

Increasing Farmworker Housing on Hawai‘i Island

Report to the County of Hawai‘i
Department of Research and Development

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Increasing Farmworker Housing on Hawai'i Island

INTRODUCTION

Both Hawai'i County and the State of Hawai'i have issued reports that call attention to our islands' deep dependence on imported food, feed, and fiber, and recommend expansion of agricultural production with a focus on increasing food produced for local consumption. These reports and analyses outline many challenges to supporting agriculture in an economy with high input costs in comparison to continental US and foreign producers, lucrative resort and residential development leading to high housing costs relative to wages, and Hawai'i's distance from supply chains. In terms of land costs, a 2011 study estimated that Hawai'i agricultural land is at least four times as valuable as ag land on the US continent.¹

This report addresses one aspect of these challenges and potential opportunities: increased access to farmworker housing, which has been identified as a limiting factor for the growth of agriculture on Hawai'i Island. Guiding questions include: (1) How do we assure that there is suitable, available, and attainable farmland? (2) How do we make it possible for farmworkers and farm family owners to live on or in close proximity to agricultural production in order to reduce housing and commuting costs and provide for on-farm security? The context within which these questions are considered is the Hawai'i County General Plan Revision proposal calling for rural development that promotes centralization of public services and infrastructure to maximize service access and minimize residential sprawl and vehicle dependence.

The information in this paper is being compiled at the request of the County of Hawai'i Departments of Research and Development and Planning as they seek recommendations as to how to remove barriers and promote opportunities for the development of farmworker dwellings. It is also aimed at farmers and ranchers, contractors, developers, and other stakeholders who might use the information for their own planning purposes, so information is included about financing options available to farm and ranch operators and housing developers for land and housing purchase, construction, or improvement for on- and off-farm housing. Though primarily focused on commercial agriculture, some of the housing finance options noted below may apply to subsistence farmers as well.

Barriers to agricultural housing development and their potential removal have been identified through interviews and stakeholder meetings with farmers, ranchers, lenders, housing developers, and government representatives, followed by potential remedies or ameliorations suggested by those same people.

An earlier paper, attached as Appendix A, outlines considerations for the development of agricultural land and housing trusts that could decrease the cost of land dedicated to agricultural purposes and allow for dwellings on or adjacent to that land.

Notes:

- To simplify the narrative, we use the terms "farm" and "farmworkers" to include ranches and aquaculture operations with their associated workers.
- The underlying assumption is that farmworker housing will be a sub-category of affordable housing, understood as housing that costs workers less than 34% of their incomes.
- Loan information focuses on those organizations and programs that specialize in assisting a farming operation to obtain land and housing or improve a property to provide housing. Other available agricultural loans for operating expenses, affordable rural housing not restricted to farmworkers, and microloans from the same sources are not covered here but might be suitable for rehabilitating non-conforming structures or constructing dwellings for agricultural workers.

¹ Hazel Parcon et al., "A Comparison of Agricultural Input Prices: Hawai'i vs. Its Major Export Competitors" (College of Tropical Agriculture and Human Resources, University of Hawai'i at Mānoa, 2011).

FARMWORKER HOUSING DEFINITIONS AND SELECT GOVERNMENT REGULATIONS

Land use and zoning

The land use definitions, regulations, and restrictions noted below are greatly abbreviated and meant only for relevance to subsequent portions of this report dealing with challenges and opportunities for increasing ag worker housing.

Overall district definitions and permitted land uses are defined in the Hawai'i Revised Statutes, Chapter 205: Land Use Commission (LUC), which establishes four land use districts: Urban, Rural, Agricultural, and Conservation. With specific exceptions and variances, the LUC restricts rural districts to a minimum lot size of one-half acre (21,780 ft²) and agricultural districts to a minimum lot size of one acre. Sizes for newly subdivided lots in urban districts in Hawai'i County are now effectively limited to 10,000 ft² by Hawai'i State Department of Health Hawai'i Administrative Rules, Chapter 62 of Title II, Wastewater Systems, Subchapter 3, Individual Wastewater Systems.

The Hawai'i County Building Code governs the regulations for placement of additional worker dwellings on agriculturally zoned land. Most of the applicable regulations can be found in the Zoning Code Chapter 25, Section 5.

- **RA, Residential and Agricultural Districts. Chapter 25, Section 5, Division 5**
The RA (residential and agricultural) district provides for activities or uses characterized by low-density residential lots in rural areas where “city-like” concentrations of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low-density residential lots. The RA district is intended to be only within areas designated as being in the State Land Use Rural or Urban Districts.
- **FA, Family Agricultural Districts. Chapter 25, Section 5, Division 6**
The FA (family agricultural) district provides for a blend of small-scale agricultural operations associated with residential activities and which may be characterized by farm estates, small acreage farms, or subsistence lots. The FA district is intended to be in areas designated as being within the State land use agricultural district, where public services and infrastructure are appropriate to support the very low-density residential needs of a rural community and where a substantial number of parcels are less than five acres in size, and where a mix of uses will not conflict with or be detrimental to existing agricultural uses in the surrounding area.
- **A, Agricultural Districts. Chapter 25, Section 5, Division 7**
The A (agricultural) district provides for agricultural and very low-density, agriculturally based residential use, encompassing rural areas of good to marginal agricultural and grazing land, forest land, game habitats, and areas where urbanization is not found to be appropriate.
- **IA, Intensive Agricultural Districts. Chapter 25, Section 5, Division 8**
The IA (intensive agricultural) district provides for the preservation of important agricultural lands as provided for in the General Plan and characterized by a mix of small- and large-scale commercial farms and other agricultural operations which may include residential use in the form of farm dwellings closely tied to intensive agricultural use. The lands in the IA district are those lands which have the soil, quality, growing season, and moisture supply needed to sustain high yields of crops generally, or of specific crops of statewide or local importance when managed according to modern farming methods.
- **ADP, Agricultural Project Districts. Chapter 25, Section 25, Division 6, Paragraphs 50 to 59.2**
The agricultural project district (APD) is intended to provide a flexible and creative planning approach for developments within the agricultural zoning districts, in lieu of specific land-use designations. It will allow for flexibility in the location of specific types of agricultural uses and variations in lot sizes. Under this planning approach, opportunities will be provided for a mix of small-scale agricultural activities and associated residential uses, as well as larger agricultural projects. This district will also provide a vehicle to satisfy the demand for a rural lifestyle on marginal agricultural land, while decreasing the pressure to develop important agricultural land for this purpose. This planning approach would establish a continuity in land uses and designs while providing for the needed infrastructure facilities and systems to support the various types of agricultural developments.

The minimum land area required for an agricultural project district shall be five acres.

Any uses permitted either directly or conditionally in the A or IA districts shall be permitted in an agricultural project district, and the overall density permitted in an agricultural project district shall not be greater than one acre per building site. Each of the proposed uses and the overall densities for dwelling uses shall be contained in a master conceptual plan for the agricultural project district and in the agricultural project district enabling ordinance.

A farm dwelling is a single-family dwelling that is located on, or used in connection with, a farm or if the agricultural activity provides income to the family occupying the dwelling. One single-family dwelling or one farm dwelling shall be permitted on any building site in the A district.

Additional farm dwellings are not permitted in RA zoning, as the lots are usually too small to require additional labor. Additional farm dwellings may be permitted in the FA, A, and IA zoning upon specified conditions that include:

(1) A farm dwelling agreement for each additional farm dwelling, on a form prepared by the director, shall be executed between the owner of the building site, any lessee having a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement, and the County. The agreement shall require the dwelling to be used for farm-related purposes.

(2) The applicant shall submit to the director an agricultural development and use program, farm plan, or other evidence of the applicant's continual agricultural productivity or farming operation within the County. Such plan shall also show how the farm dwelling will be used for farm-related purposes. An application form is attached to this report as Appendix C.

Additional farm dwelling conditions may apply in APD-zoned areas.

Additional opportunities for single-family agricultural subdivisions and clustered housing on agricultural lands

There is also the possibility of developing agricultural housing with exemptions from most State statutes and County zoning, subdivision, and building code regulations under: (1) Hawai'i Revised Statutes 201H for affordable housing, and/or (2) Section 46-15 for experimental housing, as long as the plans are approved by the Hawai'i County Council and the Hawai'i Department of Health. Significant here is that this "exemption" allows the one-acre minimum lot size requirement in the State Land Use law (HRS 205) to be reduced; house lots of any justified size can be established, analogous to a PUD approval for urban areas.

Hawai'i Revised Statutes 2013 § 46-15 (2013) gives counties the ability to do experimental and demonstration housing projects: <http://law.justia.com/codes/hawaii/2013/title-6/chapter-46/section-46-15>.

For more information about allowances for clustered housing, see page 23 of Appendix E within Appendix A of this paper, "Relevant zoning and land use regulations supporting clustered family or farmworker housing on agricultural land on Hawai'i Island," which contains a brief description of Planned Unit Development regulations, as well as affordable and experimental housing descriptions.

Dwelling size

There have been questions about the minimum size of permitted dwellings on Hawai'i Island. County Building Code regulations in Chapter 5 provide two distinct options for small homes: a) an "Efficiency Dwelling," and b) a one-bedroom dwelling. These small units must conform to the Code's room dimensions, including minimum ceiling heights, floor areas, and room widths as specified in Section 310.3.7. A County of Hawai'i Department of Public Works Memo from February 11, 2020, clarifies the size as follows:

a) An **Efficiency Dwelling** is a one-room structure defined per Section 310.3.8:

310.3.8 Efficiency Dwellings Units. An efficiency dwelling unit shall conform to the requirements of the code except as herein provided: (1) The unit shall have a living room of not less than 220 square feet of superficial floor area. An additional 100 square feet of superficial floor area shall be provided for each occupant of such unit in excess of two. (2) The unit shall be provided with a separate closet. (3) The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this code shall be provided. (4) The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.

b) A building used as a **one-bedroom dwelling** with a separate bedroom and living/kitchen/dining and bathroom is defined in the International Residential Code (IRC, 2006 ed.):

Building shall mean any one- and two-family dwelling or portion thereof, including townhouses, that is used, or designed or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, and shall include accessory structures thereto.

The minimum size of a dwelling (other than efficiency dwellings):

Floor Area. Dwelling units and congregate residences shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms except kitchens shall have an area of not less than 70 square feet.

A simple summary:

Efficiency Dwelling	Conventional Dwelling
<ul style="list-style-type: none">• 220 ft² living/sleeping/dining open area	<ul style="list-style-type: none">• 120 ft² living/dining + 70 ft² bedroom
<ul style="list-style-type: none">• Separate cooking area/bath and closet	<ul style="list-style-type: none">• Kitchen and bath

Chapter 5, Section 5-26 specifies that **package homes** must have a minimum size of 900 ft² and maximum square footage of 1,400 ft² living area (not including carport/garage) with a maximum two-car carport/garage included.

Sewage Systems

Hawai'i Administrative Rules, Title 11, Department of Health, Chapter 62 Wastewater Systems, Subchapter 3 Individual Wastewater Systems requires that there be a minimum of 10,000 ft² for each lot that contains an individual dwelling with a maximum of five bedrooms, with a septic system receiving a maximum flow of less than 1,000 gallons a day. Developments using individual septic systems are limited to 50 units unless the lots are one acre or greater.

Supply of potable water

When potable water is available from the Hawai'i County Department of Water Supply (DWS), the general minimum supply per Tax Map Key (TMK) is 400 gallons a day. Water availability is determined per TMK by communication with the DWS. If DWS water is not available, 60 inches a year of rainfall could qualify for a water variance to use catchment. Note that catchment does not clear Hawai'i Department of Health (DOH) standards for agricultural processing.

FINANCING OPTIONS FOR FARM OWNERSHIP, CONSTRUCTION, AND IMPROVEMENT

A first stop for potential borrowers will generally be a commercial bank or other conventional loan institution. In reality, many new or even experienced Hawai'i farmers won't qualify for conventional purchase, renovation, or construction loans, but some government programs will require rejection from one or more of such institutions before a farmer or developer can apply for a direct or guaranteed loan from federal or state government programs. There are some federally regulated credit unions on Hawai'i Island, such as the Hawai'i First Federal Credit Union, that do make direct loans to lower-income farm families; some have specialized loan programs for Department of Hawaiian Homes lessees. USDA Rural Housing Programs other than those targeted to agricultural housing may also be useful to support homeownership and housing development (<https://www.nhlp.org/resource-center/usda-rural-housing-programs>) in areas of Hawai'i with 10,000 or fewer people.

American AgCredit'

American AgCredit offers a broad range of agricultural loan, leasing, and insurance services. This is a network of customer-owned financial institutions that provide loans and financial services to farmers and ranchers, farmer-owned cooperatives, rural homebuyers, agribusinesses, and rural infrastructure providers.

Hilo Office: <https://www.agloan.com>.

U.S. Department of Agriculture Farm Service Agency (FSA)

The USDA Farm Service Agency's (FSA) Direct Farm Ownership loans are a resource to help farmers and ranchers become owner-operators of family farms, improve and expand current operations, increase agricultural productivity, and assist with land tenure to save farmland for future generations. Depending on the applicant's needs, there are three types of Direct Farm Ownership Loans: regular, down payment, and joint financing. FSA also offers a Direct Farm Ownership Microloan option for smaller financial needs up to \$50,000.

FSA provides credit to family-sized farmers and ranchers at advantageous loan rates of up to 40 years to:

- Start, improve, expand, transition, market, and strengthen family farming and ranching operations
- Value-added, direct sale, organic, and specialty crop operations
- Operations using alternative farming methods such as hydroponics, aeroponics, rooftop or vertical farming, and freight-container farming

FSA Farm Operating, Direct Farm Ownership, and Guaranteed Farm Loans allow eligible farmers and ranchers to buy farmland and farm housing, finance agricultural production, improve and expand current operations, and increase agricultural productivity. FSA also targets a portion of its loan funds to historically underserved farmers and ranchers, which include: Women, African Americans, Alaskan Natives, American Indians, Hispanic, Asian, Native Hawaiians, and Pacific Islanders. There is also a focus on beginning farmers and ranchers, defined as those who are in their first 10 years of operation. See *Your FSA Farm Loan Compass*, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/loan-servicing/farm_loan_compass_9-22-17.pdf.

Hawaii Department of Agriculture, Agricultural Loan Division <https://hdoa.hawaii.gov/agl>

The Hawaii Department of Agriculture's Agricultural Loan Division administers the Agricultural Loan Program and the Aquaculture Loan Program, providing credit at reasonable rates and terms, either supplementing private-lender sector loan funds or by providing direct funding. Considered a "lender of last resort," prospective applicants must inquire with and be denied credit from private-sector lenders prior to filing an application. New Farmer, Farm Ownership and Improvement, and Operating Loans are available.

- **New Farmer:** <https://hdoa.hawaii.gov/agl/home/new-farmer>
New Farmer Loans are **for applicants who intend to farm full time** and are available for: purchase or improvement of farmland; construction or improvement of essential farm buildings; purchase of farm equipment and livestock; payment of production and marketing expenses including materials, labor, and services; and payment of living expenses.
- **Qualified Farmer:** <https://hdoa.hawaii.gov/agl/qualified-farmer>
Loans are made **to sole proprietors, partnerships, corporations, and cooperatives** for purchase or improvement of farmland; construction or improvement of essential farm buildings; purchase of farm equipment and livestock; payment of production and marketing expenses including materials, labor, and services; and payment of living expenses.
- **Aquaculture Loan Program:** <https://hdoa.hawaii.gov/agl/aquaculture>
Loans are made **to sole proprietors, partnerships, corporations, and cooperatives** for purchase or improvement of aquaculture farmland; purchase of aquatic equipment and fish stock; payment of production and marketing expenses including materials, labor, and services; and payment of living expenses.

USDA Rural Development Farm Labor Housing Direct Loans and Grants, Multi-Unit Housing

<https://www.rd.usda.gov/programs-services/farm-labor-housing-direct-loans-grants>

These USDA programs provide affordable financing to develop multi-worker housing for year-round and migrant or seasonal domestic farm laborers. Funds can be used for construction, improvement, repair, and purchase of housing. The program assists qualified applicants that cannot obtain commercial credit on terms that will allow them to charge rents that are affordable to low-income tenants. Qualified applicants include:

- Farmers, associations of farmers, and family farm corporations
- Associations of farmworkers and nonprofit organizations*
- Most State and local governmental entities*
- Federally recognized tribes*

*Eligible to apply for both grants and loans

Subpart M—On-Farm Labor Housing

<https://www.ecfr.gov/cgi-bin/text-idx?SID=5a46e4158b427982721e2b125cd65433&node=pt7.15.3560&rgn=div5#sp7.15.3560.m>

Key Requirements:

- The applicant must demonstrate a need for on-farm labor housing and be the entity that will own the housing and operate it on a nonprofit basis for the exclusive benefit of labor used in its farming operations.
- The applicant must certify that housing operations will be conducted in a nonprofit manner such that income from the housing does not exceed eligible expenses associated with the housing. Eligible expenditures include, but are not limited to: housing repairs and upkeep; payment of installments on the loan, taxes, insurance, and reserves; and other essential uses needed for success of the operations.
- Housing may be multi-family or single-family in type and may be located on the farm away from farm service buildings or in the nearby community.
- The immediate relatives of the borrowers are ineligible occupants for on-farm labor housing.

