

COUNTY IAL DESIGNATION PROCESS

ISSUES AND COMMISSION REVIEW



COUNTY DESIGNATIONS OF IAL LANDS ARE DIFFERENT FROM LANDOWNER DESIGNATIONS

- County Designations are governed by Sections 205-47 to 49 Hawaii Revised Statutes.
- Rules governing the process are set forth in Sections 15-15-125 and 15-15-126 HAR.

IN SUM:

Under Section 205-47 HRS the Counties submit to the LUC, proposed designation (recommendations) of lands within the county that are appropriate for IAL designation.

The counties have viewed this as unfunded mandate. As a result we have only had one submittal (the one before us) since the passage of the measure.

SB 207 actually requires the counties to submit their proposals within a certain time. Whether or not that time has run is problematic as the statute is unclear and there is no penalty for failure to do so.

- Section 205-49 provides a limitation on that power to designate by the counties and the LUC.
- If a landowner has already voluntarily designated more than half of its land IAL then the county may not designate any more of the landowner's land IAL under 205-47.

IN SUM

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205-47 : GENERAL PROCESS FOR THE COUNTY PLANNING DEPARTMENTS IN DESIGNATION.

- The process is not simply an examination of the land in the county in relation to the 205-44 criteria or the characteristics of agricultural lands.
- The Counties must also:
- Notice all landowners whose lands may be subject to examination for inclusion;
- Undertake a public outreach program prior to reaching its conclusion;
- Develop a “matrix” setting forth how the criteria for designation are applied;
- Develop maps;
- Obtain County Council Approval; and
- Submit a complete record of the proceedings and methodology to the LUC.

205-47 HRS REQUIREMENTS

- Section (a): Requires the County to identify and map potential IAL lands based on the criteria contained in 205-44.
- Section (b): Requires the maps be developed “...in consultation and cooperation with landowners, the department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations, the United States Department of Agriculture-Natural Resource Conservation Service, the office of planning, and other groups as necessary.”

SECTION 205-47(C) REQUIREMENTS

- Section (c) sets forth a number of very specific and wide ranging requirements for public meetings and outreach that must be undertaken by the County Planning Department and must be identified in their submittal.

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

SECTION 205-47(D)

- 205-47(d) requires the county to notify all landowners of the process and requires them to take into account lands that have already been designated IAL voluntarily. It also sets forth the *basic* criteria for making a determination on what lands should be designated IAL.
- “... In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports, and is consistent with the:
 - (1) Standards and criteria set forth in section 205-44;
 - (2) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
 - (3) Comments received from government agencies and others identified in subsection (b);
 - (4) Viability of existing agribusinesses; and
 - (5) Representations or position statements of the owners whose lands are subject to the potential designation.”

Section 205-47(e) requires the County Planning Department to submit its findings for approval by the County Council

GENERALLY, ONE OF THE QUESTIONS BEFORE THE COMMISSION IS: **HAS THE COUNTY ADHERED TO ALL OF THE REQUIREMENTS OF SECTION 205-47HRS IN DEVELOPING ITS MAPS AND ITS SUBMITTAL.**

- This includes both procedural and substantive requirements .
- The County must show not only that it met with all of the required community groups and noticed all of the interested parties, but what criteria and methodology it used to apply the criteria in an objective manner to reach its final conclusions and ultimate determination.
- Criteria can include not only those set forth in 205-44 HRS but should at least notice things like County General and Community Plans.



SECTION 205-44 HRS:

- **Standards and criteria for the identification of important agricultural lands.** (a) The standards and criteria in this section shall be used to identify important agricultural lands. *Lands identified as important agricultural lands need not meet every standard and criteria listed in subsection (c). Rather, lands meeting any of the criteria in subsection (c) shall be given initial consideration; provided that the designation of important agricultural lands shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawaii constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43.*
- ~~—(b) In a petition for a declaratory order submitted under section 205-45 that seeks to both designate lands as important agricultural lands and reclassify lands in the agricultural district to the rural, conservation, or urban district, the lands shall be deemed qualified for designation as important agricultural land if the commission reasonably finds that the lands meet at least the criteria of subsection (c)(5) and (7) of this section.~~
- If a petition seeks to only designate land as important agricultural lands, then the commission shall evaluate the lands in accordance with subsection (a).
- (c) The standards and criteria shall be as follows:
 - (1) Land currently used for agricultural production;
 - (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
 - (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;
 - (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;
 - (5) Land with sufficient quantities of water to support viable agricultural production;
 - (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;
 - (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
 - (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

- Note that not all of the criteria must be met. This gives the county the flexibility to determine which criteria are paramount in its analysis and determination.
- The County should make its determination by “...weighing the standards and criteria with each other to meet the constitutionally mandated purpose in Article XI Section 3 ...” of the State Constitution.
- For instance, a weighted system is therefore possible (and encouraged) that gives the different criteria different numerical values that can then be added up and used to see if the lands qualify for designation.
- *In reviewing the County submittal it is therefore key to examine what criteria were used in the process and whether they were applied in an evenhanded manner to the parcels identified as ones to be designated.*



205-48:THE PROCEDURE

- 205-48(a) provides that the counties are to submit their “maps” to the LUC within a specific timeframe from when various incentives were put in place. As the statute is ambiguous it is not clear whether the timeframes ever became mandatory.
- 205-48(b) requires OP and DOA to comment and make recommendations.
- 205-48(c) Is a reiteration of the criteria that must be applied. This time it is directed at State (LUC) review.

Section (c), as well as Section 205-49, gives the LUC the power to make own determination on whether the County properly applied the criteria and whether or not all, or part, of the designation was legitimate. The LUC therefore can review the submittal “de novo”.

