

ARTICLE 8. AGRICULTURE DISTRICTS (A)

Sec. 8-8.1 Purpose.

The Agriculture District establishes means by which land needs for existing and potential agriculture can be both protected and accommodated, while providing the opportunity for a wider range of the population to become involved in agriculture by allowing the creation of a reasonable supply of various sized parcels..

(a) To protect the agriculture potential of lands within the County of Kaua'i to insure a resource base adequate to meet the needs and activities of the present and future.

(b) To assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses.

(c) To limit and control the dispersal of residential and urban use within agriculture lands.

Sec. 8-8.2 Types of Agriculture Districts

(a) There are two (2) Agriculture Districts:

(1) Agriculture One (1)

(2) Agriculture Two (2)

(b) Agriculture One (1) shall include but not be limited to those uses which are generally in support of agricultural production and are located on those parcels not identified as Important Agricultural Lands under Hawai'i Revised Statutes, Chapter 205, as amended.

(c) Agriculture Two (2) shall be reserved for agriculture uses and those uses generally in support of agricultural production and are located on those parcels identified as Important Agricultural Lands under Hawai'i Revised Statutes, Chapter 205, as amended.

Sec. 8-8.2 Agriculture District Development Standards

(a) Subject to the density, parcel and other requirements of Sec. 8-8.3 and Sec. 8-8.2(c), the development standards applicable in an Agriculture District shall

be the same as those established in Secs. 8-4.3 and 8-4.5 of this Chapter, except that:

(1) The maximum height of any building, other than one intended primarily for residential use, shall be fifty (50) feet.

(b) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.

(c) Permitted residential densities shall be calculated as follows:

(1) Agriculture One (1):

~~(A)(1)~~ One (1) dwelling unit for each parcel one (1) acre or larger.

~~(B)(2)~~ One (1) additional dwelling unit for each additional three (3) acres in the same parcel, provided that no more than five (5) dwelling units may be developed on any one (1) parcel.

~~(C)(3)~~ A parcel or contiguous parcels in common ownership of record existing prior to or on September 1, 1972, which is smaller than one (1) acre, may develop one (1) dwelling unit.

(2) Agriculture Two (2):

(A) One (1) dwelling unit for each parcel.

Sec. 8-8.3 Limitations on Subdivisions of Parcels in Agriculture Districts.

(a) Purpose:

(1) To limit, retard and control subdivision of agriculture land that will destroy agriculture stability and potential.

(2) To avoid the dissipation of agriculture lands by excessive or premature parceling for other than agriculture uses.

(3) To establish and maintain a proportionate mix of parcel sizes to accommodate optimum sizes for existing or potential agricultural uses.

(4) To establish a relationship between the size of the parcel to be subdivided and the size of the smaller parcels created by the subdivision, in order to maintain large parcels for agricultural uses and activities best carried out on large parcels and to maintain and provide smaller parcels of various sizes for agricultural uses that can be carried out most efficiently on smaller parcels.

(b) Method of Calculating Allowable Subdivision of Agriculture Lands.

(1) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, no larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(A) parcels not more than ten (10) acres may be subdivided into parcels not less than one (1) acre in size.

(B) parcels larger than ten (10) acres, but not more than twenty (20) acres, may be subdivided into parcels not less than two (2) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.

(C) parcels larger than twenty (20) acres, but not more than thirty (30) acres, may be subdivided into parcels not less than three (3) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.

(D) parcels larger than thirty (30) acres, but not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size.

(E) parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.

(2) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(A) a maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller

than five (5) acres.

(B) an additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than twenty-five (25) acres.

(C) the balance of the parcel area, shall not be subdivided.

