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Governor

SYLVIA LUKE
Lt. Governor



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State of Hawai'i
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December 20, 2024

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirty-third State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Nadine Nakamura,
Speaker and Members of the House
of Representatives
Thirty-third State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Nakamura, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Annual Report on the Effectiveness of the Relevant State Laws Governing Agricultural-Based Commercial Operations, as required by HCR 161, 32nd Legislature (2024). In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at <https://hdoa.hawaii.gov/meetings-reports/legislative-reports/>.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Hurd".

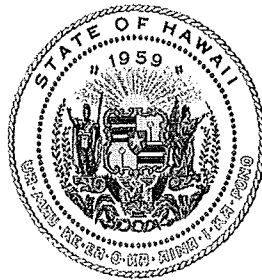
Sharon Hurd
Chairperson, Board of Agriculture

Attachment



**REPORT TO THE THIRTY-THIRD LEGISLATURE
2025 REGULAR SESSION**

IN RESPONSE TO HOUSE CONCURRENT RESOLUTION 161, 32nd Legislature (2024)
REQUESTING THE DEPARTMENT OF AGRICULTURE TO CONVENE A WORKING
GROUP TO REVIEW THE EFFECTIVENESS OF THE RELEVANT STATE LAWS
GOVERNING AGRICULTURAL-BASED COMMERCIAL OPERATIONS



Prepared by:
THE HAWAII DEPARTMENT OF AGRICULTURE

December 2024

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
Honolulu, Hawaii

December 16, 2024

Report of the Hawaii Department of Agriculture
In Response to House Concurrent Resolution 161
Requesting the Department of Agriculture to Convene a Working Group to Review the
Effectiveness of the Relevant State Laws Governing Agricultural-Based Commercial
Operations.

The 2024 State Legislature adopted House Concurrent Resolution No. 161 (copy attached below) that requests the Hawaii Department of Agriculture (Department) to convene a statewide Working Group (Group) to “review the effectiveness of the relevant State laws governing ABCOs (agricultural-based commercial operations).” The concern expressed in the Resolution is that there is “no requirement that an agricultural-based commercial operation display or sell a product produced on the subject property, only that they display or sell products grown somewhere in the State” (HCR 161, page 1, lines 23-26) and that this “lack of nexus...allows for the abuse of the intent of Act 113, and may impede enforcement of state laws regulating agricultural-based commercial operations;” (page 1, line 28 to page 2, line 2).

The Department did not convene a working group as requested in HCR 161 that was to be comprised of county planning departments, county agricultural departments, the Land Use Commission, the Hawaii Farm Bureau Federation, the Hawaii Farmers Union, producers who operate ABCOs, and representatives from relevant community advocates and organizations. In partial fulfillment, Department staff researched each county’s zoning ordinance for incorporation of ABCO provisions, pursuant to Section 205-2(d)(15), HRS, or similar language. Where these uses and activities are permitted, staff searched whether the ABCO operations or similar are required or encouraged to display or sell products produced on the properties on which the ABCO operations or similar are located. This research concluded that only Maui County has activities and uses similar to that found in the ABCO statute and specifies but not requires that uses and activities use agricultural products grown, raised, or caught in the County, and value-added products that were produced using agricultural products grown in Hawaii.

The Uses and Activities Allowed Pursuant to Act 113, SLH 2012

Act 113, SLH 2012 and subsequently, Act 129, SLH 2017 were both codified as Section 205-2(d)(15), Hawaii Revised Statutes and allow on agricultural land:

Roadside stands that are not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items;

A retail food establishment owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

A farmers' market, which is an outdoor market limited to producers selling agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii; and

A food hub, which is a facility that may contain a commercial kitchen and provides for the storage, processing, distribution, and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The Resolution provides two examples of the alleged "abuse of existing laws". The first example is the granting of a conditional use permit to a landowner of fallow agricultural land to open three businesses (coffee and tea, sandwich and pizza, distilled products). The second example is the granting of a conditional permit to the owner of a large agricultural parcel to operate a zipline. There are a few dozen sheep on a small portion of the property. The permit is now the subject of a contested case.

Department staff does not know how these two examples are related to the ABCO provisions in Chapter 205 as the current City zoning ordinance does not contain ABCO-based provisions.

