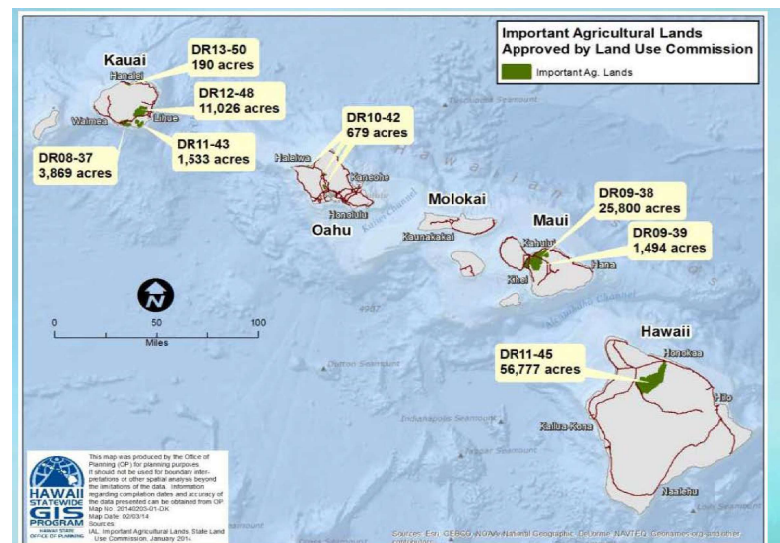


IMPORTANT AGRICULTURE LAND (IAL)

HRS Chapter 205 Part III (205-41 to 52)
HAR 15-15 Subchapter 17 (15-15-120 to 128)

Important Agricultural Lands Designation

- IAL designation is a new power of the LUC designed to identify the best agricultural lands in the state and protect them for future generations.
- A private landowner may move the LUC to have their lands designated IAL
- The counties are tasked with proposing a designation of all of the land within their jurisdiction (public and private) appropriate for IAL designation.
- A private landowner may request that apportion of the proposed IAL land be designated rural or urban or take a credit for later urbanization of a percentage of the land.
- Tax implications.
- Does not add any enhanced protections with regard to uses unless a private landowner asks for a portion to be re-designated urban.



What does it mean for land to be designated IAL?

The Legislature's intent in creating the IAL designation was to identify those lands that have the greatest value to agriculture and protect them for future generations.



IAL caveats

- IAL is not a new "district". Land remains in the general "agricultural district"
- The Legislature specifically provided that IAL petitions are not DBA proceedings but rather are "Declaratory Rulings"
- Except under certain circumstances, designating land IAL does not change what can or cannot be done on the land. Everything currently allowed in the agricultural district, either by statute or pursuant to a Special Permit, is allowed on land designated IAL
- Unless the land was designated IAL in conjunction with a request to designate a portion of the land Urban (redistricting), there is no prohibition on later petitioning the LUC to redistrict the land from Agriculture to any other designation (Rural or Urban)



How can land be designated IAL?

- The Counties are tasked with developing maps that identify all of the lands within their jurisdiction (public and private) that are appropriate for IAL designation. Once they have done so, the LUC can adopt the map designation.
- Private landowners can petition the LUC to have their land designated IAL. As an incentive, private landowners also have the ability to combine a petition for IAL designation with a request to have up to 15% of the total acreage subject to the petition re-classified to urban, rural or conservation.
- NOTE: The County is limited to designating no more than 50% of a landowner's property IAL. The 50% includes any land that the landowner may have already voluntarily had designated IAL.
- Since IAL designation does not change the districting of the land, portions of property or TMK's can be designated as IAL.

Standards and Criteria for IAL Designation

Section 205-44 HRS

- There are 8 criteria for IAL designation
- The Commission must evaluate the petition in light of the criteria
- If the petition is SOLELY for IAL designation, the land need not meet all 8
- If the land meets any of the criteria it must be given consideration for designation
- However, the LUC is tasked with weighing the standards and criteria to determine whether the land meets the mandated purpose of the Hawaii State Constitution and the objectives and policies of 205-42 and 43 HRS

Article XI, Section 3

AGRICULTURAL LANDS

Section 3. The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

[§205-42] Important agricultural lands; definition and objectives. (a) As used in this part, unless the context otherwise requires, "important agricultural lands" means those lands, identified pursuant to this part, that:

- (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;
- (2) Contribute to the State's economic base and produce agricultural commodities for export or local consumption; or
- (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.

