



Kaua'i Community Farm Land Trust
A Pilot Project for Kaua'i

Updated May 26, 2019
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Summary

Kaua'i Community Farm Land Trust is proposed as a pilot project to demonstrate how to permanently protect farmland so that it remains in agricultural production forever, while allowing a residential farmworker community on that land. Like a Community Land Trust, a Community Farm Land Trust has the benefit of separating the ownership of land from the ownership of improvements. Land is leased to farmers for ninety-nine years, renewable, on the stipulation that it be kept in agricultural production. The land can not be sold, but farmers may sell their equity or pass it to their children.

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A. Purposes of this Report:

1. To describe the Community Farm Land Trust model and highlight existing, successful and replicable examples.
2. To describe the 501(d) cooperative farm model and highlight existing, successful and replicable examples.
3. To outline the structure and purpose of a potential Community Farm Land Trust Foundation.
4. To explain the benefits to a Community Farm Land Trust of utilizing a land holding company.
5. To propose Kaua'i Community Farm Land Trust as a pilot project.

B. Sources

This report builds on a model suggested in the 2017 Kohala Center report *Affordable Land and Housing for Farmers: Exploring Agricultural and Community Land Trusts for Hawai'i Island*, prepared by Gail Byrne Baber, MSCE. Information also comes from the South of the Sound Community Land Trust in Washington State. Both are reproduced here in part, verbatim without unique citations.

C. Justifications

1. The shortage of affordable housing on Kaua'i is a crisis.
2. The inability of farmworkers to live on farmland limits the growth of sustainable agriculture and puts further pressure on the already tight affordable housing market.
3. Farmworker housing on privately owned land risks being used for other purposes such as vacation rentals.
4. Leasing of affordable housing on Kaua'i can not discriminate based on residency and is subject to being diverted from its purpose of housing island residents.
5. Efficient, sustainable, rapid and permanent solutions are needed to address these challenges.
6. Models of such solutions exist and may be imitated and combined to create an innovative pilot project.

D. Background

This pilot project is an extension of an effort to establish Ka Māla Village, a 501(d) cooperative farm on Kaua'i by using successful examples as a model.

The Ka Māla Village initiative is confronted with the same core challenge faced by many small farmers on Kaua'i: lack of secure access to land where they may also have homes. While addressing this challenge Ka Māla Village is guided by the principle that

"we hold our land, labor, income and other resources in common." Because Ka Māla Village is not currently an entity that has the capacity to receive funds and purchase land, a trust is required. A foundation is required by large donors for tax purposes.

Existing 501(d) communities have organized the Federation of Egalitarian Communities to assist in the formation of new 501(d) communities. The FEC provides legal, financial and social resources including documents, consultation, conferences and a visitor program for education and training.

The innovation of this pilot project is to combine a 501(d) cooperative farm with a Community Farm Land Trust based on existing successful models, such as South of the Sound Community Land Trust and Twin Oaks Community. By implementing proven models in an innovative way we can move forward quickly and confidently.

E. Objectives

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

F. Suggested Legal Entities

1	Kaua'i Community Farm Land Trust	501(c)(3)
2	Kaua'i Community Farm Land Trust Foundation	501(c)(3)
3	Kaua'i Community Farm Land Trust Title-Holding Corporation	501(c)(2)
4	Ka Māla Village	501(d)

TABLE 1. SUGGESTED LEGAL ENTITIES

1. Kaua'i Community Farm Land Trust 501(c)(3)

Mission: to permanently protect farmland in the State of Hawaii in order to increase the availability of land to farmers at reduced cost and with increased security.

Specific purpose: to acquire and retain land for the purpose of leasing that land to a residential farming community organized as a 501(d) non-profit.

Advantages:

- By separating ownership of land from ownership of housing, keeps land and housing in affordable pool in-perpetuity.
- Land Trust provides low cost ground lease to 501(d) for farming and housing.

- Permanently protects farmland so that it remains in agricultural production forever.
- Farm owners can receive the full appraised value of their farm by selling it to Kaua'i Community Farm Land Trust.
- Future farmers gain secure access to farmland through a 99-year inheritable land lease.
- Farmer lessees can build equity by acquiring the farm home & barns on leased land.
- There may be tax benefits for the farm seller if they choose to participate in a bargain sale.
- Does not include housing support: 501(d) develops housing.
- Provides programmatic support for 501(d).

