

# **Bill 42: an Ordinance to Amend the Definitions of “Farm” and “Farm Labor Dwelling”**

**Agriculture, Diversification, Environment, and  
Public Transportation Committee**

**County of Maui**

**March 7, 2024**



## Background: Status of Bill/Ordinance

- ▶ October 20, 2023 – County Council adopted Resolution No. 23-220 referring the proposed bill to the Planning Commissions for action and transmittal of their findings and recommendations to the Council.
- ▶ Lānaʻi Planning Commission – December 13, 2023 and January 17, 2024
- ▶ Molokaʻi Planning Commission – December 13, 2023
- ▶ Maui Planning Commission – January 9, 2024



# Background: Agricultural Land Use

- **Retaining and encouraging agricultural lands in the County is imperative**
  
- **General Plan 2030 Countywide Policy Plan**
  - *"F.2.b. Prioritize the use of agricultural land to feed the local population, and promote the use of agricultural lands for sustainable and diversified agricultural activities.*
  - *F.2.e. Support ordinances, programs, and policies that keep agricultural land and water available and affordable to farmers.*
  - *J.2.a. Protect prime, productive, and potentially productive agricultural lands to maintain the islands' agricultural and rural identities and economies.*
  - *J.2.c. Discourage developing or subdividing agriculturally designated lands when non-agricultural activities would be primary uses."*
  
- **Maui Island Plan**
  - *Core Value E. Preserve rural and agricultural lands and encourage sustainable agriculture.*
  - *2.1.3-Action 2. Amend regulations to provide additional protection of lands that are important for traditional native Hawaiian uses including subsistence food gathering, traditional access, agriculture, and religious uses."*



# Background: Agricultural Land Use

## ► Maui County Code – Chapter 19.30A Agricultural District

### ► Purpose of the Agriculture District:

- *“Implement chapter 205 of the Hawaii Revised Statutes and the goals and policies of the Maui County General Plan and Community Plans;*
- *Promote agricultural development;*
- *Preserve and protect agricultural resources; and*
- *Support the agricultural character and components of the County’s economy and lifestyle.”*

### ► Intent of Chapter 19.30A Agricultural District:

- *Reduce the land use conflicts arising from encroachment of nonagricultural uses into agricultural areas;*
- *Mitigate rising property values of farm lands to make agricultural use more economically feasible;*
- *Discourage developing or subdividing lands within the agricultural district for residential uses, thereby preserving agricultural lands and allowing proper planning of land use and infrastructure development.”*