There are generally advantageous terms under this program: The 2019–2020 interest rate for on-farm labor housing loans will be 1% for a term up to 33 years. *However, the USDA on-farm loan program does not offer grants, and the entire nation is only allocated about \$2 million per year* (Pers. comm., USDA staff, February 2020).

Subpart L—Off-Farm Labor Housing Loans and Grants

<https://www.ecfr.gov/cgi-bin/text-idx?SID=5a46e4158b427982721e2b125cd65433&node=pt7.15.3560&rgn=div5#sp7.15.3560.1>

Off-farm labor housing loan and grant funds can be used to increase:

- The supply of affordable housing for farm labor; and
- The ability of communities to attract farm labor by providing housing which is affordable, decent, safe, and sanitary.

The primary objective of this program is to provide funding for construction, improvement, repair, and purchase of housing for domestic farm laborers, including those working on fish farms, on-farm processing, and retired and/or disabled farmworkers. Funds can also be used to buy and improve land, purchase household furnishings, and pay construction loan interest.

Applicants for off-farm labor housing loans must be:

- A broad-based nonprofit organization with a membership that reflects a variety of interests in the area where the housing will be located; or an agency or political subdivision of State or local government (see detailed requirements in §3560.55, excluding §3560.55(a)(6)); or
- A limited partnership with a nonprofit general partner that meets the requirements of §3560.55(d).

To be eligible for off-farm labor housing grants, applicants must be able to contribute at least one-tenth of the total farm labor housing development cost from its own or other resources. Limited partnerships eligible under paragraph (a)(2) of this section are not eligible for farm labor housing grants. The maximum combined loan and grant amount is \$3,000,000. The 2019–2020 loan rate was at 1%. Construction financed with the assistance of a Section 516 grant will be subject to the provisions of the Davis-Bacon Act.

USDA Programs not restricted to agricultural housing

USDA's Rural Housing Service offers a variety of programs beyond farmworker housing to build or improve housing and essential community facilities in rural areas. They offer loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles, and equipment. For information, visit <https://www.rd.usda.gov/about-rd/agencies/rural-housing-service> or contact USDA Rural Development Hawai'i at 808-933-8380.

Subsidized self-help housing projects can include farm families, but these projects are generally implemented in areas with low land costs, and farmers have to be in the area in which the project is focused to allow for participant cooperation. For more information, contact Hawai'i Island Community Development Corporation, 100 Pauahi Street, Suite 204, Hilo, HI 96720, 808-969-1158.

CHALLENGES AND RECOMMENDATIONS FOR INCREASING AGRICULTURAL WORKER HOUSING

The availability of worker housing is not the only pressing challenge to agriculture in Hawai‘i. Land and construction costs are just some of the rising expenses that contribute to a decreasing share of agricultural production income returned to farmers. (Private conversation, Matthew Loke, Hawaii Department of Agriculture, December 2019). Therefore, recommendations to build agricultural housing stock has to emphasize its affordability with the goal of attracting skilled and stable farmworkers and increasing farm income. Providing worker housing is not considered a taxable benefit, so this enables the farmworker or ranch hand to receive a lower taxable wage rate because her housing costs are available at a low- or no-cost, and her commuting costs may be reduced or eliminated.

The 2012 *Baseline Study for Food Self-Sufficiency in Hawai‘i County* lists 100 ways to increase island food production (Page 104, https://kohalacenter.org/wp/wp-content/uploads/2014/05/BASELINE_FOOD_SUSTAINABILITY_WEB.pdf).

Recommendations for County government relevant to ag housing development include:

- Support affordable housing on or near farms for farmers and farmworkers
- Support layering of agricultural and non-agricultural uses (like agritourism) on agricultural lands to improve the economic viability of farms and ranches
- Create an integrated permitting system that will approve a whole-farm plan at one time and allow several years to complete

Recommendations for State action include:

- Ensure that State-owned agricultural lands are as productive as they can be, with an emphasis on food production where it is feasible
- Develop new irrigation systems where feasible, and support irrigation improvements on both State and private systems that will result in increased land available for local food production
- Support the pursuit of alternative energies that will mitigate the cost of fossil fuels on local agriculture
- Explore technologies to produce non-fossil fuel-based fertilizers

Over the course of discussions during 2019 and 2020 with a range of stakeholders—including farmers, ranchers, land owners, housing developers, architects and planners, government administrators, and legislators—the following reservations, challenges, questions, and recommendations for increasing agricultural worker housing emerged:

Cost of land

One of the ways to reduce overall housing costs are to reduce or eliminate the cost of land on which housing is constructed. In the past, this has been accomplished with leasehold arrangements, most notably by Kamehameha Schools (KS), enabling farmers on Hawai‘i Island to obtain land at reduced rates with long-term leases that required agricultural land use and permitted the construction of farm dwellings. However, given the challenges of enforcing lease requirements, KS no longer offers new leases with the option of residential use.

It is possible under *Haw. Rev. Stat. Section 201H-57 – Land leases to nonprofit organizations providing affordable housing*, for the State to lease land to any qualified organization providing affordable housing at \$1 per year per parcel through long-term, renewable, and transferable leases. Since the statute defines “affordable” as housing affordable to households with incomes at or below 140% of the median family income (as determined by the United States Department of Housing and Urban Development), this opportunity would be suitable (and may already be used in Hawai‘i) for agricultural worker housing. A concern is that the housing constructed on this lease land remains in the affordable and/or agricultural worker housing category in perpetuity, rather than being transferred to an entity that would raise rents to market levels and then price out agricultural workers.

A common form of land ownership for affordable housing development and for agricultural land development in the continental U.S., sometimes found in combination, is a land trust model, in which a nonprofit entity holds title to land set aside specifically for agricultural purposes and then manages long-term lease agreements with the owners of the housing and/or agricultural ventures. This form of land ownership/lease management could be used for off-farm worker rental housing, subdivisions, or for family-farming lots. It is often used to allow local and State government agencies to allocate land for affordable housing without the ongoing responsibility for its management. More information can be found about these options in the 2018 paper, “Affordable Land and Housing for Farmers: Exploring Agricultural and Community Land Trusts

for Hawai'i Island," attached to this report as Appendix A and posted at https://kohalacenter.org/docs/reports/2018_Ag_CL_Trusts_DRAFT.pdf.

Note that there is an existing housing land trust on Hawai'i Island, Hale o Hawai'i, interested in serving as a vehicle for this type of agricultural dwelling development innovation. The Agrarian Trust, <https://agrariantrust.org/agrarian-commons>, a national organization that provides technical assistance for the development of local agricultural trusts, is also a resource for this ownership strategy.

Small family farmers could form a cooperative ownership structure to purchase and develop land, reducing the cost of infrastructure and dwelling construction by subdividing a larger agricultural TMK and/or by taking advantage of Federal and State farm development loans. Loans to co-ops are available from both the Hawaii Department of Agriculture and USDA Rural Development as noted above.

Most Hawai'i Island farms are 10 or fewer acres in size. Reducing the cost of subdividing larger agricultural TMKs into five- to 10-acre parcels might encourage more farm ownership. This was suggested as particularly relevant in high land-cost areas such as North Kohala. However, questions on the part of County administrators with consideration of the General Plan's stated goal to limit residential sprawl must be addressed when considering the creation of smaller agricultural parcels.

Another option for off-farm worker housing would be for a private landowner to build and retain ownership of clustered, multi-family dwellings in areas of the island with a concentrated need for farm, ranch, and food system labor. This might allow the landowner, developer, and/or rental manager to take advantage of federal subsidies that could reduce the costs of housing development and provide a reliable rental income stream from farmworker rental assistance programs, as detailed at <https://www.rd.usda.gov/programs-services/multi-family-housing-rental-assistance>. Recent examples of this type of development in Hawai'i are Kunia Village on O'ahu (<https://www.eahhousing.org/apartments/kunia-village>) and the Nani O Puna Apartments in Pāhoa.

Zoning, land use, and subdivision regulations and permitting processes

In order to increase the potential for more concentrated housing in rural areas with agricultural activities and reduce sprawl that limits residents' access to public services, it may be desirable to reclassify select lands from an Agricultural to a Rural designation. To date, the Hawai'i County Planning Department reports that the State Land Use Commission is generally amenable to such changes if they are aligned with the Hawai'i County General Plan. There were, however, repeated stakeholder suggestions to increase "home rule" by allowing counties to have jurisdiction over more of the land-use regulations now controlled by the Board of Land and Natural Resources (BLNR), with the assumption that each county's circumstances are different and those geographically closer to the issues are better able to make decisions that meet the needs of island residents.

The perceived inefficiencies in State and County permitting processes were a persistent and important problem expressed by stakeholders, because these inefficiencies are a significant factor in increasing land and housing development costs. There is a call for consistency, accountability, and efficiency on the part of each permitting agency and its staff, and a need for communication among agencies. Recommendations to address these issues included:

- Digitize all County systems related to regulations and permitting: ***NOTE: Hawai'i County is implementing an online tracking and permitting process in 2020.***
- Clarify and align jurisdictional rules for land use and zoning
- Increase staff at County Planning and Building Departments, State Health Department, and Hawai'i *State Historic Preservation Division* (SHPD)
- Allow third-party permitting and inspections by licensed and approved professionals
- Provide user-friendly code education for agency staff and the public
- Develop a clear and publicly available permitting process decision tree for Hawai'i County
- Create a one-stop shop for permitting information that includes County Planning, DPW, DWS, Fire, State DLNR, DOH, SHPD, and any other relevant agencies
- Provide subsidized technical assistance and professional services to agricultural ventures to prepare permit applications and submit project plans, helping to navigate compliance and permitting processes
- Create time limits for approval reviews to promote efficiency and accountability
- Create a tracking system for SHPD applications and have an approval deadline to increase accountability; use

- County authority to review and approve SHPD applications when SHPD cannot do so in a timely manner
- Separate the County approval process into two parts:
 - 1) Require a plan proposal with site plan, elevations, and proposed scope of work
 - 2) Submit a full set of working plans to all relevant departments for review and approval
- Create templates for fast-track permitting for developers that are governed by the General Plan
- Design templates for dwellings that are pre-approved by all relevant departments
- Shorten the Special Use/Use Permit application forms, which are long and repetitive, and make the permit process less complex
- Create an alternative approval process for existing non-conforming farm dwellings (See Appendix D for a lengthy discussion of this recommendation)

Decrease infrastructure and dwelling construction costs

In the same vein as the recommendation to review permitting processes, stakeholders suggest that updates to the County building and zoning regulations be reviewed and revised to align with Hawai‘i’s climate and circumstances, reducing construction costs and enabling clustered housing development on lands adjacent or in close proximity to farms and ranches.

There was a call to examine how to finance multi-family dwelling infrastructure with the suggestion that HUD 108 loan funds be used by the County, including for community waste and potable water systems:

<https://www.hud.gov/hudprograms/section108>.

Stakeholders also emphasized review and revision of potable water and wastewater regulations. Recommendations included:

- Encourage greywater systems to reduce use of fresh potable water at dwelling sites
- Use private-sector waste stream systems
- Enable the use of composting and urine-separating toilets with other forms of bioremediation that would be more cost-effective and environmentally sound than septic tanks
- Reduce the unit requirement for potable water where DWS service is available, but limited by supplementing with catchment, to allow for increased multi-family/clustered housing for farmworkers
- Allow variances to catchment collection, e.g., include capacity for roofs on common buildings to be calculated into water requirements in clustered housing projects
- Change DOH regulations to base requirements on the number of fixtures (rather than bedrooms) in calibrating waste stream management requirements

Though the construction of smaller dwellings, including “**tiny homes**” (nationally defined as between 120 and 500 ft² of enclosed living space) has been a major focus of agricultural dwelling cost-cutting discussions, there are infrastructure costs not addressed by the emphasis on dwelling size. As noted above, the current minimum size requirement for a home in Hawai‘i County is close to 260 ft², well within the national definition of a tiny home but perhaps larger than might be necessary for a beginning farmer couple or single farmworker. Questions that arose include:

- Are there proposed regulations to feasibly reduce this minimum size?
- Will using converted shipping container homes compromise the quality of life on the island or might they be a suitable shell for a farm dwelling if all other regulations were met?
- Would enabling the use of wastewater alternatives, such as composting toilets, greywater systems, and other bioremediation, reduce the cost of small home development?

Chapter 5, Section 5-26 of the Hawai‘i County Building Code specifies that **package homes** must have a minimum size of 900 ft² and maximum square footage of 1,400 ft² living area (not including carport/garage) with a maximum two-car carport/garage included. This might be a category of home size that could be reduced without sacrifice to worker safety or comfort. Pre-approved small manufactured homes could provide a cost-effective solution for on-farm worker housing and beginning farmers.

Another recommendation has been to reduce the cost of bringing existing non-conforming farm dwellings up to code through alternative regulations and allowances for existing dwellings. A suggested framework offered by Tane Datta is described in Appendix D.

To increase the ability of beginning farmers and farm families to afford on-farm housing, a pilot program could be developed to allow commercial farm families to move onto agricultural land with just the Department of Health-approved sanitation system completed and a farm plan approved by the Planning Department, with a three-year time span to construct the balance of a conforming and permitted dwelling. This would allow beginning farmers to save the cost of a housing rental and apply it to construction or a down payment on a construction loan. Such a program might require additional inspections to assure compliance, the cost of which could be included in the cost of a pilot permit.

Additional recommendations included:

- Provide incentives for large landowners to invest in ag worker housing and affordable housing in general
- Preserve older plantation housing before it deteriorates to the point of needing to be torn down
- Allow older structures that are moved to only need permitting/compliance for the newly constructed portion of the structure
- Promote flexibility to enable cluster housing, cottage housing, co-housing development, and 'ohana dwellings
- Allow for alternative building materials that can be locally grown, such as hemp and bamboo
- Develop housing for retired agricultural workers
- Use Habitat for Humanity for construction of ag worker dwellings
- Allow for trailer park housing and use of mobile homes for agricultural workers. Note: USDA representatives' comments that fear of hurricane damage need not be the primary concern limiting this type of housing, as there are trailer parks on the continent where hurricanes and tornadoes are a risk, but counties design and locate these dwellings to be more secure and to minimize risk.

Cost and availability of labor for agricultural housing construction

Because contractors generally make more net income from large or high-end construction projects, and because most lenders require that construction be done by a licensed contractor, it can be difficult to find companies that will build affordable dwellings, such as the manufactured packages from HPM or tiny/small custom houses. Proposed solutions to this problem include:

- Finding or cultivating contractors who have a value system that includes support for community development
- Restructuring high school- and community college-level construction academies along the lines of Ma Ka Hana Ka 'Ike (<https://hanabuild.org>) and Kapili Like LLC, that teach construction skills in an engaging and challenging environment, allow students to work on real-life building projects as part of their education experience, and promote a sense of service to their local communities
- Organize and finance self-help housing projects targeted to farm families

Financing and access to capital

As noted on pages 5 to 7 above, there is limited financing for agricultural worker and farm family housing from the USDA, Hawai'i State Department of Agriculture, and private sources. Because of the high cost of housing development and the relatively low income of agricultural workers, there may be a need for additional sources of capital and better education and technical assistance for potential developers and agricultural business owners. Stakeholder suggestions include:

- Establish a \$14,000,000 Hawai'i County revolving loan fund for agricultural housing development
- Issue Special Purpose Revenue Bonds to fund multi-family, off-farm housing
- Increase Community Development Financial Institution (CDFI) monies for agricultural housing
- Use disaster recovery funds for agricultural housing development; consult with other distressed communities that have increased capital flow for agricultural housing through Local Initiatives Support Corporation (LISC, <https://www.lisc.org>)
- Create a public-private financial partnership to leverage limited housing finance resources and include technical assistance and underwriting staff
- Simplify and amplify communications and education about agricultural housing financing
- Increase technical assistance for accessing federal housing programs: HUD, USDA, SBA, EDA
- Increase the use of USDA loan guarantees, for which there is a much larger pool of available capital than for USDA direct loans
- Have the County apply for HUD 108 funds to finance development infrastructure
- Increase property tax to fund wastewater treatment solutions, including the transition to septic systems and innovative approaches to bioremediation

- Create an opportunity zone tax exemption for agricultural worker housing

Enabling agricultural tourism

There has been concern on the part of County and State regulators that creating additional housing on agricultural land would add to rural residential sprawl and/or be used for unpermitted visitor industry accommodations. However, allowing agricultural ventures to more easily combine seasonal worker housing with tourism and education could be a legitimate opportunity to increase farm income and expand the general public's familiarity with and understanding of the importance of local agriculture. Questions asked on this topic included:

- Are there infrastructure and zoning regulations that could be relaxed to encourage authentic agricultural tourism?
- Could the existing ability to develop guest houses/lodges on agricultural lands be used to legitimize the housing of both agricultural workers and agricultural tourists on farms and ranches?

