

ADEPT Committee

From: Stacey L. Vinoray
Sent: Tuesday, March 5, 2024 7:55 AM
To: ADEPT Committee
Subject: FW: Bill 42, Relating to Amending the Definition of "Farm" and "Farm Labor Dwelling"....
Attachments: white paper ag-rural 8 10 07.doc; Chapter 19 30A draft 10-8-07 (bob horcajo).doc; TinyHomes InternalPolicyPart2 eff may 2021.pdf

Forwarding to ADEPT Committee

From: AH Committee <AH.Committee@mauicounty.us>
Sent: Friday, March 1, 2024 8:10 PM
To: Alison N. Stewart <Alison.Stewart@mauicounty.us>; Stacey L. Vinoray <Stacey.Vinoray@mauicounty.us>; Paige Greco <paige.greco@mauicounty.us>
Subject: FW: Bill 42, Relating to Amending the Definition of "Farm" and "Farm Labor Dwelling"....

From: Robert L. Horcajo <bob@livemaui.com>
Sent: Friday, March 1, 2024 8:07:36 PM (UTC-10:00) Hawaii
To: AH Committee <AH.Committee@mauicounty.us>
Subject: Bill 42, Relating to Amending the Definition of "Farm" and "Farm Labor Dwelling"....

You don't often get email from bob@livemaui.com. [Learn why this is important](#)

Aloha e Gabe and fellow ADEPT committee members,

It was nice to read Bill 42 but very surprised to see the mention of IAL. Given the limited reach of Bill 42, I don't know yet the impetus for this code revision but it's good to see. The two attachments should give you an idea of my personal efforts towards the protection of IAL. Around 1998 is when my efforts started by trying to stop the implementation of the "sliding scale". I argued it was not the way to save IAL and we know today how much good ag is being produced on the 40+ acres IAL. Luckily, at least A&B designated the majority of their land as IAL.

Of course, many things have changed since 2007 that will make it difficult to do much, but maybe some tweaks/additions might be relevant to this Bill 42 discussion. Also, if the Council wants to consider how some non-IAL can help towards our housing needs, I would like to offer some thoughts. Many in the community consider the support of our farming culture and the need for affordable housing as 2 separate issues but let me give you example of why it's not. By disallowing farmers for having mobile home as employee/worker housing (attachment #3), the State has also failed to look at the big picture. Frankly, navigating the sometimes-unnecessary bureaucratic maze is no small feat for anyone, especially for many just trying to survive to keep generational ties on Maui.

Lastly, we also have a small family farm, Mahina Farms Maui, so Bill 42 interest me on a personal level as well. We are in the process of building a farm labor dwelling for our daughter and family who moved back to Maui recently. . Anyway, mahalo for your time and look forward to talking.

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WHITE PAPER
FOR
AGRICULTURAL/RURAL LANDS
MAUI COUNTY

By: Robert L. Horcajo (8/10/07)

This White Paper is strictly the opinion of the author, and no guarantees are made of its total accuracy, however, the author is confident of its general content.

The goal of this White Paper is to foster action by the Maui County administration and Council to proactively address the long overdue protection of Important Agricultural Lands (IAL) and the need to create rural communities. Given Maui County is in the midst of its General Plan review, it seems imperative that this issue be given a high priority status. The passage of meaningful legislation protecting Important Agricultural Lands and setting up the better utilization of the rural district can then be used as a planning tool for the General Plan process.

If there is truly a mandate on the State and County level to protect IAL, it has been a failure. Since the 1978 Constitution Convention mandated the identification and protection of IAL, the State legislature has failed to reach consensus on meaningful legislation. If the State Office of Planning was tasked with working with the Counties on comprehensive planning and implementation policies, little evidence can be found for its efforts. The Land Use Commission's (LUC) failure to proactively regulate all State lands given statewide population growth, and to especially protect IAL, is poor at best.

For example, HRS Chapter 205-2(3) states in part: "in the establishment of the boundaries of agricultural districts the greatest protection shall be given to those lands with a high capacity for intensive cultivation." From the County side, many feel nothing can be done without the State's active participation, but this attitude further exacerbates the loss of IAL and consequently, we see the rise of reactive legislation instead of proactive planning. The unwillingness of all Maui County stakeholders to truly "engage and embrace" this complicated issue in the past has added to this failure.

Chapter 205-2 further states: "in establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county." So the question is: does Maui County have a "plan" that fulfills the mandates of HRS Chapter 205? The fact that Maui County in recent history generally equated the "protection of ag lands" with the "protection of open spaces" does nothing to truly protect IAL. The "sliding scale" in the current Maui County agricultural district ordinance, while limiting the amount of lots created in the agricultural district (and therefore creating more open space), really just creates estate type residences on larger IAL lots. However, I truly believe that if Maui County creates a "PLAN" with meaningful legislation that fulfills the mandates of Chapter 205, the State Office of Planning and LUC will support our endeavors.

