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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL LAND.

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

- 1           SECTION 1. Section 205-2, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:
- 3           "(d) Agricultural districts shall include:
- 4           (1) Activities or uses as characterized by the cultivation  
5           of crops, crops for bioenergy, orchards, forage, and  
6           forestry;
- 7           (2) Farming activities or uses related to animal husbandry  
8           and game and fish propagation;
- 9           (3) Aquaculture, which means the production of aquatic  
10           plant and animal life within ponds and other bodies of  
11           water;
- 12           (4) Wind-generated energy production for public, private,  
13           and commercial use;
- 14           (5) Biofuel production, as described in section  
15           205-4.5(a)(16), for public, private, and commercial  
16           use;
- 17           (6) Solar energy facilities; provided that:



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- 1 (A) This paragraph shall apply only to land with soil  
2 classified by the land study bureau's detailed  
3 land classification as overall (master)  
4 productivity rating class B, C, D, or E; and
- 5 (B) Solar energy facilities placed within land with  
6 soil classified as overall productivity rating  
7 class B or C shall not occupy more than ten per  
8 cent of the acreage of the parcel, or twenty  
9 acres of land, whichever is lesser, unless a  
10 special use permit is granted pursuant to section  
11 205-6;
- 12 (7) Bona fide agricultural services and uses that support  
13 the agricultural activities of the fee or leasehold  
14 owner of the property and accessory to any of the  
15 above activities, regardless of whether conducted on  
16 the same premises as the agricultural activities to  
17 which they are accessory, including farm dwellings as  
18 defined in section 205-4.5(a)(4), employee housing,  
19 farm buildings, mills, storage facilities, processing  
20 facilities, photovoltaic, biogas, and other small-  
21 scale renewable energy systems producing energy solely



1           for use in the agricultural activities of the fee or  
2           leasehold owner of the property, agricultural-energy  
3           facilities as defined in section 205-4.5(a)(17),  
4           vehicle and equipment storage areas, and plantation  
5           community subdivisions as defined in section  
6           205-4.5(a)(12);

7           (8) Wind machines and wind farms;

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

14          (10) Agricultural parks;

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



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1 shall apply only to a county that has adopted  
2 ordinances regulating agricultural tourism under  
3 section 205-5;

4 (12) Agricultural tourism activities, including overnight  
5 accommodations of twenty-one days or less, for any one  
6 stay within a county; provided that this paragraph  
7 shall apply only to a county that includes at least  
8 three islands and has adopted ordinances regulating  
9 agricultural tourism activities pursuant to section  
10 205-5; provided further that the agricultural tourism  
11 activities coexist with a bona fide agricultural  
12 activity. For the purposes of this paragraph, "bona  
13 fide agricultural activity" means a farming operation  
14 as defined in section 165-2;

15 (13) Open area recreational facilities;

16 (14) Geothermal resources exploration and geothermal  
17 resources development, as defined under section 182-1;

18 (15) Agricultural-based commercial operations registered in  
19 Hawaii, including:

20 (A) A roadside stand that is not an enclosed  
21 structure, owned and operated by a producer for



1 the display and sale of agricultural products  
2 grown in Hawaii and value-added products that  
3 were produced using agricultural products grown  
4 in Hawaii;

5 (B) Retail activities in an enclosed structure owned  
6 and operated by a producer for the display and  
7 sale of agricultural products grown in Hawaii,  
8 value-added products that were produced using  
9 agricultural products grown in Hawaii, logo items  
10 related to the producer's agricultural  
11 operations, and other food items;

12 (C) A retail food establishment owned and operated by  
13 a producer and permitted under chapter 11-50,  
14 Hawaii administrative rules, that prepares and  
15 serves food at retail using products grown in  
16 Hawaii and value-added products that were  
17 produced using agricultural products grown in  
18 Hawaii;

19 (D) A farmers' market, which is an outdoor market  
20 limited to producers selling agricultural  
21 products grown in Hawaii and value-added products



1                   that were produced using agricultural products  
2                   grown in Hawaii; and

3                   (E) A food hub, which is a facility that may contain  
4                   a commercial kitchen and provides for the  
5                   storage, processing, distribution, and sale of  
6                   agricultural products grown in Hawaii and value-  
7                   added products that were produced using  
8                   agricultural products grown in Hawaii.