For both examples, it appears that Act 113 (Session Laws of Hawaii 2012) neither requires nor states a preference that an ABCO operation display or sell an agricultural product produced on the property on which the ABCO operation is to be located. The Department's staff review revealed that up through SB 2375 SD3 during the 2012 session, the bill did require "retail food establishments" to serve food from products grown on the premises and elsewhere in Hawaii. The roadside stand and retail activities in an enclosed structure did not have the "products grown on the premises" requirement.

When SB 2375 SD3 crossed over, both House drafts (committees on Agriculture and Economic Revitalization and Business; and Water, Land, and Ocean Resources) inserted language requiring products grown on the premises or grown in Hawaii for all three ABCO operations. At no time did SB 2375 have a minimum requirement defining the percentage of products grown on the premises to not be less than 51 percent. The

Conference Committee on SB 2375 removed all of the House's references to the "products grown on the premises" requirement.

In 2017, the Legislature amended Act 113, SLH 2012 by adding "farmers market" and "food hub" to the original three ABCO uses of roadside stands, retail activities in an enclosed structure, and retail food establishments. As House Bill No. 1475 progressed through the House committees on Agriculture, Economic Development and Business, and Finance, two amendments were proposed – requiring ABCOs to be registered and headquartered in Hawaii and the agricultural products displayed, sold, and served as food contain at least 50 percent Hawaii grown content. The House committee drafts did not require products to be grown on the property on which the ABCO operation is to be located.

When HB 1475 HD2 crossed over, the Senate committees on Agriculture and Environment and Water and Land, and Ways and Means mostly concurred with the House language by accepting the requirement that ABCOs be registered and headquartered in Hawaii and "blanked" the required percentage of Hawaii-grown content of the ABCO operations. The Senate committee drafts did not require products to be grown on the property on which the ABCO operation is to be located.

The conference committee on HB 1475 agreed to require ABCOs be registered but not headquartered (per earlier testimony from Kamehameha Schools) in Hawaii, and deleted the proposed requirement that ABCO operations have a to-be-specified percentage of Hawaii-grown content. The bill was signed into law as Act 129, SLH 2017.

Returning to HCR 161 and SB 2375, the Department notes that the City and County of Honolulu, Department of Planning and Permitting (DPP) was the only county agency to submit testimony. In opposing SB 2375, DPP cited the bill to be virtually unenforceable, depending on self-certification to demonstrate compliance for whether products were grown in the State or on the premises, producer-operators could be out-of-state entities competing with local farmers, and there is no limit on the number of operations that can be located on the same property. DPP preferred ABCO's to go through the special use permit process.

The Department concurs with the findings of the City Department of Planning and Permitting. Current law does require that the following ABCOs (roadside stand, retail activities in an enclosed structure, retail food establishment) be "owned and operated by a producer". The definition of "producer" is presumably from Section 237-5 where it means "any person engaged in the business of raising and producing agricultural products." The law does not require the "producer" to own or conduct agricultural production on the property upon which the three aforementioned ABCO operations may be located. The law does require that ABCOs be registered in Hawaii but is not required to be headquartered Hawaii. The person who is the "producer" is not required to be a Hawaii resident. The other two permitted ABCO operations (farmers' market, food hub) are not required to be owned and operated by a producer but are limited to

producers selling agricultural products grown in Hawaii, and provide for storage, processing, distribution and sale of agricultural products grown in Hawaii, respectively.

To summarize, the Department agrees that the law governing ABCOs does not have a “requirement that an agricultural-based commercial operation display or sell a product produced on the subject property, only that they display or sell products grown somewhere in the State” (HCR 161, page 1, lines 23-26). However, we do not concur that there is a “lack of nexus...allows for the abuse of the intent of Act 113, and may impede enforcement of state laws regulating agricultural-based commercial operations;” (page 1, line 28 to page 2, line 2 – emphasis added). Act 113, SLH 2012 contains no expression or expectation of nexus between the location and operation of an ABCO on a property that may neither be farmed nor owned or leased by the ABCO operator and owner.

The Department finds that Maui County’s zoning ordinance governing “commercial agricultural structures” requires has features which requires “active agricultural operation” on a lot where a “commercial agricultural structure” (includes most of the ABCO-like uses and activities) is located. Maui’s zoning ordinance encourages but does not limit their ABCO-like operations to display, sale, process, or prepare food that was grown by a producer on the same lot or within the County. Agricultural products grown elsewhere in Hawaii are allowed.