205-49(A): COMMISSION'S DESIGNATION OF IAL

(a) After receipt of the maps of eligible important agricultural lands from the counties and the recommendations of the department of agriculture and the office of planning, **the commission shall then proceed to identify and designate important agricultural lands, subject to section 205-45.** The decision shall consider the county maps of eligible important agricultural lands; declaratory orders issued by the commission designating important agricultural lands during the three year period following the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005; landowner position statements and representations; and any other relevant information.

This section clarifies that it is the responsibility of the Commission to actually designate. The County submittal is a “recommendation” and the start of a process that the Commission must complete based on its own analysis of the evidence before it.



205-49(A): CRITERIA

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

- (1) The proposed lands meet the standards and criteria under section 205-44;
- (2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
- (3) The commission has designated lands as important agricultural lands, pursuant to section 205-45; provided that if the majority of landowners’ landholdings is already designated as important agricultural lands, excluding lands held in the conservation district, pursuant to section 205-45 or any other provision of this part, the commission shall not designate any additional lands of that landowner as important agricultural lands except by a petition pursuant to section 205-45.”



205-49(A): DECISION AND VOTE

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

SUBCHAPTER 14 OF SECTION 15-15 HAR – IMPORTANT AGRICULTURAL LANDS

Sections 15-15-125 and 15-15-126 of the Commissions rules govern the designation of IAL under the County identification process.

For the most part, the rules track the statutes we have just reviewed and reiterate the process by which the submittals/recommendations have to be processed and analyzed.

15-15-125(A): TIMING AND COUNTY OBLIGATIONS

(a) requires that the Commission render a decision within 365 days with the opportunity for a 180 day extension at the discretion of the Chair.

It also sets forth that it is the County's obligation to submit a complete record of their proceedings to the Commission in conformance with Sections 205-42, 43, 44, and 47 HRS.

15-15-125(B): COMPLETE RECORD OF THE COUNTY PROCEEDINGS MUST BE SUBMITTED.

(b) The county making such recommendations to designate land important agricultural lands shall provide the commission a complete record of its proceedings in support of its recommendation, including evidence the county has specifically adhered to the requirements of section 205-47, HRS, including 15-123 3 3 51 i~ §15-15-125 records evidencing that:

(1) Maps of potential lands to be considered for designation as important agricultural lands have been developed in consultation and cooperation with landowners, the state department of agriculture, agricultural interest groups, including representatives from the Hawai'i farm bureau federation and other agricultural organizations, the United States department of agriculture - natural resources conservation service, the state office of planning, and other groups as necessary.

(2) Each county, through its planning department, has utilized an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process.

(3) The county has taken notice of those lands already designated important agricultural lands by the commission.

(4) Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, each county has taken reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands.

(5) Evidence that the important agricultural lands mapping relates to, supports, and is consistent with the:

(A) Standards and criteria set forth in section 205- 44, HRS, and this subchapter have been met;

(B) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation; 15-124 3 3 51 §15-15-125

(C) Comments received from government agencies and others identified in section 205-47(b), HRS;

(D) Viability of existing agribusinesses;

(E) Representations or position statements of the owners whose lands are subject to the potential designation; and

(F) Any other relevant information .

(6) The important agricultural lands maps have been adopted by the county council, by resolution.

15-15-125(D): THE PROCESS IS MODIFIED “RULEMAKING”

- This section specifically provides that the proceedings shall be conducted as “rulemaking” under 15-15-109.
- 15-15-109 sets forth a process containing safeguards to allow landowners to make their case. Specifically:
 - Witnesses may submit testimony (section a) and shall be given “a reasonable opportunity” to present testimony.
 - Section (e) in particular provides that all interested persons “...shall be afforded an opportunity to submit data, views or arguments orally or in writing...” This can be done up to 10 days after the close of the hearing.

*This would imply that all landowners have the right to make their case with regard to their lands inclusion or exclusion in the designation.

WHAT ARE THE COMMISSIONS OPTIONS IN RENDERING AS DECISION (15-15-125)

(e) The commission may, under this section:

(1) Remand the matter back to the county for further review or clarification;

(2) Adopt the recommendations of the county in its entirety after receipt of the complete record from the county pursuant to section 15-15-126, and designate lands in such county as important agricultural lands; or

(3) Based on evidence presented, amend or revise the county recommendation and proposal to exclude, or include, certain lands from designation as important agricultural lands.

*This reiterates the LUC's right to "de novo" review.

WHAT ALL THIS MEANS IN APPLICATION

1. The County must make its case that it has met the requirements of Chapter 205 in making its recommendations
2. The LUC has the obligation to examine the County submittal and any oral testimony to ensure adherence to procedural and substantive requirements.
3. OP and DOA must also respond and present their position.
4. Because these are “rulemaking proceedings” interested parties have to be given a reasonable opportunity to testify and have the right to submit data, views and argument. (Note that this is not a right to “intervention”)

HEARINGS AND STEP BY STEP TO A FINAL DECISION

1. The LUC will schedule and hold an initial hearing to allow initial public testimony, the County to make its presentation/case and for OP and DOA to present their positions.
2. A request by a landowner or interested party can be made at that time or up to 10 days afterward to make a presentation and submit evidence to support their position.
3. The LUC staff will schedule a “hearing date” for those requests to be heard and decided upon.
4. The LUC will schedule another hearing to allow for a final decision on the County recommendations and the maps provided.
5. A written Decision and Order, Findings of Fact and Conclusions will be prepared and another meeting scheduled for its adoption.