A related stakeholder suggestion could be to **change the basis on which the number of dwellings permitted on a given parcel of agricultural land (TMK) from acreage to agricultural revenue**, providing an additional control to the development of gentleman estates that receive discounted tax allowances for agricultural designations and that advertise visitor accommodations as farm stays. If families were engaging in subsistence agriculture, however, there would have to be exemptions that recognize agricultural production vs. commercial sales figures in the calculation of permissible dwellings.

Location of multi-family agricultural housing projects

The optimal location and number of units for multiple worker dwellings and/or agricultural subdivisions will need further investigation and should include an inventory of available agricultural housing and a survey of unmet need by both larger agricultural operations and small farm operations. A preliminary look at the materials in the 2012 *Baseline Study for Food Self-Sufficiency in Hawai'i County*, including the maps in Appendix B (with particular attention to "Core Crop Lands") suggests that Lower Puna, North Hilo, Hāmākua, Waimea, and South Kona contain a concentration of farming operations that might have the highest demand for agricultural workers. North Kohala and the Pāhala/Nā'ālehu area have great potential for agricultural expansion, but may not yet have an immediate need for additional agricultural worker housing. Existing cooperatives and agricultural industry groups should also be engaged in conversation to further determine the need for farmworker housing in their area.

Developers who were interviewed reported that multi-family projects with 50 or more units are currently cost-effective in Hawai'i because the costs of infrastructure can be spread across this number of dwellings. Island farming operations, however, tend to be relatively small, needing few full-time or part-time workers, while the County General Plan calls for a limit to rural sprawl and increased proximity to public services. Therefore, the placement and size of ag housing clusters needs careful consideration, allowing for on-farm housing and multi-family units that can serve the needs of smaller farmers and ranchers, many of whom are willing and able to share workers on a part-time basis.

Legislative advocacy and more general agricultural issues emerging from stakeholder input

- Repeal or modify the Jones Act to decrease costs of doing business
- Maintain close coordination among all advocacy efforts to sustain and increase affordable housing, of which agricultural worker housing and agricultural retired worker housing is a subset
- Increase the USDA pool of funding and caps on direct loans for farmworker housing
- Expand cottage food legislation to allow for an increased number of value-added products to be created on-farm to increase farm incomes

Appendix A

Affordable Land and Housing for Farmers

Exploring Agricultural and Community Land Trusts for Hawai‘i



*Prepared by Gail Byrne Baber, MSCE for The Kohala Center
December 2017*

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Exploring Agricultural and Community Land Trusts for Hawai'i Island

Summary

Hawai'i has the highest agricultural land costs in the nation, creating the greatest capitalization challenge for Hawai'i farmers and a significant barrier to increasing food security. Although short-term land leases are readily available, they generally do not support farmers' building equity, as most agricultural leases now prohibit the farmer (and farm families) from living on the land. Surveys of farm communities show virtually unanimous conviction that *farmers need to be able to live on the land* to adequately protect crops, equipment and infrastructure from theft, vandalism and invasive species, especially feral animals like goats and pigs. Farming without building equity and/or commuting to a field are unstable situations for farm families where personal energy and finances are expended with a high risk of losing that investment.

This project researched how agricultural and community land trusts could increase affordable access to land and housing in which farmers could build equity; convened a working group to discuss these findings and the work of other stakeholders in the State on this issue; and examined existing regulations to determine if any legislative changes are required at State and County levels for various models of on-farm dwellings.

Our research indicates that instead of borrowing from what we assumed were numerous examples of agricultural land trust models on the mainland, Hawai'i can help to inform an emerging national movement to secure affordable land and housing for farmers, as few land trusts have a deep history of combining conserving land for farmers with affordable housing that is traditionally provided by community land trusts (CLTs). In consultation with the working group, it was determined that no legislative changes are required to pilot a project that includes clustering of affordable housing.

Suggested parameters for designing a model for Hawai'i Island include ensuring farmers can live on their farms and can build and extract equity; inheritable, long-term 99 year ground leases; restrictions that keep the land and housing affordable in-perpetuity and in the hands of farmers; the ability of farmers to age in place. A preferred model includes utilizing and building existing expertise and capacity that includes: 1) Conservation land trusts and nonprofits (e.g. Hawai'i Islands Land Trust, Ala Kahakai Trail Association) or government agencies securing ag land through leases or fee simple ownership and leasing it to 2) a housing community land trust (needs to be established) with, 3) programmatic support for farmers provided by existing farmer training and mentoring programs (e.g. The Kohala Center's Beginning Farmer Rancher Program) and housing counseling services (e.g. Hawai'i Community Assets or a new Community Land Trust).

Projects to further this work include: 1) Support the stakeholder working group relationships and dialogue through periodic email outreach, informal discussions, and reconvening of the working group as warranted; 2) Research and identify the key design components for affordable farmer and farmworker housing; and, 3) Coordinate an ag land trust pilot project.

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I. Introduction

The high costs of land in Hawai'i coupled with farming leases that prohibit housing and don't provide opportunity for farmers' building equity constrains local food security. With generous support from the Bill Healy Foundation, The Kohala Center

- researched the role agricultural land trusts that include affordable housing could play in addressing this issue, and
- Convened a working group to discuss these findings and the work of other stakeholders in the State on this issue.

The primary drivers for undertaking this project included:

- Removing/reducing the cost of land so more people can farm;
- Giving farmers a chance to build equity;
- Allowing farmers to live on land they farm;
- Providing secure land tenure vs. short-term leases, unfavorable terms, arbitrary or unclear performance standards, terminations without cause, and inability to secure financing, etc.;
- Increasing ag production by keeping land in active farmers' hands.

Our project goal was to create a foundation of knowledge and form partnerships to increase access to land for farmers on which they can live and build equity. To meet the project objectives of determining potential structures for an ag land trust we:

- Researched agricultural and community land trust models.
- ➔ Consulted with a working group of stakeholders from around the State to create shared knowledge regarding challenges, potential solutions and the required partnerships to advance ag land trust initiatives. See Appendix A for a list of the working group members;
- Examined regulations to determine if legislative changes are required at State and County to develop land trust models.



Land trusts have been used for over 100 years to preserve land for specific uses and benefits, including agriculture. Community land trusts (CLT) hold land and infrastructure for and by communities with a successful track record in providing affordable housing.

Across the U.S. mainland few land trusts have a deep history of combining conservation of agricultural land *and* providing affordable housing for farmers. Community land trusts that have a rich and, generally successful history in developing and managing community based affordable housing are beginning to include agricultural and farming in their missions, while conservation land trusts that include an agricultural mission (preserving land through easements or fee simple purchase) are beginning to address affordable housing.

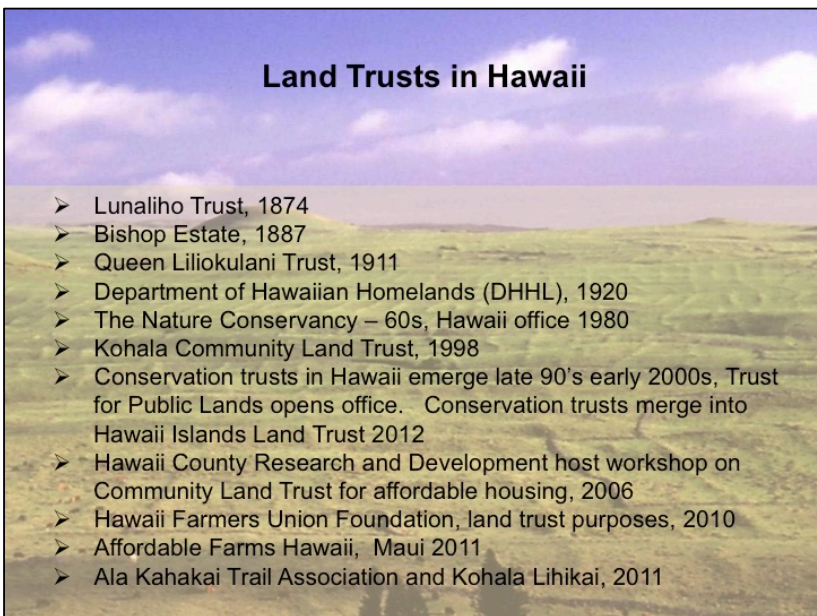
There is an emerging understanding around the country, driven by the recent agricultural renaissance of local food security movements with the emergence of regenerative farming, young farmers programs, farm-to-table restaurants, localvore and foodie groups, etc., that to meet their various objectives secure land tenure and affordable housing for farmers must be addressed.

Our research indicates that instead of borrowing from what we assumed were numerous examples/models on the mainland, Hawai'i can be part of and help to inform an emerging national movement to secure affordable land and housing for farmers, as few land trusts have a deep history of combining conservation land for farmers with affordable housing.

Brief History of Land Trusts in Hawai'i

Hawai'i has a long history of land trusts, where land is held for the benefit of the public or specific beneficiaries to support agriculture, homes, education, protection of open spaces, ecological functions and habitat, and cultural and archeological sites. Hawai'i organizations with land trust purposes and their date of origin are listed to the right.

Some of these trusts have leased land for agricultural purposes and, in the past, allowed lessees to build homes on the leased property. The State has also leased land for farming. Unfortunately there is some history of abuse of the leases, in which lease conditions were violated, creating enforcement and eviction issues for the trusts and State. In some cases trusts have lost



land when lessees successfully petitioned the State to convert their leases to fee simple holdings.

II. Challenges

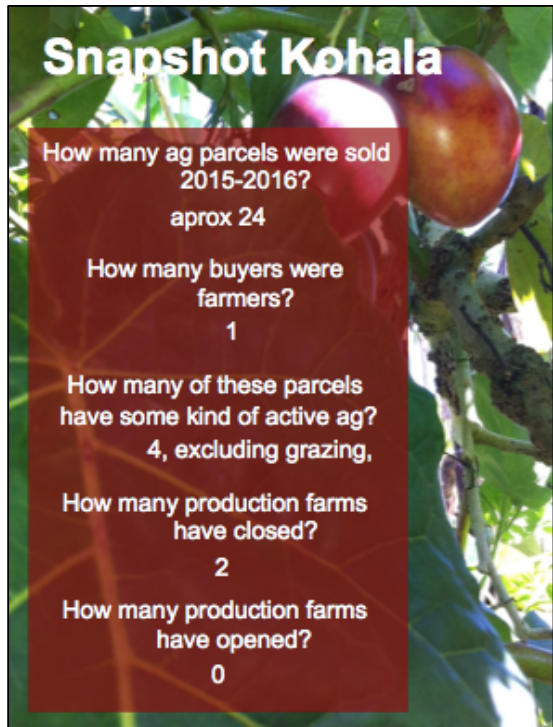
Farmland on Hawai'i Island and throughout most of Hawai'i is priced far above the financial resources of most current or aspiring farmers.

Hawai'i has the highest agricultural land and input costs in the nation, creating the greatest capitalization challenge for Hawai'i farmers and a significant barrier to beginning or maintaining agricultural activities and increasing food security.

Many farm ground leases have unfavorable terms and farmers can't build equity.

Farmers' investments (time, money, infrastructure) are at risk with

- short lease periods (>10 years), which may or may not be renewed;
- arbitrary performance standards that don't protect farmers' interests;
- and terms that do not support farmers building equity in the land they are farming.



Also leases and licenses typically don't account for,

- the value of soil building, critical to sustainability and regeneration, and
- unique understandings and intellectual property (IP) specific to the farmers' stewardship practices.

Prohibitions from living on land increase costs and instability for farm families.

Most leases prohibit the farmer, farm families and/or farm workers from living on the land. Surveys of farm communities show virtually unanimous conviction that farmers need to be able to live on the land to adequately protect crops, equipment and infrastructure from theft, vandalism and invasive species (especially feral animals like goats and pigs). Commuting to fields and processing facilities increases farmers' expenses.

Farming without building equity and/or commuting to a field are unstable situations for farm families where personal energy and finances are expended with a high risk of losing that investment. This can have particular impact on regenerative organic farmers who have high expenses due to materials and practices that build soil and restore and maintain ecological functions and additional documentation and certification requirements.

Unexpected

At the outset of the project potential funders who were interviewed regarding funding for the housing component of an agricultural land trust were cautious of a model that included an affordable housing community land trust (CLT) component. The common sentiment was that long-term ground leases (part of the community land trust model) essentially created rentals and didn't help homeowners create real estate wealth, although the money CLT homeowners save creates other forms of wealth, freeing money for education, retirement, etc. Interestingly, these same funders have communicated interest in CLTs and farmer housing towards the end of this project, autumn of 2017.

III. Research Findings

Agricultural Land Trusts

In the last 40+ years the primary work of land trusts and government programs with missions that included supporting agriculture was preserving agricultural land with easements. The primary drivers for preserving ag land were to:

- protect it from development. Ensuring continual (food) production was not the driver – just that the land would be available now or in the future for agriculture.
- support family farming by offering a way for farmers to receive the development monetary value of their land without developing it. The assumption was that the farm would be passed down to another generation of farmers within the family.

Land trust experience suggests that preserving ag land through easements or fee simple purchase does not necessarily ensure that:

- land stays in production just because it can't be developed for other purposes;
- subsequent buyers are farmers or that the land remains affordable for a farmer. Even though an agricultural easement generally decreases the value of land, the selling price with an easement is still often above what most, especially new, farmers can afford. Near urban areas or high real estate value areas (NY, HI, CA), non-farmer buyers who want an estate and open space are more likely to have the means to purchase the property.

Land trusts can address the above issues by:

1) Adding additional language to agricultural easements to:

- ensure land must be in production or leased for production (eliminating preserved ag land purchased for open space ranchettes or estates), and
- the ag land trust has first option to purchase the farm at agricultural value. This likely increases the initial protection costs of the land because the landowner is giving up an additional property entitlement (giving up right to sell to anyone on open market).

2) Becoming match makers so that when a farmer wishes to sell her/his land, the land trust steps in and looks for a farmer-buyer and sometimes pays the difference between market and agricultural value. A land trust may also purchase and hold the farm land until a farmer can secure the financing.

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3) Subsidizing purchases, so that the land trust pays for all or a portion of the costs. Usually, a land trust will add a provision that they have the first option to purchase back at agricultural values when subsidizing a purchase to keep a farm in an affordable pool for generations to come. However this does not guarantee future affordability if the trust can't afford to re-purchase. To ensure the farm remains affordable in-perpetuity, the resale of the farm could be restricted to farmers at agricultural value in addition to any first right to purchase options. The subsidy (value of grant to farmer) is balanced (recouped) through restrictions on future re-sales to ensure future affordability for future farmers.

Community Land Trusts (CLT)

Our research then turned to community land trusts to determine if CLTs could play a role in increasing access to affordable land for farmers on which they can live and build equity with the intention of creating affordable homeownership in-perpetuity.

CLTs typically retain permanent ownership of land, which is then leased to other entities that own the improvements upon the land, such as residential homes, commercial buildings, agriculture or recreational facilities. For example to ensure long-term housing affordability, a CLT separates the ownership of land and housing, preventing market factors from causing land prices to rise as significantly as fee-simple land and thereby intending to guarantee that housing will remain relatively affordable. Because land trusts have a long history in Hawai'i compared to the U.S. mainland, most people in Hawai'i are familiar with this leasehold arrangement.

To create affordable housing, typically a CLT will:

- acquire land and maintain ownership of land
- develop housing or assist with self-help housing
- issue long-term (typically 99 year) renewable leases significantly below market rate
- ensure buyer is compliant with home upkeep and maintenance to protect homeowner and CLT investment
- restrict the resale value of homes so a seller earns a portion of the increased property value (appreciation), in addition to recouping the original down payment, in return for affordability. This allows the homeowner to build equity while keeping the price relatively low for the next buyer, even if the open market cost of housing in the surrounding communities increases dramatically.