Although not specifically referred to in HCR 161, the Department does not believe ABCOs should be protected from nuisance complaints in the Hawaii Right-to-Farm law as we believe they do not comport with the definition of “farming operation” in Section 165-2, HRS. The Department believes repealing Section 165-2(1), HRS is reasonable.

HCR 161 interpretation of DOA testimony

HCR 161 references the Department’s testimony on House Bill 2737, heard before the House Committee on Agriculture and Food Systems. House Bill 2737 is the basis for the Resolution. The Resolution states that “The Department of Agriculture acknowledged there is potential for abuse of the intent of the laws regulating agricultural-based commercial operations.” The Department’s testimony does not explicitly acknowledge potential for abuse of the intent of the ABCO law. The full statement in our testimony is as follows:

“The Department supports value-adding and the sales and consumption of fresh locally grown fruits and vegetables as fundamental to increasing local food self-sufficiency in Hawaii. We also understand the desire to reduce the number of noncompliant operations posing as agricultural-based commercial operations. However, we believe that verifying the contents of value-added products and agricultural products sold or made into prepared foods are at least 50 percent sourced from the property on which the commercial operation is located may be difficult to enforce.” (emphasis added)

FINDINGS, RECOMMENDATIONS AND PROPOSED LEGISLATION

As the Department did not convene the Working Group as requested by HCR 161, there are no findings and recommendations or proposed legislation to report. However, the Department offers the following suggestion:

- As stated in our testimony on House Bill 2737 (2024 Session), the Department supports value-adding and the sales and consumption of fresh locally grown fruits and vegetables as fundamental to increasing local food self-sufficiency in Hawaii. However, with respect to establishing thresholds defining what is “local” or from a particular island or county, we strongly believe that verifying the contents of value-added products and agricultural products sold or made into prepared foods are at least 50 percent sourced from the property on which the commercial operation is located may be difficult to enforce. An alternative measure of nexus of an ABCO to the parcel of agricultural land on which the ABCO is located could be found in Maui County’s zoning ordinance.

The Maui County zoning ordinance does not require that agricultural products displayed, processed, or sold as food must be grown, raised or caught on a lot where the uses and activities similar to ABCOs are located. However, their classification of “commercial agricultural structures” must have an active agricultural operation on the aforementioned lot. This feature appears to partly address the concern expressed in HCR 161 that there is “no requirement that an agricultural-based commercial operation display or sell a product produced on the subject property, only that they display or sell products grown somewhere in the State” (HCR 161, page 1, lines 23-26).

BRIEF LEGISLATIVE HISTORY OF AGRICULTURAL-BASED COMMERCIAL OPERATIONS

Enacted in 2012 (Act 113, SLH 2012 - (SB2375 CD1)) and amending Chapter 205 (State land use law) and Chapter 165 (Hawaii Right-to-Farm law) to permit roadside stands, retail activities in an enclosed structure, and retail food establishments on agricultural land provided these activities prepare and serve food or display and sell agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii. The amendment to the Hawaii Right-to-Farm law protects agricultural-based commercial operations (ABCOs) from nuisance complaints in the same manner given to agricultural production activities.

The ABCO law was amended in 2017 (Act 129 (HB1475)) by adding two additional facilities (farmers’ markets and food hubs) to the existing list of ABCOs permitted on Agricultural District land.

The current statutory language for ABCOs follows:

Section 205-2(d)(15):

“(15) Agricultural-based commercial operations registered in Hawaii, including:

- (A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
- (B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items;
- (C) A retail food establishment owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
- (D) A farmers' market, which is an outdoor market limited to producers selling agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii; and
- (E) A food hub, which is a facility that may contain a commercial kitchen and provides for the storage, processing, distribution, and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph;”

Section 165-2:

“§165-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Farming operation" means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" includes but shall not be limited to:

- (1) Agricultural-based commercial operations as described in section [205-2(d)(15)];

- (2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit;
- (3) Operation of machinery and irrigation pumps;
- (4) Ground and aerial seeding and spraying;
- (5) The application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and
- (6) The employment and use of labor.

