres[~~, or lands~~
12 ~~delineated as important agricultural lands]~~ shall be processed
13 by the land use commission pursuant to section 205-4.

14 (b) Any department or agency of the State, [~~and~~]
15 department or agency of the county in which the land is
16 situated, or any person with a property interest in the land
17 sought to be reclassified may petition the appropriate county
18 land use decision-making authority of the county in which the
19 land is situated for [~~a change in~~] an amendment to the boundary
20 of [~~a district involving lands less than~~] land areas of fifteen
21 acres [~~presently~~] or less in the rural [~~and~~], urban [~~districts~~
22 ~~and lands less than fifteen acres in the agricultural district~~



1 ~~that are not designated as important agricultural lands.~~, or
2 agricultural districts.

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

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



1 hearing and the proposed amendments scheduled to be heard at the
2 hearing.

3 (e) The affirmative vote of a majority vote of the total
4 membership of the county land use decision-making authority
5 shall be necessary for any district boundary amendment under
6 this section; except that, pursuant to article XI, section 3, of
7 the state constitution, the affirmative vote of two-thirds of
8 the authority shall be necessary for any amendment removing land
9 from the agricultural district.

10 (f) A change in the state land use district boundaries
11 pursuant to this [~~subsection~~] section shall become effective on
12 the day designated by the county land use decision-making
13 authority in its decision. Within sixty days of the effective
14 date of any decision to amend state land use district boundaries
15 by the county land use decision-making authority, the decision
16 and the description and map of the affected property shall be
17 transmitted to the land use commission and the department of
18 business, economic development, and tourism by the county
19 planning director."

20 SECTION 6. Section 205-4, Hawaii Revised Statutes, is
21 amended as follows:

22 1. By amending subsection (a) to read:



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

13 2. By amending subsections (g) and (h) to read:

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



1 to section 205-17 and, if applicable, section 205-50 or to
2 assure substantial compliance with representations made by the
3 petitioner in seeking a boundary change. The commission may
4 provide by condition that absent substantial commencement of use
5 of the land in accordance with such representations, the
6 commission shall issue and serve upon the party bound by the
7 condition an order to show cause why the property should not
8 revert to its former land use classification or be changed to a
9 more appropriate classification. Such conditions, if any, shall
10 run with the land and be recorded in the bureau of conveyances.

11 (h) No amendment of a land use district boundary shall be
12 approved unless the commission finds upon the clear
13 preponderance of the evidence that the proposed boundary is
14 reasonable, not violative of section 205-2 and part III of this
15 chapter, and consistent with the policies and criteria
16 established pursuant to sections 205-16 [~~and~~], 205-17 [~~—Six~~],
17 and, if applicable, section 205-50. Five affirmative votes of
18 the commission shall be necessary for any boundary amendment
19 under this section[~~-~~]; except that, pursuant to article XI,
20 section 3, of the state constitution, the affirmative vote of
21 two-thirds of the commission shall be necessary for any
22 amendment removing land from the agricultural district."



1 SECTION 7. Section 205-4.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§205-4.5 Permissible uses within the agricultural**
4 **districts.** (a) Within the agricultural district, all lands
5 [~~with soil classified by the land study bureau's detailed land~~
6 ~~classification as overall (master) productivity rating class A~~
7 ~~or B~~] shall be restricted to the following permitted uses:

8 (1) Cultivation of crops, including but not limited to
9 crops for bioenergy, flowers, vegetables, foliage,
10 fruits, forage, 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 economic or personal use;

15 (4) Farm dwellings, [~~employee~~] agricultural worker
16 housing, farm buildings, or activities or uses related
17 to farming and animal husbandry. "Farm dwelling", as
18 used in this paragraph, means a single-family dwelling
19 located on a lot and [~~used in connection with a farm,~~
20 ~~including~~] occupied by a family deriving income from
21 bona fide agricultural activity on the same lot.