The modern U.S. CLT era began in 1969 out of the civil rights movement in Lee County, Georgia to help rural African-American farmers secure land. See Appendix B for additional information about the history of CLTs in the U.S.

The key factors that contribute to the success of CLTs are that the:

- community is integrally involved during key decisions,
- community group takes a long term formal role in the ownership, stewardship or management of the homes,
- benefits to community are clearly defined and legally protected in-perpetuity.

Community land trusts generally commit to a tri-party governance and board composition of CLT residents, community residents, public representatives.

Community Land Trusts build wealth for their communities by:

- providing low- and moderate-income people with the opportunity to build equity through homeownership and ensure these residents are not displaced due to land speculation and gentrification.
- protecting owners from economic downturns because people are not over extended; as a result, foreclosure rates for land trusts have been as much as 90 percent less than conventional home mortgages.
- allowing for the possibility of direct, grassroots participation in decision-making and community control of local assets since typically at least one-third of a land trust's board is composed of community residents.

Examples

See Appendix C for examples of agricultural and community land trusts.

Funding

There are programs at the county, state, and federal level that support land trust and government agency purchases of agricultural easements or fee simple ownership of agriculture land for preservation. CLT homes are typically publicly supported through direct subsidies, zoning incentives, donations, grants, and government programs. Private donations and grants often play a large role in both agricultural and community land trust purchases and operations. See Appendix D for additional information about funding.

Legislation

No legislative changes are required to initiate/launch an agricultural land trust project with affordable housing component on private land. This is especially true for Hawai'i Island which provides considerable flexibility and exemptions from subdivision rules for affordable housing projects. See Appendix E for a summary of Hawai'i State and Hawai'i County rules that support clustering housing on agricultural land on Hawai'i Island which could facilitate the establishment of agricultural land trusts to support affordable access to land and housing for farmers and ranchers.

Other islands require no legislative changes or exemptions unless the agricultural land trust project wants to cluster housing, creating housing densities greater than the current zoning allows. An organization on Maui is working to change their county ordinances to allow an increase in density with clustering when the project partners with an accredited

land trust to support farming. See Appendix F for copies of the proposed Maui legislation.

While the above is good news for more quickly launching an agricultural land trust project in Hawai'i on private land, the State owns the vast majority of agricultural land. Although the State will currently grant long-term leases (up to 99+ years), it prohibits lessee farmers from living on the land they cultivate or ranch. Unfortunately ag/farming leases have sometimes not been used for the lease's intended purposes and the State is still working to evict lessees who live on public land (squatters from the State's perspective). Fortunately, individuals within the State Department of Agriculture acknowledge that finding a workable solution to allowing farmers to live on leased State agricultural land is important.

IV. Agricultural Land Trust Design Options for Hawai'i Island

Model Components

There are multiple ways to increase access to land for farmers on which they can live and build equity. Optimally the primary components would include:

1. Affordable land
2. Affordable housing (self-help or developed)
3. Program support offered for both farm operations and housing, such as mentoring for newer farmers and support for home maintenance to ensure maintenance of home value that might include financial counseling to avoid foreclosure if farmer's financial situation changes. Thorough upfront counseling and screening of CLT residents is a key factor for success.

Potential Parameters for Designing a Hawai'i Island Model

Parameter objectives might include:

- Land affordability in-perpetuity
- Provisions that encourage land be kept in continuous agricultural production*
- Land farmed by those who dwell on the land*
- Leases are long-term and can be passed down to heirs, assuming conditions of lease are continually met
- Land with housing is kept in affordable pool for future farmers through restrictions that limit increase in equity in exchange for affordable land and/or assistance securing a rural loan or grant to offset house construction costs
- Deed and leases ensure next owner (if not passed onto heir) is a farmer*
- Deed and leases require some percentage of production to be food.*

*Note that there was considerable difference of opinion among project working group members about the goal of ensuring that land be kept in agricultural production and that some percentage of cultivated land had to increase local food production. Some of the working group stakeholders felt these provisions were too restrictive and wanted to be sure that the land was set aside for more general agricultural uses and that farmers could retire and age in place with some or all of their equity preserved for themselves and potentially for their heirs.

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Potential Models for an Agricultural Community Land Trust

The primary functions for an Agricultural Community Land Trust include an ability to:

- 1.) Hold land through long-term lease or fee simple purchase,
- 2.) Develop and manage housing, and
- 3.) Provide programmatic support – manage farm leases, ag training/mentoring farmers, housing counseling.

One entity could establish and offer all the components (e.g. a CLT) or collaborations and partnerships could be established. For example, a CLT could provide the affordable housing expertise for agricultural land owned by the County or another land trust (e.g. Hawai'i Islands Land Trust), and nonprofits or community groups could offer the programmatic support for farmers. Two model options are presented below.

1. Combined agricultural and community land trust model that:
 - a. provides low or no cost ground leases for farming and housing.
 - b. develops housing and provides support for farmer to build.
 - c. keeps land and housing in an affordable pool in-perpetuity.
 - d. includes the capacity to provide lessees with programmatic support.
2. Agricultural land trust that:
 - a. provides low or no cost ground leases for farming and housing.
 - b. does *not* include housing support, so that leasees have to develop housing on their own or with self-help housing technical assistance available from USDA Rural Development, Rural Community Assistance Corporation (RCAC) or other housing agencies.
 - c. keeps land and housing in affordable pool in-perpetuity.
 - d. includes programmatic support for lessees.

Model two requires less capacity-building and no CLT is required for housing. However, without housing development support, the farmer must do more work. Farmers are traditionally less willing to access these types of programs.



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Preferred Model

Some of the skills sets and capacity required for an agricultural land trust already exist in the State and on Hawai'i Island. The preferred model includes utilizing and building existing expertise and capacity such as conservation land trusts and nonprofits (e.g. Hawai'i Islands Land Trust, Ala Kahakai Trail Association) or government agencies that secure ag land through leases or fee simple ownership and lease it to a housing community land trust (needs to be established) with programmatic support for farmers provided by existing farmer training and mentoring programs (e.g. The Kohala Center's Beginning Farmer Rancher Program) and housing counseling services (e.g. Hawai'i Community Assets or the new CLT).

The table below lists organizations that could potentially lend expertise or support an ag land trust with housing. This is not an exhaustive list of potential organization and doesn't imply agreement by the organizations.

Existing Expertise	Purposes include ability to hold ag easement and fee simple ownership	Includes purposes that support affordable housing	Manage leases, farmer mentoring, training, etc.	Financial Counseling
Affordable Farms Maui	X to be established			
Bishop Estate and Kamehameha Schools	X		X	
Department of Hawai'ian Home Lands	X	X	X	X
Farm Apprentice Mentoring, Hawai'i Farmers Union United			X	
Farm Bureau			X	
Hawai'i Community Assets				X
Hawai'i Farmers Union Foundation	X		X	
Hawai'i Farmers Union United			X	
Hawai'i Institute for Permaculture			X	
Hawai'i Islands Land Trust	X			
Kohala Community Land Trust	X	X		
Kohala Lihikai	X	X		
National Park Service, Aka Kahakai National Historic Trail	X			
North Shore Community Land Trust	X			
Rural Community Assistance Corporation				X
The Kohala Center, Beginner Farmer/Rancher Program			X	
The Kohala Center, Rural and Cooperative Development Services			X	
USDA Rural Development				X

Model Details

Landowner/Lessor– Who will own the land and issue affordable or no cost leases to farmers?

Options: Potential for public and nonprofit partnership using an existing land trust, (Hawai'i Islands Land Trust) or new CLT with long-term lease of county or state lands. A long-term lease is less expensive than fee simple purchase.

Affordable housing – Who will help farmers secure funding for housing and/or develop housing?

Create a new community land trust as CLT duties are not currently in the mission of any Hawai'i land trust with capacity. There are existing land trusts or nonprofits whose purposes include or are broad enough to develop a CLT program if they had assistance developing capacity, e.g. Ala Kahakai Trail Association, Kohala Lihikai, Kohala Community Land Trust (inactive), etc.

OR

Farmers hui (group) develops a CLT with assistance from USDA Rural Development or RCAC for housing.

Program support – Who will help farmers access funds for ag infrastructure and offer training or mentoring to new farmers? Who will help screen farmer-buyers, help farmers secure financing for home, ensure timely maintenance to protect investments, etc?

Ag program support - The Kohala Center, Farm Bureau, Hawai'i Farmers Union, other agricultural organizations with farmer educational and mentoring programs.

Enforcement – Who will ensure enforcement of conditions of agricultural easements and leases for farming and housing? Historically, County, State, and private landowners have experienced lease violations, so enforcement is a significant issue.

Hawai'i Farmers Union Foundation is examining how it can play an enforcement role in these types of projects since this organization has agricultural expertise to determine if farmer is meeting lease conditions. A Community Land Trust also typically includes enforcement provisions for housing.

Land Tenure Considerations – What is optimal land tenure for CLT and/or ag land trust? Considerations for fee simple land ownership:

- Fee simple land with agricultural easement assurances with the intent to keep the land in an affordable pool doesn't require a separate entity to hold and manage land in-perpetuity, so there are fewer perpetual operational costs.
- Purchasing fee simple land is much more expensive than leasing to acquire unless the land discounted or donated to a CLT or managing entity.

Considerations for lease holding:

- Land is less expensive to acquire than fee simple and long-term leases can be complex to develop and monitor though farmers need the stability of long-term leases and mortgage and operational financing often requires long terms.
- There are greater on-going operational costs to monitor lease agreement

compliance.

- It may be best for a land trust to lease from a publicly supported body (non-profit or government agency) to better ensure likelihood of lease renewal assuming lease conditions are met.

Other Considerations

The following questions need to be considered in the refinement of the design of an agricultural land trust with housing:

- Older farmers – with a continual production requirement, what are their options for retirement and remaining on the farm/in one's family housing?
- Scale – what is the optimal scale for an initial project? What criteria dictate scales?
- Multi-island structure options or statewide effort – what are the pros and cons? Working group members agreed that not duplicating administrative functions in organizations is key to long-term viability for any ag land trust initiatives. The example of the merger of the conservation land trusts on each island into a statewide land trust was cited. Most likely the same organizations will be tapped by every island for holding land tenure and building housing capacity, although the community leaders and organizations that initiate and implement projects will vary by island.
- In-perpetuity – How to avoid forced conversions of leases to fee simple? Lessees on Oahu forced the Lunalilo Trust to sell land that had been in long-term leases, converting long-term organizational leases to fee simple private ownership. Is this a potential threat to CLTs?

Note that some community land trusts use a 501(c)(2) organization to hold title and manage the real property. A 501(c)(2) is a title-holding corporation that gives its revenues to a tax-exempt organization, a 501(c)(3). A 501(c)(2) cannot receive tax-deductible donations. The advantages of using a 501(c)(2) organization are that this type of organization can develop and implement buyer and lessee selection criteria without jeopardizing its non-profit status such as residency-based criteria for local owner occupancy, skills-based criteria for farmers and workforce, Income-based criteria for affordable housing,

V. Potential Next Steps

Three future projects have been identified to advance the work that this paper describes:

- 1) Support the stakeholder working group relationships and dialogue through periodic email outreach, informal discussions, and reconvening of the working group as warranted.
- 2) Research and identify the key design components for affordable farm family and farm worker housing including: materials specific to subtropical environments (e.g. mold resistant); code changes that could reduce costs without compromising health and safety, especially since many farm houses can't affordably tie into existing power, water, or wastewater treatment grids (e.g. grey water systems, composting toilets); potential for use of island-grown building materials (e.g. grow bamboo vs. importing wood, steel, etc.
- 3) Coordinate an agricultural land trust pilot project by assisting with location or development of pilot project partner organizations; designing project implementation outline and schedule; identifying funding appropriate to the various project elements.

Appendix A Working Group

This project consulted with organizations and individuals from around Hawai‘i including farmers, community members, and representatives from government agencies, land trusts, ag groups, and housing and agricultural funding institutions. Consultation began with phone outreach and then in-person meetings for most of the group. A few elected to offer their thoughts and declined participating in the convening of the group. Several individuals had scheduling conflicts and were not able to make the convening but offered detailed input.

<i>Name</i>	<i>Organization</i>
Aric Arakaki	National Park Service, Aka Kahakai National Historic Trail
Gail Byrne Baber	Malama Kohala Kahakai
Dale Bonar	Former Director, Maui Land Trust; Coordinator Affordable Farms Maui, former member of the Hawai‘i State’s Legacy Lands Conservation Commission
Kawika Burges	CEO, Hawai‘i Islands Land Trust
Randy Cabral	Hawai‘i Island Farm Bureau
Julie Ann Cachola	Planner, Department of Hawaiian Homelands
Keola Childs	Hawai‘i County Planning Department, Long-term Planning
Doug Cole	North Shore Community Land Trust
Elizabeth Cole	The Kohala Center
Cindy Evans	Hawai‘i State Legislature
David Fuertes	Kohala rancher, Korean Natural Farmer
Marissa Harman	Kamehameha Schools, Assets Management Hawai‘i Island
Lea Hong	Trust for Public Lands
Raymond Kawamoto	Waimea farmer
Diane Ley	Director, Hawai‘i County Research and Development
Stan Keasling	CEO, Rural Community Assistance Corporation
Tim Richards	Rancher, Hawai‘i County Council Member
Nathan Riedel	USDA Rural Development, Multi-Family Housing Specialist
Simon Russell	Maui farmer, President Hawai‘i Farmers Union Foundation
Sammy Stanboro	Kona farmer
Kyle Studer	Ka ‘u farmer

Appendix B

Community Land Trust Brief History

The concept of land treated as a common heritage is embedded in the history of many cultures and people around the world, e.g. native peoples, New England custom of town commons, etc. The modern U.S. CLT era began in 1969 emerging from the civil rights movement in Lee County, Georgia, to address poverty and help rural African-American farmers secure land. A number of influential figures in the movement, including Bob Swann and Slater King (cousin of Martin Luther King Jr.), wanted to create long-term opportunities for economic and residential independence for African Americans.

The initial Georgia project, New Communities, was informed by the Gramdan or village land trust movement of the 1950s and 1960s in India where land was held in trust by villages and by the New Jewish Fund projects that offered 99+year leases for communities and agricultural co-ops in Palestine and Israel.

New Communities inspired the establishment of other rural CLTs. In the 1980s, CLTs were established in urban settings to tackle issues such as affordable home ownership, neighborhood revitalization, and resistance to gentrification. The housing boom of the 1990s and rapidly rising cost of housing inspired the third wave of CLTs to focus on affordable housing. These CLTs new mission was supported by low interest, fixed rate mortgages and low community unemployment, which enabled many lower income and minority individuals to become homeowners with the support of CLTs. Since 2008 and the great recession, increased unemployment and tightened underwriting guidelines have reduced the pool of potential CLT homebuyers. CLTs are increasingly including agriculture, especially urban agriculture, and other local economic development in their activities.

Appendix C

Examples of Agricultural and Community Land Trusts

Most land trusts have a conservation mission and some preserve agricultural land, primarily through easements. Housing is not a component of most agricultural land trusts. There are approximately 1,700 conservation land trusts in the US. Community Land Trusts have traditionally had a housing focus, although, they emerged from the Civil Rights era as a way to assist African-Americans farmers secure access to land. There are almost 300 community land trusts with a housing focus in the US.

Existing and Emerging Ag Land Trust Scenarios with Housing

Current:

- Trust owns multiple farms and each farm is leased by an individual farmer usually with housing.
- Trust owns a large parcel and offers leases to multiple farmers. In this case housing is often not included, as in Hawai'i.

Emerging: Trusts own land and are raising funds for housing for multiple farmers.

Examples: Ag Land Trusts with Housing

Trust: **South of the Sound Community Land Trust**

Organizational structure: 501(c)(3), membership based

Location: Washington State

Farm: Scatter Creek Farm

Acreage: 100 acres owned by land trust

Land Tenure: 99-year, inheritable ag ground leases

Housing: Farmers who have purchased or constructed housing and/or improvements on leased land can capture a fair value return on those investments by selling these to the next farmer.

Other programs: Affordable small farm equipment rental

Farmers in housing: 1 family

Other farmers: varies 3-4



Trust: **Puget Consumer Coop Farmland Trust**

Organizational structure: 501(c)(3)

Location: Washington

Farm(s): 19 farms

Acreage: 20 – 300

Land Tenure: Primarily owned by farmers with ag easement held by PCC Farmland Trust. The Trust owns some of the farms, which they lease to farmers.

