
A BILL FOR AN ACT

RELATING TO IMPORTANT AGRICULTURAL LANDS.

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

1 PART I

2 SECTION 1. The important agricultural lands designation
3 serves as a resource overlay, a comprehensive statewide resource
4 map, to identify those lands that are of significant
5 agricultural value to the State. This resource overlay or map
6 is intended to broadly inform decision-makers of those lands
7 that are needed to sustain Hawaii's agricultural industry and
8 for which agricultural incentives should be targeted to promote
9 and support high levels of agricultural production over the
10 long-term.

11 Section 205-47, Hawaii Revised Statutes, establishes a
12 process for the counties to identify lands to be recommended for
13 designation as important agricultural lands by the state land
14 use commission. Section 205-49, Hawaii Revised Statutes,
15 describes a process for land use commission decision-making on
16 the county maps that is ambiguous as to whether this is a
17 rulemaking or contested case proceeding. Section 15-15-125(d),



1 Hawaii Administrative Rules, of the land use commission's rules
2 states that the adoption of county maps of important
3 agricultural lands is through rulemaking. The rule recognizes
4 that this resource mapping involves hundreds of parcels of land
5 and cannot in practical terms be designated through hundreds of
6 individual contested case hearings but must rather be designated
7 through public hearings and a quasi-legislative process. In
8 this respect, the land use commission rule mirrors the method by
9 which the counties adopt their regional community and
10 development plans.

11 Accordingly, the purpose of this part is to clarify that
12 adoption of maps identifying important agricultural lands from a
13 county is through rulemaking in conformance with existing land
14 use commission rules.

15 SECTION 2. Section 205-49, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) After receipt of the maps of eligible important
18 agricultural lands from the counties and the recommendations of
19 the department of agriculture and the office of planning and
20 sustainable development, the commission shall then proceed to
21 identify and designate important agricultural lands, subject to



1 section 205-45. The decision shall consider the county maps of
2 eligible important agricultural lands; declaratory orders issued
3 by the commission designating important agricultural lands
4 during the [~~three-year~~] three-year period following the
5 enactment of legislation establishing incentives and protections
6 contemplated under section 205-46, as provided in section 9 of
7 Act 183, Session Laws of Hawaii 2005; landowner position
8 statements and representations; and any other relevant
9 information.

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

- 13 (1) The proposed lands meet the standards and criteria
14 under section 205-44;
- 15 (2) The proposed designation is necessary to meet the
16 objectives and policies for important agricultural
17 lands in sections 205-42 and 205-43; and
- 18 (3) The commission has designated lands as important
19 agricultural lands, pursuant to section 205-45;
20 provided that if the majority of landowners'
21 landholdings [~~is~~] are already designated as important



1 agricultural lands, excluding lands held in the
2 conservation district, pursuant to section 205-45 or
3 any other provision of this part, the commission shall
4 not designate any additional lands of that landowner
5 as important agricultural lands except by a petition
6 pursuant to section 205-45.

7 ~~[Any decision regarding the designation of lands as~~
8 ~~important agricultural lands and the adoption of maps of those~~
9 ~~lands pursuant to this section shall be based upon written~~
10 ~~findings of fact and conclusions of law, presented in] The~~
11 commission shall conduct at least one public hearing ~~[conducted]~~
12 in the county where the land is located ~~[in accordance with~~
13 ~~chapter 91, that the subject lands]~~ to receive testimony from
14 the public. The commission shall subsequently designate lands
15 as important agricultural lands by adopting a map of the county
16 recommendations, in whole or in part, of those lands that meet
17 the standards and criteria set forth in section 205-44, and the
18 adoption of maps shall be approved by two-thirds of the
19 membership to which the commission is entitled.

20 The adoption of maps designating important agricultural
21 lands pursuant to this section shall not be through a contested



1 case hearing but rather through rulemaking pursuant to section
2 91-3."

3 PART II

4 SECTION 3. In 2008, the legislature passed a package of
5 incentives for lands designated as important agricultural lands
6 pursuant to section 3 of article XI of the Hawaii State
7 Constitution. Enacted as Act 233, Session Laws of Hawaii 2008,
8 the incentives were intended to promote agricultural viability,
9 sustained growth of the agricultural industry, and the long-term
10 use and protection of lands designated as important agricultural
11 lands.

12 Act 233, Session Laws of Hawaii 2008, included a provision
13 for landowners to develop, construct, and maintain farm
14 dwellings and employee housing for farmers, employees, and their
15 immediate family members on lands designated as important
16 agricultural lands; provided that occupants of these dwellings
17 are actively engaged in farming. Although intended as an
18 incentive for the designation and agricultural use of important
19 agricultural lands, it is unclear whether this provision,
20 codified as section 205-45.5, Hawaii Revised Statutes, imposes
21 more restrictive standards for farm dwellings and employee



1 housing on important agricultural lands than the existing
2 standards for farm dwellings and employee housing on lands in
3 the agricultural land use district in chapter 205, Hawaii
4 Revised Statutes.