22 "Farm dwelling" also means clusters of single-family



1 farm dwellings permitted within agricultural parks
2 developed by the State~~[, or where agricultural~~
3 ~~activity provides income to the family occupying the~~
4 ~~dwelling,]~~ and occupied by families deriving income
5 from bona fide agricultural activity in agricultural
6 parks. "Agricultural worker housing" means a
7 multifamily dwelling or cluster of single-family
8 dwellings on a lot that are rented to workers engaged
9 in bona fide agricultural activity on the same or
10 nearby lot and their families; provided that the
11 building area of the agricultural worker housing shall
12 not exceed two per cent of the total land area of the
13 lot, and a "nearby lot" means a lot within one mile of
14 the lot on which the agricultural worker housing is
15 situated;

- 16 (5) Public institutions and buildings that are necessary
17 for agricultural practices;
- 18 (6) Public and private open area types of recreational
19 uses, including day camps, picnic grounds, parks, and
20 riding stables, but not including dragstrips,
21 airports, drive-in theaters, golf courses, golf
22 driving ranges, country clubs, and overnight camps;



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- 1 (7) Public, private, and quasi-public utility lines and
2 roadways, transformer stations, communications
3 equipment buildings, solid waste transfer stations,
4 major water storage tanks, and appurtenant small
5 buildings such as booster pumping stations, but not
6 including offices or yards for equipment, material,
7 vehicle storage, repair or maintenance, treatment
8 plants, corporation yards, or other similar
9 structures;
- 10 (8) Retention, restoration, rehabilitation, or improvement
11 of buildings or sites of historic or scenic interest;
- 12 (9) Roadside stands for the sale of agricultural products
13 grown on the premises;
- 14 (10) Buildings and uses, including but not limited to
15 mills, storage, and processing facilities, maintenance
16 facilities, and vehicle and equipment storage areas
17 that are normally considered directly accessory to the
18 above mentioned uses and are permitted under section
19 205-2(d);
- 20 (11) Agricultural parks;
- 21 (12) Plantation community subdivisions, which as used in
22 this paragraph means a subdivision or cluster of



1 employee housing, community buildings, and acreage
2 established on land currently or formerly owned,
3 leased, or operated by a sugar or pineapple plantation
4 and in residential use by employees or former
5 employees of the plantation; provided that the
6 employees or former employees shall have a property
7 interest in the land;

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

18 (14) Wind energy facilities, including the appurtenances
19 associated with the production and transmission of
20 wind generated energy; provided that the wind energy
21 facilities and appurtenances are compatible with



1 agriculture uses and cause minimal adverse impact on
2 agricultural land;

3 (15) Biofuel processing facilities, including the
4 appurtenances associated with the production and
5 refining of biofuels that is normally considered
6 directly accessory and secondary to the growing of the
7 energy feedstock; provided that biofuels processing
8 facilities and appurtenances do not adversely impact
9 agricultural land and other agricultural uses in the
10 vicinity.

11 For the purposes of this paragraph:

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

17 "Biofuel processing facility" means a facility
18 that produces liquid or gaseous fuels from organic
19 sources such as biomass crops, agricultural residues,
20 and oil crops, including palm, canola, soybean, and
21 waste cooking oils; grease; food wastes; and animal



1 residues and wastes that can be used to generate
2 energy[+]; or[+]
3 +] (16) [+]
4 Construction and operation of wireless communication
5 antennas; provided that, for the purposes of this
6 paragraph, "wireless communication antenna" means
7 communications equipment that is either freestanding
8 or placed upon or attached to an already existing
9 structure and that transmits and receives
10 electromagnetic radio signals used in the provision of
11 all types of wireless communications services;
12 provided further that nothing in this paragraph shall
13 be construed to permit the construction of any new
14 structure that is not deemed a permitted use under
15 this subsection.

16 (b) Uses not expressly permitted in subsection (a) shall
17 be prohibited, except the uses permitted as provided in sections
18 205-6 and 205-8, and construction of single-family dwellings on
19 lots existing before June 4, 1976.

20 Any other law to the contrary notwithstanding, no
21 subdivision of land within the agricultural district [~~with soil~~
22 ~~classified by the land study bureau's detailed land~~
~~classification as overall (master) productivity rating class A~~



1 ~~or B~~] shall be approved by a county unless [~~these A and B~~] the
2 lands within the subdivision are made subject to the restriction
3 on uses as prescribed in this section and to the condition that
4 the uses shall be primarily in pursuit of an agricultural
5 activity. No new lots resulting from a subdivision shall be
6 used solely for residential occupancy, except as permitted under
7 this chapter or chapter 166.

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

16 If the foregoing requirement of encumbrances running with
17 the land jeopardizes the owner or lessee in obtaining mortgage
18 financing from any of the mortgage lending agencies set forth in
19 the following paragraph, and the requirement is the sole reason
20 for failure to obtain mortgage financing, then the requirement
21 of encumbrances shall, insofar as such mortgage financing is
22 jeopardized, be conditionally waived by the appropriate county



1 enforcement officer; provided that the conditional waiver shall
2 become effective only in the event that the property is
3 subjected to foreclosure proceedings by the mortgage lender.