Bylaws:

- The bylaws of South of the Sound Community Land Trust can be used as a model for creating bylaws for Kaua'i Community Farm Land Trust.

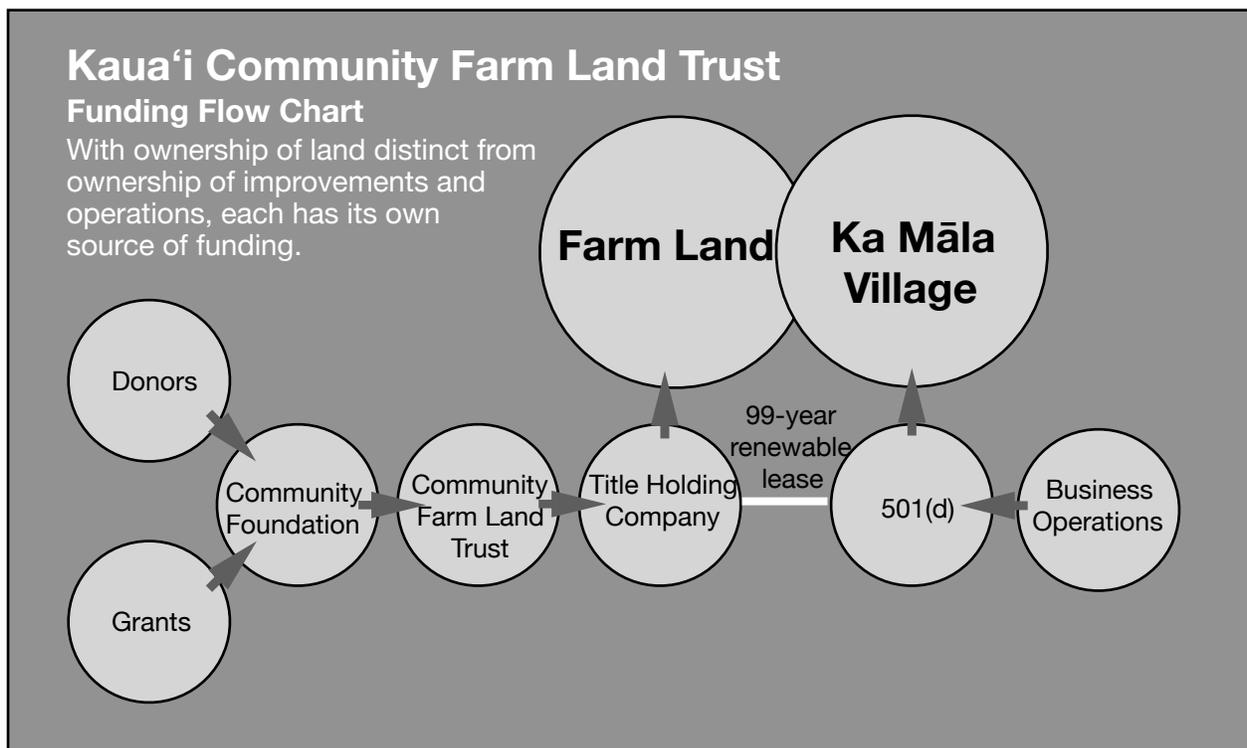


DIAGRAM A. KAUA'I COMMUNITY FARM LAND TRUST FUNDING FLOW CHART

2. Kaua'i Community Farm Land Trust Foundation 501(c)(3)

Mission: To support the development of a Community Farm Land Trust on Kaua'i.

Specific Purpose: to manage funds to support the Kaua'i Community Farm Land Trust through an agency endowment agreement with the Kaua'i Community Farm Land Trust.

Kaua'i Community Farm Land Trust Foundation will be a non-operating community foundation managing a designated fund supporting the Kaua'i Community Farm Land Trust in the form of an Agency Endowment.

Advantages:

- A community foundation may administer non-endowment funds.
- Community foundations provide professional investment management of charitable contributions. Donors making contributions to these foundations generally receive the maximum charitable deduction allowed because most community foundations are publicly supported within the meaning of IRC 170(b)(1)(A).
- Community foundations, because of their structure, tend to attract large contributions from a small number of donors.