Housing: No additional provided by Trust. Farms have housing for existing farmers.

Other programs: Farmland Stewardship to provide technical assistance to farmers to move towards sustainable farming practices. Community Engagement to offer the public multiple ways to get out on the farm or engage with farmers, e.g. harvest festivals, farm tours, volunteer opportunities, etc.

Farmers in housing: Housing on each farm.



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Trust: Berkshire Community Land Trust, Inc. One of the oldest community trusts in the nation, this trust also has community housing projects and another farm.

Location: Massachusetts

Organizational structure: 501(c)(3) educational, membership nonprofit with 501(c)(2) entity to own and manage land.

Farms: Indian Line Farm

Acreage: 17 acres

Land Tenure: 99-year lease to farmers.

Housing: Farmers purchased house, barn, and other buildings and can gain equity through improvements made to farm. Trust retains option to purchase buildings and improvements back and to resell to a new farmer at replacement value.

Other programs: Regional education on community land trusts.

Farmers in housing: 1

Other farmers: 2



Lopez Community Land Trust

Trust: Lopez Community Land Trust

Award winning affordable housing trust has recently included agriculture to its mission.

Organizational structure: 501(c)(3) nonprofit

Farm: Stonecrest Farm.

Acreage: 46

Land Tenure: Initially 60-month lease transition into longer-term; former owners and farmers will live out their life on the farm.

Housing: One bedroom guesthouse and bunkhouse available to farm lessee.

Other programs: Affordable housing projects, internships,

Farmers in housing: New lessee not yet selected.

Other farmers: One lease holder, but may be a co-op.

Examples: Community Land Trust – Housing Only

- There are almost 300 community land trusts in the U.S
- Community members housed - can vary significantly--less than a dozen to 2,000
- Structure - usually 501(c)(3)s and sometimes have a 501(c)(2) to hold and lease real estate
- Tenure - long-term ground lease to tenants with trust ownership of the land
- Housing Development - sometimes the trust is the housing developer/builder and sometimes partners with building organizations such as Habitat for Humanity or self-help groups are the builders.
- Other Programs - usually homeowner education and financial counseling, some trusts offer loan programs.

Successful community land trusts examples include:

- Bolinas Community Land Trust, Bolinas, California, bolinaslandtrust.org
- Champlain Housing Trust, Burlington, Vermont, getahome.org
- Homestead Community Land Trust, Seattle, Washington, homesteadclt.org
- Island Housing Trust, Bar Harbor, Maine, islandhousingtrust.org
- Jackson Hole Housing Trust, Jackson, Wyoming, housingtrustjh.org
- Madison Area Community Land Trust, Madison, Wisconsin, affordablehome.org
- Opal Community Land Trust, Orcas Island, Washington, opalclt.org

Appendix D

Funding for Ag and Community Land Trusts

Community Land Trusts

CLTs usually need subsidies to purchase land and to develop homes. Private foundations and government agencies are a typical source for grants. Nationally, the federal “HOME Investment Partnership Program” is the single most important source of both project subsidies and operating support for CLTs. Fannie Mae has loan packages specifically designed for CLTs.

An outline of foundation, bank, and government funding sources for community land trusts can be found at the National Community Land Trust Network website.

<http://cltnetwork.org/funding-opportunities-community-land-trusts/>

The following information about Federal programs from *Development Without Displacement: Organizational and Operational Choices in Starting a Community Land Trust*, is available at the CLT Resource Center (www.burlingtonassociates.com) and may be downloaded in its entirety free of charge.

“Any federal funds that are offered to nonprofit 501(c)(3) corporations for the construction of affordable housing or the redevelopment of low-income neighborhoods can be used – and have been used – by CLTs. The two federal programs from which CLTs have received the greatest project support over the past decade have been the Community Development Block Grant Program (CDBG) and HOME. Under the latter program, it should be noted that many CLTs have been designated “Community Housing Development Organizations” (CHDOs) by their Participating Jurisdictions. In 1992, Congress amended the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12773) to allow even start-up CLTs to qualify for CHDO status (see Appendix A). Unlike other nonprofit housing developers seeking CHDO designation, a CLT can be awarded CHDO status without having “a demonstrated capacity for carrying out HOME activities” and without a “history of serving the local community within which the HOME-assisted housing is to be located.”

Agricultural Land Trusts

Examples of County and State funding sources to support purchases of agricultural lands and easements:

Hawai‘i County Open Space and Natural Resource Conservation (PONC) program
<http://www.Hawai‘icounty.gov/finance-property-management/>

Hawai‘i State Legacy Lands Conservation Program
<https://dlnr.Hawai‘i.gov/ecosystems/llcp/>

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Federal Programs those primarily administered by the US Department of Agriculture (USDA) such as the Agricultural Conservation Easement Program,
<https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/acep/>

Land and Water Conservation Fund
<https://www.doi.gov/lwcf>

Appendix E

Relevant zoning and land use regulations supporting clustered family or farm worker housing on agricultural land on Hawai'i Island

1. Within an agricultural land classification, the smallest allowable lot size on Hawai'i Island is five acres in Agricultural zoning, smaller in the County's Residential Agriculture and Family Agricultural Zoning, with a one acre minimum allowance in the Agricultural State Land Use District. (Ag 1). If housing is to be placed on smaller than one acre lots, then the land must be reclassified into the Rural (minimum ½ acre lots) or Urban districts through a State land use boundary amendment. If the amount of land to be reclassified is 15 acres or more, then the State Land Use Commission (LUC) must approve the change; if the amount of land is less than 15 acres, this change can be made at the County level.

[HI Rev Stat § 205-4 \(2016\)](#),

<http://law.justia.com/codes/Hawai'i/2016/title-13/chapter-205/section-205-4>

2. HRS 205-2 and 4.5 permit "Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including...farm dwellings, which is defined as a single-family dwelling located on and used in connection with 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;...employee housing. County Code also allows additional farm dwellings with a farm dwelling agreement and an agricultural development use plan.

3. There are several ways to design clustered housing under Hawai'i County regulations. One is through a Planned Unit Development (PUD) which does not allow for overall project area density exceptions but does allow for a variance package that can alter zoning code provisions including minimum lot sizes without limitation (except for the State statute limiting ag-zoned parcels to one-acre minimum size), as well as subdivision standards for lot design, placement, and infrastructure (mainly roads) at the County level. A PUD application is filed with the Planning Department and then reviewed and approved, subject to various conditions, by the relevant County Planning Commission.

Hawai'i County Zoning Code: Article 6. Optional Development Regulations.

Division 1. Planned Unit Development (P.U.D.):

Section 25-6-1. Purpose.

The purpose of planned unit development (P.U.D.) is to encourage comprehensive site planning that is compatible with the surrounding community and that adapts the design of development to the land, by allowing diversification in the relationships of various uses, buildings, structures, open spaces and yards, building heights, and lot sizes in planned building groups, while still insuring that the intent of this chapter is observed.

Section 25-6-2. Minimum land area required.

The minimum land area required for a P.U.D. [total project area] shall be two acres.

4. Agricultural Project Districts (APDs) are also another potential mechanism, depending on site conditions and goals. See HCC 25-6-50 in <http://www.hawaiicounty.gov/lb-countycode/#countycode>

“The agricultural project district (APD) development is intended to provide a flexible and creative planning approach for developments within the agricultural zoning districts, in lieu of specific land use designations. It will allow for flexibility in the location of specific types of agricultural uses and variations in lot sizes. Under this planning approach, opportunities will be provided for a mix of small scale agricultural activities and associated residential uses, as well as larger agricultural projects. This district will also provide a vehicle to satisfy the demand for a rural lifestyle on marginal agricultural land, while decreasing the pressure to develop important agricultural land for this purpose. The planning approach would establish a continuity in land uses and designs, while providing for the needed infrastructural facilities and systems to support the various types of agricultural developments”

The minimum land area required for an agricultural project district shall be five acres. . . . Any uses permitted either directly or conditionally in the A or IA districts shall be permitted in an agricultural project district, and the overall density permitted in an agricultural project district shall not be greater than one acre per building site.”

5. There is also the possibility of developing agricultural housing with exemptions from most State statutes and County zoning, subdivision, and building code regulations under: (i) Hawai‘i Revised Statutes 201H for affordable housing, and/or (ii) Section 46-15 for experimental housing, as long as the plans are approved by the Hawai‘i County Council. Significant here is that this “exemption” route allows the one-acre minimum lot size requirement in the State Land Use law (HRS 205) to be eliminated; house lots of any justified size can be established, analogous to a PUD approval for urban areas.

2015 Hawai‘i Revised Statutes, TITLE 13. PLANNING AND ECONOMIC DEVELOPMENT

201H. Hawai‘i Housing Finance and Development Corporation

201H-38 Housing development; exemption from statutes, ordinances, charter provisions, and rules, HI Rev Stat § 201H-38 (2015), [http://law.justia.com/codes/Hawai‘i/2015/title-13/chapter-201h/section-201h-38](http://law.justia.com/codes/Hawai'i/2015/title-13/chapter-201h/section-201h-38), states:

(a) The corporation may develop on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of, housing projects that shall be exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon; provided that: (1) The corporation finds the housing project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety; (2) The development of the proposed housing project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or of the various boards of water supply authorized under chapter 54. . . .

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Hawai'i Revised Statutes 2009 Hawai'i Revised Statutes Volume 02 TITLE 6 - COUNTY ORGANIZATION AND ADMINISTRATION CHAPTER 46 - GENERAL PROVISIONS §46-161 - TITLE 6 - COUNTY ORGANIZATION AND ADMINISTRATION CHAPTER 46 - GENERAL PROVISIONS

Chapter 46 gives Counties ability to do experimental housing: Chapter 46, Section 46-161.

[HI Rev Stat § 46-15 \(2013\)](#)

<http://law.justia.com/codes/Hawai'i/2013/title-6/chapter-46/section-46-15>

§46-15 Experimental and demonstration housing projects.

(a) The mayor of each county, after holding a public hearing on the matter and receiving the approval of the respective council, shall be empowered to designate areas of land for experimental and demonstration housing projects, the purposes of which are to research and develop ideas that would reduce the cost of housing in the State. Except as hereinafter provided, the experimental and demonstration housing projects shall be exempt from all statutes, ordinances, charter provisions, and rules or regulations of any governmental agency or public utility relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction and sale of homes thereon; provided that the experimental and demonstration housing projects shall not affect the safety standards or tariffs approved by the public utility commissions for such public utility.

The mayor of each county with the approval of the respective council may designate a county agency or official who shall have the power to review all plans and specifications for the subdivisions, development and improvement of the land involved, and the construction and sale of homes thereon. The county agency or official shall have the power to approve or disapprove or to make modifications to all or any portion of the plans and specifications.

The county agency or official shall submit preliminary plans and specifications to the legislative body of the respective county for its approval or disapproval. . . .

Any experimental or demonstration housing project for the purposes hereinabove mentioned may be sponsored by any state or county agency or any person as defined in section 1-19.

The county agency or official shall apply to the state land use commission for an appropriate land use district classification change, except where a proposed project is located on land within an urban district established by the state land use commission. Notwithstanding any law, rule, or regulation to the contrary, the state land use commission may approve the application at any time after a public hearing held in the county where the land is located upon notice of the time and place of the hearing being published in the same manner as the notice required for a public hearing by the planning commission of the appropriate county.

(b) The experimental and demonstration homes may be sold to the public under terms and conditions approved by the county agency or official who has been designated to review the plans and specifications.

(c) The county agency or official may adopt and promulgate rules and regulations which are necessary or desirable to carry out the purposes of this section. [L 1970, c 108, §1; am L 1975, c 142, §1; am L 1977, c 207, §1; am L 1984, c 66, §1]

Appendix F
Proposed Changes to Maui County Rules

(Rule Changes Begin on next Page)

ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE TO INCLUDE PROPERTY
CONVEYED TO AN AGRICULTURAL LAND TRUST AS
CRITERIA FOR FARM LABOR DWELLING USE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose and intent. The purpose of this ordinance is to include property owned by or conveyed through a perpetual conservation easement to an agricultural land trust as criteria that allows for farm labor dwelling use, with the intent of keeping agricultural land affordable to farmers through the community land trusts model of housing development, consistent with the countywide policy plan.

SECTION 2. Section 19.040.040, Maui County Code, is amended by inserting a new definition to read as follows:

““Agricultural land trust” means a nonprofit organization registered with the department of planning, in accordance with section 19.30A.082, that acquires land that:

1. Is held in perpetuity;
2. Is primarily for conveyance under a long-term ground lease for the creation of farm dwelling units and farm labor dwelling units that shall be sold or rented to applicants that agree to participate in agricultural activities; and
3. Retains an option to purchase any farm dwelling unit or farm labor dwelling unit at a price determined by formula that is designed to ensure the dwelling unit remains affordable in perpetuity.”

SECTION 3. Section 19.30A.050, Maui County Code, is amended by amending subsection B to read as follows:

“B. Accessory Uses. Uses that are incidental or subordinate to, or customarily used in conjunction with a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area;
2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following [three] five criteria:
 - a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings;
 - b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system; [or]
 - c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production[.];
 - d. Subject lot is owned by an agricultural land trust; or
 - e. Subject lot is conveyed to an agricultural land trust through a perpetual conservation easement.

On the islands of [Moloka'i] Molokai and [Lana'i] Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050.B.2.a and 19.30A.050.B.2.b;
3. One agricultural products stand per lot, for the purpose of displaying and selling agricultural products grown and processed on the premises or grown in the County, provided that said stand shall not exceed three hundred square feet, shall be set back at least fifteen feet from roadways, shall have a wall area that is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010 of this code, except that paved parking shall not be required; stands that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, [Hawai'i] Hawaii Revised Statutes;
4. Farmer's markets, for the growers and producers of agricultural products to display and sell agricultural products grown and processed in the County; structures shall have a wall area that is at least fifty percent open; markets shall operate only during daylight hours and shall not operate on parcels less than ten acres; the director of public works may impose additional requirements if a building permit is required for any structures; markets that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, [Hawai'i] Hawaii Revised Statutes;
5. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County;

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6. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation;

7. Energy systems, small-scale;

8. Small-scale animal-keeping;

9. Animal hospitals and animal board facilities; if conducted on the island of [Moloka'i] Molokai, such uses shall have been approved by the [Moloka'i] Molokai planning commission as conforming to the intent of this chapter;

10. Riding academies; if conducted on the island of [Moloka'i] Molokai, such uses shall have been approved by the [Moloka'i] Molokai planning commission as conforming to the intent of this chapter;

11. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of [Moloka'i] Molokai, such uses shall have been approved by the [Moloka'i] Molokai planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection 19.30A.060.H shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, [Hawai'i] Hawaii Revised Statutes;

12. Except on [Moloka'i] Molokai, bed and breakfast homes permitted under chapter 19.64 of this code that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less; and

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii Historic Register or the National Register of Historic Places.

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13. Parks for public use, not including golf courses and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds; and

14. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter.”

SECTION 4. Chapter 19.30A, Maui County Code, is amended to add a new section to be appropriately designated and to read as follows:

“19.30A.082 Agricultural land trusts. A. Any organization seeking to register as an agricultural land trust shall submit a request to the department, on a form prescribed by the director. The form shall include the following information:

1. The name, address, and telephone number of the organization;

2. A letter of determination verifying compliance with section 501(c) of the Internal Revenue Code for the current year; and

3. A copy of the organization’s bylaws and articles of incorporation.

B. Within sixty days of receipt, the director shall provide written notice of the registration status to any organization that submits a form pursuant to this section. The director shall register any organization, as an agricultural land trust, provided that the organization submits a form containing all the required information and the organization is deemed, by the director, to be consistent with the definition of an agricultural land trust.

C. Registration shall be valid for period not to exceed five years. An organization may renew its registration by submitting a request to the department pursuant to subsection A. Any organization without a valid registration that is actively engaged in a use allowed explicitly for an agricultural land trust shall be subject to enforcement, pursuant to chapter 19.530 of this title.

E. The director shall maintain a list of all agricultural land trusts. This list shall be made accessible through the County website and updated immediately upon the registration of an organization as an agricultural land trust.