To understand this issue better, a historical accounting of this issue will first be offered. Secondly, a list of reasons will be presented as to why we should do something sooner than later. Lastly, a discussion of possible options to consider will be offered.

Historical Accounting-Statewide:

The State Land Use Commission (LUC) was formed in 1961 to administer the State Land Use Law as a quasi-legislative body, regulating land uses within the four State land use districts of Urban, Rural, Agricultural and Conservation. Its responsibilities included a statewide review of district boundaries every 5 years. After numerous problems with the process, the State legislature mandated the LUC adopt a quasi-judicial process for re-districting applications. The important thing to remember here is that the LUC stopped being a planning agency. Therefore, the vast majority of the land use re-districting applications were development driven and continues to be so to this day.

The State Constitution Convention of 1978 included an amendment that mandated that the Legislature define and map “important agricultural lands”. Prior to 1978, different land rating systems were being used by State and Federal Agencies. The LSB (Study Bureau) System was based on soil characteristics (A,B,C,D and E ratings) and is the standard noted currently in HRS Chapter 205. The ALISH (Agricultural Lands of Importance in the State of Hawaii) system was developed in the late 1970’s and went beyond soil characteristics and included lands with potential for agricultural use. The ALISH system rated lands as prime, unique and other important agricultural lands. In the early 1980’s, the State Legislature created a Land Evaluation and Site Assessment (LESA) Commission to develop an initial inventory of IAL as well as a classification system to identify IAL. LESA took into account all the various land rating systems. Its findings were submitted to the State legislature in 1986, but since then, many attempts to implement the findings of LESA have failed.

In the 2005 legislative session, Act 183 was passed. In Act 183, Counties were tasked to identify IAL and provide maps and also suggest that the Counties establish one or more citizens’ advisory committees to provide public input. Act 183 did not refer to land ratings but defined IAL as: “capable of producing sustained high agricultural yields...”, “contribute to the State’s economic base...” and “are needed to promote the expansion of agricultural activities...”. However, an important component of Act 183 was the need for “incentive packages” to be approved by the State legislature before the County maps could be presented. The incentive package is an attempt to get landowners to willingly designate a certain amount of their lands IAL. While an “incentive package” bill was introduced at the 2006 session, it did not pass, in large part due to the concerns raised by large landowners and anti-growth groups. Some legislators expect a minimum of five (5) years to fully implement all the provisions of Act 183.

In 2004 and 2005, Oahu planners Tom Dinell and Robin Foster facilitated statewide meetings through the support of the American Planning Association-Hawaii Chapter to address the lack of statewide planning and suggested constructive changes to the roles of the State and County governments. Their topic was called “Planning and Land Reform For the ‘Land Between’”. The “Land Between” for them meant the rural and agricultural lands between the urban and conservation lands that were being gobbled up for residential housing, and ultimately, the loss of

important agricultural lands. Generally, their plan spoke to “clearly defining” the roles of the State, County and LUC to avoid duplication of work and authority. It suggested that the LUC function as a planning agency. The plan redefined the districts, suggesting that only IAL fall within the agricultural district and the rural district be designated for rural community development. Lastly, the plan would grant the Counties the authority to plan and regulate land use in the agricultural and rural districts, along with the urban district they currently have authority over, based on standards and criteria approved by the Legislature and plans and maps approved by the LUC.

The 2005 legislative session also produced the passage of Act 205. First of all, Act 205 clarified permitted uses in the rural district. Secondly, Act 205 tasked the Counties to work with the LUC and facilitate public discussions to help redefine the rural district including the identification of additional lands to the rural district. It states that “...priority shall be placed on the reclassification of lands that are already subdivided and developed for non-agricultural uses.” With what monies were appropriated for this purpose, the LUC hired the Hawaii Rural Development Council (HRDC), a non-profit statewide organization “committed and supporting the rural based economic welfare of the State.” The HRDC conducted statewide community meetings in the latter part of 2006 “to conduct a study to develop policy recommendations to expand and enhance Rural Districts.” Act 205 also suggests that “each County may convene an advisory group or utilize existing general or community planning review processes for redefining rural districts....”

Senate Bill No 1236 was proposed in the 2007 State legislative session. Citing Article XI of the State Constitution, its intent was the protection of agricultural lands and promotion of agricultural usages. As originally written, the bill was not written to protect IAL per se. There were many concerns with Bill 1236 that prompted all of the Maui State legislators to work for its deferral. Passage of this bill would have made thousands of lots on Maui alone “non-conforming”. A major reason for its demise was the lack of any provision allowing for reconstruction of improvements legally permitted under past and existing government policies.