3. Kaua'i Community Farm Land Trust 501(c)(2) Title-Holding Corporation

Advantage:

Through a 501(c)(2) Title-Holding Corporation the Agricultural Land Trust can use lessee selection criteria such as residency and skills for farmers and workforce without jeopardizing non-profit status. Potentially this allows for restricting 501(d) membership to island residents, avoiding the dilemma of building housing on Kaua'i which is then occupied by new arrivals.

4. Ka Māla Village 501(d) Apostolic Association

Mission:

To live in equality, cooperation, and harmony with the earth.

Principles:

- We hold our land, labor, income and other resources in common.
- We assume responsibility for the needs of our members, distributing the products of our labor and all other goods equally, or according to need.
- We practice non-violence.
- We use a form of decision making in which members have an equal opportunity to participate, either through consensus, direct vote, or right of appeal or overrule.
- We actively work to establish the equality of all people and we do not permit discrimination on the basis of race, class, creed, ethnic origin, age, sex, sexual orientation, or gender identity.
- We act to conserve natural resources for present and future generations while striving to continually improve ecological awareness and practice.
- We create processes for group communication and participation.

General Description:

A 501(d) non-profit is a worker-owned cooperative farm. Workers receive the necessary and desirable amenities of life in compensation for their labor, such as housing, food, clothing, health care, childcare and

education, senior care, transportation and utilities. The 501(d) is described by IRC 7.25.23 Religious and Apostolic Associations.

IRS Description:

In general, the type of organization exempt under IRC 501(d) is one organized for the purpose of operating a communal religious community where the members live a communal life following the tenets and teachings of the organization. All of the organization's property is owned in community and, each member, upon leaving, the organization, is entitled to no part of the community assets. The activities often consist of farming and manufacturing. The income of the organization goes into a community treasury and is used to defray operating expenses and the cost of supporting and maintaining the members and their families.

Advantages:

- Labor provided by members of 501(d).
- No employees, no payroll, no payroll taxes and no income taxes.
- Workers are compensated with in-kind goods and services bought in bulk quantities.
- Members produce a high percentage of their own food, reducing the cost of feeding workers to manufacturers level, about one-sixth of retail prices.
- Eliminates the need for government welfare or charity assistance for members.
- Motivated, responsible and dedicated workers.
- Clients and customers give preference to a worker-owned business.

Business Name	Since	Community Name	# People
<u>East Wind Nutbutters</u>	1980	<u>East Wind Community</u>	65
<u>Southern Exposure Seed</u>	1999	<u>Acorn Community</u>	32
<u>Commonwealth Seed Growers</u>	2008		
<u>Twin Oaks Hammocks</u>	1967	<u>Twin Oaks Community</u>	105
<u>Twin Oaks Community Foods</u>	1991		
<u>East Brook Community Farm</u>	2013	<u>East Brook Community Farm</u>	7
<u>Garden Medicinals and Culinaries</u>	2014	<u>Sapling Community</u>	8

TABLE 2. SUCCESSFUL 501(D) BUSINESSES

Appendix I

Affordable Land and Housing for Farmers:

Exploring Agricultural and Community Land Trusts for Hawai'i Island Gail Byrne Baber, MSCE for The Kohala Center

From the Introduction and 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."

Appendix II

The Community Farm Land Trust Model from South Of The Sound Community Farm Land Trust

The Community Farm Land Trust model of farmland preservation was created to keep farmland affordable for the next generation of farmers. It works like this: a nonprofit land trust purchases farmland with the help of federal, state, and local grant funds and commits to keeping the land in farming forever. The land is then leased to farmers under the terms of a 99-year, renewable, inheritable land lease. The buildings on the farm can be purchased by the farmers that lease the land. This gives the new farmer an ownership stake in the farm, the ability to build equity in the buildings, and land security through the terms of the lease.

The land lease specifies that the land must continue to be farmed. All future purchasers of the farm buildings must sign a land lease and abide by the terms of the lease. Once everything is in place, the original owner of the land will have sold their farm knowing that it will never be developed. And the new farmer who otherwise could not have afforded to buy the land, will now has secure access to farmland and farm buildings at a price that makes farming the land economically feasible.