9                   The owner of an agricultural-based commercial  
10                  operation shall certify, upon request of an officer or  
11                  agent charged with enforcement of this chapter under  
12                  section 205-12, that the agricultural products  
13                  displayed or sold by the operation meet the  
14                  requirements of this paragraph; ~~and~~

15                  (16) Hydroelectric facilities as described in section  
16                  205-4.5(a) (23) [-]; and

17                  (17) Second dwellings on lots with a minimum area of forty  
18                  thousand square feet in a county with an area greater  
19                  than 4,000 square miles; provided that the second  
20                  dwelling:



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- 1           (A) Shall have a maximum size of one thousand five  
2           hundred square feet;
- 3           (B) Shall have additional land use access, excluding  
4           the size of the dwelling, derived from the  
5           original lot with a minimum size of one thousand  
6           square feet or five per cent of the original lot,  
7           whichever is greater, with the possibility of  
8           more land access as determined by the owner of  
9           the original lot to be used for agricultural  
10           purposes; provided further that the uses of the  
11           accessed land shall comply with all county,  
12           state, and federal laws;
- 13           (C) Shall be rented; provided further that the length  
14           of the rental agreement shall be for a period of  
15           at least six months; and
- 16           (D) May include water catchment, solar electricity,  
17           and individual wastewater management systems  
18           constructed and installed on the lot.

19 Agricultural districts shall not include golf courses and golf  
20 driving ranges, except as provided in section 205-4.5(d).  
21 Agricultural districts include areas that are not used for, or



1 that are not suited to, agricultural and ancillary activities by  
2 reason of topography, soils, and other related characteristics."

3 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read:

5 "(a) Within the agricultural district, all lands with soil  
6 classified by the land study bureau's detailed land  
7 classification as overall (master) productivity rating class A  
8 or B and for solar energy facilities, class B or C, shall be  
9 restricted to the following permitted uses:

- 10 (1) Cultivation of crops, including crops for bioenergy,  
11 flowers, vegetables, foliage, fruits, forage, and  
12 timber;
- 13 (2) Game and fish propagation;
- 14 (3) Raising of livestock, including poultry, bees, fish,  
15 or other animal or aquatic life that are propagated  
16 for economic or personal use;
- 17 (4) Farm dwellings, employee housing, farm buildings, or  
18 activities or uses related to farming and animal  
19 husbandry. "Farm dwelling", as used in this  
20 paragraph, means a single-family dwelling located on  
21 and used in connection with a farm, including clusters





- 1 of single-family farm dwellings permitted within  
2 agricultural parks developed by the State, or where  
3 agricultural activity provides income to the family  
4 occupying the dwelling;
- 5 (5) Public institutions and buildings that are necessary  
6 for agricultural practices;
- 7 (6) Public and private open area types of recreational  
8 uses, including day camps, picnic grounds, parks, and  
9 riding stables, but not including dragstrips,  
10 airports, drive-in theaters, golf courses, golf  
11 driving ranges, country clubs, and overnight camps;
- 12 (7) Public, private, and quasi-public utility lines and  
13 roadways, transformer stations, communications  
14 equipment buildings, solid waste transfer stations,  
15 major water storage tanks, and appurtenant small  
16 buildings such as booster pumping stations, but not  
17 including offices or yards for equipment, material,  
18 vehicle storage, repair or maintenance, treatment  
19 plants, corporation yards, or other similar  
20 structures;



- 1           (8) Retention, restoration, rehabilitation, or improvement
- 2                   of buildings or sites of historic or scenic interest;
- 3           (9) Agricultural-based commercial operations as described
- 4                   in section 205-2(d)(15);
- 5           (10) Buildings and uses, including mills, storage, and
- 6                   processing facilities, maintenance facilities,
- 7                   photovoltaic, biogas, and other small-scale renewable
- 8                   energy systems producing energy solely for use in the
- 9                   agricultural activities of the fee or leasehold owner
- 10                  of the property, and vehicle and equipment storage
- 11                  areas that are normally considered directly accessory
- 12                  to the above-mentioned uses and are permitted under
- 13                  section 205-2(d);
- 14           (11) Agricultural parks;
- 15           (12) Plantation community subdivisions, which as used in
- 16                   this chapter means an established subdivision or
- 17                   cluster of employee housing, community buildings, and
- 18                   agricultural support buildings on land currently or
- 19                   formerly owned, leased, or operated by a sugar or
- 20                   pineapple plantation; provided that the existing
- 21                   structures may be used or rehabilitated for use, and