A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other nonagricultural use shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

"Nuisance" means any interference with reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, or vibration; provided that nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety, and welfare. "Nuisance" as used in this chapter, includes all claims that meet the requirements of this definition regardless of whether a complainant designates such claims as brought in nuisance, negligence, trespass, or any other area of law or equity; provided that nuisance as used in this chapter does not include an alleged nuisance that involves water pollution or flooding."

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2024
STATE OF HAWAII

H.C.R. NO. 161

HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF AGRICULTURE TO CONVENE A WORKING GROUP TO REVIEW THE EFFECTIVENESS OF THE RELEVANT STATE LAWS GOVERNING AGRICULTURAL-BASED COMMERCIAL OPERATIONS.

WHEREAS, Act 113, Session Laws of Hawaii 2012 (Act 113), expanded the list of authorized activities in agricultural districts to include agricultural-based commercial operations, which allows for the display and sale of agricultural products grown in the State, value-added products that were produced

using agricultural products grown in the State, food using products grown in the State or value-added products produced using agricultural products grown in the State, and logo items related to the producer's agricultural operations; and

WHEREAS, the intent of Act 113 was to enable bona fide agricultural producers to remain profitable and continue to farm in the State by allowing producers to have additional income streams; and

WHEREAS, pursuant to section 205-2(d)(15), Hawaii Revised Statutes, agricultural-based commercial operations include roadside stands, limited retail activities in an enclosed structure owned and operated by an agricultural producer, certain retail food establishments, farmers' markets, and food hubs; and

WHEREAS, there is currently no requirement that an agricultural-based commercial operation display or sell a product produced on the subject property, only that they display or sell products grown somewhere in the State; and

WHEREAS, this lack of nexus between the product sold by the agricultural-based commercial operation and the subject land allows for the abuse of the intent of Act 113, and may impede enforcement of state laws regulating agricultural-based commercial operations; and

WHEREAS, as an example of this type of abuse of existing laws, a conditional use permit, which is now involved in a contested case, was granted to a landowner of fallow agricultural land to open three businesses, one to sell coffee and tea, one to sell sandwiches and pizza, and one to sell distilled products; and

WHEREAS, as an additional example of this type of abuse of existing laws, a conditional use permit, which is now involved in a contested case, to operate a zipline business was granted to a landowner in exchange for locating a few dozen sheep on a small portion of a large agricultural parcel; and

WHEREAS, at the February 7, 2024, hearing by the House Standing Committee on Agriculture on House Bill No. 2737, the Department of Agriculture acknowledged that there is potential for abuse of the intent of the laws regulating agricultural-based commercial operations; and

WHEREAS, representatives from the Department of Agriculture and relevant stakeholders have expressed an openness to participate in a review of the effectiveness and deficiencies of the laws regulating agricultural-based commercial operations; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirty-second Legislature of the State of Hawaii, Regular Session of 2024, the Senate concurring, that the Department of Agriculture is requested to convene a working group to review the effectiveness of the relevant State laws governing agricultural-based commercial operations; and

BE IT FURTHER RESOLVED that in convening the working group, the Department of Agriculture is requested to invite relevant stakeholders and agencies to participate in the working group, including but not limited to:

- (1) County planning and agricultural departments;
- (2) The Land Use Commission;
- (3) The Hawaii Farm Bureau;
- (4) Hawaii Farmers United;
- (5) Producers who operate agricultural-based commercial operations; and
- (6) Representatives from relevant community advocates and organizations; and

BE IT FURTHER RESOLVED that the Department of Agriculture is requested to submit a report of the working group's findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2025; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor; Chairperson of the Board of Agriculture; Mayors of the Counties of Maui, Kauai, and Hawaii; Mayor of the City and County of Honolulu; and Chairpersons of the Hawaii County Council, Honolulu City Council, Kauai County Council, and Maui County Council.

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
Honolulu, Hawaii

December 16, 2024

ATTACHMENT

COUNTY ZONING ORDINANCES – INCORPORATION OF “AGRICULTURAL-BASED COMMERCIAL OPERATIONS” AS PRESCRIBED IN SECTION 205-2(d)(15), HAWAII REVISED STATUTES.

