

**From:** Manuel, Kaleo L <kaleo.l.manuel@hawaii.gov>  
**Sent:** Tuesday, March 08, 2016 2:23 PM  
**To:** IEM Committee  
**Cc:** Scott Jensen  
**Subject:** IEM-9 DHHL Comment Letter - Amending Section 16.26B101  
**Attachments:** DHHL Letter - Maui CC - Building Code Amendment (3-7-16).pdf  
  
**Importance:** High

Aloha Chair Cochran,

Mahalo for the opportunity to provide comments on the proposed amendment to the Building Code of County of Maui.

Attached is an electronic copy of DHHL's comment letter. The original is forthcoming in the mail.

If you have any questions, please do not hesitate to contact me.

Mahalo nui,

M. Kaleo Manuel  
Acting Planning Program Manager  
Planning Office  
P: (808) 620-9485  
F: (808) 620-9559

Department of Hawaiian Home Lands  
Mailing: P.O. Box 1879, Honolulu, HI 96805  
Address: 91-5420 Kapolei Parkway, Kapolei, HI 96707

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DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR  
STATE OF HAWAII



JOHIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.  
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

P O BOX 1879  
HONOLULU, HAWAII 96815

March 7, 2016

The Honorable Elle Cochran, Chair  
Infrastructure and Environmental Management Committee  
County Council  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

Dear Chair Cochran,

Subject: Amending Section 16.26B.101 to Eliminate  
Exemptions in the Building Code of County of Maui  
(IEM-9)

Mahalo for allowing the Department of Hawaiian Home Lands  
(DHHL) the opportunity to review the proposed bill and provide  
the following comments at this time:

DHHL does not believe that the proposed amendment to Section  
16.26B.101 of the Building Code of the County of Maui will change  
the legal application of the Building Code on Hawaiian Home  
Lands.

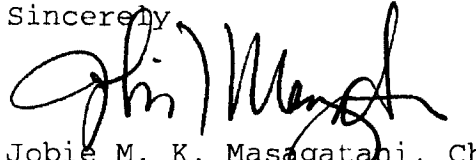
As a State agency, DHHL and its lands are generally not  
subject to county ordinances - including building codes - without  
DHHL's express consent. In this regard, DHHL does require its  
lessees and tenants in Maui County to adhere to the Maui County  
Building Code for health and safety purposes, and intends to  
continue doing so.

DHHL is willing to work with the County of Maui towards  
developing a Memorandum of Understanding (MOU) to clarify these  
issues and the respective roles and relationships of both of our  
agencies. We developed a similar MOU with the County of Hawaii,  
attached for your reference, and are currently working on one  
with the City and County of Honolulu.

The Honorable Elle Cochran  
March 7, 2016  
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Mahalo for the opportunity to provide comments. If you have any questions, please contact me at 620-9501 or Kaleo Manuel, Acting Planning Program Manager at 620-9481 or contact via email at [kaleo.l.manuel@hawaii.gov](mailto:kaleo.l.manuel@hawaii.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jobie M. K. Masagatani". The signature is fluid and cursive, with a large loop at the end.

Jobie M. K. Masagatani, Chair  
Hawaiian Homes Commission

Cc: Pua Canto, HHC Maui Commissioner  
Attachment

**Memorandum of Agreement Between the County of Hawaii  
and the Department of Hawaiian Home Lands**

**I. Purpose**

The purpose of this Memorandum of Agreement (MOA) is to clarify the respective roles, responsibilities, and obligations of the County of Hawaii (County) and the Department of Hawaiian Home Lands (DHHL) relating to land use planning, infrastructure maintenance, enforcement of laws, and collection of taxes and other fees on Hawaiian home lands.

**II. Guiding Principles**

The following general principles have guided the development of this MOA:

- A. The Hawaiian Homes Commission is responsible for determining land use on Hawaiian home lands. The County may not use its land use and zoning powers to prevent the Hawaiian Homes Commission from controlling the use of Hawaiian home lands.
- B. The County and DHHL share common goals in planning for the use of Hawaiian home lands: both support the orderly development of those lands for the benefit of native Hawaiians and both are committed to the integration of planning by DHHL and Hawaii County.
- C. The County should manage and maintain all infrastructure built to County standards
- D. The County is authorized to enforce criminal laws and applicable County ordinances and regulations on Hawaiian home lands.
- E. Hawaiian homestead lessees are residents of the County of Hawaii and should be treated in a manner consistent with all other residents of the County.
- F. Hawaiian homestead lessees should pay all taxes and fees required by law.
- G. The County and DHHL acknowledge that there are areas where agreement will not be reached, and agree to continue to work together toward a mutually acceptable resolution of such issues.