Benefits of the Community Farmland Trust Model

Permanently protects farmland so that it remains in agricultural production forever.

- Farm owners can receive the full appraised value of their farm by selling it to Kauaʻi Community Farm Land Trust.
- Future farmers gain secure access to farmland through a 99-year inheritable land lease.
- Farmer lessees can build equity by acquiring the farm home & barns on leased land. There may be tax benefits for the farm seller if they choose to participate in a bargain sale.

Bargain Sale

While a Community Farm Land Trust does purchase farmland at its full appraised value, some farmland owners (depending on their individual financial situation) may prefer to donate all or a portion of the value of their farm through a “bargain sale”. In a bargain sale, the difference between the appraised value of the farm and the discounted price the farm sells for, is tax deductible to the extent allowed by law.

Nonprofit Land Trust’s Stewardship Responsibilities

After a farm is purchased and the land is leased, Kauaʻi Community Farm Land Trust would be responsible for ensuring that the terms of the agricultural ground lease are respected. The Kauaʻi Community Farm Land Trust visits the farm annually to ensure that the terms of the lease are followed.

Appendix III

Examples of Community Farm Land Trusts

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

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 tour volunteer opportunities, etc.
- Farmers in housing: Housing on each farm.

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.

Appendix IV

SOUTH OF THE SOUND COMMUNITY FARM LAND TRUST SELECTED BYLAWS

ARTICLE I: NAME AND PURPOSE

1. Name. The name of this organization shall be South of the Sound Community Farm Land Trust, herein after referred to as the "Corporation."
2. Purpose. The purpose of the Corporation shall be:
 - a. To permanently preserve land for locally owned and managed farms, and market and community gardens.
 - b. To provide opportunities for farmers, with special consideration to those of low income, to lease agricultural land at affordable rates, on a long term basis.
 - c. To provide opportunities for peoples, with special consideration to low income peoples, to secure housing on a long term basis, that is decent and affordable.
 - d. To combat community deterioration through the loss of agricultural lands and local food security by:
 - (1) promoting the development, rehabilitation, and viable operation of farms, along with associated industries, affordable housing, and social programs to support local agriculture;
 - (2) developing and promoting community gardens;
 - (3) creating educational and economic opportunities for members of the community in economic or other need;
 - (4) promoting sustainable, ecological, and humane farming practices;
 - (5) educating the larger community about agricultural issues and the Community Land Trust model of land stewardship.
 - e. To demonstrate sustainable land use and planning for environmental purposes and resource conservation.
 - f. To protect the natural environment and to promote the ecologically sound use of natural resources and the long term health, safety, and well being of the community.

ARTICLE V: STEWARDSHP OF LAND

1. Principles of Land Use. The Board of Directors shall oversee the use of land owned by the Corporation and shall convey the right to productive use of the land while preserving its natural resources in perpetuity. In leasing land the Board of Directors will seek to balance the rights and responsibilities of lessees and the larger community with the intent of fostering cultural connections between a healthy, sustainable agriculture and a thriving community. In doing so the Board shall be guided by the following principles:
 - a. The Board will protect to the best of its ability the productive capacity of the land for the benefit of the local community now and in perpetuity.
 - b. The Board will facilitate access to land for farmers who are committed to developing and practicing sustainable farming methods. Sustainable farming practices may be

exemplified by: cycling farm nutrients, tracking soil management, revegetation and reforestation, organic growing practices, or restoration of wildlife habitat.

c. The Board will facilitate community empowerment and the equitable distribution of resources, which it also recognizes are prerequisites of achieving sustainability.

Examples may include: co-operative structures, emphasis on local markets, development of appropriate technology, equitable wage structures, affordable leases, educational and apprenticeship programs, and egalitarian work and living situations.

d. The Board will convey land use rights on terms which conserve and replenish natural resources, including air, soil, water, and native plant and animal communities.

e. The Board will facilitate access to land for farmers with special concern for those who need it most.

f. The Board will respect and foster self-determination and community participation in decision making.