# Background: Agricultural Land Use

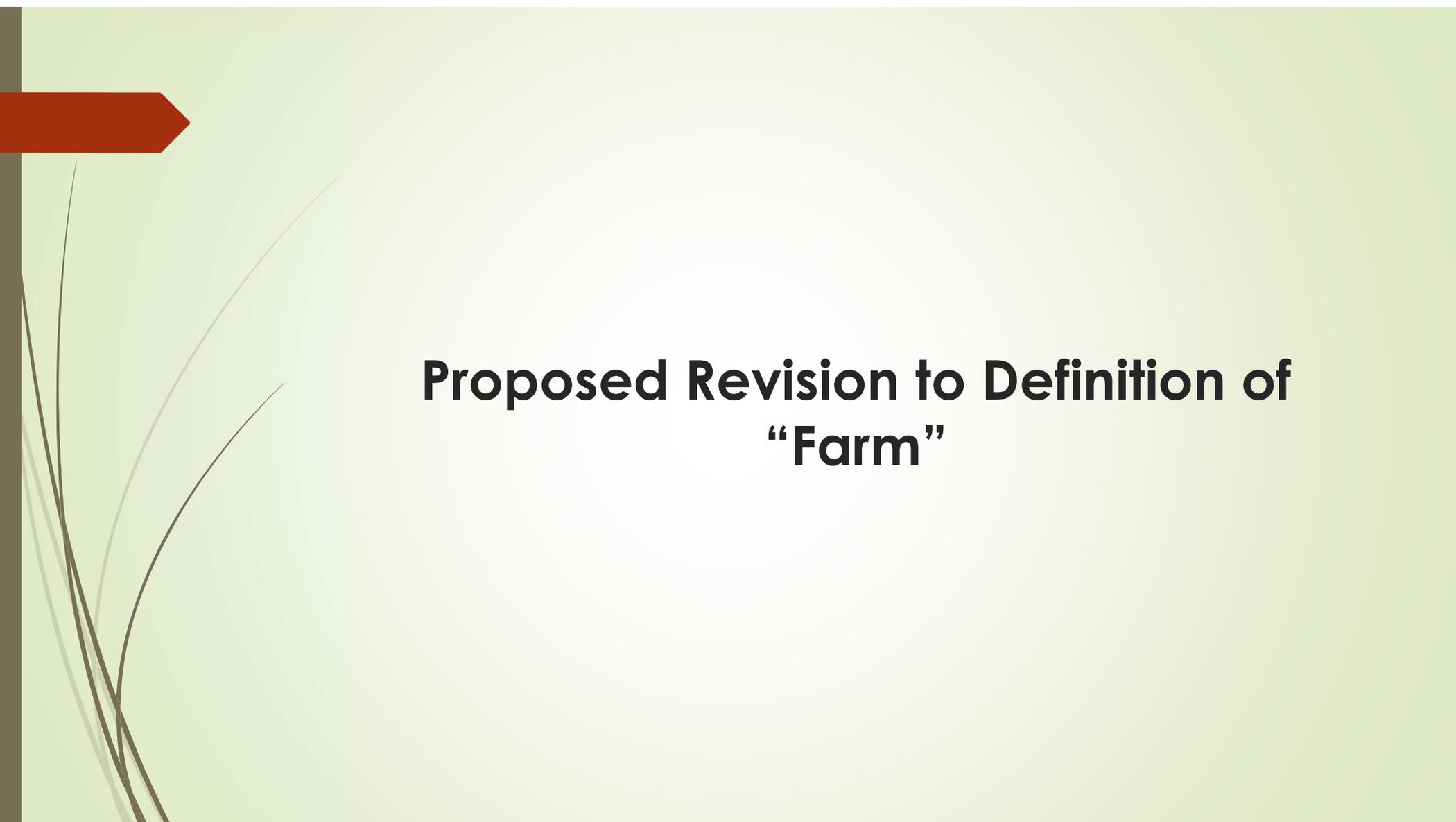
## ▶ Maui County Code, Agricultural District – Permitted Uses

### ▶ Principal Uses:

- ▶ Agriculture.
- ▶ Agricultural land conservation.
- ▶ Agricultural Parks.
- ▶ Animal and livestock raising.
- ▶ Private agricultural parks.
- ▶ Minor utility facilities.
- ▶ Retention, restoration, rehabilitation or improvements of buildings, sites, or cultural landscapes of historical or archaeological significance.
- ▶ Solar energy facilities.

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

- ▶ Two Farm Dwellings per lot, one of which must not exceed 1,000 sq. ft.
- ▶ One Farm Labor Dwelling per 5 acres of lot area and meeting certain criteria
- ▶ Others



# **Proposed Revision to Definition of “Farm”**

# Proposed Ordinance: Definition of “Farm”

## ► Proposed Ordinance Amendment:

- “Farm” means a lot on which **[the majority] at least 51 percent** of the area of the land that is usable, accessible, and feasible for farming, ranching, or conservation is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation.”

## ► Relationship between “Farm” and “Farm Dwelling”

### ► Definition of “Farm Dwelling”:

- Maui County Code: “Farm dwelling” means a single-family dwelling that is located on and used in connection with a “farm”
- HRS: “Farm dwelling” means a single-family dwelling located on and accessory to a “farm”

### ► Definition of “Farm”

- Maui County Code: “farm” a lot on which the majority of the land is used for and the predominant activity is agriculture and/or agricultural land conservation.
- A “farm dwelling” may only be permitted if it is located on a “farm”, and in order to have a “farm dwelling” on a “farm”, the majority of the lot must be used for agriculture.

## ► **Phrase 1: Replacing “the majority” with “at least 51 percent”**

- Department supports the change from “majority” to “51 percent” as it provides clarity.