**III. Relating to Planning and Land Use**

- A. DHHL will implement its Planning System which includes plans with DHHL land use designations such as the Hawaii Island Plan, various Development and Subdivision Plans, and Homestead Community Plans. In the formulation, updating, and amendment of these plans, DHHL will consult with the relevant County departments, and shall give due consideration and weight to their

comments, and to the Hawaii County General Plan, and other officially adopted plans such as Community Development Plans. All land uses on DHHL property will be placed according to the applicable DHHL plans.

- B. The County will consult with DHHL over the appropriate designations of DHHL property in the Hawaii County General Plan LUPAG maps, and shall give due weight and consideration to the comments of DHHL, and to officially adopted DHHL plans.
- C. Based on its plans and DHHL land use designations, DHHL will determine the appropriate County zoning districts that shall apply to the property in question. DHHL will communicate these zoning districts to the County.
- D. All normal land use controls will be applied by Hawaii County to DHHL property according to the zoning district selected by DHHL. Except as specifically provided in the Agreement, DHHL will follow all normal land use procedures, regulations, and standards applicable to the zoning district.
- E. All land use permit applications on Hawaiian home lands must be accompanied by written consent from DHHL before the County can begin processing those applications.
- F. The standards of the various zoning districts selected will apply to DHHL property. DHHL and its lessees will go through normal County administrative variance procedures if they seek exemptions from standards.
- G. For uses allowed in the various zoning districts that require special permits or use permits, DHHL and its lessees will go through the applicable County permit procedures. At some time in the future, DHHL may implement its own use permit procedure for Hawaiian home lands. If DHHL grants use permits, it will be responsible for enforcing violations of those permits. The County will be notified when DHHL has formulated its use permit system.
- H. The County will advise DHHL of all violations by its lessees. The County will enforce land use codes and regulations on Hawaiian home lands in the same manner as with other landowners. DHHL will cooperate with the County in enforcing the terms of its leases requiring conformity to applicable laws and regulations, if requested by the County. Ongoing violations and failure to comply will be referred to DHHL after the County has exhausted all remedies short of pursuing legal action to address the violation. DHHL may institute lease enforcement proceedings in advance of, or in lieu of, County enforcement actions.

**IV. Relating to Public Facilities and Infrastructure Serving Hawaiian Home Lands**

- A. In the development of future projects, DHHL will construct public facilities in accordance with County standards. Where departures from County standards are desired, DHHL will pursue exemptions and other administrative variances from the appropriate County department, in accordance with procedures established for all property owners. Should DHHL choose not to construct infrastructure in accordance with County standards, the County may view such improvements as private facilities for repair and maintenance purposes.
- B. The County will accept operation, repair, and maintenance of all future DHHL infrastructure constructed according to County standards.
- C. Existing infrastructure shall be subject to County inspection prior to being accepted by the County for operation, repair, and maintenance. The County may require DHHL to repair any damage such as leaks, holes, sags, or deterioration affecting the operation of the existing infrastructure, identified as a result of the inspection.
- D. In the case of existing infrastructure that is not constructed to County standards, the County and DHHL will work to establish minimum standards for residential, agricultural, and pastoral subdivisions. Existing projects will be evaluated based on these new standards. The County may require DHHL to upgrade the infrastructure to the minimum standard prior to being accepted by the County for operations, repair, and maintenance.
- E. The County will maintain infrastructure according to its own standards, resources and schedules. Any decisions as to upgrades or rehabilitation will be at the County's discretion.
- F. Should DHHL elect to convert its land to a more intensive land use, DHHL will be responsible for upgrading the onsite infrastructure to accommodate the new use, and will consult with the County regarding the need to upgrade offsite infrastructure. DHHL and the County shall negotiate the extent to which DHHL will be responsible for any such offsite improvements requested by the County. DHHL shall be responsible for project-related offsite improvements to the extent that these would be required of other developers with similar projects. If offsite improvements benefit other property, DHHL and the County shall cooperate so that DHHL bears only its fair share of these improvement costs.
- G. The County will treat DHHL lessees in the same manner as other property owners with respect to conformity with laws, ordinances, and regulations. The County will advise DHHL of violations, and will refer cases of ongoing violation to DHHL after the County has exhausted all remedies short of pursuing legal action

to address the violation. DHHL reserves the right to institute lease enforcement proceedings in advance of, or in lieu of, County enforcement actions.