(c) Limitations on Resubdivision of any Parcel in an Agriculture District Subsequent to September 1, 1972. Except as provided herein, no parcel resulting from a subdivision approved after September 1, 1972, shall be resubdivided unless the parcel is transferred to the Urban or Rural Districts under the provisions of the State Land Use Law and is transferred to a use district other than Agriculture or Open, under the provisions of this Ordinance. The restriction in this subsection shall not apply to any lot resulting from:

- (1) Subdivision requested by any governmental agency;
- (2) Subdivision resulting from the construction of public improvements by governmental action;
- (3) Subdivision requested for public utility purposes;
- (4) Consolidation and resubdivision of properties where no additional lots or parcels are created provided that the resulting properties would not permit greater density.

However, any parcel of record thirty acres or less existing prior to August of 1972 and subsequently subdivided which has not maximized density as prescribed in Subsection 8-8.3(b)(1), may be further subdivided in accordance with said subsection.

(d) Automatic Review of the Provisions of This Section. The provisions of this Article and the boundaries of the Agriculture District shall be comprehensively reviewed by the Planning Commission in accordance with the requirements and procedures of Sec. 8-8.3(d) no later than two (2) years after September 1, 1972 and every succeeding five (5) years thereafter.

(e) Minimum lot size requirements

- (1) The minimum average lot width shall be one hundred fifty (150) feet.

(2) The average length of any lot shall not be greater than four (4) times its width.

Sec. 8-8.4 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any Agriculture District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Section 8-3.1, shall be required for the following activities:

(1) A Class I Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is not large enough to qualify for more than one (1) dwelling unit under the density provisions of this Article; and

(A) the construction or development does not require a Use Permit or a Variance Permit.

(2) Class II Permit. A Class II Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is qualified for more than one (1) dwelling unit; and

(B) the construction or development does not require a Use Permit or a Variance Permit.

(3) Class III Permit. A Class III Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development of a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance or a use permit is required.

(5) To obtain any permit, the applicant shall show compliance with the Standards established in this Article and shall submit a plot plan and other information as required by Sec. 8-4.6(d).

Sec. 8-8.5 Application To Agricultural Development In Other Districts.

All agricultural construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article.

Sec.8-8.6 Special Standards For Issuance of Farm Worker Housing Use Permits.

(a) For the purposes of this Section the following definitions shall apply:

“Commercial farm” means an operation or enterprise in operation for at least one year whose owner has filed a Schedule F form with federal income tax filings with the Internal Revenue Service. The core function of the commercial farm shall be;

(1) the commercial cultivation of fruits, vegetables, flowers, foliage, crops for bioenergy and forage (but excluding timber and turf farms); or

(2) the raising of livestock, including but not limited to, meat and dairy cattle, pigs, goats, sheep, poultry, bees, fish, or other animal or aquatic life that are propagated for commercial purposes (but excluding the husbandry of horses for recreational or hobby purposes unless the farm complies with the guidelines set forth in §RP-2-3(a)(1) of the County of Kaua'i's Department of Finance Real Property Tax Division's Agricultural Dedication Program Rules as of April, 2010).

“Exclusive residence” means the real property that is the person's only home or residence. If the person has more than one home or residence, then the person does not have an exclusive residence.

“Farm worker” is a farm owner, employee, contract worker or unpaid intern in a program that qualifies under the Fair Labor Standards Act who works no less than nineteen (19) hours per week in farm-related operations on a commercial farm.

For the purposes of farm worker housing, a commercial farm owner may qualify as a farm worker only when he can demonstrate the following:

(1) that the proposed farm worker housing will be the farm owner's exclusive residence, and

(2) that the affected lot has been subject to a condominium property regime (C.P.R.) and the respective C.P.R. limited common element does not qualify for any allowable permanent density.

“Farm worker housing” means the use of a building or portion thereof designed and used exclusively for the housing of farm workers who actively and currently farm on the land upon which the housing is situated. Farm worker housing may also be used to house the immediate family members of the respective farm worker.

