

ATTACHMENT 6

Agricultural Zoning Ordinance Chapter 19.30A

Title 19 ZONING

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 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 lands within the agricultural district for residential uses, thereby preserving agricultural lands and allowing proper planning of land use and infrastructure development;
4. Discourage establishment of nonagricultural subdivisions;
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)

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)

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 nondwelling 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

		Maximum	Maximum	Maximum
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Area of lot (in acres)	Maximum number of permitted lots: 2-acre minimum lot size	number of permitted lots: 15-acre-minimum lot size	number of permitted lots: 25-acre minimum lot size	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.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
 - c. 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)

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 quasipublic 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)

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