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1 new employee housing and agricultural support  
2 buildings may be allowed on land within the  
3 subdivision as follows:

4 (A) The employee housing is occupied by employees or  
5 former employees of the plantation who have a  
6 property interest in the land;

7 (B) The employee housing units not owned by their  
8 occupants shall be rented or leased at affordable  
9 rates for agricultural workers; or

10 (C) The agricultural support buildings shall be  
11 rented or leased to agricultural business  
12 operators or agricultural support services;

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



- 1           ordinances regulating agricultural tourism under  
2           section 205-5;
- 3           (14) Agricultural tourism activities, including overnight  
4           accommodations of twenty-one days or less, for any one  
5           stay within a county; provided that this paragraph  
6           shall apply only to a county that includes at least  
7           three islands and has adopted ordinances regulating  
8           agricultural tourism activities pursuant to section  
9           205-5; provided further that the agricultural tourism  
10          activities coexist with a bona fide agricultural  
11          activity. For the purposes of this paragraph, "bona  
12          fide agricultural activity" means a farming operation  
13          as defined in section 165-2;
- 14          (15) Wind energy facilities, including the appurtenances  
15          associated with the production and transmission of  
16          wind generated energy; provided that the wind energy  
17          facilities and appurtenances are compatible with  
18          agriculture uses and cause minimal adverse impact on  
19          agricultural land;
- 20          (16) Biofuel processing facilities, including the  
21          appurtenances associated with the production and



1 refining of biofuels that is normally considered  
2 directly accessory and secondary to the growing of the  
3 energy feedstock; provided that biofuel processing  
4 facilities and appurtenances do not adversely impact  
5 agricultural land and other agricultural uses in the  
6 vicinity.

7 For the purposes of this paragraph:

8 "Appurtenances" means operational infrastructure  
9 of the appropriate type and scale for economic  
10 commercial storage and distribution, and other similar  
11 handling of feedstock, fuels, and other products of  
12 biofuel processing facilities.

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

20 (17) Agricultural-energy facilities, including  
21 appurtenances necessary for an agricultural-energy



1 enterprise; provided that the primary activity of the  
2 agricultural-energy enterprise is agricultural  
3 activity. To be considered the primary activity of an  
4 agricultural-energy enterprise, the total acreage  
5 devoted to agricultural activity shall be not less  
6 than ninety per cent of the total acreage of the  
7 agricultural-energy enterprise. The agricultural-  
8 energy facility shall be limited to lands owned,  
9 leased, licensed, or operated by the entity conducting  
10 the agricultural activity.

11 As used in this paragraph:

12 "Agricultural activity" means any activity  
13 described in paragraphs (1) to (3) of this subsection.

14 "Agricultural-energy enterprise" means an  
15 enterprise that integrally incorporates an  
16 agricultural activity with an agricultural-energy  
17 facility.

18 "Agricultural-energy facility" means a facility  
19 that generates, stores, or distributes renewable  
20 energy as defined in section 269-91 or renewable fuel  
21 including electrical or thermal energy or liquid or



1 gaseous fuels from products of agricultural activities  
2 from agricultural lands located in the State.

3 "Appurtenances" means operational infrastructure  
4 of the appropriate type and scale for the economic  
5 commercial generation, storage, distribution, and  
6 other similar handling of energy, including equipment,  
7 feedstock, fuels, and other products of agricultural-  
8 energy facilities;

9 (18) Construction and operation of wireless communication  
10 antennas, including small wireless facilities;  
11 provided that, for the purposes of this paragraph,  
12 "wireless communication antenna" means communications  
13 equipment that is either freestanding or placed upon  
14 or attached to an already existing structure and that  
15 transmits and receives electromagnetic radio signals  
16 used in the provision of all types of wireless  
17 communications services; provided further that "small  
18 wireless facilities" shall have the same meaning as in  
19 section 206N-2; provided further that nothing in this  
20 paragraph shall be construed to permit the