4 The mortgage lending agencies referred to in the preceding
5 paragraph are the Federal Housing Administration, Federal
6 National Mortgage Association, Veterans Administration, Small
7 Business Administration, United States Department of
8 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
9 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
10 other federal, state, or private mortgage lending agency
11 qualified to do business in Hawaii, and their respective
12 successors and assigns.

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

18 ~~(d)]~~ (c) Notwithstanding any other provision of this
19 chapter to the contrary, golf courses and golf driving ranges
20 approved by a county before July 1, 2005~~[7]~~ for development
21 within the agricultural district shall be permitted uses within
22 the agricultural district.



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

5 ~~[(f)]~~ (e) Notwithstanding any other law to the contrary,
 6 agricultural lands may be subdivided and leased for the
 7 agricultural uses or activities permitted in subsection (a);
 8 provided that:

9 (1) The principal use of the leased land is agriculture;

10 (2) No permanent or temporary dwellings, agricultural
 11 worker housing, or farm dwellings, including trailers
 12 and campers, are constructed on the leased area. This
 13 restriction shall not prohibit the construction of
 14 storage sheds, equipment sheds, or other structures
 15 appropriate to the agricultural activity carried on
 16 within the lot; and

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

19 (A) The minimum real property tax agricultural
 20 dedication period of the county in which the
 21 subdivided lot is located; or

22 (B) Five years.



1 Lots created and leased pursuant to this section shall be legal
2 lots of record for mortgage lending purposes and shall be exempt
3 from county subdivision standards."

4 SECTION 8. Section 205-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§205-5 Zoning.** (a) Except as herein provided, the
7 powers granted to counties under section 46-4 shall govern the
8 zoning within the districts, other than in conservation
9 districts. Conservation districts shall be governed by the
10 department of land and natural resources pursuant to chapter
11 183C.

12 Nothing in this chapter shall be construed to prohibit a
13 county from placing urban- or rural-classified land into a
14 county agricultural zoning district or designating agricultural
15 activity as a principal or permitted use on the land.

16 (b) Within agricultural districts, uses compatible to the
17 activities described in section 205-2 as determined by the
18 commission shall be permitted; provided that accessory
19 agricultural uses and services described in sections 205-2 and
20 205-4.5 may be further defined by each county by zoning
21 ordinance. Each county shall adopt ordinances setting forth
22 procedures and requirements, including provisions for



1 enforcement, penalties, and administrative oversight, for the
2 review and permitting of agricultural tourism uses and
3 activities as an accessory use on a working farm, or farming
4 operation as defined in section 165-2; provided that
5 agricultural tourism activities shall not be permissible in the
6 absence of a bona fide farming operation. Ordinances shall
7 include but not be limited to:

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

19 Each county may require an environmental assessment under
20 chapter 343 as a condition to any agricultural tourism use and
21 activity.



1 Other uses may be allowed by special permits issued
2 pursuant to this chapter. The minimum lot size in agricultural
3 districts shall be determined by each county by zoning
4 ordinance, subdivision ordinance, or other lawful means;
5 provided that the minimum lot size for any agricultural use
6 shall not be less than one acre, except as provided herein. If
7 the county finds that unreasonable economic hardship to the
8 owner or lessee of land cannot otherwise be prevented or where
9 land utilization is improved, the county may allow lot sizes of
10 less than the minimum lot size as specified by law for lots
11 created by a consolidation of existing lots within an
12 agricultural district and the resubdivision thereof; provided
13 that the consolidation and resubdivision do not result in an
14 increase in the number of lots over the number existing prior to
15 consolidation; and provided further that in no event shall a lot
16 which is equal to or exceeds the minimum lot size of one acre be
17 less than that minimum after the consolidation and resubdivision
18 action. The county may also allow lot sizes of less than the
19 minimum lot size as specified by law for lots created or used
20 for plantation community subdivisions as defined in section 205-
21 4.5(a)(12), for agricultural workers housing, for public,
22 private, and quasi-public utility purposes, and for lots



1 resulting from the subdivision of abandoned roadways and
2 railroad easements.

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

- 6 (1) Low density residential uses;
- 7 (2) Agricultural uses~~[+]~~ or agricultural worker housing;
- 8 (3) Golf courses, golf driving ranges, and golf-related
9 facilities; ~~[and]~~
- 10 (4) Public, quasi-public, and public utility
11 facilities~~[+]~~; and
- 12 (5) Plantation community subdivisions.

