

JOSIAH K. NISHITA
County Clerk



MARGARET C. CLARK
Deputy County Clerk

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OFFICE OF THE MAYOR

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

January 8, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For transmittal to:

Ms. Michele McLean
Planning Director
County of Maui
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino 1/10/19
Mayor Date

Dear Ms. McLean:

Transmitted herewith for your records is a copy of the AMENDMENTS TO TITLE 12, CHAPTER 102, RULES RELATING TO THE ADMINISTRATION OF CHAPTER 19.30A, MAUI COUNTY CODE, PERTAINING TO THE AGRICULTURAL DISTRICT, effective January 6, 2019.

Respectfully,

A handwritten signature in black ink, appearing to read "Josiah K. Nishita".

JOSIAH K. NISHITA
County Clerk

/lks

Enclosure

Amendments to Title 12, Chapter 102,
Rules Relating to the Administration
of Chapter 19.30A, Maui County Code, Pertaining
to the Agricultural District

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OFFICE OF THE MAYOR

1. Chapter 102, Rules Relating to the Administration of Chapter 19.30A, Maui County Code, Pertaining to the Agricultural District, is amended to read as follows:

"TITLE MC-12

DEPARTMENT OF PLANNING

SUBTITLE 01

DIRECTOR OF THE DEPARTMENT OF PLANNING

CHAPTER 102

RULES RELATING TO THE ADMINISTRATION
OF CHAPTER 19.30A, MAUI COUNTY CODE, PERTAINING
TO THE AGRICULTURAL DISTRICT

Subchapter 1 General Provisions

- §12-102-1 Title
- §12-102-2 Purpose
- §12-102-3 Definitions
- §12-102-4 [Farm plan] Declaration required

Subchapter 2 Procedures

- §12-102-5 [Farm plan review application] Farm dwellings, farm labor dwellings, and accessory agricultural structures
- §12-102-6 [Farm plan - content requirements] Commercial agricultural structures
- §12-102-7 [Farm plan review criteria] Open land recreation
- §12-102-8 [Unilateral agreement and declaration of restrictive covenants] Repealed
- §12-102-9 [Farm plan review fee] Repealed
- §12-102-10 [Additional dwelling; compliance report] Repealed
- §12-102-11 Appeal of decision

SUBCHAPTER 1

GENERAL PROVISIONS

§12-102-1 Title. The rules in this chapter shall be known as the “Rules Relating to the Administration of Chapter 19.30A, Maui County Code, Pertaining to the Agricultural District”. [Eff 12/10/06] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

§12-102-2 Purpose. The purpose of these rules is to: regulate farm dwellings and accessory agricultural structures and establish procedures for [the processing of farm plans] verifying principal agricultural uses in accordance with chapter 205, Hawaii Revised Statutes, and chapter 19.30A, Maui County Code; encourage sustainable agricultural practices; and protect and preserve agricultural resources. [Eff 12/10/06; am and comp 01/06/19] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

§12-102-3 Definitions. For purposes of this chapter, and unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined by chapters 19.04 and 19.30A, Maui County Code; other certain words and phrases used herein are defined as follows:

["Accessory use" means a use of land or of a building or portion thereof that is customarily incidental and subordinate to the principal use of the land or building and located on the same zoning lot as the principal use.]

"Accessory agricultural structure" means a building or structure that is used to support agriculture, agricultural land conservation and/or animal and livestock raising, such as an office, barn, stable, storage building, processing facility, workshop or combination thereof. For the purposes of these rules, commercial agricultural structures, farm dwellings and private garages, which are defined in chapters 19.04 and 19.30A, Maui County Code, shall not be considered accessory agricultural structures.

["Agricultural land conservation" means the planting and maintaining of soil-nourishing plants and trees to achieve soil conservation and environmental benefits, including but not limited to, soil nourishment, prevention of soil erosion, improvement of air quality, and habitat restoration.

"Agriculture" means the production of plant and animal life for food and fiber, and for raw materials for processed products. Agriculture includes, but is not limited to, fruit, vegetable, and flower growing, forestry, aquaculture, beekeeping, grazing and dairying, and their accompanying services and facilities.]