# Proposed Ordinance: Definition of “Farm”

## ► Proposed Ordinance Amendment:

- *“Farm” means a lot on which [the majority] at least 51 percent of the area of the land that is usable, accessible, and feasible for farming, ranching, or conservation is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation.”*

## ► **Phrase 2: Qualifying what can and cannot be used for Agriculture**

- **Current Code requires a majority (51%) of the lot to be used for agricultural uses to be considered a “farm”**
- **Proposed revision would require 51% of what is usable, accessible and feasible for agricultural uses to be considered a “farm”**
  - **Department Concerns:**
    - Requires less farming area to be considered a “farm” – inconsistent with Policy
    - Code already permits up to 49% of the lot for areas that are not usable, accessible and feasible
    - Terms are subjective, need to be defined

# Proposed Ordinance: Definition of “Farm”

- ▶ **Example A: No issue with existing Code if unusable area is less than 49%**
  - ▶ 2-acre lot (87,120 sq. ft.)
  - ▶ Assume 10% (8,712 sq. ft.) of lot is unusable and 90% (78,408 sq. ft.) is usable
  - ▶ Proposed revision = 51% of land area that is usable ( $78,408 \times .51 = 39,988$  sq. ft.)
  - ▶ Existing code = 51% of total lot area ( $87,120 \text{ sq. ft.} \times .51 = 44,446$  sq. ft.)
- ▶ **Example B: Issue with existing Code if unusable area is more than 49%**
  - ▶ 2-acre lot (87,120 sq. ft.)
  - ▶ Assume 55% (47,916 sq. ft.) of lot is unusable and 45% (39,204 sq. ft.) of lot is usable
  - ▶ Proposed revision = 51% of land area that is usable ( $39,204 \times .51 = 19,994$  sq. ft.)
  - ▶ Existing code = 51% of total lot area ( $87,120 \text{ sq. ft.} \times .51 = 44,446$  sq. ft.)

# Proposed Ordinance: Definition of “Farm”

## ► Planning Department Recommended Alternative 2 – Defining Terms

*“Farm” means a lot on which [the majority] at least 51 percent of the area of the land is used for, and the predominant activity is, agriculture [and/or] or agricultural land conservation. If it is determined by the Director that more than 49 percent of the lot is not usable, accessible and feasible for farming or ranching, then those areas deemed unusable, inaccessible and infeasible may be excluded provided that the remainder of the lot is used for the predominant activity of agriculture or agricultural land conservation. For the purpose of this definition, land that is not usable, accessible and feasible for active agricultural uses shall, subject to the approval of the Director, include culturally sensitive areas, slopes steeper than 1 to 1, streams or gulches, or land containing earth material that cannot be farmed.*