13 In addition, the minimum lot size for any low density
14 residential use shall be one-half acre and there shall be but
15 one dwelling house per one-half acre, except as provided ~~[for]~~
16 in section 205-2~~[+]~~ or provisions related to agricultural worker
17 housing or plantation community subdivisions."

18 SECTION 9. Section 205-6, Hawaii Revised Statutes, is
19 amended by amending subsections (c), (d), (e), and (f) to read
20 as follows:

21 "(c) The county planning commission ~~[may]~~, under ~~[such]~~
22 protective restrictions ~~[as may be]~~ deemed necessary, may permit



1 the desired use, but only when the use would promote the
2 effectiveness and objectives of this chapter [~~; provided that a~~
3 ~~use proposed for designated important agricultural lands shall~~
4 and does not conflict with any part of this chapter. [A] If the
5 special permit involves land in the rural district, a decision
6 in favor of the applicant shall require the affirmative vote of
7 a majority [vote] of the total membership of the county planning
8 commission. If the special permit involves land in an
9 agricultural district, a decision in favor of the applicant
10 shall require the affirmative vote of two-thirds of the total
11 membership of the county planning commission.

12 (d) Special permits for land, the area of which is greater
13 than fifteen acres in a rural district, or for lands [~~designated~~
14 ~~as important~~] in an agricultural [lands] district shall be
15 subject to approval by the land use commission. The land use
16 commission may impose additional restrictions as may be
17 necessary or appropriate in granting the approval, including the
18 adherence to representations made by the applicant.

19 [~~e~~] A copy of the decision, together with the complete
20 record of the proceeding before the county planning commission
21 on all special permit requests involving a land area greater
22 than fifteen acres in a rural district or for lands [~~designated~~



1 ~~as important]~~ in an agricultural [~~lands,~~] district shall be
2 transmitted to the land use commission within sixty days after
3 the decision is rendered.

4 Within forty-five days after receipt of the complete record
5 from the county planning commission, the land use commission
6 shall act to approve, approve with modification, or deny the
7 petition. If the special permit involves land in a rural
8 district, the approval or approval with modification of the
9 special permit shall require the affirmative vote of a majority
10 of the total membership of the land use commission. If the
11 special permit involves land in an agricultural district, the
12 approval or approval with modification of the special permit
13 shall require the affirmative vote of two-thirds of the total
14 membership of the land use commission.

15 A denial either by the county planning commission or by the
16 land use commission, or a modification by the land use
17 commission, as the case may be, of the desired use shall be
18 appealable to the circuit court of the circuit in which the land
19 is situated and shall be made pursuant to the Hawaii rules of
20 civil procedure.

21 [~~(f)~~] (e) Land uses substantially involving or supporting
22 educational ecotourism, related to the preservation of native



1 Hawaiian endangered, threatened, proposed, and candidate
2 species, that are allowed in an approved habitat conservation
3 plan under section 195D-21 or safe harbor agreement under
4 section 195D-22, which are not identified as permissible uses
5 within the agricultural district under sections 205-2 and 205-
6 4.5, may be permitted in the agricultural district by special
7 permit under this section, on lands with soils classified by the
8 land study bureau's detailed land classification as overall
9 (master) productivity rating class C, D, E, or U."

10 SECTION 10. Section 205-12, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§205-12 Enforcement.** The appropriate officer or agency
13 charged with the administration of county zoning laws shall
14 enforce within each county the use classification districts
15 adopted by the land use commission and the restriction on use
16 and the condition relating to agricultural districts under
17 [~~section~~] sections 205-2, 205-A, and 205-4.5 and shall report to
18 the commission all violations."

19 SECTION 11. Section 205-14, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§205-14 Adjustments of [assessing] real property tax**
22 **assessment practices.** Upon the [~~adoption~~] amendment of district



1 boundaries, certified copies of the classification maps showing
2 the amended district boundaries shall be filed with the
3 [~~department of taxation.~~] appropriate county. Thereafter, the
4 [~~department of taxation shall,~~] county, when making assessments
5 of property within a district[~~7~~] for real property tax purposes,
6 shall give consideration to the use or uses that may be made
7 thereof as well as the uses to which it is then devoted."