“Declaration” means a form provided by the director that declares a property owner’s compliance with chapter 205, Hawaii Revised Statutes, and chapter 19.30A, Maui County Code.

“Department” means the department of planning.

“Director” means the director of the department of planning.

“Enclosed living area” means any portion of a dwelling that is covered by a roof and is surrounded on three or more sides by a constructed barrier, other than safety railings, such as a wall, that is greater than forty-two inches in height measured from the finished floor or finished grade.

[“Farm” means a lot on which the majority (more than fifty percent) of the land is used for and the predominant activity is agriculture and/or agricultural land conservation.

“Farm dwelling” means a single-family dwelling that is located on, and used in connection with, a farm.

“Small-scale animal-keeping” means the keeping of dogs, cats, birds, rabbits, fowl, and similar type animals for noncommercial and domestic use. This also includes the keeping, grazing, and raising of pigs, goats, chickens, horses, cows, sheep and similar type animals for noncommercial and domestic use.] [Eff 12/10/06; am and comp 01/06/19] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapters 19.04, 19.30A; Maui County Charter §8-8.3)

§12-102-4 [Farm plan] Declaration required. [A farm plan for a parcel of property in the agricultural district shall be required prior to the issuance of a building permit for the construction of the first farm dwelling thereon.] The director shall not approve a building permit for a farm dwelling, accessory agricultural structure or private garage unless [a farm plan has been submitted by the building permit applicant and approved by the director and an executed and recorded unilateral agreement and declaration of restrictive covenants has been submitted to the department.] the owner of the subject property has executed and filed with the department a declaration. Before or with a building permit application or other development application, the applicant shall provide the department with a declaration verifying compliance with chapter 205, Hawaii Revised Statutes, and chapter 19.30A, Maui County Code. The declaration shall be made by the current owner of the subject property. If the property is sold to a new owner, then any applicant for a building permit or other development on the property must provide a declaration from the new owner at the time of the application for a building permit or other development. [Eff 12/10/06; am and comp 01/06/19] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

SUBCHAPTER 2

PROCEDURES

§12-102-5 Farm plan review application. (a) Farm plans shall be submitted to the director. The director shall review the farm plan to determine if the farm plan is complete. If the farm plan is determined to be complete, the director shall proceed with the processing of the farm plan. If the farm plan is determined to be incomplete the director shall give the applicant written notification identifying the portions of the farm plan determined to be incomplete or the additional information that is needed to process the application.

(b) Within forty-five days of determining the application is complete the director shall approve, approve with conditions, or deny, the farm plan.

(c) Upon approval of the farm plan, the applicant shall prepare, have executed, and, at applicant's expense, record with the State bureau of conveyances and/or land court, a unilateral agreement and declaration of restrictive covenants. The executed and recorded unilateral agreement and declaration of restrictive covenants shall be submitted to the director within sixty days of the director's approval of the farm plan. The director may, for good cause shown, grant an extension of time for submission of an executed and recorded unilateral agreement and declaration of restrictive covenants. The farm plan shall be kept on file in the department.]

Farm dwellings, farm labor dwellings, and accessory agricultural structures. Farm dwellings are subject to developable area and enclosed living area restrictions, pursuant to chapter 19.30A, Maui County Code. To regulate compliance with these restrictions:

- (1) Accessory agricultural structures shall not be used for dwelling purposes.
- (2) Farm dwellings shall not be attached to each other or to farm labor dwellings.
- (3) Farm labor dwellings may be attached to each other.
- (4) Any farm dwelling and any farm labor dwelling may have an attached or detached private garage.
- (5) The farm dwelling that may exceed one thousand square feet of developable area pursuant to subsection 19.30A.050(B)(1), Maui County Code, may be attached to, or have attached to it, any accessory agricultural structure.
- (6) The farm dwelling that shall not exceed one thousand square feet of developable area pursuant to subsection 19.30A.050(B)(1), Maui County Code, may be attached to, or have attached to it, any accessory agricultural structure, provided that the uses of each structure are separated by a solid constructed barrier such as a wall and provided that each structure has a separate exterior entrance; however, if the accessory agricultural structure is not enclosed on more than three sides by a constructed barrier such as a wall, lattice, canvas or screening that is greater than forty-two inches in

height, such as a lean-to shed, then a separate exterior entrance is not required.