# Planning Commission Recommendation: Definition of “Farm”

## Lāna‘i Planning Commission (December 13, 2023 and January 17, 2024):

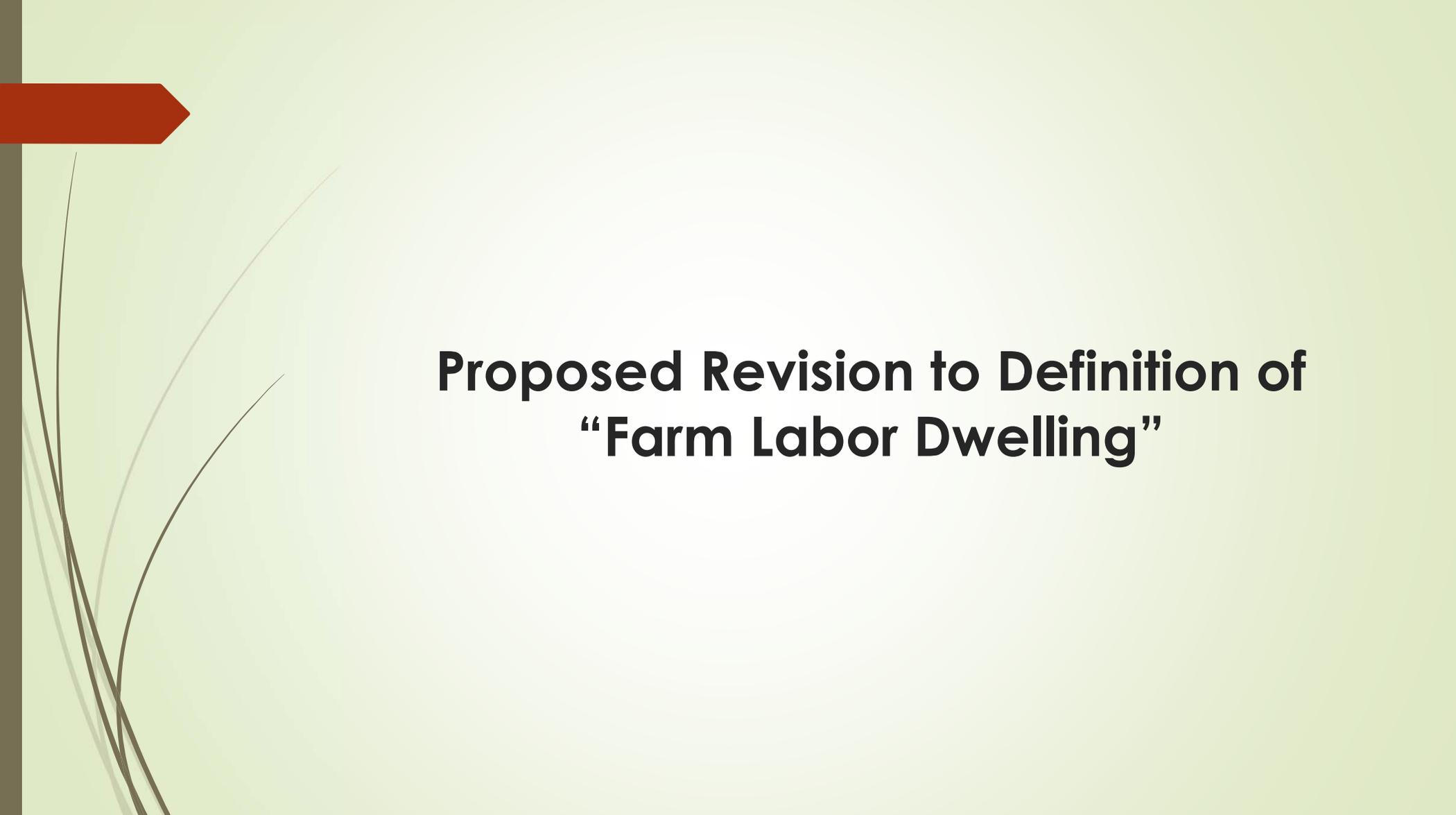
- Recommend definition of “Farm” as amended by Planning Department

## Moloka‘i Planning Commission (December 13, 2023):

- Recommend definition of “Farm” as amended by Planning Department with amendment to add text “Except for Moloka‘i”

## Maui Planning Commission (January 9, 2024)

- Recommend definition of “Farm” as amended by Planning Department
- Commented that the County Director of Agriculture should be included in determining the usability/feasibility of land as it pertains to 51%



# **Proposed Revision to Definition of “Farm Labor Dwelling”**



# Background: Definition of “Farm Labor Dwelling”

- ▶ **“Farm Dwelling” and “Farm Labor Dwelling” – Is there a difference?**
- ▶ **“Farm Dwelling”** is considered a single-family residence – no occupant restrictions (STR with permit)
  - ▶ Up to 2 Farm Dwellings permitted on a lot, provided that:
    - ▶ The farm dwelling is located on and used in connection with a “farm”
    - ▶ At least 51% of the lot area where the “farm” and farm dwelling(s) are located must be used for active agricultural use.
    - ▶ One of the two allowable farm dwellings can be no larger than 1,000 sq. ft.
    - ▶ The total maximum developable area of all farm dwelling(s) cannot exceed 10% of the total lot area.
- ▶ **“Farm Labor Dwelling”** – occupancy to agricultural employees only
  - ▶ One farm labor dwelling per 5 acres of lot area and meet two of the following criteria:
    - ▶ Provide proof of at least \$35,000 of gross sales of ag products/year, for the preceding 2 consecutive years, for each farm labor dwelling on the lot
    - ▶ Provide certification by the dept. of water supply that ag water rates are being paid if served by County water system
    - ▶ Provide a farm plan that demonstrates the feasibility of commercial ag production.
    - ▶ On Moloka'i and Lāna'i, the owner or lessee of the lot must meet the first two criteria above.
  - ▶ No restriction on the size of a farm labor dwelling
  - ▶ Does not need to comply with 10% maximum developable area of the lot