ARTICLE VI: LEASING, ENCUMBERING, AND SELLING THE CORPORATION'S LAND

1. Principles of Land Use. The Board of Directors shall oversee the use of land owned by the Corporation and shall convey the right to use such land, including through the use of leases, so as to facilitate the following principles:

a. The Board shall consider the needs of potential lessees and shall attempt to effect a just distribution of land use rights.

b. The Board shall convey land use rights on terms that will preserve affordable access to land and housing for future residents of the community, with a special consideration to low income people.

c. The Board shall convey land use rights in a manner that will promote the long-term well-being of the community and the long-term health of the environment.

d. Termination of Leases. The Board shall provide for periodic inspection of all leased lands and shall terminate leases, according to procedures set forth in lease agreements, if necessary for the protection of the land, the surrounding community or future generations.

2. Encumbrance of Land. The decision to mortgage or otherwise encumber land owned by the Corporation shall require the approval of the Board of Directors and written consent of any parties to whom such land is leased, excluding preexisting leases at the time of purchase.

3. Sale of Land. The sale of land does not conform with the philosophy and purposes of the Corporation. Accordingly, land shall not be sold except in extraordinary circumstances when the sale is considered a necessary means of achieving the purposes of the Corporation. In such extraordinary circumstances, land may be sold only with:

a. An affirmative vote by at least two thirds of the entire Board of Directors at a regular or special Board meeting, provided that written notice of such meeting has described the proposed sale and the reasons for the proposal; and

b. The written consent of any persons to whom the land in question is leased; and

c. The approval of two thirds of the Active Members present at two consecutive regular or special Membership Meetings, a quorum being assembled, provided that written

notice of such meeting has described the proposed sale and the reasons for the proposal.

ARTICLE VII: OWNERSHIP OF HOUSING AND OTHER IMPROVEMENTS LOCATED ON THE CORPORATION'S LAND, AND LIMITATIONS ON RESALE

1. Ownership of Housing and Improvements on the Corporation's Land. In accordance with the purposes of the Corporation, the Board of Directors shall take appropriate measures to promote and facilitate the ownership of housing and other improvements on the Corporation's land by low and moderate income people. These measures may include, but are not limited to, provisions for the sale of housing to such people; provisions for financing the acquisition of housing by such people, including direct loans by the Corporation; and provision for grants and other subsidies that will lower the cost of housing for such people.
2. Purchase by the Corporation of Property Located on the Corporation's Land. It is a purpose of the Corporation to preserve the affordability of housing and other improvements for low and moderate income people in the future. Accordingly, when land-use rights are leased, the Board of Directors shall assure that, as a condition of lease, the Corporation is granted the right to purchase any lessee-owned housing or other improvements on the land, for a price determined by the "resale formula," at such time as the lessees wish to sell or the lease is terminated.
3. The Resale Formula. For the purpose of preserving affordability, the Corporation shall restrict the price that lessees may receive when they sell housing and other improvements located on the land leased to them by the Corporation. A policy establishing such restrictions in the form of a "resale formula" shall be adopted by the Board of Directors in accordance with the following principles:
 - a. To the extent possible, the formula shall allow the seller to receive a price based on the value that the seller has actually invested in the property being sold.
 - b. To the extent possible, the formula shall limit the price of the property to an amount that will be affordable for other low and moderate income people at the time of the transfer of ownership.
4. Procedures for Adoption of the Resale Formula. The adoption of the resale formula shall require:
 - a. An affirmative vote by at least two thirds of the entire Board of Directors at any regular or special Board meeting, provided that written notice of such meeting has set forth the proposed formula with an explanation thereof; and
5. Procedure for Altering the Resale Formula. The consistent long-term application of a resale formula is essential to the purposes of the Corporation. Accordingly, the resale formula shall not be altered unless the Board of Directors and Active Members of the Corporation determine that the current formula presents an obstacle to the achievement of the purposes of the Corporation. In such an event, the resale formula may be altered only by a two-thirds vote of the entire Board of Directors and a two thirds vote of the Active Members present at a Membership meeting, as described above for the adoption of the formula.