8 SECTION 12. Section 205-17, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§205-17 Land use commission decision-making criteria.** In
11 its review of any petition for reclassification of district
12 boundaries pursuant to this chapter, the commission shall
13 specifically consider the following:

14 (1) The extent to which the proposed reclassification
15 conforms to the applicable goals, objectives, and
16 policies of the Hawaii state plan and relates to the
17 applicable priority guidelines of the Hawaii state
18 plan and the adopted functional plans;

19 (2) The extent to which the proposed reclassification
20 conforms to the applicable district standards;

21 (3) The impact of the proposed reclassification on the
22 following areas of state concern:



- 1 (A) Preservation or maintenance of important natural
- 2 systems or habitats;
- 3 (B) Maintenance of valued cultural, historical, or
- 4 natural resources;
- 5 (C) Maintenance of other natural resources relevant
- 6 to Hawaii's economy, including agricultural
- 7 resources;
- 8 (D) Commitment of state funds and resources;
- 9 (E) Provision for employment opportunities and
- 10 economic development; and
- 11 (F) Provision for housing opportunities for all
- 12 income groups, particularly the low,
- 13 low-moderate, and gap groups;
- 14 (4) The standards and criteria for the reclassification or
- 15 rezoning of [~~important~~] agricultural lands in section
- 16 205-50; and
- 17 (5) The representations and commitments made by the
- 18 petitioner in securing a boundary change."

19 SECTION 13. Section 205-18, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§205-18 Periodic review of districts.** The office of
22 planning shall undertake a review of the classification and



1 districting of all lands in the State, within five years from
2 ~~[December 31, 1985,]~~ July 1, 2010, and every fifth year
3 thereafter. The office, in its five-year boundary review, shall
4 focus its efforts on reviewing the Hawaii state plan, county
5 general plans, and county development and community plans. Upon
6 completion of the five- year boundary review, the office shall
7 submit a report of the findings to the commission. The office
8 may initiate state land use boundary amendments which it deems
9 appropriate to conform to these plans. The office may seek
10 assistance of appropriate state and county agencies and may
11 employ consultants and undertake studies in making this review."

12 SECTION 14. Section 205-42, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§205-42[+] **Important agricultural lands; definition**
15 **and objectives.** (a) ~~[As used in this part, unless the context~~
16 ~~otherwise requires,]~~ As provided under section 205-2(a)(3), all
17 lands in an agricultural district shall be designated "important
18 agricultural lands" ~~[means those lands, identified pursuant to~~
19 ~~this part, that:~~

20 ~~(1) Are capable of producing sustained high agricultural~~
21 ~~yields when treated and managed according to accepted~~
22 ~~farming methods and technology;~~



1 ~~(2) Contribute to the State's economic base and produce~~
2 ~~agricultural commodities for export or local~~
3 ~~consumption; or~~

4 ~~(3) Are needed to promote the expansion of agricultural~~
5 ~~activities and income for the future, even if~~
6 ~~currently not in production.] for the purpose of~~
7 ~~article XI, section 3, of the state constitution.~~

8 (b) ~~[The objective for the identification of important~~
9 ~~agricultural lands is to identify and plan for the maintenance~~
10 ~~of a strategic agricultural land resource base that can support~~
11 ~~a diversity of agricultural activities and opportunities that~~
12 ~~expand agricultural income and job opportunities and increase~~
13 ~~agricultural self-sufficiency for current and future~~
14 ~~generations. To achieve this objective,] To protect important~~
15 ~~agricultural lands, the State shall:~~

16 (1) Promote agricultural development and land use planning
17 that delineates blocks of productive agricultural land
18 and areas of agricultural activity for protection from
19 the encroachment of nonagricultural uses; and

20 (2) Establish incentives and programs that promote:

21 (A) Agricultural viability[+] and diversity;



- 1 (B) Sustained growth of the agriculture industry;
- 2 [and]
- 3 (C) Agricultural self-sufficiency for current and
- 4 future generations;
- 5 [~~(C)~~] (D) The long-term agricultural use and
- 6 protection of [~~these~~] productive agricultural
- 7 lands~~[-]~~; and
- 8 (E) Expansion of agricultural related income and job
- 9 opportunities."