**V. Relating to the Enforcement of Criminal Violations on Hawaiian Home Lands**

- A. The County is authorized to and will enforce violations of criminal law on Hawaiian home lands.
- B. County law enforcement agencies and DHHL will work to establish procedures regarding sharing information and providing testimony relating to arrests made on Hawaiian home lands needed for contested case hearings and other administrative and/or judicial proceedings.

**VI. Relating to Real Property Taxes**

- A. Homestead lessees on Hawaiian home lands are responsible for the payment of real property taxes in accordance with the Hawaiian Homes Commission Act, 1920, as amended, and applicable County ordinances.
- B. The County agrees to waive the penalty and interest on all delinquent real property taxes owed by Hawaiian homestead lessees as of December 31, 2001. Such waiver will apply to payments made by February 20, 2002, or to payments advanced by DHHL pursuant to paragraph C.
- C. For those homestead lessees with real property tax balances, excluding penalty and interest, of more than \$500, if payment is not made by February 20, 2002, DHHL will advance full payment of all real property taxes, excluding penalty and interest, to bring those bills current, within 60 days of receipt of an updated real property tax listing. This date may be extended by mutual agreement of the parties.
- D. It is understood that the County's waiver of interest and penalty charges on delinquent real property taxes owed by homestead lessees as of December 31, 2001, and DHHL's advance of full payment of real property taxes, excluding interest and penalty, in accordance with paragraph C, is a one-time only offer.
- E. In order to alleviate or reduce further delinquencies, the County will notify DHHL on an annual basis of any delinquent property owners.
- F. The parties will continue to meet on an annual basis to evaluate the extent of delinquencies by Hawaiian homestead lessees on the Island of Hawaii and take action, if necessary, to keep delinquencies from recurring.

- G. The County and DHHL shall work to establish a customer trust fund by July 1, 2004 to collect real property tax payments as part of the mortgage/loan payments in order to make smaller, regular payments.

**VII. Areas for Further Collaboration**

The parties agree to work further on the following issues:

- A. The creation of new County zoning districts for farming and pastoral activities.
- B. The development of infrastructure standards for rural land uses such as agricultural and pastoral activities.
- C. The establishment of procedures for sharing evidence, information, and testimony involving criminal violations on Hawaiian home lands.
- D. The implementation of actions to prevent and/or address future real property tax delinquencies by Hawaiian homestead lessees.

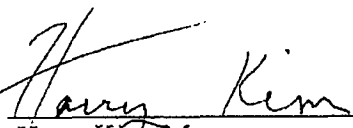
**VIII. Termination**

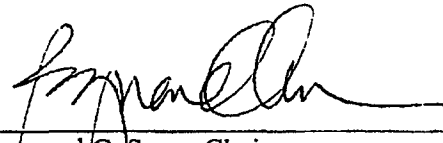
To achieve the objectives of this MOA, either party may, by mutual agreement in writing, further clarify or waive any term or condition of this agreement, provided such action does not violate any statutes, ordinances, or binding rules or regulations. DHHL and the County reserve the right to terminate this MOA upon one hundred eighty (180) days notice in writing to the other party.

In agreement thereof, the parties have entered into this Memorandum of Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2002.

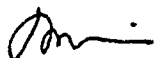
COUNTY OF HAWAII

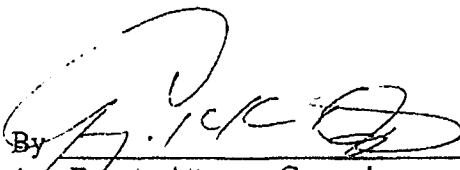
DEPARTMENT OF HAWAIIAN HOME  
LANDS

By   
Harry Kim, Mayor

By   
Raynard C. Soon, Chairman  
Hawaiian Homes Commission

APPROVED AS TO FORM:

By   
Corporation Counsel

By   
Deputy Attorney General