Appendix V

IRC 7.25.23 Religious and Apostolic Associations

Part 7. Rulings and Agreements

Chapter 25. Exempt Organizations Determinations Manual

Section 23. Religious and Apostolic Associations

7.25.23.1 (02-23-1999)

Requirements for Exemption

IRC 501(d) and 501(a) provide exemption for a religious or apostolic association or corporation if:

it has a common or community treasury, even if it engages in business for the common benefit of its members; and
the members include in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for the year.

Any amount included in the gross income of a member is to be treated as a dividend received.

7.25.23.2 (02-23-1999)

Legislative History

This provision dates back to the Revenue Act of 1936 and was added to the law for the following reasons:

It has been brought to the attention of the committee that certain religious and apostolic associations and corporations, such as the House of David and the Shakers, have been taxed as corporations, and that since their rules prevent their members from being holders of property in an individual capacity the corporations would be subject to the undistributed-profits tax. These organizations have a small agricultural or other business. The effect of the proposed amendment is to exempt these corporations from the normal corporation tax and the undistributed-profits tax, if their members take up their shares of the corporations' income on their own individual returns. It is believed that this provision will give them relief, and their members will be subjected to a fair tax. 80 Cong. Rec. 9074 (1936)

7.25.23.3 (02-23-1999)

General Discussion

In general, the type of organization exempt under IRC 501(d) is one organized for the purpose of operating a communal religious community where the members live a communal life following the tenets and teachings of the organization. All of the organization's property is owned in community and, each member, upon leaving, the organization, is entitled to no part of the community assets. The activities often consist of farming and manufacturing. The income of the organization goes into a community treasury and is used to defray

operating expenses and the cost of supporting and maintaining the members and their families. See Rev. Rul. 57– 574, 1957–2 C.B. 161.

A court test under this section involved Christ's Church of the Golden Rule. *Peggy Lou Riker. v. Commissioner*, 244 F.2d 220 (9th Cir. 1957). The church was devoted to the teaching and practice of Christianity in everyday life. Its principal reliance is on having its members live in a manner exemplifying Christ's teachings, particularly by living in a selfless manner. As a means of attaining its spiritual purposes, the church engages in commercial activities designed to permit the public to witness the application of Christ's teachings in everyday life. Its canon law provides that a commercial project may be owned in whole or in part by the church or an individual member of the church. In this particular case, a member of the church owned a restaurant which she managed as a church project. The restaurant was staffed by student ministers. The gross receipts were turned over to the church and the church paid all expenses. Neither the project manager nor the student ministers received a salary but received subsistence and living quarters from the church.

In holding that the church did not qualify for exemption under what is now IRC 501(d), the court said: *** Congress intended [to exempt] an association somewhat akin to the ordinary association or partnership in which each member has a definite, though undivided, interest in the business conducted for the common benefit of the members, as well as a common interest in the community treasury and property. The business benefit mentioned appears to be something more tangible and worldly than spiritual comfort though the common community enterprise is to be related to or associated with a religious group and doctrine, and being under the aegis of that group***

In *Twin Oaks Community, Inc. v. Commissioner*, 87 T.C. 1233 (1986), the Tax Court rejected the Service position that the requirement for a common treasury or community treasury meant that members must take a vow of poverty and irrevocably contribute all of their property to the organization. The court held that a community treasury exists when all income that is internally generated by the community operated business and all income derived by the organization from its property is placed in a common fund and used for the maintenance and support of its members, with all members having an equal undivided interest in the fund, but no right to claim title to any part of it.

In *Kleinsasser v. United States*, 707 F. 2d 1024 (9th Cir. 1983), the Ninth Court made the following comments: "***The only requirements for the exemption are that there be a common treasury, that the members of the organization include pro-rata shares when reporting taxable income, and implicitly, that the organization have a religious or apostolic character. Once this requirement of form is fulfilled, the exempt organization is unlimited as to function***"

7.25.23.4 (02-23-1999)

Taxable Income Defined

Even though exempt from income tax, a religious or apostolic corporation or association must compute "taxable income" in order to determine the amounts

its members will include in their gross incomes. "Taxable Income" means gross income minus the deductions allowed by Chapter 1 of the Code. See IRC 63(a). The entire pro rata share of the organization's "taxable income," which a member includes in his or her gross income, is treated as a dividend, as defined in IRC 316 and the implementing regulations, even though a portion thereof may be attributable to the sale or exchange of capital assets. See IRC 501(d). Accordingly, passthrough of the character of the corporation's income and any deductions is not allowed to the members.