- (7) Accessory agricultural structures can have plumbing and electrical fixtures and services.
- (8) The director may require building permit applicants for accessory agricultural structures to provide a written description of the agricultural activity conducted or proposed to be conducted on the property. The building permit applicant may include photographs or other indicators of agricultural activity, such as receipts for donations of agricultural products, tax information demonstrating commercial agricultural production, verification from the department of water supply that agricultural water rates are being paid, or demonstration of agricultural dedication for real property tax purposes. [Eff 12/10/06; am and comp 01/06/19] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

§12-102-6 [Farm plan - content requirements. (a) A farm plan application shall include the following:

- (1) Documents identifying the owner(s) of the subject parcel of land and a notarized letter signed by the owner(s) and authorizing submission of the farm plan;
- (2) Owner's name, address and telephone number(s);
- (3) Applicant's name, address and telephone number(s), if applicable;
- (4) Property description, including the following elements:
 - (A) Tax Map Key number(s);
 - (B) Property address(es); and
 - (C) Lot size;
- (5) A description of existing and proposed agricultural and agricultural land conservation uses on the subject parcel;
- (6) A map of the parcel drawn on a sheet of paper no larger than 8-1/2" x 11", not necessarily to scale, showing the areas and approximate acres to be in agricultural use and/or areas to be maintained in agricultural land conservation;
- (7) A written description of the types of plants and/or animals intended to be raised on the parcel and the percentage of total lot area to be devoted to each type; and
- (8) Any additional information requested by the director to assess the farm plan.]

Commercial agricultural structures. (a) A commercial agricultural structure may be attached to any farm dwelling, provided that the uses of each structure are separated by a solid constructed barrier such as a wall. A commercial agricultural structure may be attached to or incorporated in an accessory agricultural building provided that the floor area of the commercial

agricultural structure is clearly separated from the rest of the structure, such as by a constructed barrier such as a wall, or as otherwise determined by the director.

(b) A farmer's market may be a temporary use of land, including but not limited to tables, tents or vehicles, or may be a building or structure, or a combination of any.

(c) The total floor area of a commercial agricultural structure shall include the floor area of the structure, areas used for indoor or outdoor seating, dining or retail activities, restrooms except as provided by subsection 12-102-6(d), and any kitchen facility that prepares food for sale in the commercial agricultural structure, but shall not include areas used for parking, or facilities used for agricultural product processing or production.

(d) If an existing, permitted accessory agricultural structure contains a restroom that was justified by and approved with a farm plan, such restroom may be used by the patrons of a commercial agricultural structure, and shall not count toward the total floor area of the commercial agricultural structure. [Eff 12/10/06; am and comp 01/06/19] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

§12-102-7 [Farm plan review criteria. No farm plan shall be approved unless the director finds that the farm plan demonstrates that the farm dwelling will be an accessory use to agriculture, agricultural land conservation, or both, by meeting the following criteria:

- (1) The farm plan is prepared in accordance with the provisions set forth herein; and
- (2) The majority (greater than fifty percent) of the parcel on which the farm dwelling is located is, or will be, used for agriculture or agricultural land conservation as set forth in the farm plan. Small-scale animal-keeping shall not constitute an agricultural use.]

Open land recreation. (a) Open land recreation, pursuant to subsection 19.30A.050(B)(10), Maui County Code, and parks for public use, pursuant to subsection 19.30A.050(B)(12), Maui County Code, shall be considered accessory to any of the principal uses allowed pursuant to subsection 19.30A.050(A), Maui County Code. The director shall have the discretion to determine whether any structures related to open land recreation are necessary and appropriate to conduct such uses and whether such structures may be allowed without a special use permit pursuant to section 19.30A.060, Maui County Code.

(b) Any open land recreation conducted as an accessory use that also includes a component that is a special use pursuant to section 19.30A.060, Maui County Code, such as a guided tour that includes thrill rides such as a zipline, bungee jumping, or guided or unguided self-driven ATV rental, shall be required to obtain a special use permit pursuant to section 19.30A.060, Maui County Code. [Eff 12/10/06; am and comp 01/06/19] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-

8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

§12-102-8 Unilateral agreement and declaration of restrictive covenants.

