
A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

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

SECTION 1. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Agricultural districts shall include:

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

(2) Farming activities or uses related to animal husbandry and game and fish propagation;

(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind-generated energy production for public, private, and commercial use; provided that the department of agriculture certifies that the lands are also used for a farming operation as defined in section 165-2;

(5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;



1 (6) Solar energy facilities; provided that:

2 (A) This paragraph shall apply only to land with soil
3 classified by the land study bureau's detailed
4 land classification as overall (master)
5 productivity rating class B, C, D, or E; and

6 (B) Solar energy facilities placed within land with
7 soil classified as overall productivity rating
8 class B or C [~~shall~~]:

9 (i) Shall not occupy more than ten per cent of
10 the acreage of the parcel, or twenty acres
11 of land, whichever is lesser, unless a
12 special use permit is granted pursuant to
13 section 205-6; and

14 (ii) Shall be permissible uses as long as the
15 department of agriculture certifies that the
16 lands are also used for a farming operation
17 as defined in section 165-2;

18 (7) Bona fide agricultural services and uses that support
19 the agricultural activities of the fee or leasehold
20 owner of the property and accessory to any of the
21 above activities, regardless of whether conducted on



1 the same premises as the agricultural activities to
2 which they are accessory, including farm dwellings as
3 defined in section 205-4.5(a)(4), employee housing,
4 farm buildings, mills, storage facilities, processing
5 facilities, photovoltaic, biogas, and other small-
6 scale renewable energy systems producing energy solely
7 for use in the agricultural activities of the fee or
8 leasehold owner of the property, agricultural-energy
9 facilities as defined in section 205-4.5(a)(17),
10 vehicle and equipment storage areas, and plantation
11 community subdivisions as defined in section 205-
12 4.5(a)(12);

13 (8) Wind machines and wind farms; provided that the
14 department of agriculture certifies that the lands are
15 also used for a farming operation as defined in
16 section 165-2;

17 (9) Small-scale meteorological, air quality, noise, and
18 other scientific and environmental data collection and
19 monitoring facilities occupying less than one-half
20 acre of land; provided that these facilities shall not



1 be used as or equipped for use as living quarters or
2 dwellings;

3 (10) Agricultural parks;

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

14 (12) Agricultural tourism activities, including overnight
15 accommodations of twenty-one days or less, for any one
16 stay within a county; provided that this paragraph
17 shall apply only to a county that includes at least
18 three islands and has adopted ordinances regulating
19 agricultural tourism activities pursuant to section
20 205-5; provided further that the agricultural tourism
21 activities coexist with a bona fide agricultural



1 activity. For the purposes of this paragraph, "bona
2 fide agricultural activity" means a farming operation
3 as defined in section 165-2;

4 (13) Open area recreational facilities;

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

7 (15) Agricultural-based commercial operations registered in
8 Hawaii, including:

9 (A) A roadside stand that is not an enclosed
10 structure, owned and operated by a producer for
11 the display and sale of agricultural products
12 grown in Hawaii and value-added products that
13 were produced using agricultural products grown
14 in Hawaii;

15 (B) Retail activities in an enclosed structure owned
16 and operated by a producer for the display and
17 sale of agricultural products grown in Hawaii,
18 value-added products that were produced using
19 agricultural products grown in Hawaii, logo items
20 related to the producer's agricultural
21 operations, and other food items;



1 (C) A retail food establishment owned and operated by
2 a producer and permitted under chapter 11-50,
3 Hawaii administrative rules, that prepares and
4 serves food at retail using products grown in
5 Hawaii and value-added products that were
6 produced using agricultural products grown in
7 Hawaii;

8 (D) A farmers' market, which is an outdoor market
9 limited to producers selling agricultural
10 products grown in Hawaii and value-added products
11 that were produced using agricultural products
12 grown in Hawaii; and

13 (E) A food hub, which is a facility that may contain
14 a commercial kitchen and provides for the
15 storage, processing, distribution, and sale of
16 agricultural products grown in Hawaii and value-
17 added products that were produced using
18 agricultural products grown in Hawaii.

19 The owner of an agricultural-based commercial
20 operation shall certify, upon request of an officer or
21 agent charged with enforcement of this chapter under



1 section 205-12, that the agricultural products
2 displayed or sold by the operation meet the
3 requirements of this paragraph;

4 (16) Hydroelectric facilities as described in section 205-
5 4.5(a) (23); and

6 (17) Composting and co-composting operations; provided that
7 operations that process their own green waste and do
8 not require permits from the department of health
9 shall use the finished composting product only on the
10 operation's own premises to minimize the potential
11 spread of invasive species.

