

# Affordable Land and Housing for Farmers

*Exploring Agricultural and Community Land Trusts for Hawai'i*



Funding provided by The Bill Healy Foundation



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# Affordable Land and Housing for Farmers

## *Exploring Agricultural and Community Land Trusts for Hawai'i Island*

### Summary

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

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

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

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

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

## I. Introduction

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

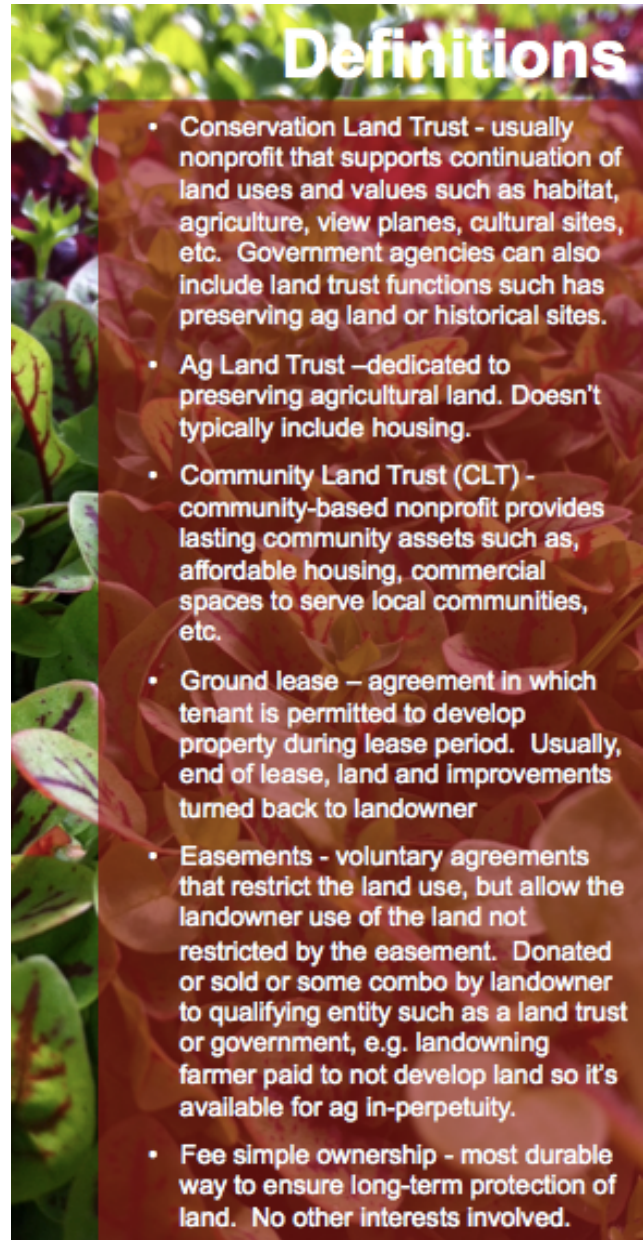
- researched the role agricultural land trusts that include affordable housing could play in addressing this issue, and
- Convened a working group to discuss these findings and the work of other stakeholders in the State on this issue.

The primary drivers for undertaking this project included:

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

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

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



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

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

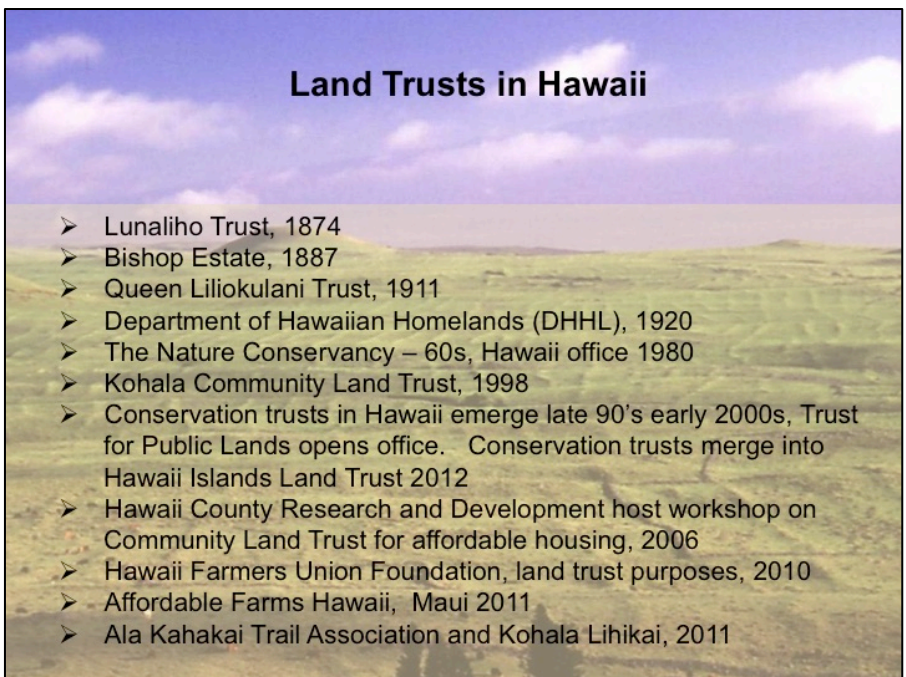
There is an emerging understanding around the country, driven by the recent agricultural renaissance of local food security movements with the emergence of regenerative farming, young farmers programs, farm-to-table restaurants, localvore and foodie groups, etc., that to meet their various objectives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