In *Kleinsasser v. United States*, *supra.*, the court held that members of an IRC 501(d) organizations are not entitled to an investment tax credit provided by IRC 38(a) on farm equipment and machinery purchased by the organization because IRC 501(d) organizations are not partnerships, and the property was not used in unrelated trade or business.

7.25.23.5 (02-23-1999)

Application for Exemption

There is no prescribed application form to be used by an organization seeking exemption under IRC 501(d). Any form of written application is acceptable. For specific information concerning the required contents of an application, see Rev. Proc. 72-5, 1972-1 C.B. 709.

7.25.23.6 (02-23-1999)

Filing requirements for Religious and Apostolic Associations

Under Reg. 1.6033-2(e) and the filing instructions for Form 1065, an IRC 501(d) organization is required to file a partnership return on Form 1065. As required by IRC 501(d), members report their pro rata share of the organization's income as a dividend on their individual tax returns.

The instructions for Form 1065 were modified in 1994 adding the following paragraph to the Form 1065 instructions: A religious or apostolic organization exempt from Income tax under section 501(d) must file Form 1065 to report its taxable income, which must be allocated to its members as a dividend, whether distributed or not. Such an organization must figure its taxable income on an attachment to Form 1065 in the same manner as a corporation. Form 1120, U.S. Corporation Income Tax Return, may be used for this purpose. Enter the organization's taxable income, if any, on line 4b of Schedule K and each member's pro rata share on line 4b of Schedule K-1. Net operating losses are not deductible by the members but may be carried back or forward by the organization under the rules of section 172.

IRC 501(d) organizations are required to make their annual Form 1065 returns available for public inspection for three years after the return is due. IRC 501(d)'s are also required to make available a copy of their exemption application letters, any supporting documents, and their exemption letters. Failure to make these documents available for public inspection may subject the organization to a penalty of \$20 per day for each day there is a failure to comply (up to a maximum of \$10,000 in the case of an annual return). See IRC

6104(d) and IRC 6652(c)(1)(C). However, the Schedule K-1's need not be disclosed.

7.25.23.7 (02-23-1999)

Digests of Published Rulings and Procedures Relating to Religious and Apostolic Associations

Apostolic Organization—This ruling illustrates the type of organization that may qualify for exemption from federal income tax under IRC 501(d) and provides that contributions to such organizations are not deductible as charitable contributions for income tax purposes or for estate or gift tax purposes. Rev. Rul. 57-574, 1957-2 C.B. 161.

Applications—Information to be filed with exemption application by religious and apostolic organizations seeking exemption under IRC 501(d). Rev. Proc. 72-5, 1972-1 C.B. 709.

Infants and minor children as members—To the extent allowed under applicable state law, parents may consent to membership on behalf of their minor children. Rev. Rul. 77-295, 1977-2 C.B. 196.

Organization supported by outside income—An organization supported by wages earned by members from outside employment, rather than from internally operated businesses, is not described in IRC 501(d). Rev. Rul. 78-100, 1978-1 C.B. 162.

An organization that is substantially dependent on wages earned by some of its members from outside employment does not qualify for exemption under IRC 501(d). Rev. Rul. 80-332, 1980-2 C.B. 34.

Contributions to IRC 501(d) organizations are not deductible by donors under IRC 170(c)(2). Under IRC 6113, any fundraising solicitation (including a solicitation for membership dues payment) that an IRC 501(d) makes, must include an express statement (in a conspicuous and easily recognizable format) that contributions and gifts are not deductible as charitable contributions for federal income tax purposes. IRC 6113 does not apply, however, if the organization's annual gross receipts are normally \$100,000 or less, or if the organization's solicitations are made to no more than ten persons during a calendar year. The law provides penalties for failure to comply with this requirement, unless the failure is due to reasonable cause. Notice 88-120, 1988-2 C.B. 454.

Appendix VI

DRAFT

ARTICLES OF INCORPORATION OF

KA MĀLA

ARTICLE I

The name of the Corporation is KA MĀLA, INCORPORATED.