Historical Accounting-Maui County:

Since the original classification of lands in the 1960's, Maui County continued to enjoy a largely agricultural based society, including the continuation of plantation-style sugar production. Pineapple production and cattle grazing were also major contributors to the agricultural base. The State offered very little oversight over the Counties' agricultural lands, and all the Counties developed their own strategies for use and entitlements. In the early 70's, the influx of many new residents seeking a rural lifestyle combined with the demise of many independent farmers started to change the look of former agricultural lands, some recently farmed and some fallow for many years. Some reasons for the farmers' demise in the past continue today: competition, foreign or otherwise and the unwillingness of younger generations to continue the agricultural lifestyle. With the intent of capturing the growth of the tourism industry, plans were adopted in the late 1970's to focus resort/tourism growth to portions of West Maui and South Maui. There was no anticipated need to look at the non-urban areas of Maui. While seemingly tenuous at times, Maui County still felt in the 70's and 80's that a strong agricultural component would continue. Unfortunately, combination of the demise of large-scale agricultural endeavors, with

the desire of visitors to seek out a rural lifestyle, coupled with the lack of an enforceable land use plan, brings us to where Maui County is today.

As stated earlier, each County developed their own policies on entitlements, in spite of HRS Chapter 205, but with no guidance by State agencies. As an example, prior to 1979 Maui County allowed a main dwelling of unlimited size and a “cottage” of 500 sq ft. on an agricultural zoned parcel. At some point in the early 80’s, “cottages” were not allowed. Now, a main residential dwelling is allowed with a 1,000 sq. ft. farm dwelling.

Around the late 1970’s or early 80’s, concerned with the proliferation of agricultural subdivisions with very little agriculture activity, Mayor Hannibal Tavares instituted a policy shift to force landowners to seek State agricultural zoning. Faced with many legal challenges given the fact these lands were already within the State agricultural district and Maui County already had an agricultural zoning district, the County dropped its policy.

Around 1977, the “Kula Rule” of the Mayor Cravalho administration curtailed the agricultural subdivisions in the Kula region, but it did not stop it completely. Some projects like Kula Glen were already in the books and others like Kula Nani were able to create a private water system off the public system. What this policy did, however, was shift the growth to the Haiku region. Again, the demise of independent farmers in Haiku and water availability created land opportunities for development.

Given the further proliferation of subdivisions of agricultural lands, a revision to the County agricultural district ordinance was finally passed in December of 1998. While it limited the number of lots created via a “sliding scale”, it did nothing to protect the agricultural lands, especially IAL. During deliberations of this bill, there was discussion on limiting the minimum size of agricultural lots to 5 acres, but it failed to get support.

Since the 1990’s, at least two attempts to create a moratorium on agricultural subdivisions and two attempts to require public hearings failed to pass the County Council.

In 2006, a Workforce Housing Ordinance was passed by Council, which requires a developer of 5 or more units (homes and/or lots, but excluding farm labor dwellings or second farm dwellings) to provide 40% or 50% of their units within certain affordable housing ranges.

Now in 2007, the presentation of yet another moratorium bill is anticipated.

Now What?

While there is blame to go all around, the bottom line is that if protection of IAL is truly a mandate, something needs to be done sooner than later. As bad as S.B. No. 1236 would have been for tens of thousands State landowners, the fact it got to conference committee and is expected to be reintroduced in 2008 and is supported by the State Planning Office and the Governor’s office, indicates there is a fear at the State administration level that the State legislature will not create meaningful legislation on this matter anytime soon. The same type of

fear has played out in Maui County with attempts to protect IAL via moratorium and other stopgap administrative or legislative actions.

For Maui County, the main consideration for timely action is the current General Plan update. In the creation of the Maui Island Plan, the Planning Department will facilitate the identification of “urban growth areas”, also known as urban growth boundaries (UGB). The UGB will determine where urban growth should occur given population projections to the year 2030. The accepted principle of a UGB is to separate urban areas from its surrounding open space, agricultural and conservation lands with one main purpose being the protection of agricultural lands outside the UGB from scattered and low density development. The legislation under which this General Plan review is being processed, however, also speaks to the identification of Rural Growth Areas (also known as RGB). Currently, there are no plans to incorporate rural growth areas in the Maui Island Plan, which therefore begs the question: what does happen outside the urban growth areas?

Let it be known there are no easy answers. During deliberations on Bill 84, there was no concentrated effort to define UGB’s and RGB’s. It might have been intentional, given we are a three (3) island County, and exceptions and/or different standards have been adopted before for different areas. Nonetheless, a common definition was probably still warranted. RGB’s are noted on the Maui Island Plan, however, without codification, it creates unnecessary administrative demands and public hardships. There are a number of similar examples of incomplete land use designations in the County Code. Consider the 40+ years it took to move older areas out of “interim zoning”; an “open space” district was added into the last two General Plans, but lacked codification for years; and the addition of Service Business/Residential District (SBR) without codification to this day. These failures to complete the process created hardships for many landowners and unnecessarily wasted government time and taxpayers monies. Given the amount of growth in the County’s Rural/Agricultural Districts over the last two decades, it is imperative that the County properly define these districts.