The Department of Agriculture (Department) staff reviewed the zoning ordinances of the counties of Hawaii, Maui, Honolulu, and Kauai for incorporation of “agricultural-based commercial operations” (ABCOs) pursuant to Section 205-2(d)(15), HRS or similar language. Where these uses and activities are permitted, we searched whether the ABCO operations or similar are required or encouraged to display or sell products produced on the properties on which the ABCO operations or similar are located.

Section 205-2(d)(15) specifies that the State Agricultural District shall include the following:

“(15) Agricultural-based commercial operations registered in Hawaii, including:

(A) A **roadside stand that is not an enclosed structure**, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

(B) **Retail activities in an enclosed structure** owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items;

(C) A **retail food establishment** owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

(D) A **farmers' market**, which is an outdoor market limited to producers selling agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii; and

(E) A **food hub**, which is a facility that may contain a commercial kitchen and provides for the storage, processing, distribution, and sale of agricultural products

grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph;"

Hawaii County zoning code (Chapter 25, Hawaii County Code)

The Department's review of the Hawaii County zoning code found that "roadside stands" are permitted in Residential and Agricultural, Family Agricultural, and Agricultural zoning districts (but not the Intensive Agricultural district) provided that the agricultural products sold are grown on the premises. None of the ABCOs listed in Section 205-2(d)(15) or similarly described are permitted within the aforementioned zoning districts.

Maui County zoning code (Chapter 19, Maui County Code)

The definitions (Section 19.30A.015, Maui County Code) for agricultural food establishment, agricultural products stand, agricultural retail structure, and farmer's market are similar to the definitions for agricultural-based commercial operations (ABCOs) found in Section 205-2(d)(15), Hawaii Revised Statutes. Maui does not require that agricultural products displayed, processed, or sold as food must be grown, raised or caught on a lot where the above uses are located. However, "commercial agricultural structures" must have an active agricultural operation on the aforementioned lot. This partly addresses the concern expressed in HCR 161 (2024 Session) that there is "no requirement that an agricultural-based commercial operation display or sell a product produced on the subject property, only that they display or sell products grown somewhere in the State" (HCR 161, page 1, lines 23-26) and that this "lack of nexus...allows for the abuse of the intent of Act 113, and may impede enforcement of state laws regulating agricultural-based commercial operations;" (page 1, line 28 to page 2, line 2). Food hubs or operations with the attributes defined in State statute are not included in the zoning code as principal or accessory uses (Section 19.30A.050, "Permitted uses", MCC), or special uses (Section 19.30A.060, "Special uses", MCC).

Maui's zoning code as it applies to the Agricultural District and the definitions (Section 19.30A.015, MCC) and standards for commercial agricultural structures (Section 19.30A-072, MCC) (*in italics*), are as follows:

"Agricultural food establishment" means a building or structure, owned and operated by a producer and permitted under title 11, chapter 50 of the administrative rules of the state department of health, that prepares and serves food at retail using agricultural products grown, raised, or caught in the County, and value-added products that were produced using agricultural products grown in Hawaii.

Standards for agricultural food establishment - Total floor area in excess of 1,000 square feet requires special use permit. All food must be prepared in accordance with Department of Health rules and regulations.

"Agricultural products stand" means a building, structure, or place that is partially enclosed by walls, at least 25 percent open to the outside when in operation, owned and operated by a single agricultural product producer for the display and sale of agricultural products grown, raised, or caught in the County, and value-added products produced using agricultural products grown, raised, or caught in Hawaii.

Standards for agricultural products stands – Total floor area in excess of 1,000 square feet requires special use permit. Agricultural products stands that are less than three hundred square feet in total floor area are exempt from this requirement and exempt from the registration requirement with the Department of Planning. Maximum two structures per lot.

"Agricultural retail structure" means a fully-enclosed building or structure owned and operated by a single producer for the display and sale of agricultural products grown, raised, or caught in the County, value-added products that were produced using agricultural products grown, raised, or caught in Hawaii, logo items related to the producer's agricultural operations, and other food items.

Standards for agricultural retail structures - Total floor area in excess of 1,000 square feet requires special use permit. Agricultural retail structure serving food shall require a Department of Health permit. Other food items (non-agricultural and non-value added products produced using agricultural products grown, raised, or caught in the County or State, and logo items not to occupy more than 40 percent of the total floor area.