(b) The objective for the identification of important agricultural lands is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations. To achieve this objective, the State shall:

- (1) Promote agricultural development and land use planning that delineates blocks of productive agricultural land and areas of agricultural activity for protection from the encroachment of nonagricultural uses; and
- (2) Establish incentives that promote:
 - (A) Agricultural viability;
 - (B) Sustained growth of the agriculture industry; and
 - (C) The long-term agricultural use and protection of these productive agricultural lands. [L 2005, c 183, pt of §2]

[§205-43] Important agricultural lands; policies. State and county agricultural policies, tax policies, land use plans, ordinances, and rules shall promote the long-term viability of agricultural use of important agricultural lands and shall be consistent with and implement the following policies:

- (1) Promote the retention of important agricultural lands in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management;
- (2) Discourage the fragmentation of important agricultural lands and the conversion of these lands to nonagricultural uses;
- (3) Direct nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses;
- (4) Limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes;
- (5) Provide a basic level of infrastructure and services on important agricultural lands limited to the minimum necessary to support agricultural uses and activities;
- (6) Facilitate the long-term dedication of important agricultural lands for future agricultural use through the use of incentives;
- (7) Facilitate the access of farmers to important agricultural lands for long-term viable agricultural use; and
- (8) Promote the maintenance of essential agricultural infrastructure systems, including irrigation systems. [L 2005, c 183, pt of §2]

The 8 Standards and Criteria are: (HRS§205-44)

- (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. [L 2005, c 183, pt of §2; am L 2008, c 233, §18]



Issues with Implementing the IAL Statutes

No reference to chapter 343 environmental law process (may be applicable if there is a request for re-classification in the petition).

While it is specifically set forth that the process is a DR rather than a DBA, there is no explanation of the procedure required to process petitions. Note: DR proceedings provide that a hearing may be scheduled if neither denial or approval is appropriate at the initial proceeding.

The statutes allow a petitioner to take a "credit" for the 15% re-classification but does not define how the credit functions (chapter 343 issues, public trust doctrine issues, etc.)

The end result is that we have a set of rules that are trying to interpret what the legislature intended and reconcile the IAL statutes with other supreme court decisions, laws and statutes.

Our rules are therefore untested and, especially with regard to the 15% reservation and re-classification provisions, could be overturned/rejected by the courts.

Requirements of 205-47

1. Maps must be developed "in consultation with":

A. Landowners.

B. The State Department of Agriculture.

C. Agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations.

D. The US Department of Agriculture Natural Resources Conservation Service.

E. The Office of Planning.

F. Other groups as necessary.

2. Each County must, through its planning department, develop an inclusive process for public involvement, including a series of public meetings throughout the process.

- "May" establish a citizens advisory committee;
- "May" use an existing process (general plan etc.); or
- Use ("employ") existing and adopted general plan, development plan or community plan maps.

3. The counties shall take notice of those lands already designated IAL by the LUC.

Simple IAL Petitions

- A Landowner may Petition the LUC to have all or portions of their land designated IAL.
- The petition must include evidence to support the lands classification as IAL based on the 8 criteria set out in 15-15-120(c) and an explanation of the current or planned use of the area to be designated.
- The proceedings are a DR proceeding and governed by those rules.
- The LUC (through OPSD) must seek DOA's opinion on the appropriateness of the designation.
- To petition can only be granted if it receives a two thirds affirmative vote (6 commissioners) otherwise it is deemed denied.
- LUC usually, in order to ensure there is no later confusion, requests a specific waiver of the 15% credit for re-classification if it is not contained in the petition. Regardless, under section 15-15-124d), if the petition fails to include a request for credits to re-classify, it is automatically waived (this was written to ensure the commission decided based on the representations made at the initial hearing and to prevent retroactive claims for the credits).



Additional Requirements

- The planned uses of both the agricultural lands and the land sought to be re-classified must be contained in the petition.
- TMK#s and verification of ownership.
- A certification from the DOA as to the quality of the land subject to the petition.



To grant the petition, the commission must also find:

1. The land is suitable for reclassification under the dba chapters of the rules (Chapters 2 & 8)
2. Any urban re-classification is consistent with the county plans
3. That there has been adherence to chapter 343
4. 2/3 of the commission must vote in favor of the petition
5. The commission may impose reasonable conditions

Should the commission find that *either*:

The IAL designation is inappropriate; **or**

The reclassification of the remaining land is not appropriate;

The petition should be denied in its entirety.



Petition for IAL including a reservation of credits

Instead of designating a specific portion of the land for re-designation in conjunction with an IAL proceeding, a landowner may request credits (to reclassify land to urban rural or conservation), amounting to 15% of the total land subject to the proceeding, to be used later.