F. On or before September 1 of each year, each agricultural land trust shall submit to the department and the council a report containing the following:

1. The number of farm dwelling units or farm labor dwelling units proposed, constructed, and sold;

2. A summary of the agricultural activity associated with each farm dwelling unit and farm labor dwelling unit proposed, constructed, and sold; and

3. Certification of owner occupancy for each farm dwelling unit and farm labor dwelling unit sold.”

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SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui
paf:jkm:14-065j

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ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE TO ALLOW FOR THE
CREATION OF AGRICULTURAL CONSERVATION LOTS
WITHIN THE AGRICULTURAL DISTRICT

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose and intent. The purpose of this ordinance is to allow any subdivision of land zoned in the agricultural district that creates an agricultural conservation lot to utilize the minimum lot size standard of one acre, with the intent of allowing flexibility in site planning and design to promote land conservation, preserve agricultural land resources, and maintain district character, consistent with the general plan. This ordinance is not intended to allow landowners wishing to create an agricultural conservation lot to further subdivide property beyond the maximum lot limit under section 19.30A.030(G).

SECTION 2. Section 19.30A.030, Maui County Code, is amended to read as follows:

“19.30A.030 District standards. Except as otherwise provided in this chapter, the following district standards shall apply for uses, facilities and structures in the agricultural district:

- A. Minimum lot area: two acres;
- B. Minimum lot width: two hundred feet;
- C. Minimum yard setbacks: front yards, twenty-five feet; side and rear yards, fifteen feet;
- D. Maximum developable area: ten percent of the total lot area. This restriction shall apply to farm dwellings, but shall not apply to any structure or portion thereof [which] that is used to support agriculture, including but not limited to storage facilities, barns, silos, greenhouses, farm labor dwellings, and stables, and shall not apply to utility facilities as permitted by this chapter;
- E. Maximum height limit: Unless otherwise provided for in this chapter, the maximum height of any dwelling shall be thirty feet, except that vent pipes, fans, chimneys, antennae and solar collectors on roofs shall not exceed forty feet. Any [nondwelling] non-dwelling structure such as a barn or silo that is over thirty-five feet in height shall be set back one additional foot for each foot in structure height;

F. Maximum wall height: Walls shall not exceed four feet within the yard setback area as measured from the finished or existing grade, whichever is lower, to the top of the wall as defined herein, except for one utility wall per lot; utility walls shall not exceed seven feet in height and seven feet in width, and shall not obstruct sight distance for roadways or driveways. This does not preclude constructing fences on the top of the wall for safety purposes. The director of public works may permit greater heights of walls as needed to retain earth, water or both for health and safety purposes;

G. The maximum number of lots that may be created from a lot, or portion thereof, that is in the agricultural district shall be based on the gross area of the subject lot, which for the purposes of this subsection shall be the tax map key parcel as certified by the real property tax division [on] in March 1998, as follows:

Agricultural District				
Area of lot (in acres)	Maximum number of permitted lots:			
	2-acre minimum lot size	15-acre minimum lot size	25-acre minimum lot size	40-acre minimum lot size
At least 2 but less than 31	7			
At least 31 but less than 61	7, plus one additional lot for each 10 acres above 31 acres			
At least 61 but less than 92	10, plus one additional lot for each 15 acres above 61 acres; plus ✎	1		
[92+] <u>92 or more</u>	12, plus one additional lot for each 40 acres above 92 acres (not to exceed 14 lots); plus ✎	2, plus one additional lot for each 60 acres above 92 acres; plus ✎	1, plus one additional lot for each 100 acres above 92 acres; plus ✎	one <u>lot</u> for each 160 acres above 92 acres

For the purposes of this subsection, any [lot(s)] lots or [portion(s)] portions thereof that is contained entirely within the subject lot, and [that is owned by the same persons or related corporate entities] with the same ownership as the subject lot, shall be considered a part of the subject lot and shall count towards the maximum number of permitted lots that may be created from the subject lot.

This subsection shall not apply to any lot [which] that received preliminary subdivision approval prior to [the effective date of this ordinance] December 31, 1998, and [which] that receives final subdivision approval after [the effective date of this ordinance] December 31, 1998. The subsequent lots resulting from such subdivision shall be subject to this subsection.

- 2 -

H. Agricultural conservation lot. An agricultural conservation lot is any lot zoned in the agricultural district and dedicated for agricultural use, in perpetuity, through a perpetual conservation easement, in accordance with chapter 198, Hawaii Revised Statutes, or through the execution and recordation with the bureau of conveyances of the State of Hawaii or the land court of the State, as the case may be, of a unilateral agreement incorporating such conditions that shall restrict the new lot to the permitted uses set forth in 19.30A.050 and special uses set forth in 19.30A.060. The unilateral agreement shall provide that the conditions shall run with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. The agreement shall be enforceable by the County, by appropriate action at law or suit in equity, against the parties and their heirs, personal representatives, successors, and assigns.

1. An agricultural conservation lot shall be prohibited from changes in zoning or further subdivision, except as provided for in section 19.30A.040(B).

2. The director shall maintain a list of all agricultural conservation lots. The list shall be made accessible through the County website and updated immediately upon the creation of a new agricultural conservation lot. On or before September 1 of each year, the director shall submit to the council a report identifying all agricultural conservation lots created in the County.

3. Notwithstanding the foregoing provisions of this section, any subdivision that creates an agricultural conservation lot shall be subject to the following district standards:

a. Minimum lot area: one acre, provided that:

i. The proposed subdivision is permissible pursuant to section 19.30A.040(A);

ii. The minimum area of the agricultural conservation lot is seventy per cent of the subject lot area;

iii. The design of the subdivision supports the purpose and intent of the agricultural district and is in accordance with best management practices, as established by rule, pursuant to section 19.30A.120.

b. The maximum number of lots that may be created from a lot, or portion thereof, shall be based on the gross area of the subject lot, which for the purposes of this subsection shall be the tax map key parcel as certified by the real property tax division in March 1998, as follows:

Agricultural Conservation Lot Subdivision	
Area of lot (in acres)	Maximum number of permitted lots:
At least 2 but less than 31	one lot for every 2 acres (not to exceed 7 lots)
At least 31 but less than 61	7, plus one additional lot for each 10 acres above 31 acres
At least 61 but less than 92	11, plus one additional lot for each 15 acres above 61 acres

- 3 -

92 or more	15, plus one additional lot for each 40 acres above 92 acres (not to exceed 17 lots); plus one lot for each 60 acres above 92 acres; plus one lot for each 100 acres above 92 acres; plus one lot for each 160 acres above 92 acres
------------	--

For the purposes of this subsection, any lots or portions thereof contained entirely within the subject lot and with the same ownership as the subject lot shall be considered a part of the subject lot and shall count towards the maximum number of permitted lots that may be created from the subject lot."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval. Any subdivision application that has received preliminary subdivision approval prior to the effective date of this ordinance may be amended to incorporate an agricultural conservation lot, without the need for a new preliminary subdivision approval, if it otherwise complies with section 19.30A.030(H), Maui County Code, and other applicable laws.

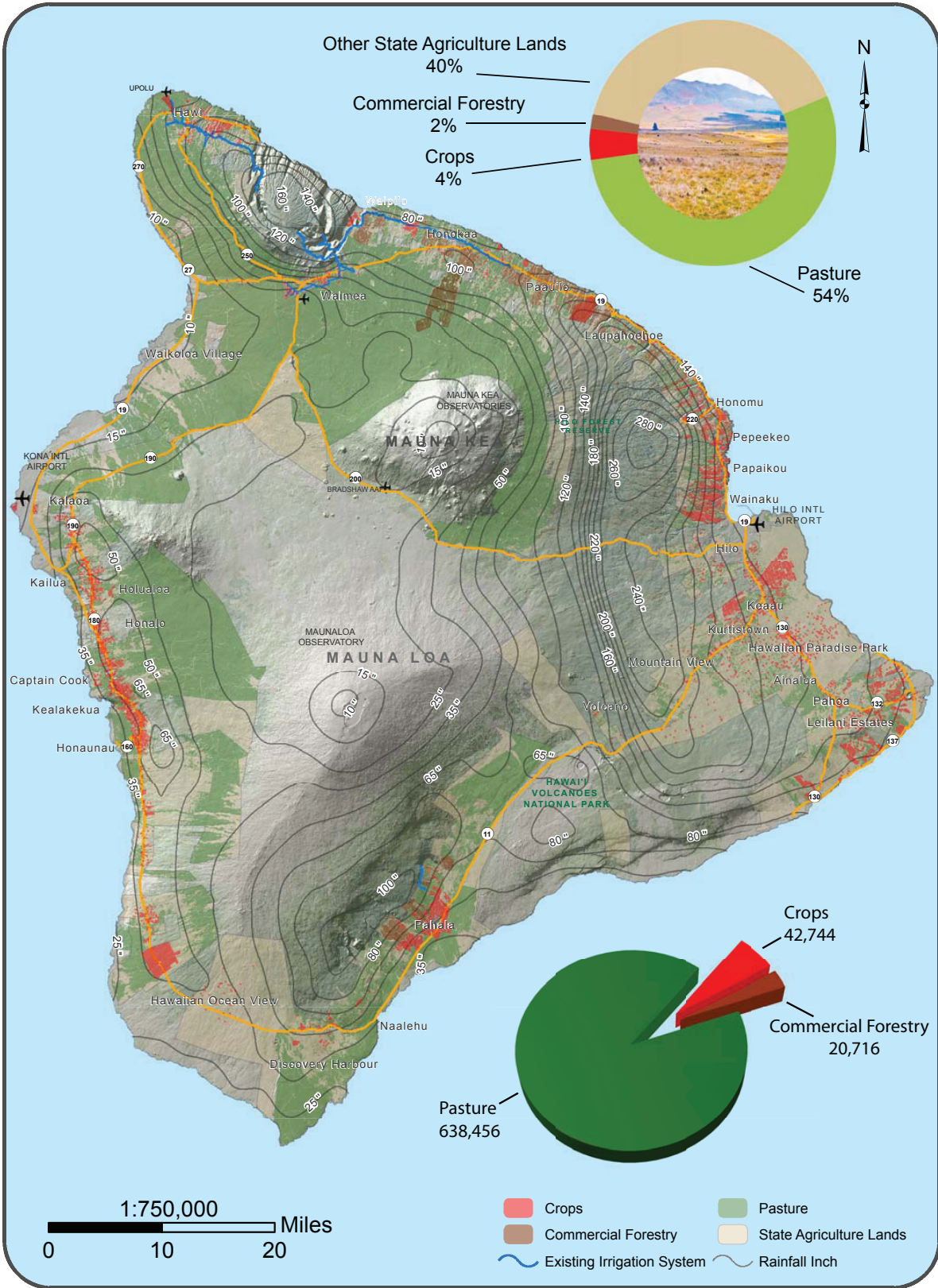
APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:jkm:14-065a