# Proposed Bill: Definition of “Farm Labor Dwelling”

- ▶ **Proposed Ordinance Amendment:**

*“Farm labor dwelling” means a dwelling [or lodging] unit that is used exclusively by full-time and part-time agricultural [employees employed full-time or seasonally in the County, and that is located] workers, including interns and apprentices, on a farm [and is ancillary and secondary to agriculture] or ranch on which the unit is located. Family members of the agricultural worker may also reside in the farm labor dwelling unless the farm labor dwelling is located on important agricultural lands, under section 205-45.5 Hawaii Revised Statutes.*

- ▶ **Three proposed changes to content:**

- ▶ Three Changes to Content:

- ▶ Changes the timing of work by the farm laborer. Specifically, it replaces “*employees employed full-time or seasonally in the County*” with “*full-time and part-time*”.
- ▶ Changes the terminology of those working on a farm from “*employees*” to “*workers, including interns and apprentices*”.
- ▶ Introduces an allowance for “*family members of the agricultural worker*” to reside in the farm labor dwelling



## Department Concerns: Definition of “Farm Labor Dwelling”

- 1. Changing the type of worker to include alternate types (interns and apprentices) may be inconsistent with the intended use of agricultural “employees”, and will be difficult to regulate.
- 2. “part-time” work is not defined. Permitting a “part-time” worker and/or the family of a “part-time” worker that is employed for an unknown number of hours to reside in the farm labor dwelling potentially turns the farm labor dwelling into a third farm dwelling or transient use under the pretenses of an agricultural educational or internship program.
- 3. The proposed revisions loosen the requirements of a farm labor dwelling by removing the clause “employees”, which assumes some type of payment to the worker.
- 4. Since the farm labor dwelling has no restriction on size nor is counted towards the ten percent developable area, accommodating a family would assume that the dwelling would be larger than normal and may impact the availability of agricultural activity occurring on the farm.



# Agency Comments: Definition of “Farm Labor Dwelling”

- State of Hawaii, Department of Agriculture
  - Concerned that current and proposed definition of “farm” includes “agricultural land conservation” as equivalent to farming and ranching uses and activities.
    - *“Agricultural land conservation” means the planting of soil-nourishing plants and trees to achieve soil conservation and environmental benefits, including but not limited to soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration.*
    - State believes the definition sets a low bar for what activities farm labor dwellings may be accessory to and not consistent with the purpose of the Ag District.
    - State believes that “Improvement of air quality” and “habitat restoration” should not be included as activities under “Agricultural land conservation”.
  - Concerned that “interns and apprentices” are not equivalent to “full-time and part-time agricultural workers”, and how will “interns and apprentices” be distinguishable from visitors and others that pay rather than be paid to work or learn on the farm.



# Planning Commission Recommendation: “Farm Labor Dwelling”

## Lānaʻi Planning Commission (December 13, 2023 and January 17, 2024):

- ▶ Shared **four** concerns as expressed by the Planning Department (noted on prior slide)

## Molokaʻi Planning Commission (December 13, 2023):

- ▶ Recommend definition as proposed with amendment to add text “Except for Molokaʻi”

## Maui Planning Commission (January 9, 2024)

- ▶ Recommend definition of “Farm labor dwelling” as proposed with the following comments:
  - ▶ The farm owner needs to maintain records of written agreements with its employees, including interns and apprentices, that address how long they are staying on property and hours of work so that it can be monitored from an enforcement perspective; and
  - ▶ The farm owner should be incentivized to give preference to local residents for farm labor over people from off island.



**Questions?**