Lastly, while the goals of Act 183 towards protecting IAL are laudable, until the “incentive packages” are adopted by the state legislature, the Act does nothing for IAL protection. The large landowners who do not want their lands permanently devalued will certainly not make decisions on designation yet. Also, the slow growth advocates fear the identification of IAL will open the floodgates of development for the non-IAL. Therefore, we should not expect full implementation of Act 183 for many years to come, maybe never.

A PLAN?

There are two general options as this point in time. The first is to continue to wait for the State, either the administration and/or the legislature, to provide leadership and clean and meaningful legislation, and act accordingly.

The second is to be pro-active and to create legislation that fulfills the mandate of HRS Chapter 205, to wit: “in the establishment of the boundaries of the agricultural district, the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation;” and “in the establishment of boundaries of the rural district, areas of land composed primarily of

small farms mixed with very low density residential lots,”. Furthermore, HRS 205-2c states : “rural districts shall include activities or uses as characterized by low density residential lots.....in areas where “city-like” concentration of people, structures, streets, and urban level of services are absent,”. Locally, various land use objectives and policies in the current 1990 Update to the General Plan also speak to these issues: “to preserve lands that are well suited for agricultural pursuits”; “protect prime agricultural lands from competing nonagricultural land uses”; “define urban and rural limits in each community region”; “provide and maintain a range of land use districts sufficient to meet the social, physical, environmental and economic needs of the community”.

A meaningful “PLAN” would revisit the agricultural and rural district ordinances together, at one time. At the onset, it is imperative that everyone understands and agrees that the proper definition of both of these districts is necessary for the protection of IAL and would address the needs of a large segment of Maui County residents. Just as important, however, is that any new legislation be crafted so that it does not tax the citizens and government with unnecessary actions. .

A citizen advisory group should be immediately formed to bring all the stakeholders to the table. This group will run concurrently with the General Plan process for the purpose of creating new standards for the agricultural and rural districts, with the intent of offering legislation to the County Council for adoption. While this advisory group’s finding may not coincide with the timetable of the GPAC, it will nevertheless be offered to the Planning Commissions and Council during their deliberations on the General Plan. Equally important, passage of new meaningful legislation on the rural and agricultural district will be a major asset to the Community Plan Citizen Advisory Committees (CAC) for their respective regions.

There is no doubt there will probably be some challenges, legal or otherwise, but to continue to do nothing is not an option. Collaborations with State agencies and especially with our Maui County legislators will be vital to this process. If we need new legislation for future implementation (i.e. the authority of the LUC to give blanket approvals to new rural districts), they should be discussed before the next legislative session. Any effort will surely bring other ideas and options to the table. At the State level, there has been discussion on abolishing the LUC, creating more homerule for the Counties on agricultural and rural district lands and allowing the County to regulate non-IAL while the LUC regulate IAL. While these ideas may have had merit in the past and/or may have merit in the future, they are actually irrelevant to the goal of protecting IAL and creating amendments to the rural district, in compliance with State regulations, while protecting the character of rural Maui County.

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Chapter 19.30A AGRICULTURAL DISTRICT

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19.30A.010 Purpose and intent.

A. Purpose. The purpose of the agricultural district is to:

1. Implement chapter 205, Hawai'i Revised Statutes, and the goals and policies of the Maui County general plan and community plans;
2. Promote agricultural development;
3. Preserve and protect **important agricultural lands (IAL)**; ~~agricultural resources~~; and
4. Support the agricultural character and components of the County's economy and lifestyle.

B. Intent. It is the intent of this chapter to:

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

4. Discourage establishment of nonagricultural subdivisions; **Minimize infrastructure requirements for subdivision of important agricultural lands if the lands are intended for long-term agricultural use by dedication or otherwise;**
5. Ensure that the rezoning of land from the agricultural district shall be open for public debate and in the overall public interest, as evidenced by conformance with the Maui County general plan and community plan land use designations and policies, State land use law, this chapter and good planning practices; and
6. Notify the public that lands within the agricultural district are used for agricultural purposes. Owners, residents, and other users of such property or neighboring properties may be subjected to inconvenience, discomfort, and the possibility of injury to property and health arising from normal and accepted agricultural practices and operations. Such normal and accepted agricultural practices and operations include but are not limited to noise, odors, dust, smoke, the operation of machinery of any kind, including aircraft, and the storage and disposal of manure. Owners, occupants, and users of such property or neighboring properties shall be prepared to accept such inconveniences, discomfort, and possibility of injury from normal agricultural operations. (Ord. 2749 § 3 (part), 1998)
7. **Clearly identify the “important agricultural lands” and the “non-important agricultural lands” of Maui County and set distinct district standards and permitted uses for each district.**

19.30A.020 District criteria.