12 Agricultural districts shall not include golf courses and golf
13 driving ranges, except as provided in section 205-4.5(d).

14 Agricultural districts include areas that are not used for, or
15 that are not suited to, agricultural and ancillary activities by
16 reason of topography, soils, and other related characteristics."

17 SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Within the agricultural district, all lands with soil
20 classified by the land study bureau's detailed land
21 classification as overall (master) productivity rating class A



or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

(1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;

(2) Game and fish propagation;

(3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;

(4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. For the purposes of this paragraph, "farm dwelling" means a single-family dwelling located on and accessory to a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

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



1 (6) Public and private open area types of recreational
2 uses, including day camps, picnic grounds, parks, and
3 riding stables, but not including dragstrips,
4 airports, drive-in theaters, golf courses, golf
5 driving ranges, country clubs, and overnight camps;
6 provided that overnight camps in operation before
7 January 1, 1961, may be approved by special permit;

8 (7) Public, private, and quasi-public utility lines and
9 roadways, transformer stations, communications
10 equipment buildings, solid waste transfer stations,
11 major water storage tanks, and appurtenant small
12 buildings such as booster pumping stations, but not
13 including offices or yards for equipment, material,
14 vehicle storage, repair or maintenance, treatment
15 plants, corporation yards, or other similar
16 structures;

17 (8) Retention, restoration, rehabilitation, or improvement
18 of buildings or sites of historic or scenic interest;

19 (9) Agricultural-based commercial operations as described
20 in section 205-2(d)(15);



1 (10) Buildings and uses, including mills, storage, and
2 processing facilities, maintenance facilities,
3 photovoltaic, biogas, and other small-scale renewable
4 energy systems producing energy solely for use in the
5 agricultural activities of the fee or leasehold owner
6 of the property, and vehicle and equipment storage
7 areas that are normally considered directly accessory
8 to the above-mentioned uses and are permitted under
9 section 205-2(d);

10 (11) Agricultural parks;

11 (12) Plantation community subdivisions, which as used in
12 this chapter means an established subdivision or
13 cluster of employee housing, community buildings, and
14 agricultural support buildings on land currently or
15 formerly owned, leased, or operated by a sugar or
16 pineapple plantation; provided that the existing
17 structures may be used or rehabilitated for use, and
18 new employee housing and agricultural support
19 buildings may be allowed on land within the
20 subdivision as follows:



1 (A) The employee housing [~~is~~] shall be occupied by
2 employees or former employees of the plantation
3 who have a property interest in the land;

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

7 (C) The agricultural support buildings shall be
8 rented or leased to agricultural business
9 operators or agricultural support services;

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

19 (14) Agricultural tourism activities, including overnight
20 accommodations of twenty-one days or less, for any one
21 stay within a county; provided that this paragraph



1 shall apply only to a county that includes at least
2 three islands and has adopted ordinances regulating
3 agricultural tourism activities pursuant to
4 section 205-5; provided further that the agricultural
5 tourism activities coexist with a bona fide
6 agricultural activity. For the purposes of this
7 paragraph, "bona fide agricultural activity" means a
8 farming operation as defined in section 165-2;

9 (15) Wind energy facilities, including the appurtenances
10 associated with the production and transmission of
11 wind generated energy; provided that ~~[the]~~:

12 (A) The wind energy facilities and appurtenances are
13 compatible with agriculture uses and cause
14 minimal adverse impact on agricultural land; and

15 (B) The department of agriculture certifies that the
16 lands are also used for a farming operation as
17 defined in section 165-2;

18 (16) Biofuel processing facilities, including the
19 appurtenances associated with the production and
20 refining of biofuels that is normally considered
21 directly accessory and secondary to the growing of the



1 energy feedstock; provided that biofuel processing
2 facilities and appurtenances do not adversely impact
3 agricultural land and other agricultural uses in the
4 vicinity.

5 For the purposes of this paragraph:

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

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

18 (17) Agricultural-energy facilities, including
19 appurtenances necessary for an agricultural-energy
20 enterprise; provided that the primary activity of the
21 agricultural-energy enterprise is agricultural



1 activity. To be considered the primary activity of an
2 agricultural-energy enterprise, the total acreage
3 devoted to agricultural activity shall be no less than
4 ninety per cent of the total acreage of the
5 agricultural-energy enterprise. The
6 agricultural-energy facility shall be limited to lands
7 owned, leased, licensed, or operated by the entity
8 conducting the agricultural activity.