1 construction of any new structure that is not deemed a  
2 permitted use under this subsection;

3 (19) Agricultural education programs conducted on a farming  
4 operation as defined in section 165-2, for the  
5 education and participation of the general public;  
6 provided that the agricultural education programs are  
7 accessory and secondary to the principal agricultural  
8 use of the parcels or lots on which the agricultural  
9 education programs are to occur and do not interfere  
10 with surrounding farm operations. For the purposes of  
11 this paragraph, "agricultural education programs"  
12 means activities or events designed to promote  
13 knowledge and understanding of agricultural activities  
14 and practices conducted on a farming operation as  
15 defined in section 165-2;

16 (20) Solar energy facilities that do not occupy more than  
17 ten per cent of the acreage of the parcel, or twenty  
18 acres of land, whichever is lesser or for which a  
19 special use permit is granted pursuant to section 205-  
20 6; provided that this use shall not be permitted on  
21 lands with soil classified by the land study bureau's





1 detailed land classification as overall (master)  
2 productivity rating class A;

3 (21) Solar energy facilities on lands with soil classified  
4 by the land study bureau's detailed land  
5 classification as overall (master) productivity rating  
6 B or C for which a special use permit is granted  
7 pursuant to section 205-6; provided that:

8 (A) The area occupied by the solar energy facilities  
9 is also made available for compatible  
10 agricultural activities at a lease rate that is  
11 at least fifty per cent below the fair market  
12 rent for comparable properties;

13 (B) Proof of financial security to decommission the  
14 facility is provided to the satisfaction of the  
15 appropriate county planning commission prior to  
16 date of commencement of commercial generation;  
17 and

18 (C) Solar energy facilities shall be decommissioned  
19 at the owner's expense according to the following  
20 requirements:



1 (i) Removal of all equipment related to the  
2 solar energy facility within twelve months  
3 of the conclusion of operation or useful  
4 life; and

5 (ii) Restoration of the disturbed earth to  
6 substantially the same physical condition as  
7 existed prior to the development of the  
8 solar energy facility.

9 For the purposes of this paragraph, "agricultural  
10 activities" means the activities described in  
11 paragraphs (1) to (3);

12 (22) Geothermal resources exploration and geothermal  
13 resources development, as defined under section 182-1;  
14 [~~or~~]

15 (23) Hydroelectric facilities, including the appurtenances  
16 associated with the production and transmission of  
17 hydroelectric energy, subject to section 205-2;  
18 provided that the hydroelectric facilities and their  
19 appurtenances:



- 1           (A) Shall consist of a small hydropower facility as  
2           defined by the United States Department of  
3           Energy, including:
- 4           (i) Impoundment facilities using a dam to store  
5           water in a reservoir;
- 6           (ii) A diversion or run-of-river facility that  
7           channels a portion of a river through a  
8           canal or channel; and
- 9           (iii) Pumped storage facilities that store energy  
10          by pumping water uphill to a reservoir at  
11          higher elevation from a reservoir at a lower  
12          elevation to be released to turn a turbine  
13          to generate electricity;
- 14          (B) Comply with the state water code, chapter 174C;
- 15          (C) Shall, if over five hundred kilowatts in  
16          hydroelectric generating capacity, have the  
17          approval of the commission on water resource  
18          management, including a new instream flow  
19          standard established for any new hydroelectric  
20          facility; and



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1 (D) Do not impact or impede the use of agricultural  
 2 land or the availability of surface or ground  
 3 water for all uses on all parcels that are served  
 4 by the ground water sources or streams for which  
 5 hydroelectric facilities are considered[-]; or  
 6 (24) Second dwellings as described in 205-2(d)(17)."

7 SECTION 3. This Act does not affect rights and duties that  
 8 matured, penalties that were incurred, and proceedings that were  
 9 begun before its effective date.

10 SECTION 4. Statutory material to be repealed is bracketed  
 11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect on January 1, 2021.

13

INTRODUCED BY: *Richard Luze*  
*Rida Catherine Akawa*

JAN 23 2020



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**Report Title:**

Agricultural Lands; Second Dwellings

**Description:**

Subject to certain restrictions, allows second dwellings on agricultural lands in a county with an area greater than 4,000 square miles. Takes effect 01/01/2021.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