5 The lack of affordable housing for farmers and farm labor
6 is an impediment to increasing food and non-food agricultural
7 production in Hawaii. The legislature finds there is still a
8 need for a means to develop housing for farmers and farm
9 employees on lands designated as important agricultural lands
10 that both reduces the cost and time required to supply such
11 housing and ensures that the housing is used in conjunction with
12 and located on an active farm and occupied by bona fide farmers
13 and farm employees. This part is intended to ensure reduced
14 infrastructure standards for important agricultural lands
15 pursuant to section 205-51, Hawaii Revised Statutes, to
16 facilitate the provision of certain farmer and farm employee
17 housing to meet agricultural industry needs.

18 The purpose of this part is to:

19 (1) Establish an important agricultural lands incentive to
20 facilitate the development of farm cluster housing for



1 farmers and farm employees who actively and currently
2 farm important agricultural lands;

3 (2) Include farm cluster housing under a priority permit
4 processing procedure for facilities on lands
5 designated as important agricultural lands; and

6 (3) Repeal the existing requirements for farm dwellings
7 and employee housing on important agricultural lands
8 to eliminate restrictions that may be stricter than
9 what is allowed under the definition of farm dwelling.

10 SECTION 4. Chapter 205, Hawaii Revised Statutes, is
11 amended by adding a new section to part III to be appropriately
12 designated and to read as follows:

13 "§205- Important agricultural lands incentive; farm
14 cluster housing. (a) The purpose of this important
15 agricultural lands incentive is to provide an alternative means
16 to develop housing for farmers and farm employees who actively
17 and currently farm important agricultural lands that reduces
18 costs and time while ensuring that the housing developed does
19 not contribute to the loss of agricultural land to non-
20 agricultural residential uses or residential sprawl.



1 (b) Notwithstanding section 205-51(b) and any other law to
2 the contrary, a landowner or lessee of agricultural lands that
3 are designated as important agricultural lands may apply to a
4 county to develop, construct, and maintain farm cluster housing
5 on the lands for rent to:

- 6 (1) Farmers and farm employees who actively and currently
7 farm on important agricultural lands; and
- 8 (2) Immediate family members of the individuals described
9 in paragraph (1).

10 (c) Each county shall enact ordinances to allow farm
11 cluster housing on important agricultural lands. The ordinance
12 shall provide for:

- 13 (1) Conformance with the conditions in subsection (d);
- 14 (2) Exemption from subdivision of the land and other
15 county subdivision ordinances;
- 16 (3) Priority review and processing;
- 17 (4) More units per lot than allowed by right by the
18 underlying county zoning; and
- 19 (5) Submittal to the county of an agricultural plan or
20 agricultural business plan that supports the plan for
21 the farm cluster housing and evidence of a real



1 property tax agricultural dedication granted by the
2 county. The agricultural plan and agricultural tax
3 dedication verification shall be submitted to the
4 appropriate county agency for review and comment and
5 may be submitted to the department of agriculture for
6 review and comment, before county action on the
7 application.

8 (d) Farm cluster housing shall be subject to the following
9 conditions:

10 (1) Farm cluster housing shall be allowed only on lots of
11 record that are greater than or equal to ten acres;

12 (2) The primary occupant of each farm cluster housing unit
13 shall be a farmer or farm employee who actively and
14 currently farms the important agricultural lands upon
15 which the farm cluster housing units are situated;

16 (3) The total land area upon which the farm cluster
17 housing units and all appurtenances are situated shall
18 occupy a contiguous block or area no more than five
19 per cent of the lot of record or ten acres, whichever
20 is less;



- 1 (4) The farm cluster housing units shall meet building
2 code requirements and infrastructure requirements and
3 standards reduced to the minimum necessary to ensure
4 safe and healthful occupancy;
- 5 (5) Short-term vacation rental use of the farm cluster
6 housing units shall be prohibited;
- 7 (6) The landowner or master lessee shall be responsible
8 for ensuring compliance with the restriction of
9 occupancy of the farm cluster housing units to farmers
10 or farm employees who are actively and currently
11 farming the land, and their immediate family members.
12 The restriction on use shall be clearly stated in the
13 rental documents; and
- 14 (7) If farm cluster housing units are vacated as a result
15 of the cessation of any agricultural operations on the
16 land, the landowner or master lessee may rent the farm
17 cluster housing units under the same restrictions
18 imposed by this section to farmers or farm employees
19 who are actively and currently farming other
20 agricultural lands.