~~Agricultural lands that meet at least two of the following criteria should be given the highest priority for retention in the agricultural district:~~

- ~~A. Agricultural Lands of Importance to the State of Hawai'i (ALISH);~~
- ~~B. Lands not classified by the ALISH system whose agricultural land suitability, based on soil, topographic, and climatic conditions, supports the production of agricultural commodities, including but not limited to coffee, taro, watercress, ginger, orchard and flower crops and nonirrigated pineapple. In addition, these lands shall include lands used for intensive animal husbandry, and lands in agricultural cultivation in five of the ten years immediately preceding the date of approval of this chapter; and~~
- ~~C. Lands which have seventy-five percent or more of their boundaries contiguous to lands within the agricultural district. (Ord. 2749 § 3 (part), 1998)~~

IAL (important agricultural land) as defined in section 10.30A.025 shall be given the highest priority for retention in the agricultural district.

19.30A.025 District Categories.

- A. The County shall have two agricultural zoning districts.**
 - 1. IAL (important agricultural land). Lands within this district are those lands identified as ALISH (agricultural lands of importance to the State of Hawaii) as determined by the State of Hawaii Department of Agriculture. For the purpose of this ordinance, the maps dated November 1977 shall be authority for this determination, and any subsequent and adopted revisions thereof.**
 - 2. Non-IAL (non-important agricultural land). Lands within this district are those lands that are not identified as ALISH by the State of Hawaii Department of Agriculture.**
- B. For the purpose of this chapter, the following existing ALISH lands as identified by the maps dated November 1977 shall be deemed Non-IAL:**

1. ***Lands that are within the State and/or County agricultural district but which have existing public or quasi-public uses, including but not limited to parks, schools and utility facilities;***
2. ***All parcels under 15 acres within agricultural zoned subdivisions that have already received final approval that are mostly residential in nature;***
3. ***All parcels under 15 acres within agricultural zoned subdivisions that have received preliminary subdivision approval as of adoption of this ordinance, but only upon receipt of final subdivision approval.***
4. ***Through petition to the Dept of Agriculture, lands that have received a determination letter and deemed non-ALISH.***
5. ***Through petition to the Land Use Commission, lands that receive a District Boundary Amendment to the urban, rural or conservation district.***
6. ***Existing parcels under 15 acres unless said parcel is:***
 - a. ***Adjoining parcels owned by the same entity totaling more than 25 acres of IAL;***
 - b. ***....For the purpose of this subsection, the land ownership and gross area shall be based on the tax map key parcel as certified by the real property tax division on March 2007.***

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 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 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. This does not preclude constructing fences on the top of the wall for safety purposes. The director of public works and waste management 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 March 1998, as follows:

Agricultural District

Area of lot (in acres)	Maximum number of permitted lots: 2-acre minimum lot size	Maximum number of permitted lots: 15-acre minimum lot size	Maximum number of permitted lots: 25-acre minimum lot size	Maximum number of permitted lots: 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; plus ↗	1		
92+	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 for each 160 acres above 92 acres

For the purposes of this subsection, any lot(s) or portions(s) thereof that is contained entirely within the subject lot, and that is owned by the same persons or related corporate entities 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 received preliminary subdivision approval prior to the effective date of the ordinance codified in this chapter and which receives final subdivision approval after the effective date of said ordinance. The subsequent lots resulting from such subdivision shall be subject to this subsection. (Ord. 2749 § 3 (part), 1998)

19.30A.040 Limitations on resubdivision.

A. Following the effective date of this the ordinance codified in this chapter:

1. At the time of subdivision, the director of public works ~~and waste management~~ shall determine the maximum number of lots that can be created based upon the provisions and standards set forth in section 19.30A.030;
2. The subdivider shall allocate the maximum number of lots that can be created between the original lot and any new lot created as a result of the subdivision;
3. The allocation of lots shall be recorded with the bureau of conveyances; and
4. No lot, or portion thereof, which is in the agricultural district shall be further subdivided beyond the maximum number of lots permitted pursuant to this chapter and as recorded with the bureau of conveyances, except as provided by subsection 19.30A.040.C.

B. The following subdivisions shall not reduce the gross “area of lot” nor the “maximum number of permitted lots” as provided by subsection 19.30A.030.G:

1. Any subdivision requested by a public agency or public utility company for a public purpose;
2. Any consolidation and resubdivision in which no additional developable lots, as defined by section 18.04.123, Maui County Code, are created, provided that this would not result in the potential to create any additional lots than could have been created prior to consolidation and resubdivision;
3. Any subdivision for purposes of providing an easement exclusively for the protection of sites of cultural and historic significance; greenways; protection of sensitive environmental areas such as wetlands, streams, and endangered species habitat; and easements for public access to shoreline and mountain areas; or
4. Any subdivision for purposes of providing a roadway easement or lot.

C. If the original lot has been subdivided into the maximum number of lots permitted pursuant to this chapter, additional lots may be created for family members as described in subsections 18.20.280.B.1 and 18.20.280.B.2, Maui County Code, whether or not a deferral of improvements is intended, with the approval of the council; the application for such additional lots shall be processed in the same manner as applications for conditional permits, as provided by chapter 19.40, Maui County Code.