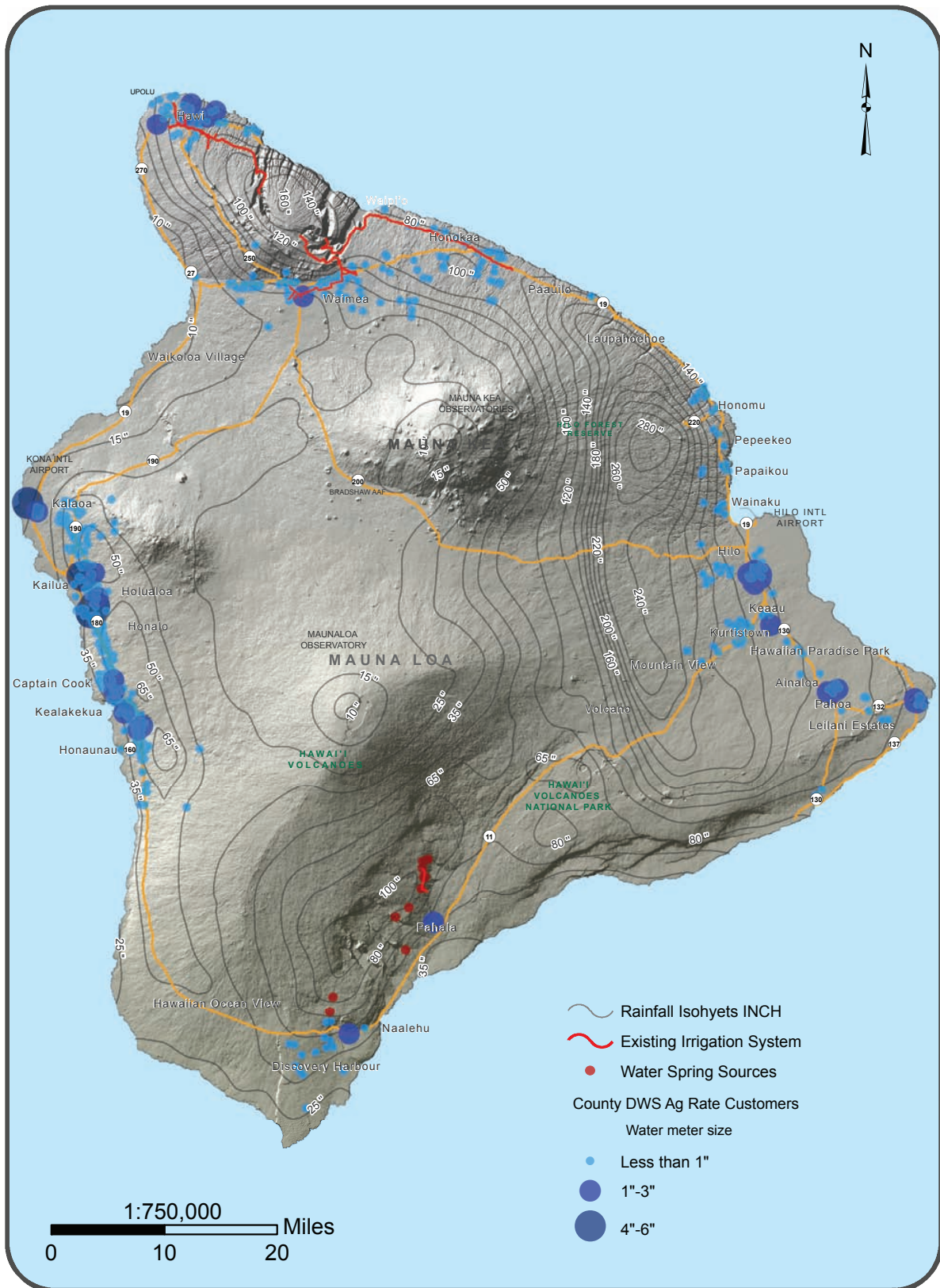
- 4 -

Appendix B: Maps



Hawai'i Island Agriculture Land Use Summary

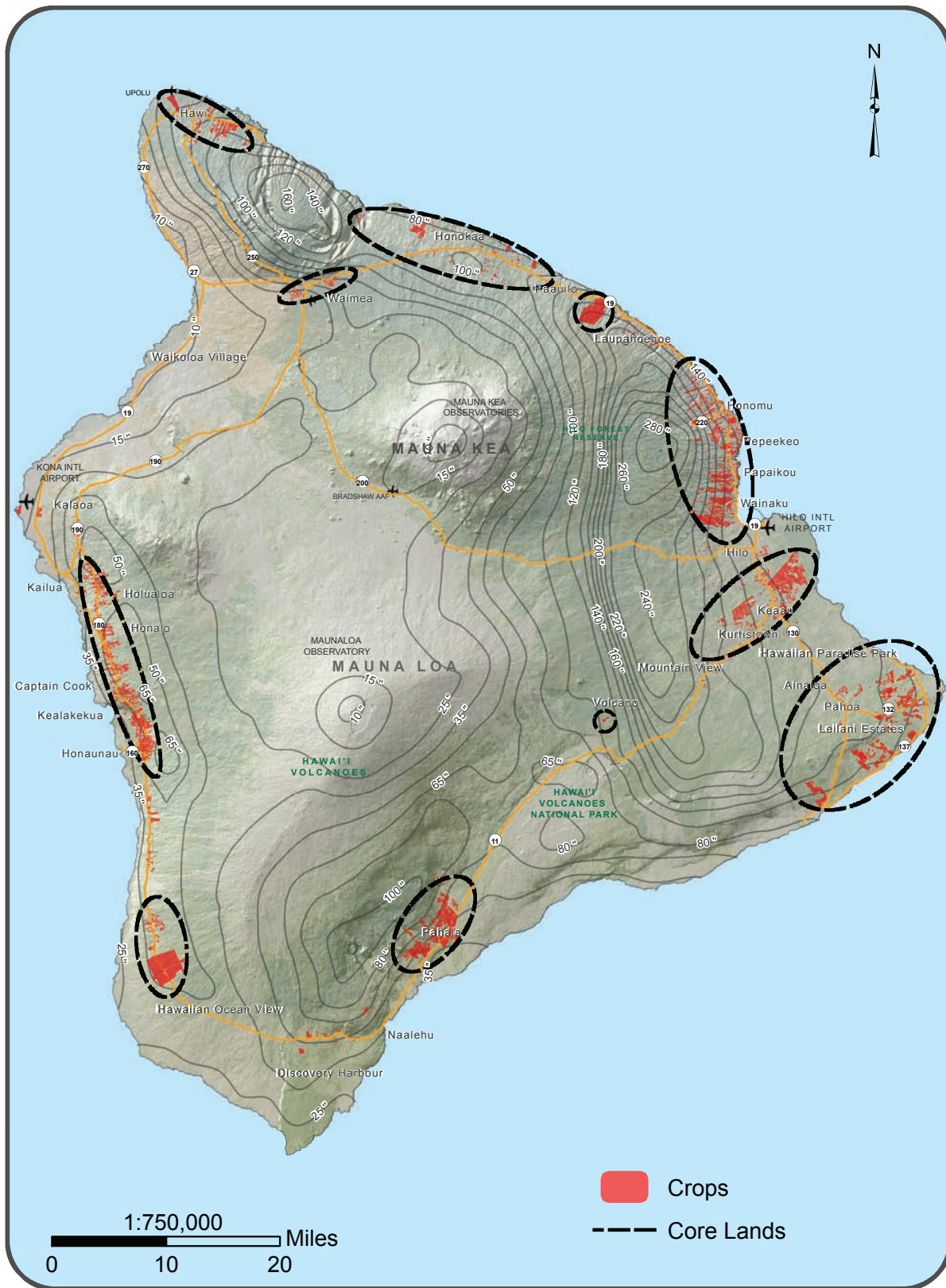




Agriculture Water Sources



UNIVERSITY
of HAWAII
HILO

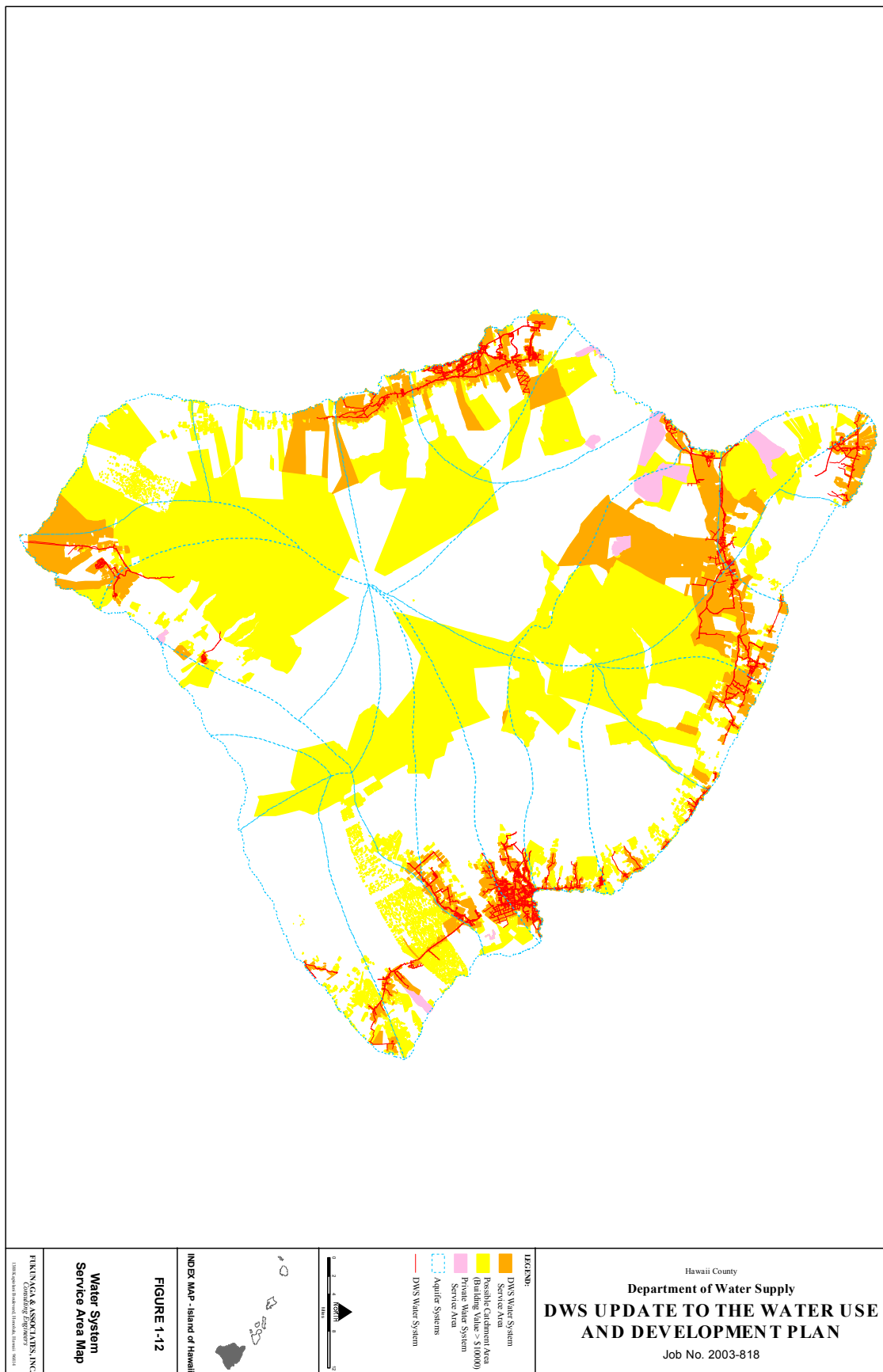


Core Crop Lands



UNIVERSITY of HAWAII
HILO





Appendix C: Additional Farm Dwelling Agreement Application



County of Hawai'i Planning Department

www.hiplanningdept.com · planning@hawaiicounty.gov

East Hawai'i Office · 101 Pauahi Street, Suite 3 · Hilo, Hawai'i 96720

Phone (808) 961-8288 · Fax (808) 961-8742

West Hawai'i Office · 74-5044 Ane Keohokalole Hwy · Kailua-Kona, Hawai'i 96740

Phone (808) 323-4770 · Fax (808) 327-3563

ADDITIONAL FARM DWELLING AGREEMENT APPLICATION

Additional farm dwellings may be permitted in the County-zoned FA, A, and IA districts provided that a farm dwelling agreement is executed between the owner or the lessee of the affected building site and the County. The farm dwelling shall be used to provide shelter to person(s) involved in the agricultural or farm-related activity on the building site. Family members of the farm worker(s), who are not engaged in agricultural or farm-related activity, are allowed to reside in the farm dwelling.

APPLICANT(s) (Print): _____
(The applicant must be either an owner or lessee of the subject TMK)

APPLICANT'S SIGNATURE(s): _____

DATE: _____

ADDRESS: _____

EMAIL: _____

PHONE (Bus): _____ (Res./Cell): _____

TAX MAP KEY: _____ Land Area: _____

If applicant is not the sole landowner, complete below:

LANDOWNER(S) (Print): _____

LANDOWNER SIGNATURES: _____

INSTRUCTIONS: All the information requested on this application must be provided. Lack of required information will render the application incomplete, and it will not be processed.

Note: If your application for an Additional Farm Dwelling Agreement (AFDA) is approved, an appropriate AFDA form and the necessary instructions for submittal of the AFDA will be included with your approval letter from the Planning Department. Your AFDA may contain conditions requiring implementation of up to seventy-five percent (75%) of your proposed farm plan within three (3) years of the AFDA approval date, and that the Planning Department shall be allowed to inspect the farm upon reasonable prior notice.

(over)

The Original and three (3) copies of this application shall be accompanied by four (4) copies of Items 1 and 2, following:

1. A written description of the applicant's agricultural development and use program, farm plan, or other evidence of the applicant's continual agricultural productivity or farming operation within the County, and show how the additional farm dwelling will be utilized for farm-related purposes. Your written description should include as much of the following information as possible:
 - (a) Details as to the specific crops, livestock, etc. and the land area utilized for each agricultural activity;
 - (b) Documentation or an estimation as to the number of man-hours per week that are required for each specific ongoing and proposed agricultural activity;
 - (c) Clear differentiation between ongoing and proposed agricultural activities;
 - (d) The amount of income generated from each ongoing agricultural activity and the amount of income anticipated for each proposed agricultural activity;
 - (e) A timetable for the implementation of each proposed agricultural activity.
2. A site plan drawn to scale showing the following:
 - (a) All existing and proposed improvements to the TMK parcel. This must include all buildings, accessory structures, roads and driveways, fencing, and wastewater disposal systems. All existing and proposed dwellings should be labeled as to whether it is the first, second, etc. dwelling on the property and the number of bedrooms it contains;
 - (b) The specific existing and proposed agricultural activities described in the written agricultural use farm plan should be located on the site plan.

In addition to the items listed above, your application must include one of each of the following:

3. Verification of the applicant's engagement in agricultural productivity or farming operation. Such evidence includes, but is not limited to the following:
 - (a) State of Hawaii Department of Taxation's General Excise Tax License;
 - (b) Approved agricultural dedication from the County of Hawaii Department of Finance, Real Property Tax Division;
 - (c) Receipts of income from the sale of agricultural products;
 - (d) Receipts or invoices from expenses incurred in the development of a farm or agricultural activity.
4. A certification of clearance from the Director of Finance that the real property taxes and all other fees relating to the subject parcel(s) have been paid and that there are no outstanding delinquencies.

Farm Plan Summary

Attachment to Additional Farm Dwelling Application

Applicant: _____

TMK: _____

Agricultural development and use program, farm plan, or other evidence of applicant's continual agricultural productivity or farming operation.

- A. ☐ ATTACH evidence of Current Income, if any, from farming operation:

☐ Copy of the farm's most recently filed Schedule F (Form 1040, IRS).

OR

Remove your Social Security number.

☐ Copy of your last General Excise/Use Annual Return and Reconciliation (Form G-49) and receipts to show farm expenses.

☐ Is there active farming occurring on the subject property now? ☐ No ☐ Yes

- B. ☐ List the specific crops/livestock and the current and future land area for each.

Crop/Livestock	Current Sq. feet or acres	Future Sq. feet or acres
1	_____	_____
2	_____	_____
3	_____	_____
4	_____	_____
5	_____	_____
TOTALS:	0	0.00

- C. ☐ Documentation or estimation of the labor-hours per week that are required for each specific ongoing and proposed agricultural activity. For PROPOSED agricultural activities, the estimated hours shall be for the ongoing period after plantings or livestock operations have been established.

Crop/Livestock	Current average labor-hrs per wk	Future average labor-hrs per wk
1	_____	_____
2	_____	_____
3	_____	_____
4	_____	_____
5	_____	_____
TOTALS:	_____	_____

- D. ☐ Current and Future annual incomes to be generated from each agricultural activity.

Crop/Livestock	Current income	Future income
1	_____	_____
2	_____	_____
3	_____	_____
4	_____	_____
5	_____	_____
TOTALS:	_____	_____

- E. ☐ List of vendors/markets that buy your products.

Crop/Livestock	Current Vendor/market	Intended/Planned Future Vendor/market
1		
2		
3		
4		
5		

- F. ☐ Timetable for the implementation of each proposed agricultural activity. Add more pages, if needed.
(See attached suggested template)
- G. ☐ Site plan, drawn to scale, showing all existing and proposed improvements and the specific existing and proposed agricultural production activities.
- H. ☐ Certificate of clearance from the Director of Finance that the real property taxes and all other fees relating to the subject parcel(s) have been paid, and that there are no outstanding delinquencies.
- I. ☐ Do you have a conservation plan from the NRCS? (Optional) ☐ Yes ☐ No
- J. ☐ Have you applied for/received approval from the Department of Finance-Real Property Tax Office for the Agricultural Use Dedication Program? ☐ Yes ☐ No
Effective date: _____ (Optional)
- K. ☐ Explain why another farm dwelling is needed for your agricultural operations and how it will support your existing or proposed productivity. Include an estimate of the portion of the total average labor hours/week that will be provided by at least one occupant of the proposed Additional Farm Dwelling. Add additional sheets, if necessary.

Year 1:	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Crop/Livestock	Work to be done	Work to be done	Work to be done	Work to be done

Year 2:	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter
Crop/Livestock	Work to be done	Work to be done	Work to be done	Work to be done

Appendix D:

Building Code Revision Recommendation

Compiled and submitted by Tane Datta, January 2020

A win win situation for the county and residents could be created if existing structures are grandfathered in and become part of the tax base and certain major revisions are made to the building code to prevent the current situation from arising in the future.

The current situation is characterized by a large number of structures being unpermitted and substandard; no revenues for the county from those structures, property values being diminished by being listed (for sale) with unpermitted structures as a possible liability and a growing lack of housing at affordable prices. It is also characterized by a general reluctance by almost everyone to go through the permitting process and low availability of reasonable priced rentals.

The primary change is detailed in a proposal attached to this letter titled **“Creating “Limited Permit” Category for Existing Non-compliant Structures on Ag Lands”**

Other changes are discussed in this letter along with background information on the existing situation.

The county would win the following:

1. A major increase in revenues.

The increase would come from:

- a. A large number of easy to process building permit fees (short term gain)
- b. A long term increase in revenue from many properties
- c. Increased land values from properties with “limited permit” structures
- d. Increased GET revenues from rentals currently not being declared for fear of having a structure torn down.

2. A significant addition of housing, reducing homelessness and an increase affordable income housing

3. Higher future compliance with county building codes and improved current structures

4. The county government and building department would not be used as a tool in neighborhood feuds

5. The county would not be responsible for trying to enforce unenforceable laws with limited personal. Existing laws would let neighbors settle their disputes without involving the county and building permits would be issued primarily according to structural-engineering based regulations

6. The building department would be responsible only for new construction and NOT the responsibility of monitoring every existing structure on the island. New construction made without a permit would still be subject to penalties under the building department’s mandates.

The residents would win the following:

1. The ability to legalize and improve existing structures on their land without fear of having them torn down.

2. Real estate transactions would be stabilized
3. Land values with limited permitted structures would increase
4. Compliance with building code would be less subjective and unpredictable and based on structural-engineering criteria
5. Renters would have their homes legalized and could demand reasonable improvements
6. More affordable choices of places to live.

Background

To enforce the current building codes as written would require a lot more personnel and expense to the county and would result in a lowered tax base and add to the housing shortage that already exists. The current law requires the building department to be responsible for every structure on the island and monitor them all the time. The only remedies the county statutes provide for unpermitted or substandard structures are immediate condemnation, large fines and hard to meet expensive requirements and tearing the structure down. Even tearing the structures down has expensive hard to meet requirements, often beyond the means of the people who own the structures. The building department has for decades, responded only to complaint based phone calls and so has become entangled in neighbor to neighbor disputes. The building code requires approval for vague and subjective criteria from state health officials. This has created widespread dissatisfaction and non compliance.

As a result, on agricultural lands there are structures, many with people living in them that are in poor and deteriorating condition. The owners are in a limbo, where there is too much risk to improve the structures and yet they are needed for multiple uses including creating income as low cost rentals or housing workers.

This situation needs to be addressed at the roots. The building department is being asked to verify that structures are built soundly, monitor living conditions within the structures, and ensure that previously built structures are maintained and that living conditions within them remains the same. In essence, they are responsible for the structural and social condition of every building on the island every day of the year and are also expected to process new construction permits quickly. Since it is unreasonable to expect that this mission can be carried out fairly and completely, the mission should be changed to what can realistically be accomplished. This will be a multi step process.

The first and most important step is to simplify the mission of the Building Department to one major task; Certifying that new structures and new additions are built to structural/engineering codes that are clearly written and easily available to builders, owners, contractors and regulators. Everyone should literally be looking at the same page. The structural codes are clearly written and clear and are based on national standards.

The county regulations overlays this with a large variety of health and social issues that are subjective. The county code was likely written before the national code was adopted and other aspects of state and county regulations such as tenant rights and nuisance laws were not as developed. Many aspects of the building code may be better handled in other areas of law and regulation. Specifically, the building department should not be used in

neighbor to neighbor disputes. Those should be handled by court.

According to current regulations, virtually any house from a broken down coffee shack to a multi million dollar structure could have (Div 6 /Sec 5-48 K)“infestations of insects...rodents” or (Div 6 Sec 5-48 3 G)“uncleanliness” and therefore be subject to demolition according to the county laws. These issues should be taken off the mission of the Building Department and covered by tenant rights or just plain old common sense. As a result of these type of regulations the codes are unevenly and sporadically enforced. In the eyes of the public this means unfairly. Therefore many people would rather just build an addition or a structure and try to get away with not being caught by a building inspector. Many of these same people would be glad to construct structurally sound and safe buildings.