IAL Petition with RE-Classification Request

An IAL petition may include a **request to re-classify a portion (15%)** of the total amount of land in the petition to Urban, Rural or Conservation (15-15-122). The land sought to be reclassified must be

1. Within the same county as the land sought to be designated IAL;
2. If to urban, the reclassification must be consistent with the relevant county plans;
3. Be no more than 15% of the total acreage in the petition; and
4. Meet all the requirements of granting a DBA.

NOTE: Item 4 is not contained in 205-45 (b) - it was added to provide decision-making criteria. It does not require a DBA proceeding but establishes a benchmark required of the petitioner.

Additional Requirements for Combined IAL Petition

For the lands sought to be designated IAL in a petition also requesting classification, the IAL lands must specifically meet two of the eight criteria:

1. Have sufficient quantities of water to support viable agricultural production; and
2. Contribute to maintaining a critical land mass important to agricultural productivity.

Unlike a petition which does not seek partial re-classification the commission must find, at a minimum, that based on the evidence presented, these two of the eight criteria are met. Meeting these two criteria does not automatically grant the petition, the remaining criteria must be balanced and weighed as well.

This raises a ton of issues!

Public Trust

Chapter 343

Infrastructure costs and requirements

Conditions

Impacts on watersheds

etc.



**HAR §15-15-124 is
an attempt to
resolve some of
these**

It is untested and
extrapolated - but our best
shot



SOME BASIC RULES

Limited to 15%

A petition can make a combined request (part for specifically identified lands and the remainder as a credit).

Must be specified in the petition.

Lands must be in the same county as the lands designated IAL.

Before the credits can be used a petition has to be filed similar to a petition that specifically identifies lands (Must meet the same criteria including IAL minimum requirements and evidence to support the re-classification)

Credits must be used within ten years

Credits are not transferrable.

Re-classification of IAL Lands (HRS §205-50)

Once land has been designated IAL it can still be reclassified to Urban, Rural or Conservation. (HAR §15-15-126)

- If the land was designated IAL without a 15% reservation or reclassification the LUC can re-classify.
- If the land was designated IAL in conjunction with a 15% reservation or request, the legislature (by a 2/3 vote of both houses) must first authorize the re-designation

Special permits may also be granted after referral to the DOA.

Must be done as part of regular DBA proceeding.

Additional criteria must be met to grant the petition to re-classify.

Additional Criteria for Re-Districting of IAL Lands

1. The land is not critical for agriculture.
 2. Re-districting will not harm the viability of agriculture in the area where it is located.
 3. It will not cause fragmentation of agricultural lands so as to make them unusable and will not allow intrusion of urban uses into an agricultural area.
 4. There is a public benefit or need for non-agricultural lands.
 5. It will not adversely impact the ability of the state or county to provide or support additional agricultural services in the area.
 6. The public benefit to re-districting outweighs the public benefit derived from continued use for agriculture.
 7. Re-districting will not impact the viability of agricultural operations on adjacent lands.
 8. The criteria for granting a DBA have been met.
 9. The criteria for decision making used by the county in designating or not designating land IAL have been met.
- Must be by 2/3 vote of the commission.
- If a petition is denied it can not be heard again for a year.

Removing the IAL Designation

By petition landowner (or farmer) if there is no longer enough water for viable agriculture. (Lack of water must be due to circumstances beyond the petitioner's control).

By prior authorization of the legislature where the designation was done in conjunction with a 15% reservation or re-classification.

County designated maps may be re-adjusted through periodic review by the county and commission where water is no longer available.