D. No deed, lease, agreement of sale, mortgage or other instrument of conveyance shall contain any covenant or clause which restricts, directly or indirectly, the operation of agricultural activities on lands within the agricultural district. This subsection shall not apply to any covenant or clause existing prior to the effective date of the ordinance codified in this chapter. (Ord. 2749 § 3 (part), 1998)

19.30A.045 Additional Development Standards.

These standards are intended to allow flexibility in site planning and further the purpose of preserving IAL.

A. The Planning Director shall allow deviation from lot size and lot counts as set forth in 19.30A.030 under the following condition. If a project configuration includes the smallest lot size possible for its maximum lot count minus one, and the remainder large lot is declared by a Unilateral Agreement for agricultural, open space and/or conservation use, additions to the lot count shall be granted as follows:

- 1. An additional lot will be granted for every 100 acres of the remainder large lot.**
- 2. An additional lot will be granted if the same 100 acres is placed under a permanent Conservation Easement with a “no improvement” condition.**
- 3. An additional lot will be granted if the project area is less than 100 acres and more than 50% of the original project area size is placed under a permanent Conservation Easement with a “no improvement” condition.**

19.30A.050 Permitted uses.

The following uses and structures shall be permitted in the agricultural district provided they also comply with all other applicable laws:

~~A. Principal Uses.~~

- ~~1. Agriculture;~~
- ~~2. Agricultural land conservation;~~
- ~~3. Agricultural parks, pursuant to chapter 171, Hawai'i Revised Statutes;~~
- ~~4. Animal and livestock raising, including animal feed lots and sales yards;~~
- ~~5. Private agricultural parks as defined herein;~~
- ~~6. Minor utility facilities as defined in section 19.04.040, Maui County Code; and~~
- ~~7. Retention, restoration, rehabilitation, or improvement of buildings, sites or cultural landscapes of historical or archaeological significance.~~

~~B. Accessory Uses. Uses which 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 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 Schedule F forms;
- b. Provide certification by the Maui board of water supply that agricultural water rates are being paid if the subject lot is served by the County water system; or
- e. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Moloka'i and Lana'i, 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 which is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010, Maui County Code, except that paved parking shall not be required; stands which display or sell agricultural products which are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i 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 which 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 and waste management may impose additional requirements if a building permit is required for any structures; markets which display or sell agricultural products which are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i 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;

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, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;~~

10. ~~Riding academies; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i 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 which 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 and conducted for commercial purposes on the island of Moloka'i, such uses shall have been approved by the Moloka'i 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 Revised Statutes;~~

12. ~~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~~

13. ~~Other uses which 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. (Ord. 2749 § 3 (part), 1998)~~

USES	IAL	NON-IAL	PERFORMANCE STANDARDS
A. Permitted Uses:			
Agriculture	√	√	This includes the cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber;
Agricultural Land Conservation	√	√	
Agricultural parks, pursuant to Chapter 171, HRS	√	√	

Agricultural Product Stands	√	√	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 which is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010, Maui County Code, except that paved parking shall not be required; stands which display or sell agricultural products which are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;
Animal and livestock raising, including animal feed lots and sales yards;	√	√	Raising of livestock, including but not limited to poultry, bees, fish or other animal.
Aquaculture	√	√	Raising of aquatic life that are propagated for economic or personal use;
Dwelling	√	√	IAL: one dwelling only with a maximum of 1,500 sq ft and the occupants of the dwelling provide security or caretaker services; Farm Plan required; Non-IAL: Two dwellings with a 1,000 sq ft maximum for the 2 nd dwelling; Farm Plan not required;
Eco-Agricultural	√	√	Commercial tours of farm activities shall be allowed with a special use permit pursuant to Chapter 205, HRS.
Farm Labor Dwelling	√	√	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 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 Schedule F forms; b. Provide certification by the Maui board 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.

Game & Fish Propagation	√	√	
Open Land Recreation		√	Limited to non-commercial hiking, camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; hand gliding; paragliding; mountain biking and accessory restroom facilities; All commercial uses shall required a Special Use Permit pursuant to Chapter 205, HRS.
Parks		√	For public use and not including commercial activities except under the supervision of a government agency in charge of parks and playgrounds;
Restoration of historical & Cultural	√	√	
Riding Academies		√	
Subsistence Farming	√	√	
Utility Facilities, Minor (all forms of utility generation allowed to include but not limited to wind energy, solar and hydropower)	√	√	No special use permit required if parcel specific or for neighboring parcels not to exceed three (3).

19.30A.060 Special uses.