"Commercial agricultural structure" means an agricultural products stand, farmer's market, agricultural retail structure, or agricultural food establishment.

Standards for commercial agricultural structures – May sell agricultural products or value-added products that are not grown, raised, caught or produced on the lot on which the commercial agricultural structure is located, so long as an active agriculture operation is present on the lot where the commercial agriculture structure is located. A farm plan showing an active agriculture operation shall be provided to the Department of Planning and its implementation shall be verified before a commercial agricultural structure commences operation. Producers who propose to own or operate a commercial agricultural structure shall register each structure separately with the Department of Planning.

"Farmer's market" means either:

The temporary use of land that is managed by a single producer who leases space or stalls for the outdoor sale of agricultural products grown, raised, or caught in the County or value-added products that were produced using agricultural products grown, raised, or caught in Hawaii; or

A building or structure managed by a single producer who leases space or stalls for the display and direct retail sale of agricultural products grown, raised, or caught in the

County or value-added products that were produced using agricultural products grown in Hawaii.

"Producer" means an owner, lessee, or licensee of land located within the agricultural district, who is engaged in the growing or production for sale of any agricultural product or value-added products on such land.

"Value-added" refers to a raw agricultural product whose market value has been increased by special manufacturing, marketing, or processing.

Standards for farmers' markets – floor area in excess of 1,000 square feet requires a special use permit. Operating hours limited to daylight hours.

City and County of Honolulu Land Use Ordinance (Chapter 21, Revised Ordinances of Honolulu)

(Note: As of December 16, 2024, the City Council had just approved substantial amendments to the Land Use Ordinance (Bill 64 (2023) FD1, CD2). Some of the amendments address uses and activities similar to ABCOs as defined in Section 205-2(d)(15), HRS. For the purposes of this report, only the existing zoning ordinance (subject to the Mayor's approval) will be referenced.)

Roadside stands, accessory – permissible on AG-1 and AG-2 zones as an accessory to agricultural production on the same premises, subject to standards – one stand per premises and not to exceed 500 square feet in floor area.

Agribusiness activities – defined in part as "...accessory uses conducted on the same site where agricultural products are cultivated or raised", subject to standards - allows "retail activities in an enclosed structure", not to exceed 500 square feet of floor area, all products for sale "...must be predominantly agricultural products grown or produced on the site, in the city or elsewhere in the State of Hawaii." Up to 5% of the floor area can be used to sell general merchandise, facilities for preparation, sale, and consumption of food and drink on the site and feature agricultural products grown/produced on site, in the city or elsewhere in the state.

Also allowed under "agribusiness activities" are "farmer's markets" for growers and producers of agricultural products to display and sell agricultural products grown in the city or elsewhere in the State of Hawaii. One market may be permitted on a zoning lot. There is no requirement that the "farmer's market" be owned or operated by a "producer" or farmer or agricultural operator.

As a condition of approval of agribusiness activities, dedication of 50 percent or more of the project site, as the Planning Director determines is necessary to preserve the purpose and intent of the agricultural districts, for a minimum of 10 years to active agricultural use will be required by way of an agricultural easement or comparable

mechanism acceptable to the Planning Director. The required dedication of 50 percent of the project site to active agricultural use is unique to the City.

“Retail food establishment” and “Food hub” are not permitted uses on AG-1 and AG-2 zones nor as agribusiness activities.

Kauai County Comprehensive Zoning Ordinance (Chapter 8, Kauai County Code)

“Agricultural retail stands” are a permitted use on agriculture zoned land and in a structure not to exceed 1,000 square feet of gross floor area and agricultural products sold are produced on the subject property or the associated farm. This is the most limiting definition of all counties of what a farm stand type of operation may sell.

“Farmers market” is the offering of fresh agricultural products for sale by multiple farmers directly to consumers at an open-air or enclosed area. There is no restriction on sales or the location of production of the agricultural products sold.

“Food hubs”, “retail food establishments” or “retail stores or shops” are not permitted uses on agricultural land.

Community development plans (Kapaa-Wailua; North Shore; West Kauai; Lihue; South Kauai) establishes exceptions, modification, or additions to the Comprehensive Zoning Ordinance. Most are urban development oriented.