9 As used in this paragraph:

10 "Agricultural activity" means any activity
11 described in paragraphs (1) to (3) [~~of this~~
12 ~~subsection~~].

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

17 "Agricultural-energy facility" means a facility
18 that generates, stores, or distributes renewable
19 energy as defined in section 269-91 or renewable fuel
20 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
8 agricultural-energy facilities;

9 (18) Construction and operation of wireless communication
10 antennas, including small wireless facilities;
11 provided that~~[, for]~~ nothing in this paragraph shall
12 be construed to permit the construction of any new
13 structure that is not deemed a permitted use under
14 this subsection.

15 For the purposes of this paragraph~~[, "wireless"]~~:

16 "Wireless communication antenna" means
17 communications equipment that is either freestanding
18 or placed upon or attached to an already existing
19 structure and that transmits and receives
20 electromagnetic radio signals used in the provision of



1 all types of wireless communications services[~~+~~
2 ~~provided further that "small"]~~].

3 "Small wireless facilities" [~~shall have~~] has the
4 same meaning as in section 206N-2[~~+~~ ~~provided further~~
5 ~~that nothing in this paragraph shall be construed to~~
6 ~~permit the construction of any new structure that is~~
7 ~~not deemed a permitted use under this subsection~~];

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



1 (20) Solar energy facilities that do not occupy more than
2 ten per cent of the acreage of the parcel, or twenty
3 acres of land, whichever is lesser or for which a
4 special use permit is granted pursuant to
5 section 205-6; provided that this use shall not be
6 permitted on lands with soil classified by the land
7 study bureau's detailed land classification as overall
8 (master) productivity rating class A;

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

14 (A) The department of agriculture certifies that the
15 lands are also used for a farming operation as
16 defined in section 165-2;

17 ~~[-(A)-]~~ (B) The area occupied by the solar energy
18 facilities is also made available for compatible
19 agricultural activities at a lease rate that is
20 at least fifty per cent below the fair market
21 rent for comparable properties;



1 ~~[(B)]~~ (C) Proof of financial security to decommission
2 the facility is provided to the satisfaction of
3 the appropriate county planning commission before
4 the date of commencement of commercial
5 generation; and

6 ~~[(C)]~~ (D) Solar energy facilities shall be
7 decommissioned at the owner's expense according
8 to the following requirements:

9 (i) Removal of all equipment related to the
10 solar energy facility within twelve months
11 of the conclusion of operation or useful
12 life; and

13 (ii) Restoration of the disturbed earth to
14 substantially the same physical condition as
15 existed before the development of the solar
16 energy facility.

17 For the purposes of this paragraph, "agricultural
18 activities" means the activities described in
19 paragraphs (1) to (3);

20 (22) Geothermal resources exploration and geothermal
21 resources development, as defined under section 182-1;



1 (23) Hydroelectric facilities, including the appurtenances
2 associated with the production and transmission of
3 hydroelectric energy, subject to section 205-2;
4 provided that the hydroelectric facilities and their
5 appurtenances:

6 (A) Shall consist of a small hydropower facility as
7 defined by the United States Department of
8 Energy, including:

9 (i) Impoundment facilities using a dam to store
10 water in a reservoir;

11 (ii) A diversion or run-of-river facility that
12 channels a portion of a river through a
13 canal or channel; and

14 (iii) Pumped storage facilities that store energy
15 by pumping water uphill to a reservoir at
16 higher elevation from a reservoir at a lower
17 elevation to be released to turn a turbine
18 to generate electricity;

19 (B) Comply with the state water code, chapter 174C;

20 (C) Shall, if over five hundred kilowatts in
21 hydroelectric generating capacity, have the



1 approval of the commission on water resource
2 management, including a new instream flow
3 standard established for any new hydroelectric
4 facility; and

5 (D) Do not impact or impede the use of agricultural
6 land or the availability of surface or ground
7 water for all uses on all parcels that are served
8 by the ground water sources or streams for which
9 hydroelectric facilities are considered; or

10 (24) Notwithstanding any other law to the contrary,
11 composting and co-composting operations; provided that
12 operations that process their own green waste and do
13 not require permits from the department of health
14 shall use the finished composting product only on the
15 operation's own premises to minimize the potential
16 spread of invasive species."

17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

DOA; Solar; Wind; Agricultural Lands

Description:

Requires that lands within the agricultural district with class B or C soils that have solar or wind energy facilities must also obtain certification from the Department of Agriculture that the lands are also used for a farming operation. Effective 7/1/3000. (HD2)

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