The following uses and structures shall be permitted in the agricultural district if a special use permit, pursuant to section 19.510.070, Maui County Code, has been obtained; except that if a use described in this section also requires a special permit pursuant to chapter 205, Hawai'i Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the State special permit shall fulfill the requirements of this section:

A. Additional farm dwellings beyond those permitted by subsection 19.30A.050.B.1;

- B. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050.B.2;
- C. Agricultural products stands that do not meet the standards of subsection 19.30A.050.B.3;
- D. Farmer's markets that do not meet the standards of subsection 19.30A.050.B.4;
- E. Public and quasi-public institutions which are necessary for agricultural practices;
- F. Major utility facilities as defined in section 19.04.040, Maui County Code;
- G. Telecommunications and broadcasting antenna;
- H. Open land recreation uses, structures or facilities which do not meet the criteria of subsection 19.30A.050.B. 11, including commercial camping; gun or firing ranges; archery ranges; skeet shooting; paint ball; bungee jumping; skateboarding; roller blading; playing fields; accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips; motor sports facilities; golf courses and golf driving ranges;
- I. Cemeteries, crematories, and mausoleums;
- J. Churches and religious institutions;
- K. Mining and resource extraction; and
- L. Landfills. (Ord. 2749 § 3 (part), 1998)

19.30A.070 Private agricultural parks.

Private agricultural parks provide for appropriately sized, functionally configured, and affordable agricultural parcels to support diversified agricultural development. Lots created for the purposes of establishing or expanding a private agricultural park shall not be counted in or as part of the number of lots permitted by subsection 19.30A.030.G. Except as otherwise provided in this chapter, the following requirements and standards shall apply for uses, facilities, and structures in areas designated as private agricultural parks;

- A. Individual lot leases or deeds shall provide that the lots is restricted to agricultural purposes;
- B. Lots within private agricultural parks shall be made available for lease or sale;
- C. No permanent or temporary dwellings or farm dwellings, including trailers and campers, shall be permitted within a private agricultural park, unless the

following requirement are met:

1. A special use permit, pursuant to section 19.510.070, Maui County Code, has been obtained;
2. The lot on which the dwelling is located is used principally for agriculture, and the occupant of the dwelling provides security or caretaker services for the private agricultural park;
3. A maximum of one dwelling per lot;
4. The private agricultural park shall be subject to a maximum density of one dwelling per twenty-five acres of private agricultural park area; and
5. The dwelling shall be subject to a maximum developable area of seven hundred square feet.

D. A restrictive covenant excluding dwellings that do not meet the criteria of subsection 19.30A.070.C shall be included in the deed of the lot and run with said lot as long as said lot is within the agricultural district. This restriction shall not prohibit the construction of storage sheds, equipment sheds or other structures appropriate to the agricultural activity carried on within the lot;

E. Agricultural parks shall not be less than twenty-five acres in size;

F. Minimum lot area: five acres;

G. Subdivision requirements, as set forth in the following provisions of Title 18, Maui County Code, shall not apply to private agricultural parks and the lots therein:

1. 18.16.010 to 18.16.180;
2. 18.16.270 to 18.16.310B;
3. 18.16.320;
4. 18.20 to 18.20.090;
5. 18.20.140; and
6. 18.28; and

H. All requirements set forth herein shall terminate if an area designated as an agricultural park is rezoned to a nonagricultural zoning district. (Ord. 2749 § 3 (part), 1998)

19.30A.080 Agricultural leases.

A. Any landowner may enter into an agricultural lease provided that the following conditions are met:

1. The principal use of the leased land is agriculture; and
2. No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall

not prohibit the construction of storage sheds, equipment sheds or other structures appropriate to the agricultural activity carried on within the lot.
B. Subdivision requirements, as set forth in Title 18, Maui County Code, shall not apply to agricultural leases. (Ord. 2749 § 3 (part), 1998)

19.30A.090 Substandard agricultural lots.

Substandard agricultural lots existing prior to the enactment of the ordinance codified in this chapter shall be subject to the following standards:

A. Lots less than two acres but equal to or greater than one-half acre shall be subject to the yard and building height standards as set forth for lots of such area in section 19.29.020, Maui County Code, and shall be exempt from the maximum developable area restriction of subsection 19.30A.030.D; and

B. Lots less than one-half acre shall be subject to the yard and building height standards as set forth for lots of such area in sections 19.08.050 and 19.08.060, Maui County Code, and shall be exempt from the maximum developable area restriction of subsection 19.30A.030.D. (Ord. 2749 § 3 (part), 1998)

19.30A.100 Exemptions pursuant to state law.

A. If provided by Hawai'i Revised Statutes, for lands legally defined and recognized as kuleana or similar type of land ownership, such as land commission awards or royal patents, the district standards of section 19.30A.030, and the density restriction of subsection 19.30A.050.B.1, shall not apply.

B. Affordable housing projects as set forth in chapter 201E, Hawai'i Revised Statutes, shall be exempt from the requirements of this chapter. (Ord. 2749 § 3 (part), 1998)

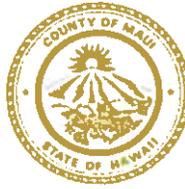
19.30A.110 Permits issued prior to the enactment of this ordinance.