ARTICLE II

In order that the residents of Ka Māla Village may achieve and preserve a clearer perception of community and realize a more pure and unfettered unity of spirit, the Corporation is organized for the following apostolic and communal purposes: the Corporation shall form and become a self-contained intentional community, having a common treasury and providing for its members and for persons who wish to become members an environment in which they may live in harmony with nature and their fellow humans, a community designed and maintained according to principles of harmony and love. In furtherance of these purposes the community shall endeavor to: eliminate hierarchial relationships between people; promote the practice of non-violence in personal, interpersonal, and political relationships; respect and preserve the natural environment for the use of all species, now and in the future; eliminate classism, racism, ageism, patriarchy, and other forms of oppressions; practice community of property, with all those in the community sharing what they are, have, and can produce with one another.

The Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(d) of the Internal Revenue Code and its Regulations as now in force or as hereafter amended.

ARTICLE III

The Corporation shall have no capital stock and shall have three classes of members, designated as full, intermediate, and provisional. Individuals shall be admitted to provisional membership upon application made to and approval by the Board of Directors upon determination by it, in accordance with such procedures adopted by it for such purpose, that the applicant is acceptable and desirable to the purposes of the Corporation. Provisional members may become intermediate members after a six month provisional membership period, by admission to intermediate membership by the Board of Directors in accordance with such procedures as are adopted by it for such purpose. Intermediate members may become full members, provided they are at least eighteen years old, by admission to full membership by the Board of Directors in accordance with such procedures as are adopted by it for such purpose. Full and

intermediate members shall be entitled to vote on all matters to which the Bylaws entitle them to vote. Provisional members shall have no voting rights.

ARTICLE IV

The affairs of the Corporation shall be managed by its Board of Directors ("the Board"). The number of directors shall be fixed by the Bylaws, and in the absence of a Bylaw fixing the number, the number shall be three. The provisions of the Bylaws shall govern the time, place, and manner of electing or appointing members of the Board of Directors. The term of directors shall be eighteen months.

ARTICLE V

Each person who at any time serves as a director or officer of the Corporation or who at any time serves at the request of the Corporation as a director or officer of another corporation shall be indemnified by the Corporation against any and all liabilities incurred by him or her in any such capacity or arising out of his or her status as such director or officer.

Appendix VII

Relevant zoning and land use regulations supporting farmworker housing on agricultural land in Hawai'i

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- **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.
- **HRS 201H-38** Housing development; exemption from statutes, ordinances, charter provisions, and rules, 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.
- **HRS 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 VIII

Examples of State and Federal Funding Sources to Support Purchases of Agricultural Lands and Easements.

The **Hawaii State Legacy Land Conservation Program**

Provides grants to community organizations and government agencies that strive to purchase and protect land that shelters exceptional, unique, threatened, and endangered resources. The Legacy Land Conservation Program distributes this money through a competitive grants process—for purchasing land and conservation easements and for paying the debt service on state financial instruments (such as bonds)—for the protection of Agricultural and other resources.

The **US Department of Agriculture National Resources Conservation Service Agricultural Conservation Easement Program (ACEP)** provides financial and technical assistance to help conserve agricultural lands and wetlands and their related benefits. Under the Agricultural Land Easements component, NRCS helps American Indian tribes, state and local governments and non-governmental organizations protect working agricultural lands and limit non-agricultural uses of the land.

The **US Department of the Interior Land and Water Conservation Fund (LWCF)** Federal program supports the protection of federal public lands and waters – including national parks, forests, wildlife refuges, and recreation areas – and voluntary conservation on private land. LWCF investments secure public access, improve recreational opportunities, and preserve ecosystem benefits for local communities.

The **Community Development Block Grant (CDBG)** program is a flexible program that provides communities with resources to address a wide range of unique community development needs.

The **HOME Investment Partnerships Program (HOME)** provides formula grants to States and localities that communities use - often in partnership with local nonprofit groups - to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people.

The **Social Innovation Fund (SIF)** positions the federal government as a catalyst for impact – in which evidence-based programs and interventions are used to enable social innovation across America. Funded at an initial level of \$50 million in FY 2010, the Social Innovation Fund aims to work with intermediaries to provide funding to support nonprofit innovation and social enterprise.