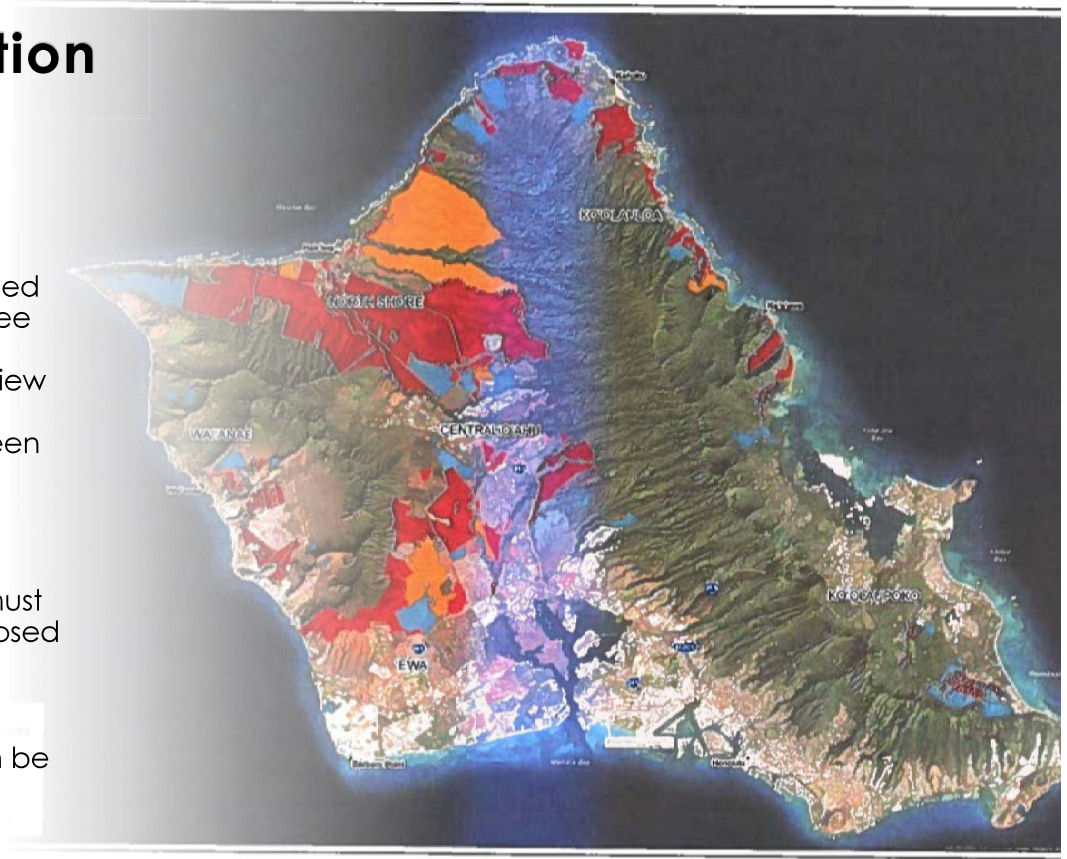


County Designation Process (HRS 205-47)

- The Counties were originally supposed to present their proposed designation to the LUC within three years of the development of incentives (2008). The counties view this requirement as an unfunded mandate and have generally been slow to respond.

- Section 205-47 sets out specific requirements that the counties must adhere to in developing its proposed designation.

- This process is complex and can be expensive.



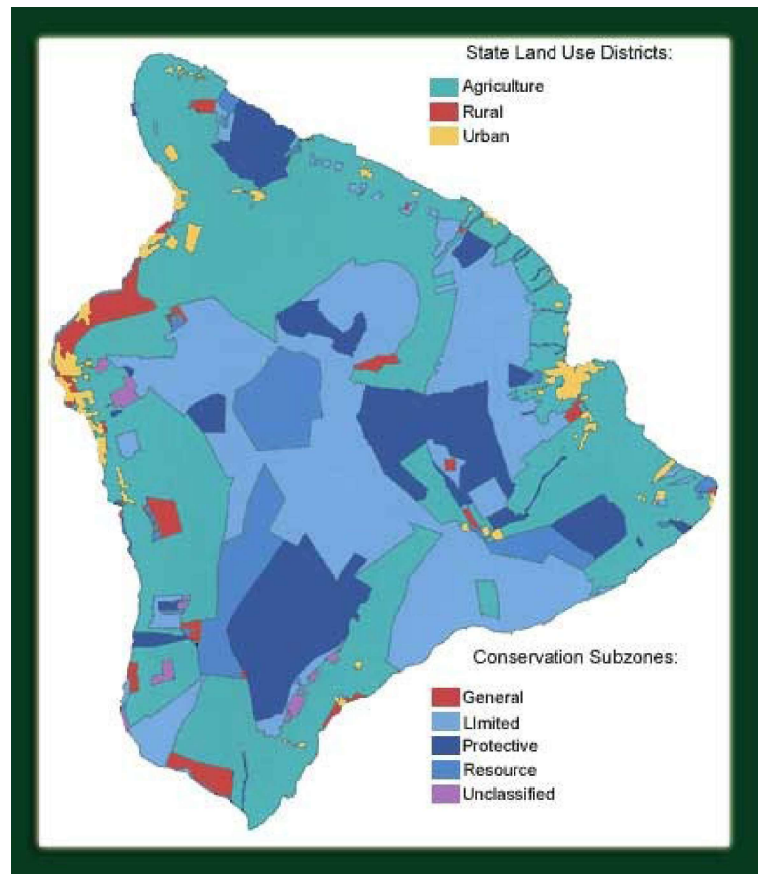
Once the Planning Department has identified potential IAL lands it must identify each owner of those lands and notify them that their lands are proposed for designation as IAL.