To address the situation at the roots the following actions could be taken to simplify the code and redefine its mission:

1. Grandfather in existing structure in exchange for having them added to the tax base and agreeing that any expansion of the building would be to code. This would start Jan 1, 2017. For more details and change in wording see. “Limited Permit” proposal. This would start the county off with a clean slate.
2. Following the intentions of Hawaii State Act 203 increase exemption for non lived in structures from 600 sq. ft to 1000 sq ft (Div 2 Section 5-19 Exceptions 18)
3. Simplify Div 6 Sec 5-48 by replacing the words starting with “in which there exists” and ending with the words “or the occupants” with “which was built without a permit after Jan 1st 2017 or is not maintained according to the regulations in place when the structure was built”. This redefines the definition of a substandard building. It also removes the mission of monitoring living conditions within the living structure.

Then delete in its entirety all the rest of the language {From Sec 5-48 (1) to (7)}. This again takes the building department out of monitoring living conditions and also removes the need to involve state health officials in the building permitting process. The conflicts between the state health inspectors demands and building code requirements has created frustration, long delays, high expenses and stopped projects that were 90% done. The sets of regulations the builder is confronted with are not integrated. This would eliminate the need for a person trying to build a structure from getting a run around from building officials to state health officials, and then back again. With that section deleted, a person would be able to go to the building department with a set of plans, if the plans comply with structural building codes, they would be allowed to proceed. Enforcement of regulations that do not pertain to construction would be up the agency that oversees those regulations.

Note that section 5-49 would be left as is and would provide protection from buildings that are abandoned or not properly maintained. It actually covers much of what is in 5-48 in simpler terms. It has an emphasis on structural integrity.

4. Rewrite the enforcement penalties to something reasonable by changing section 5-51 b
 - a. replace the words “to commence” with “write a work plan that will address” Once an agreement is reached on the actual work to be done and the timeline to do it in, remedial work would begin.
 - b. replace the words “48 hours” with “one week”
 - c. replace the words “ninety days” with “according to the time line agreed upon in the work plan”

- d. In the next sentence, replace the word ‘shall’ with “may” referring to whether the building needs to be vacated or not during repairs. This should be determined by the work plan.

These revisions would provide more recourses for both the owner and the building department and facilitate the county and owners working together instead of the current sledgehammer solution of large fines or tear down the structure approach that is currently all the law provides. This section is also responsible for the fear many people have of the building department and their reluctance to deal with it. Revising to emphasis agreeing on a work plan and a time line unties the hands of the building department officials and gives the opportunity to work out a remedy that is appropriate to the situation. Changing this section will promote higher compliance from the public.

Proposal to County Council

Creating Limited Permit Category for Existing Non-compliant Structures on Ag Lands

Summary

This proposal would allow the county to “grandfather” in all existing structures and have all additions to these structures be compliant with appropriate codes on agricultural lands only. It would improve the living situations of a large number of Hawaii County residents, stop the county government from being used as a tool in neighborhood disputes and increase the tax base now and in the future.

The Proposal

1. Add the following to Section 5-19 (Of the Hawaii County Code) (b)

(6) Non-Living structures existing as of Jan 1st 2021 on agricultural land and not currently permitted, provided that:

- a. The permit is designated as a “Limited Permit “ and the following documents have been submitted:
 1. TMK map with structure location and or GPS location
 2. Photos, all sides of the building
 3. Agreement to pay \$25/yr. per structure for structures under 2000 sq. ft. and \$50/yr. for larger structures (the idea is to make it affordable for a person with 4 or 5 structures)
 4. Agreement to have all expansion built to code and regular tax rates will apply only to the new part of the structure. However, improvements to the structure that do not increase it’s size could be made without further permitting. (This prevents problems in the future and is of equal or greater value than the annual fee)
 5. No inspection of the structure is required, but it is allowed.

(7) Living Structures existing as of Jan 1st 2021 on agricultural land and not currently permitted, provided that:

- a. The permit is designated as a “Limited Permit, Dwelling” and the following documents have been submitted:
 1. TMK map with structure location and or GPS location
 2. Photos, all sides of the building
 3. Agreement to pay \$100/yr. per structure for structures under 2000 sq. ft. and \$200/yr. for larger

structures

4. Agreement to have all expansion built to code, and regular tax rates will apply only to the new part of the structure. However, improvements to the structure that do not increase its size could be made without further permitting.
5. If rented, must furnish renter with tax ID, so they claim their state tax credits and taxes can be collected on the rent.
6. Applies to all structures that are lived in, including part time living
7. No inspection of the structure is required, but it is allowed.

Relevant section of the county regulations to be modified

For limited permit addition

Division 2. Permits.

Section 5-19. Permit required.

(a) No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, convert, or demolish any building or structure in the County, or cause the same to be done, without first obtaining a separate building permit for each building or structure from the building official; provided that one permit may be obtained for a dwelling and its accessories, such as fence, retaining wall, pool, storage and garage structures.

(b) Permits will be further required for, but not limited to, the following:

(1) All Television/Radio Communication Towers, etc., not regulated by the Public Utility Commission.

(2) Complete new installations of all solar water heating systems, or the complete replacement of existing system with all new components, or relocating of panels from roof to ground or vice versa, along with plumbing and electrical permits.

(3) Construction or renovation of Handicap Accessible routes from parking lot to building or from building to building on a lot.

(4) Water tanks or catchments intended for potable/household use, regardless of height or size. For additional requirements where water tank or catchment systems are used as means of fire protection, see Chapter 26 of the Hawai'i County Code.

(5) Retaining walls four feet and higher. Stepped or terraced retaining walls 8'-0" of each other are considered to be one wall when determining wall height.

[Additions placed here]

Current regulations for uncoded buildings

Where other changes would be made

If these codes were to be enforced equally on every structure on the island many people would lose their places to live and possibly their incomes. Homelessness would drastically increase beyond the current unfortunate situation. Some of the regulations are so vague that almost any structure could be considered substandard. For example "Lack of minimum amounts of natural light" or "Dampness of habitable rooms as determined by the health department". Last year almost all the island had this condition.

This proposal makes changes that gives an owner the ability and incentive to improve their structures and living situation.

The changes should be referenced to these current regulations.

Division 6. Substandard and Unsafe Buildings.

Section 5-48. Substandard buildings.

Any building or portion thereof in which there exists any of the following listed conditions to an extent that it endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a “substandard building:”

(1) Inadequate sanitation shall include but not limited to the following:

- (A) Lack of, or improper water closet, lavatory, bathtub or shower in a dwelling unit.
- (B) Lack of, or improper water closets, lavatories, and bathtubs or showers in a hotel.
- (C) Lack of, or improper kitchen sink in a habitable building.
- (D) Lack of hot and cold water to basins, sinks, tubs and showers in R-1 Occupancies.
- (E) Lack of hot and cold water to basins, sinks, tubs and showers in a dwelling unit or efficiency living unit.
- (F) Lack of, or improper operation of required ventilating equipment.

BUILDING § 5-48

5-15 SUPP. 14 (7-2012)

- (G) Lack of minimum amounts of natural light and ventilation required by this code.
- (H) Room area or space dimensions less than the minimum required by this code.
- (I) Lack of required lighting.
- (J) Dampness of habitable rooms as determined by the Health Department.
- (K) Infestations of insects, vermin or rodents as determined by the health officer.
- (L) General dilapidation or improper maintenance.
- (M) Lack of connection to required sewage disposal system.
- (N) Lack of adequate garbage and rubbish storage and removal facilities as determined by the health officer.

(2) Structural hazards shall include but not be limited to the following:

- (A) Deteriorated or inadequate foundations.
- (B) Defective or deteriorating flooring or floor supports.
- (C) Flooring or floor supports of insufficient size to carry imposed loads with safety.
- (D) Members of walls, partitions or other vertical supports that split, lean, or buckle due to defective material or deterioration.
- (E) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety.
- (F) Members of ceiling, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
- (G) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads safely.
- (H) Fireplaces or chimneys that separate, bulge or settle due to defective material or deterioration.
- (I) Fire places or chimneys which are of insufficient size or strength to carry imposed loads with safety.

(3) Presence of a nuisance including:

- (A) Any public nuisance known at common law or in equity jurisprudence.

(B) Any attractive nuisance which may prove detrimental to children whether in a building or on the premises of a building. This includes any unfenced man-made swimming pools, abandoned wells, shafts, or basements; any structurally unsound fences; and any debris or vegetation affecting the structural stability of structures.

(C) Whatever is dangerous to human life or is detrimental to health, as determined by the health officer.

(D) Overcrowding a room with occupants.

(E) Insufficient ventilation or illumination.

(F) Inadequate or unsanitary sewage or plumbing facilities.

(G) Uncleanliness, as determined by the health officer.

(H) Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the health officer.

(4) Faulty weather protection, which shall include but not be limited to, the following:

(A) Deteriorating, crumbling or loose plaster.

(B) Deteriorating or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors.

(C) Defective or lack of weather protection for exterior wall covering, including lack of paint, weathering due to lack of paint or other approved protective covering.

(D) Broken, rotted, split or buckled exterior wall covering or roof coverings.

(5) Inadequate Maintenance. Any building or portion thereof which is determined to be an unsafe building in accordance with this code.

§ 5-48 HAWAII COUNTY CODE

SUPP. 14 (7-2012) 5-16

(6) Inadequate Exits. All buildings or portions thereof not provided with adequate exit facilities as required by this code except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of its construction and which have been adequately maintained.

When an unsafe condition exists through lack of, or improper location of exits, additional exits may be required to be installed.

(7) Any building or portion thereof that is not being occupied or used as intended or permitted.

(2012, Ord. No. 12-27, sec. 2.)5-48

Section 5-49. Unsafe buildings.

All substandard buildings which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard or abandonment, as specified in this code or any other effective ordinance are, for the purpose of this chapter, "unsafe buildings."

(2012, Ord. No. 12-27, sec. 2.)5-49

Section 5-50. Examination of buildings or structures reported dangerous or damaged.

The building official shall examine or cause to be examined every building or portion thereof appearing to the building official to be or having been reported as dangerous or damaged.

(2012, Ord. No. 12-27, sec. 2.)5-50

Section 5-51. Buildings found to be unsafe; Notice to owner.

(a) Whenever the building official has examined or caused to be examined any building and has determined that such building is an unsafe building:

(1) The building official shall commence proceedings to cause the repair, rehabilitation, vacating, removal and/or demolition of the building;

(2) Such building shall automatically be deemed and are hereby declared to be a public nuisance;

(3) The building official shall give to the owner of such building written notice of violation in accordance with section 5-59 and as further described below; and

(4) The building official shall cause to be posted at each entrance to the buildings ordered vacated a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAII."

(b) The notice required by subsection (a)(3) above shall require the owner or person in charge of the building or premises, to commence the required repairs or improvements or demolition and removal of the building or structure or portions thereof within forty-eight hours, and to complete all such work within ninety days from date of notice, provided that the building official may provide for more time for completion if deemed reasonably necessary. The notice shall also require the building or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the building official.

(c) The notice required by subsection (a)(4) above shall remain posted until the required repairs, demolition or removal are completed. Such notice shall not be removed without written permission of the building official, and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

(2012, Ord. No. 12-27, sec. 2.)5-51

BUILDING § 5-52

5-17 SUPP. 14 (7-2012)

Section 5-52. Restricted use signs.

In the event of a major natural disaster, the building official may post "Restricted Use" placards at each entrance to a building or portion of a building if an inspection warrants such posting. Entry or occupancy in a building or portion of a building posted with a "Restricted Use" placard shall be limited to the restrictions stated on the placard. Placards shall not be removed or altered unless authorized by the building official.

(2012, Ord. No. 12-27, sec. 2.)5-52

Section 5-53. Action upon noncompliance.

In case the owner shall fail, neglect, or refuse to comply with the notice to repair, rehabilitate, or demolish and remove a building or portion thereof, the building official may order the owner of the building prosecuted as a violator of the provisions of this code.

(2012, Ord. No. 12-27, sec. 2.)5-53

Section 5-54. Remedies cumulative.

Nothing contained herein shall be construed to limit or restrict the building official from instituting, on behalf of the County, any other legal or equitable proceedings, in addition to those specified herein, to obtain compliance with the notice to repair, rehabilitate, or to demolish and remove said building or structure or portion thereof, and to recover the cost of such work from owner to attach a lien to the property. The remedies provided in this code shall be cumulative and not exclusive.

(2012, Ord. No. 12-27, sec. 2.)5-54

Section 5-55. Reserved.

Fuller version of Section 5-19, where the proposed changes would be made

Division 2. Permits.

Section 5-19. Permit required.

(a) No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, convert, or demolish

any building or structure in the County, or cause the same to be done, without first obtaining a separate building permit for each building or structure from the building official; provided that one permit may be obtained for a dwelling and its accessories, such as fence, retaining wall, pool, storage and garage structures.

(b) Permits will be further required for, but not limited to, the following:

(1) All Television/Radio Communication Towers, etc., not regulated by the Public Utility Commission.

(2) Complete new installations of all solar water heating systems, or the complete replacement of existing system with all new components, or relocating of panels from roof to ground or vice versa, along with plumbing and electrical permits.

(3) Construction or renovation of Handicap Accessible routes from parking lot to building or from building to building on a lot.

(4) Water tanks or catchments intended for potable/household use, regardless of height or size. For additional requirements where water tank or catchment systems are used as means of fire protection, see Chapter 26 of the Hawai'i County Code.

(5) Retaining walls four feet and higher. Stepped or terraced retaining walls 8'-0" of each other are **[Additions placed here]**

considered to be one wall when determining wall height.

EXCEPTIONS: A permit is not required for:

(1) Work located primarily in a public way, public utility towers, bridges, and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.

(2) Temporary structures used during the construction of a permitted structure, temporary buildings, platforms, and fences used during construction or for props for films, television or live plays and performances.

(3) Re-roofing work with like material and installation of siding to existing exterior walls which will not affect the structural components of the walls for Groups R-3 and U Occupancies.

(4) Temporary tents or other coverings used for private family parties or for camping on approved campgrounds.

(5) Television and radio equipment (i.e. antennas, dishes) accessory to R-1 and R-3 Occupancies. Supports or towers for television and radio equipment 6'-0" or less in height.

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(6) Awnings projecting up to 4 feet and attached to the exterior walls of buildings of Group R-3 or U Occupancy; provided that the awnings do not violate the provisions for "yards" in Chapter 25 (Zoning) of the Hawai'i County Code.

(7) Standard electroliers not over 35 feet in height above finish grade.

(8) Installation of wallpaper or wall covering which are exempted under the provisions of Section 801.1, Interior Finishes, Chapter 8, IBC.

(9) Repairs which involve only the replacement of component parts of existing work with similar materials for the purpose of maintenance, and which do not aggregate over \$4,000 in valuation in any twelve-month period, and do not affect any electrical or mechanical installations.

(10) Painting and decorating.

(11) Installation of floor covering.

(12) Cabinet work for R-3 Occupancy and individual units of R-1 and U Occupancies which are not regulated (under Section 310.3.12 Cooking Unit Clearances of this code). Wall mounted shelving not affecting fire resistance or structural members of wall. This is dealing with clearances to

cabinets and range clearance to combustible.

(13) Work performed under the jurisdiction of Federal Government and/or located in Federal property.

(14) Swimming pools for one and two-family dwelling units less than 24" in depth

(15) Department of Transportation, Harbors, - section 266-2, Hawai'i Revised Statutes.

(16) Fences 6'-0" or less in height.

(17) Detached structures for animal shelters, storage sheds, towers, and similar uses not more than 6'-0" in height.

(18) One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed a) 120 square feet (11 m²); b) ***does not exceed 600 square feet for agricultural zoned lands.*** (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).

(19) Detached decks or platforms less than 30" in height above grade. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).

(20) Playground equipment, excluding assembly or similar waiting areas.

(21) Replacement of solar water heating components (i.e. panels, tanks) in the same location and of the same type, however; plumbing and/or electrical permits required.

(22) Wells and Reservoirs – Hawai'i Revised Statutes, chapter 178. Check requirements of other governmental agencies.

(23) Work performed under the jurisdiction or control of the State Department of Accounting and General Services (DAGS).

(24) Water tanks or catchment systems 5,000 gallons or less in size with a height to width ratio of not more than 2:1, to be used strictly for non-potable/household purposes such as agriculture, irrigation or stock, and that are independent of the potable/household system.

(2012, Ord. No. 12-27, sec. 2.)