10 SECTION 15. Section 205-43, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "[~~{~~]§205-43[~~}~~—~~Important agricultural~~] Agricultural lands;
 13 **policies.** State and county agricultural policies, tax policies,
 14 land use plans, ordinances, and rules shall promote the long-
 15 term viability of agricultural use of [~~important~~] agricultural
 16 lands and shall be consistent with and implement the following
 17 policies:

- 18 (1) Promote the retention of [~~important~~] agricultural
- 19 lands in blocks of contiguous, intact, and functional
- 20 land units large enough to allow flexibility in
- 21 agricultural production and management;



- 1 (2) Discourage the fragmentation of [~~important~~]
2 agricultural lands and the conversion of these lands
3 to nonagricultural uses;
- 4 (3) Direct [~~nonagricultural~~] uses and activities [~~from~~
5 ~~important~~] not permitted on agricultural lands to
6 other areas and ensure that [~~uses on important~~]
7 agricultural use is permitted on lands [~~are actually~~
8 ~~agricultural uses;~~] under sections 205-2, 205-4.5, and
9 205-8;
- 10 (4) Limit physical improvements on [~~important~~]
11 agricultural lands to maintain affordability of these
12 lands for agricultural purposes;
- 13 (5) Provide a basic level of infrastructure and services
14 on [~~important~~] agricultural lands [~~limited to the~~
15 ~~minimum~~] necessary to support agricultural uses and
16 activities;
- 17 (6) Facilitate the long-term dedication of [~~important~~]
18 agricultural lands for future agricultural use through
19 the use of incentives;
- 20 (7) Facilitate the access of farmers to [~~important~~]
21 agricultural lands for long-term viable agricultural
22 use; and



1 (8) Promote the maintenance of essential agricultural
2 infrastructure systems, including irrigation systems."

3 SECTION 16. Section 205-44, Hawaii Revised Statutes, is
4 amended to read as follows:

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

- 19 (1) Land currently used for agricultural production;
20 (2) Land with soil qualities and growing conditions that
21 support agricultural production of food, fiber, or
22 fuel- and energy-producing crops;



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

20 SECTION 17. Section 205-46, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "[+]§205-46[+] **Incentives for [important] agricultural**
 2 **lands.** (a) To achieve the long-term agricultural viability and
 3 use of [important] agricultural lands, the State and each county
 4 shall ensure that their:

- 5 (1) Agricultural development, land use, water use,
- 6 regulatory, tax, and land protection policies; and
- 7 (2) Permitting and approval procedures,
- 8 enable and promote the economic sustainability of agriculture.

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

15 (b) ~~[State and county incentive programs shall provide~~
 16 ~~preference to important agricultural lands and agricultural~~
 17 ~~businesses on important agricultural lands.]~~ The State and each
 18 county shall cooperate ~~[in]~~ to promote program development to
 19 prevent duplication of, and to streamline and consolidate access
 20 to, programs and services for agricultural businesses located on
 21 [important] agricultural lands.



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

5 (1) Grant assistance;

6 (2) Real property tax systems that support the needs of
7 agriculture, including property tax assessments based
8 on agricultural use valuation;

9 (3) Reduced infrastructure requirements and facilitated
10 building permit processes for dedicated agricultural
11 structures;

12 (4) Tax incentives to offset operational costs, promote
13 agricultural business viability, and promote the long-
14 term protection of [~~important~~] agricultural lands;

15 (5) Agricultural business planning, marketing, and
16 implementation grants;

17 (6) Tax incentives and programs for equity investments and
18 financing for agricultural operations, including
19 agricultural irrigation systems;

20 (7) Other programs and mechanisms that promote investment
21 in agricultural businesses or agricultural land



- 1 protection, such as the purchase of development
- 2 rights;
- 3 (8) State funding mechanisms to fund business viability
- 4 and land protection programs;
- 5 (9) Water regulations and policies that provide farmers of
- 6 [~~important~~] agricultural lands access to adequate and
- 7 cost-effective sources of water;
- 8 (10) Other measures that would ensure that state capital
- 9 investments, projects, programs, and rules are
- 10 consistent with this part; and
- 11 (11) Agricultural education and training for new farmers;
- 12 upgrading the skills of existing farmers and other
- 13 agriculture-related employees through the use of
- 14 mentoring, business incubators, and public or private
- 15 scholarships; and increasing the returns of farming by
- 16 adding value to food processing and other tools and
- 17 methods.