State or County special permits, special use permits, conditional permits and variances issued prior to the enactment of the ordinance codified in this chapter shall remain in full force and effect for their duration, and their renewal shall be subject to the provisions of this chapter. Any dwelling or structure that was constructed with a building permit that was approved prior to the enactment of said ordinance need not acquire a County special use permit, conditional permit or variance and may be reconstructed as permitted by the original building permit(s), and such dwellings or structures may be expanded or modified with a building permit, subject to the other provisions of this chapter and this title. (Ord. 2749 § 3 (part), 1998)

19.30A.120 Rule-making authority.

The planning director and the director of public works ~~and waste management~~ shall have the authority to adopt rules regarding the administration of this chapter. (Ord. 2749 § 3 (part), 1998)

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

May 14, 2021

MEMORANDUM

TO: DEPARTMENT OF PLANNING STAFF
FROM: MICHELE CHOUTEAU MCLEAN, AICP, PLANNING DIRECTOR 
SUBJECT: REGULATION OF TINY HOMES, TRAILER-HOMES, MOBILE HOMES AND RVS

This memo is a supplement to the memo on this subject dated December 22, 2020 (attached). For properties in the state agricultural and rural districts, house trailers and mobile homes are not permitted as dwelling units.

Hawaii Administrative Rules Chapter 15-15 10/8/2019, §15-15-03 includes the following definitions (underlines added for emphasis):

"**Farm dwelling**" means a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

"**Single-family dwelling**" means a dwelling occupied exclusively by one family.

"**Dwelling**" means a building designed or used exclusively for single family residential occupancy, but not including house trailer, multi-family unit, mobile home, hotel, or motel.

State Agricultural District: In §15-15-25, the rules refer to HRS 205-2 and HRS 205-4.5 for permissible uses within the agricultural district:

HRS 205-2.d.7: "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 as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12)...”

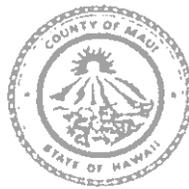
HRS 205-4.5: “Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. “Farm dwelling” as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling...”

Because the state rules specifically define farm dwellings as excluding house trailers or mobile homes, they are not allowed as dwelling units in the state agricultural district.

State Rural District: According to §15-15-27, permissible uses within the rural district include low-density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), HRS...” HRS §205-2.c also uses the term “dwelling” in describing the allowed uses in rural districts. Again, because the term “dwelling” has been defined to exclude house trailers or mobile homes, they are not allowed as dwellings in the state rural district.

Attachment
MCM:JMCT

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

December 22, 2020

MEMORANDUM

TO: DEPARTMENT OF PLANNING STAFF
FROM: MICHELE CHOUTEAU MCLEAN, AICP, PLANNING DIRECTOR *mm*
SUBJECT: REGULATION OF TINY HOMES, TRAILER-HOMES, MOBILE HOMES AND RVS

There has been a recent increase in inquiries about the legality and standards of tiny homes, mobile homes, trailer-homes and recreational vehicles (RVs). Some are issued building permits, and some are not. See **Section 16.26B.105.2, Maui County Code (MCC) Building Code – Work Exempt From Permit**, which does not require building permits for “motor vehicles with a valid certificate of registration.” Refer questions about building permit requirements to DSA.

Regardless, if the tiny home, trailer-home, mobile home or RV is being used as a dwelling unit, the Department of Planning (Department) will apply the following rules and procedures:

Section 19.04.040, MCC, Definitions – provides the following definitions:

1. “Dwelling unit” means a room or group of rooms connected together constituting an independent housekeeping unit for family and containing a single kitchen.
2. “Dwelling, single-family “Single-family dwelling unit” means a building consisting of only one dwelling unit designed for or occupied exclusively by one family.
3. “Farm dwelling” means a single-family dwelling that is located on and used in connection with a farm.

If a structure, trailer-home, mobile home, tiny home, RV or similar living space meets the above definitions, the Department will consider it as a dwelling.

Section 19.04.020, MCC, Compliance – regulates the permitted uses in each zoning district. If a motor vehicle or trailer is used for dwelling purposes, it will be regulated as a dwelling unit and all zoning rules will apply.

Section 19.62.060, MCC, Flood Hazard Areas, Standards for Development – includes specific requirements for manufactured homes and recreational vehicles. For floodplain management purposes, registered or unregistered vehicles or other non-traditional living spaces that serve as permanent dwelling units must conform to this Section.

Special Management Area and Shoreline: Being that Planning also administers the SMA, we require an SMA and/or shoreline assessment when these dwelling units are located in the SMA and/or shoreline, just as we would for new construction of a traditional dwelling. It should be noted that a SMA exemption can only be issued to a single family dwelling and one accessory dwelling on certain parcels; they cannot be part of a larger development.

If the dwelling unit does not comply with zoning, compliance must be established or the unit may have to be removed.

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