At a minimum, the unilateral agreement and declaration of restrictive covenants shall include the following:

- (1) Owner's name and address;
- (2) Tax map key number(s);
- (3) State land use district classification and County zoning district;
- (4) Conditions requiring that:
 - (A) The farm dwelling shall be an accessory use to the principal use of agriculture and/or agricultural land conservation;
 - (B) The unilateral agreement and declaration of restrictive covenants shall run with the land and shall bind and constitute notice to all successors, grantees, assignees, mortgagees, lienors, and any other person who claims an interest in such property;
 - (C) The unilateral agreement and declaration of restrictive covenants shall not terminate, change, extinguish, nor cancel without the written approval of the director;
 - (D) Failure to maintain the farm in accordance with the unilateral agreement and declaration of restrictive covenants shall constitute grounds for the County to revoke or suspend any building permits issued under chapter 16.26, Maui County Code, and to deny new development permits for the subject parcel;
 - (E) The County may enforce the unilateral agreement and declaration of restrictive covenants and all conditions related thereto by appropriate action at law or suit in equity against the declarant and any persons claiming an interest in such property.] [Eff 12/10/06; R] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

§12-102-9 Farm plan review fee. Except for farm plans filed by County agencies, applicants shall pay a fee in the amount specified in the annual budget of the County. Checks issued to pay for application fees shall be made payable to the director of finance of the County.] [Eff 12/10/06; R] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

§12-102-10 Additional dwelling; compliance report. A compliance report shall be submitted by the landowner to the director, for the director's review and

approval, prior to County approval of any building permits for additional farm dwellings on the parcel. The compliance report shall verify the implementation of agricultural and/or agricultural land conservation uses in accordance with the approved farm plan.] [Eff 12/10/06; R] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3)

§12-102-11 Appeal of decision. The approval or denial of [the farm plan] a decision made by the director may be appealed to the Maui County board of variances and appeals pursuant to chapter 19.520, Maui County Code.” [Eff 12/10/06; am and comp 01/06/19] (Auth: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §8-8.3) (Imp: HRS Chapter 91-2, §§205-2, 205-4.5 and 205-12; MCC Chapter 19.30A; Maui County Charter §§8-8.3, 8-8.7)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. These amendments to Chapter 102, Rules Relating to the Administration of Chapter 19.30A, Maui County Code, Pertaining to the Agricultural District, shall take effect ten days after filing with the Office of the County Clerk. Any farm plan in effect prior to the effective date of these rules shall remain in effect; however, a declaration pursuant to these rules may be used to replace the requirements of such farm plan.

2018-1666
2019-01-06 Chapter 102 Effective

Adopted this 24th day of December, 2018, at Wailuku, Maui, Hawaii.

DEPARTMENT OF PLANNING



MICHELE MCLEAN
Director of Planning

Approved this 24th day of
December, 2018.



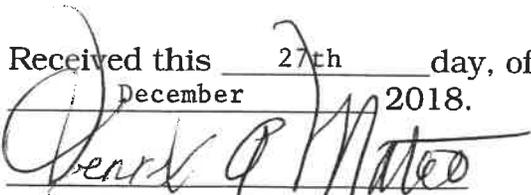
ALAN M. ARAKAWA
Mayor, County of Maui

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL HOPPER
Deputy Corporation Counsel
County of Maui

Received this 27th day, of
December 2018.



DENNIS A. MATEO
County Clerk, County of Maui
2018-1666
2018-12-21 Chapter 102 Ramseyer

CERTIFICATION

I, MICHELE MCLEAN, Director, Department of Planning, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Amendments to Chapter 102, Rules Relating to the Administration of Chapter 19.30A, Maui County Code, Pertaining to the Agricultural District, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which was adopted on the 24th day of December, 2018, following a public hearing on December 21, 2018; and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing rules was published in the Maui News on the 21st day of November, 2018.

DEPARTMENT OF PLANNING



MICHELE MCLEAN
Director of Planning