(b) the Director shall not deem an application for a farm worker housing use permit complete unless the applicant can demonstrate that:

(1) the commercial farm has generated at least thirty five thousand dollars (\$35,000.00) of gross sales of agricultural product(s) per year for the preceding (2) two consecutive years for each for each farm worker housing structure, as shown by State general excise tax forms and Internal Revenue Service Schedule F forms;

(2) the owner has dedicated the subject lot or C.P.R. limited common element or portion thereof upon which the farm worker housing will be located to agricultural use pursuant to Section 5A-9.1 of the Kaua'i County Code as of August 16, 2010; and

(3) the owner or lessee of the subject lot or C.P.R. limited common element or portion thereof upon which the farm worker housing is being proposed has provided a commercial farm plan with staffing needs outlined to the Planning Department that demonstrates the feasibility of the respective farm's commercial agricultural production.

(c) The owner of a condominium property regime or a limited common element in a condominium property regime may not apply for farm worker housing unless, as of August 16, 2010:

(1) the condominium property regime has been registered with and received an effective date for the final public report from the Real Estate

Commission of the State of Hawai'i and the declaration has not been amended subsequent to August 16, 2010; and

(2) the subject CPR limited common element or portion thereof has been dedicated to agricultural use pursuant to Section 5A-9.1 of the Kaua'i County Code.

(d) No use permit for farm worker housing shall be approved unless:

(1) The application meets the use permit standards established under Section 8-3.2(e) of the Kaua'i County Code;

(2) The Planning Commission finds that based upon the type of agricultural activity, size of the commercial farm, and farming methodologies, the applicant has demonstrated a clear and compelling need for farm worker housing and the number and size of structures applied for; and

(3) The subject lot's maximum residential densities, as established in Section 8-3.2(c), have been permitted and constructed. If the applicant can demonstrate that the subject lot has been subjected to a condominium property regime (C.P.R.), and that the maximum allowable residential density for the applicant's respective C.P.R. limited common element has been permitted and constructed, the Planning Commission may waive the requirements of this provision.

(e) In addition to conditions of approval that the Planning Commission may impose pursuant to Section 8-3.2(e)(2), a use permit for farm worker housing shall be subject to the following conditions:

(1) The farm worker housing shall be used exclusively for the housing of farm workers and their immediate family;

(2) The Planning Commission may issue a maximum of one (1) farm worker housing use permit per lot or, if the lot has been developed as a C.P.R., per C.P.R. limited common element. Each permit may allow the construction of a maximum of three (3) farm worker housing structures. The total floor area of all structures combined shall be limited to 1,800 square feet and no structure may exceed 1,200 square feet of floor area. For the purposes of farm worker housing, the total floor area shall mean the sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls. The total floor area shall include enclosed attached accessory structures such as garages or storage areas, but it shall exclude unenclosed attached structures such as breezeways, lanais, or porches;

(3) The structures shall have post and pier foundations. No concrete slabs shall be used in constructing the farm worker housing;

(4) The structures shall be located on a plot plan approved by the Planning Commission; and

(5) The owner or lessee of the subject lot or C.P.R. limited common element or portion thereof shall not charge the farm workers or their immediate family members for rent or electricity.

(f) The land upon which the farm worker housing is located shall not be subdivided to create separate lots for the farm worker housing and the commercial farm. A farm worker housing use permit shall be subject to revocation if the farm worker housing and the commercial farm are designated as limited common elements of separate condominium units.

(g) The owner of farm worker housing shall annually certify to the Director of Planning that the Farm Worker Housing meets requirements and conditions set forth in Sections 8-8.6 (a) through (f). If any interest in the subject lot or C.P.R. limited common element or portion thereof that is the subject of the use permit is transferred, conveyed or sold, the successor in interest shall immediately notify the Director of Planning of such change in ownership.

(h) Prior to the issuance of the building permit, the applicant shall demonstrate to the satisfaction of the Planning Director that the applicant has recorded in the Bureau of Conveyances or the Land Court, as the case may be, the requirements and conditions set forth in Sections 8-8.6 (a) through (g) respectively.