1 (e) The appropriate officer or agency charged with the
2 administration of county zoning laws within each county may
3 enforce the building and use restrictions in this section and
4 impose penalties for violations of any provision of this section
5 or the county permit.

6 (f) Farm dwellings and employee housing units on lands
7 designated as important agricultural lands that are not
8 processed as farm cluster housing pursuant to this section shall
9 be subject to all applicable state laws, county ordinances, and
10 rules.

11 (g) For the purposes of this section, "farm cluster
12 housing" means a housing development that concentrates housing
13 units and shared infrastructure in a compact area within the
14 larger lot and minimizes the land area occupied by the housing
15 development."

16 SECTION 5. Section 205-46.5, Hawaii Revised Statutes, is
17 amended by amending its title and subsection (a) to read as
18 follows:

19 "**[+]§205-46.5[+] Agricultural processing facilities; farm**
20 **cluster housing; permits; priority.** (a) Any agency subject to
21 this chapter [~~or title 13~~] that issues permits shall establish



1 and implement a procedure for the priority processing of permit
2 applications and renewals, at no additional cost to the
3 applicant, for ~~[agricultural]~~ the following:

4 (1) Agricultural processing facilities that process crops
5 or livestock from an agribusiness; or

6 (2) Farm cluster housing developed pursuant to section
7 205- ;

8 provided that the majority of the lands held, owned, or used by
9 the agribusiness or farm cluster housing applicant shall be land
10 designated as important agricultural lands pursuant to this
11 part, excluding lands held, owned, or used by the agribusiness
12 or applicant in a conservation district.

13 Any priority permit processing procedure established
14 pursuant to this section shall not provide or imply that any
15 permit application filed under the priority processing procedure
16 shall be automatically approved."

17 SECTION 6. Section 205-45.5, Hawaii Revised Statutes, is
18 repealed.

19 ~~["~~§205-45.5~~ Important agricultural land; farm dwellings~~
20 ~~and employee housing.~~ A landowner whose agricultural lands are
21 designated as important agricultural lands may develop,



1 ~~construct, and maintain farm dwellings and employee housing for~~
2 ~~farmers, employees, and their immediate family members on these~~
3 ~~lands; provided that:~~

4 ~~(1) The farm dwellings and employee housing units shall be~~
5 ~~used exclusively by farmers and their immediate family~~
6 ~~members who actively and currently farm on important~~
7 ~~agricultural land upon which the dwelling is situated;~~
8 ~~provided further that the immediate family members of~~
9 ~~a farmer may live in separate dwelling units situated~~
10 ~~on the same designated land;~~

11 ~~(2) Employee housing units shall be used exclusively by~~
12 ~~employees and their immediate family members who~~
13 ~~actively and currently work on important agricultural~~
14 ~~land upon which the housing unit is situated; provided~~
15 ~~further that the immediate family members of the~~
16 ~~employee shall not live in separate housing units and~~
17 ~~shall live with the employee;~~

18 ~~(3) The total land area upon which the farm dwellings and~~
19 ~~employee housing units and all appurtenances are~~
20 ~~situated shall not occupy more than five per cent of~~
21 ~~the total important agricultural land area controlled~~



- 1 ~~by the farmer or the employee's employer or fifty~~
- 2 ~~acres, whichever is less;~~
- 3 ~~(4) The farm dwellings and employee housing units shall~~
- 4 ~~meet all applicable building code requirements;~~
- 5 ~~(5) Notwithstanding section 205-4.5(a)(12), the landowner~~
- 6 ~~shall not plan or develop a residential subdivision on~~
- 7 ~~the important agricultural land;~~
- 8 ~~(6) Consideration may be given to the cluster development~~
- 9 ~~of farm dwellings and employee housing units to~~
- 10 ~~maximize the land area available for agricultural~~
- 11 ~~production; and~~
- 12 ~~(7) The plans for farm dwellings and employee housing~~
- 13 ~~units shall be supported by agricultural plans that~~
- 14 ~~are approved by the department of agriculture."]~~

PART III

16 SECTION 7. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and permit proceedings
18 begun before its effective date under the use and district
19 standards for the state agricultural land use district and
20 underlying county zoning.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Important Agricultural Lands; Adoption of County Maps; Land Use Commission; Farm Cluster Housing

Description:

Clarifies the decision-making process for the land use commission adoption of county maps and designation of important agricultural lands. Repeals the provision for farm dwelling and employee housing on important agricultural lands and adopts a new provision for farm cluster housing as an incentive for the designation of lands as important agricultural lands. (HD2)

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