The Planning Department may then submit its recommendations to the County Council for approval.

When it does so the Planning Department shall submit to the Council a report on how the maps were derived and how they relate to support or are consistent with:

1. The IAL criteria set forth in 205-44 that all IAL land must meet.
2. The County Plans
3. The Comments received
4. Viability of existing agribusiness (?)
5. Statements made by landowners whose land is proposed for designation

- The County Council then must act, by resolution, to adopt the maps with or without changes.
- Once the Council has done so, the maps are transmitted to the LUC for action.



County Submission to the LUC

The LUC may then:

Remand the matter back if it feels further clarification is required;

Adopt the recommendations of the County; or

Amend or revise the County recommendations to exclude or include certain lands from designation.

Action by the LUC requires a two thirds affirmative vote (Currently 6 votes).

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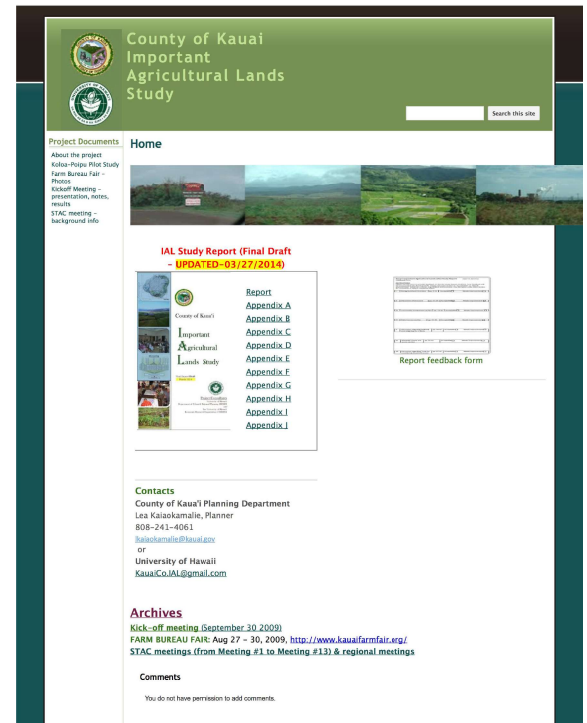
1894 Hurrah for the Republic of Hawaii! 1897

County Submission to LUC

The IAL maps and report must be officially transmitted to the LUC by the County. The complete record of the proceedings must be included, evidencing that the County has gone through the proper procedure.

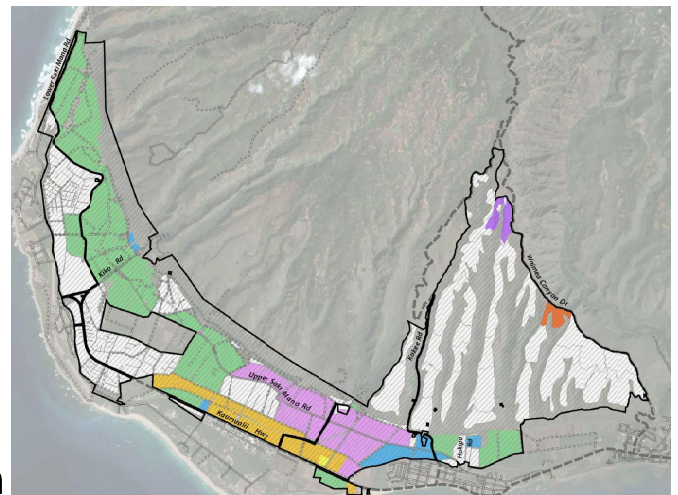
The County must also serve a copy on the State DOA and OPSD within 24 hours of filing.

DOA and OP have 45 days to provide comments to the LUC.



IAL Issues

- Kekaha Agricultural Association (KAA)
 - Not a farmer
 - No State landowner authorization [ADC vs. BLNR]
 - State designation process under HRS 205-44.5 not intended as piecemeal but for comprehensive designation by DLNR and DOA in collaboration



County IAL Issues

- City & County IAL Submission
 - Criteria used: all or some
 - Notice
 - Public Engagement
 - Small parcels; steep slopes; CPR; non-contiguous parcels