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



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

12 ~~(c) This section shall apply only to those lands~~
 13 ~~designated as important agricultural lands pursuant to sections~~
 14 ~~205-45 and 205-49.]"~~

15 SECTION 18. Section 205-50, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "~~[+]~~§205-50~~[+]~~ **Standards and criteria for [the**
 18 **reclassification] district boundary amendments or rezoning of**
 19 **[important] agricultural lands.** (a) [Any] After July 1, 2010,
 20 any land use district boundary amendment or change in zoning
 21 involving ~~[important]~~ agricultural lands ~~[identified pursuant to~~
 22 ~~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 (c) Any decision by the land use commission or county
6 [~~pursuant to this section~~] to amend an agricultural district
7 boundary or change the zoning of agricultural land shall
8 specifically consider the following standards and criteria:

- 9 (1) The relative importance of the land for agriculture
10 based on the stock of similarly suited lands in the
11 area and the State as a whole;
- 12 (2) The proposed district boundary amendment or zone
13 change will not harm the productivity or viability of
14 existing agricultural activity in the area[7] or
15 adversely affect the viability of other agricultural
16 activities or operations that share infrastructure,
17 processing, marketing, or other production-related
18 costs or facilities with the agricultural activities
19 on the land in question;
- 20 (3) The district boundary amendment or zone change will
21 not cause the fragmentation of or intrusion of
22 nonagricultural uses into largely intact areas of



1 ~~[lands identified by the State as important]~~

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

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

7 (5) The impact of the proposed district boundary amendment
8 or zone change on the necessity and capacity of state
9 and county agencies to provide and support additional
10 agricultural infrastructure or services in the
11 area~~[+]~~;

12 (6) Whether a sufficient supply of water is no longer
13 available to allow profitable agricultural use of the
14 land due to governmental action, an act of God, or
15 other cause beyond the farmer's or landowner's
16 reasonable control; and

17 (7) The negative effect that the proposed district
18 boundary amendment or zone change may have on the
19 following:

20 (A) The potential for increasing the cultivation of
21 crops or trees for the generation of energy;

22 (B) The recharging of the aquifer;



- 1 (C) The beneficial reuse of treated wastewater for
- 2 crop or tree farm irrigation;
- 3 (D) The absorption of carbon dioxide from the
- 4 atmosphere, and the potential future use of crop
- 5 or tree farm lands for carbon credit;
- 6 (E) The need for green or open space for the
- 7 viability of the visitor industry and contentment
- 8 of residents; and
- 9 (F) The prevention of soil erosion and non-point
- 10 source pollutant discharge into the ocean.

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

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

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

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

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

19 SECTION 19. Section 205-51, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[~~{~~]§205-51[~~}~~] ~~Important agricultural~~ Agricultural lands;
22 reduced county [ordinances.] subdivision standards. [~~+a~~] Each



1 county shall adopt ordinances that reduce infrastructure
 2 standards for [~~important~~] agricultural lands [~~no later than the~~
 3 ~~effective date of the legislative enactment of protection and~~
 4 ~~incentive measures for important agricultural lands and~~
 5 ~~agricultural viability, as provided in section 9 of Act 183,~~
 6 ~~Session Laws of Hawaii 2005.~~

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

- 11 ~~(1) None of the resulting lots shall be used solely for~~
 12 ~~residential occupancy; and~~
 - 13 ~~(2) The leasehold lots shall return to the original lot of~~
 14 ~~record upon expiration or termination of the lease.]~~
- 15 from standards applicable to residential lands; provided that
 16 the reduced standards shall not jeopardize the public's health
 17 and safety."

18 SECTION 20. Section 205-45, Hawaii Revised Statutes, is
 19 repealed.

20 ["~~[S205-45] Petition by farmer or landowner. (a) A~~
 21 ~~farmer or landowner with lands qualifying under section 205-44~~



1 ~~may file a petition for declaratory ruling with the commission~~
2 ~~at any 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~~
 9 ~~section 205-44 may file petitions for a declaratory ruling to~~
 10 ~~designate lands as important agricultural lands following the~~
 11 ~~legislative enactment of protection and incentive measures for~~
 12 ~~important agricultural lands and agricultural viability, as~~
 13 ~~provided in section 9 of Act 183, Session Laws of Hawaii 2005."]~~

14 SECTION 21. Section 205-47, Hawaii Revised Statutes, is
 15 repealed.

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

1 ~~(b) Each county shall develop maps of potential lands to~~
2 ~~be 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~~
15 ~~may 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~~
21 ~~have already been designated as important agricultural lands by~~
22 ~~the 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 these 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 ~~(c) The important agricultural lands maps shall be~~
20 ~~submitted to the county council for decision-making. The county~~
21 ~~council shall adopt the maps, with or without changes, by~~



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

3 SECTION 22. 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 23. Section 205-49, Hawaii Revised Statutes, is
8 repealed.