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

### *Brief History of Land Trusts in Hawai'i*

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

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



### Land Trusts in Hawaii

- Lunaliho Trust, 1874
- Bishop Estate, 1887
- Queen Liliokulani Trust, 1911
- Department of Hawaiian Homelands (DHHL), 1920
- The Nature Conservancy – 60s, Hawaii office 1980
- Kohala Community Land Trust, 1998
- Conservation trusts in Hawaii emerge late 90's early 2000s, Trust for Public Lands opens office. Conservation trusts merge into Hawaii Islands Land Trust 2012
- Hawaii County Research and Development host workshop on Community Land Trust for affordable housing, 2006
- Hawaii Farmers Union Foundation, land trust purposes, 2010
- Affordable Farms Hawaii, Maui 2011
- Ala Kahakai Trail Association and Kohala Lihikai, 2011

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

## II. Challenges

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

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

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

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

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



Also leases and licenses typically don't account for,

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

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

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

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

### *Unexpected*

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

### **III. Research Findings**

#### *Agricultural Land Trusts*

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

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

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

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

Land trusts can address the above issues by:

1) Adding additional language to agricultural easements to:

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

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

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

### *Community Land Trusts (CLT)*

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

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

To create affordable housing, typically a CLT will:

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

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



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

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

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

Community Land Trusts build wealth for their communities by:

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

### *Examples*

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

### *Funding*

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

### *Legislation*

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

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

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

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

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

##### *Model Components*

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

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

##### *Potential Parameters for Designing a Hawai'i Island Model*

Parameter objectives might include:

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

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

### *Potential Models for an Agricultural Community Land Trust*

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

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

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

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

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



*Preferred Model*

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

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

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

### *Model Details*

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

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

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

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

OR

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

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

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

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

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

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

Considerations for fee simple land ownership:

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

Considerations for lease holding:

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

compliance.

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

### *Other Considerations*

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

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

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

## **V. Potential Next Steps**

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

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

## Appendix A Working Group

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

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



## **Appendix B**

### **Community Land Trust Brief History**

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

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

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

## **Appendix C**

### **Examples of Agricultural and Community Land Trusts**

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

#### **Existing and Emerging Ag Land Trust Scenarios with Housing**

Current:

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

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

#### **Examples: Ag Land Trusts with Housing**

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

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

Location: Washington State

Farm: Scatter Creek Farm

Acreage: 100 acres owned by land trust

Land Tenure: 99-year, inheritable ag ground leases

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

Other programs: Affordable small farm equipment rental

Farmers in housing: 1 family

Other farmers: varies 3-4



Trust: **Puget Consumer Coop Farmland Trust**

Organizational structure: 501(c)(3)

Location: Washington

Farm(s): 19 farms

Acreage: 20 – 300

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

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

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

Farmers in housing: Housing on each farm.



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

Location: Massachusetts

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

Farms: Indian Line Farm

Acreage: 17 acres

Land Tenure: 99-year lease to farmers.

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

Other programs: Regional education on community land trusts.

Farmers in housing: 1

Other farmers: 2



## Lopez Community Land Trust

Trust: Lopez Community Land Trust

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

Organizational structure: 501(c)(3) nonprofit

Farm: Stonecrest Farm.

Acreage: 46

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

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

Other programs: Affordable housing projects, internships,

Farmers in housing: New lessee not yet selected.

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

### Examples: Community Land Trust – Housing Only

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

Successful community land trusts examples include:

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

## **Appendix D**

### **Funding for Ag and Community Land Trusts**

#### **Community Land Trusts**

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

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

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

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

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

#### **Agricultural Land Trusts**

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

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

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

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

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

## **Appendix E**

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

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

[HI Rev Stat § 205-4 \(2016\)](#),

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

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

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

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

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

Section 25-6-1. Purpose.

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

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

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

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

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

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

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

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

201H. Hawai‘i Housing Finance and Development Corporation

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

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



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

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

[HI Rev Stat § 46-15 \(2013\)](#)

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

§46-15 Experimental and demonstration housing projects.

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

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

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

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

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

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

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

**Appendix F**  
**Proposed Changes to Maui County Rules**

(Rule Changes Begin on next Page)

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2014)

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

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

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

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

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

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

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

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

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area;

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following [three] five criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings;

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system; [or]

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production[.];

d. Subject lot is owned by an agricultural land trust; or

e. Subject lot is conveyed to an agricultural land trust through a perpetual conservation easement.

On the islands of [Moloka'i] Molokai and [Lana'i] Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050.B.2.a and 19.30A.050.B.2.b;

3. One agricultural products stand per lot, for the purpose of displaying and selling agricultural products grown and processed on the premises or grown in the County, provided that said stand shall not exceed three hundred square feet, shall be set back at least fifteen feet from roadways, shall have a wall area that is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010 of this code, except that paved parking shall not be required; stands that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, [Hawai'i] Hawaii Revised Statutes;

4. Farmer's markets, for the growers and producers of agricultural products to display and sell agricultural products grown and processed in the County; structures shall have a wall area that is at least fifty percent open; markets shall operate only during daylight hours and shall not operate on parcels less than ten acres; the director of public works may impose additional requirements if a building permit is required for any structures; markets that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, [Hawai'i] Hawaii Revised Statutes;

5. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County;

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

7. Energy systems, small-scale;

8. Small-scale animal-keeping;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

paf:jkm:14-065j

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2014)

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

92 or more	<u>15, plus one additional lot for each 40 acres above 92 acres (not to exceed 17 lots);</u> <u>plus one lot for each 60 acres above 92 acres;</u> <u>plus one lot for each 100 acres above 92 acres;</u> <u>plus one lot for each 160 acres above 92 acres</u>
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For the purposes of this subsection, any lots or portions thereof contained entirely within the subject lot and with the same ownership as the subject lot shall be considered a part of the subject lot and shall count towards the maximum number of permitted lots that may be created from the subject lot."

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

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

APPROVED AS TO FORM AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

paf:jkm:14-065a