9 ~~["**§205-49** **Designation of important agricultural lands;**~~
10 ~~**adoption of important agricultural lands maps.** (a) After~~
11 ~~receipt of the maps of eligible important agricultural lands~~
12 ~~from the counties and the recommendations of the department of~~
13 ~~agriculture and the office of planning, the commission shall~~
14 ~~then proceed to identify and designate important agricultural~~
15 ~~lands, subject to section 205-45. The decision shall consider~~
16 ~~the county maps of eligible important agricultural lands;~~
17 ~~declaratory orders issued by the commission designating~~
18 ~~important agricultural lands during the three year period~~
19 ~~following the enactment of legislation establishing incentives~~
20 ~~and protections contemplated under section 205-46, as provided~~
21 ~~in section 9 of Act 183, Session Laws of Hawaii 2005; landowner~~



1 ~~position statements and representations; and any other relevant~~
2 ~~information.~~

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

6 ~~(1) The proposed lands meet the standards and criteria~~
7 ~~under section 205-44;~~

8 ~~(2) The proposed designation is necessary to meet the~~
9 ~~objectives and policies for important agricultural~~
10 ~~lands in sections 205-42 and 205-43; and~~

11 ~~(3) The commission has designated lands as important~~
12 ~~agricultural lands, pursuant to section 205-45;~~
13 ~~provided that if the majority of landowners'~~
14 ~~landholdings is already designated as important~~
15 ~~agricultural lands, excluding lands held in the~~
16 ~~conservation district, pursuant to section 205-45 or~~
17 ~~any other provision of this part, the commission shall~~
18 ~~not designate any additional lands of that landowner~~
19 ~~as important agricultural lands except by a petition~~
20 ~~pursuant to section 205-45.~~

21 ~~Any decision regarding the designation of lands as~~
22 ~~important agricultural lands and the adoption of maps of those~~



1 ~~lands pursuant to this section shall be based upon written~~
2 ~~findings of fact and conclusions of law, presented in at least~~
3 ~~one public hearing conducted in the county where the land is~~
4 ~~located in accordance with chapter 91, that the subject lands~~
5 ~~meet the standards and criteria set forth in section 205-44 and~~
6 ~~shall be approved by two-thirds of the membership to which the~~
7 ~~commission is entitled.~~

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

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



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

4 ~~(1) A farmer or landowner petition for declaratory ruling~~
5 ~~under section 205-45 at any time; or~~

6 ~~(2) The county process for identifying and recommending~~
7 ~~lands for important agricultural lands under section~~
8 ~~205-47 no sooner than three years,~~

9 ~~after the enactment of legislation establishing incentives and~~
10 ~~protections contemplated under section 205-46, as provided in~~
11 ~~section 9 of Act 183, Session Laws of Hawaii 2005."]~~

12 SECTION 24. Section 205-52, Hawaii Revised Statutes, is
13 repealed.

14 ~~["§205-52] Periodic review and amendment of important~~
15 ~~agricultural lands maps. The maps delineating important~~
16 ~~agricultural lands shall be reviewed in conjunction with the~~
17 ~~county general plan and community and development plan revision~~
18 ~~process, or at least once every ten years following the adoption~~
19 ~~of the maps by the land use commission; provided that the maps~~
20 ~~shall not be reviewed more than once every five years. Any~~
21 ~~review and amendment of the maps of important agricultural lands~~
22 ~~shall be conducted in accordance with this part. In these~~



1 ~~periodic reviews or petitions by the farmers or landowners for~~
 2 ~~declaratory rulings, the "important agricultural lands"~~
 3 ~~designation shall be removed from those important agricultural~~
 4 ~~lands where the commission has issued a declaratory order that a~~
 5 ~~sufficient supply of water is no longer available to allow~~
 6 ~~profitable farming of these lands due to governmental actions,~~
 7 ~~acts of God, or other causes beyond the farmer's or landowner's~~
 8 ~~reasonable control."]~~

9 SECTION 25. Part III of Act 183, Session Laws of Hawaii
 10 2005, is repealed.

11 SECTION 26. In codifying the new section added by section
 12 2 of this Act, the revisor of statutes shall substitute an
 13 appropriate section number for the letter used in designating
 14 the new section in this Act.

15 SECTION 27. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 28. This Act shall take effect on July 1, 2009;
 18 except that sections 2, 16, 26, and 27 shall take effect upon
 19 its approval.

20

INTRODUCED BY:



H.B. NO. 2357

Tom Brown

JAN 15 2008



Report Title:

Agricultural Lands; Policies for Districting and Protection

Description:

Establishes new policies for the districting and protection of land in agricultural districts designated as "important agricultural land" for the purpose of article XI, section 3, of the state constitution.

