

STATE AND COUNTY RURAL LAND
USE PROGRAMS:
PROGRAMS FROM OTHER STATES AND
OPPORTUNITIES FOR HAWAII

EXECUTIVE SUMMARY

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Introduction

The Assessment of State and County Rural Land Use Programs: Programs from Other States and Opportunities for Hawaii (the Assessment) was produced as part of the Rural Best Practices project as funded by Hawaii's Coastal Zone Management Program (CZM) and the National Oceanic and Atmospheric Administration (NOAA). The purpose of this document is to provide an overview of successful state level and county level programs pertaining to different rural planning objectives. These programs are described in detail to provide guidance and ideas for future planning effort at both the state and county levels in Hawaii for their rural lands.

It is important to note that the word "rural" as it is used in this assessment does not refer to the State of Hawaii's official designation of Rural Districts. The word rural is used here to discuss those land uses, landscapes and cultural assets that are generally associated with areas experiencing lower densities of development and services. These lands often serve as the transitional areas between urban and conservation lands and provide a unique mix of small "human" scale village centers, varied sizes of agricultural opportunities, scenic landscapes and lower density workforce housing. Rural areas serve valuable ecological functions with wide areas of open space and greenway corridors. The extractive industries provide stable localized economies for a population that is closely connected with the landscape and values associated with a strong local culture.

Rural areas represent a truly unique environment within Hawaiian society today. But as population continues to expand, global markets continue to shift and land use trends follow the pervasive patterns of sprawl, the very characteristics that make rural areas special are at risk. Many regions in the United States are showing enormous growth pressures in the sparsely populated rural areas that provide ideal locations for suburban bedroom communities within commuting distance to urban centers. Without proper growth management planning and rural support structures, these lands quickly fold to market pressures. The result is often an irreversible loss of community character, considerable environmental damage, socio-economic impacts and demands for local services that simply cannot be met within existing tax structures.

The Assessment is designed to provide a detailed review of several states and counties who are successfully protecting their rural legacies against growth pressures threatening to consume these lands with sprawl. These success stories are particularly important in the context of rural lands in Hawaii today. As enormous holdings of agricultural lands fall out of production and pressures for residential development continue to soar, Hawaii is faced with a situation where its rural lands could be developed with large-scale tracts of suburban housing and commercial development. Beyond the impacts to community character that would result from this style of development, the damage to ecosystems that are found nowhere else in the world would be extensive.

To provide guidance toward planning in Hawaii’s rural lands, this Assessment is divided into two sections. The first section takes a detailed look at three ~~model~~-state rural planning programs and how these programs have helped to shape success stories in a corresponding local jurisdiction. The three states chosen for the report are Maryland, Kentucky and Washington. The three counties examined from these states are Montgomery County, Lexington-Fayette County, and Skagit County respectively. The second section of this report builds upon the first, and also looks to several other programs, to illustrate the basic framework of effective state and county level programs. Specifically, this section examines:

- 1) Guidance for Comprehensive Planning and Policies in Rural Areas
- 2) Thresholds and Standards for Local Zoning Initiatives
- 3) Policy Guidance for Rural Communities
- 4) Incentives (financial and other) for Rural Economies and Rural Preservation

Although the programs examined for this assessment are implemented in areas quite different from Hawaii in many respects, the same core cultural, environmental, social and economic issues are readily visible from one location to the next. It is therefore important to closely examine these success stories to assess the effectiveness of their planning framework, legislative approach and suite of tools used to protect and foster sustainable rural lands.

Section 1. Successful State and County Rural Planning Initiatives

Successful states and counties examined for the Assessment illustrate several recurring tenets of sound planning in their management of rural areas:

- 1) State legislation provides clear enabling statutes for tools that can be implemented at the local (county) level;
- 2) Typical zoning density thresholds for rural residential development range from 5 to 20 acres; however, many communities also identify areas suitable for more concentrated residential development with densities as high as 8 units per acre;
- 3) There is a strong focus, on both the state and county level, on well-crafted ~~Comprehensive-comprehensive Plans-plans~~ that articulate rural land use policy and resource management strategies for rural areas; and
- 4) States and counties employ a variety of techniques to address the different supports and protections that are required to preserve rural landscapes and cultures.

The following tables summarize the different programs and techniques employed in the successful case studies developed for the Assessment.

Table 1: Summary Rural Land Management Tools for State of Maryland and Montgomery County.

TOOL	ENTITY	BRIEF DESCRIPTION
Rural Legacy Program	State	Provides funds to local governments and land trusts to purchase interests in real property from willing sellers in Rural Legacy Areas.
Agricultural Land Preservation Program	State	Guidance program to county officials for purchase of agricultural preservation easements. Based on the establishment of Agricultural Preservation Districts, an agricultural use assessment of land, and a state Agricultural Transfer Tax.
Maryland Agricultural & Resource-Based Industry Development Corporation	State	A public corporation that will provide financing to agricultural and resource-based businesses.
Maryland Transfer of Development Rights Legislation	State	State enabling legislation promulgated to allow local governments (counties) to develop transfer of development rights programs.
Farm Viability Programs	State	The Maryland Agricultural and Resource Based Industry Development Corporation developed four business assistance programs to provide funding and technical assistance to farms to help secure their viability: the Maryland Resource-Based Industry Financing Fund, Rural Business Energy Efficiency Loan Fund, Rural Business Working Capital Fund, and the Maryland Farm and Producer Viability Program.
Agricultural Zoning	Montgomery County	Meaningful agricultural zoning that separates farming operations from rural residential areas to avoid the impermanence syndrome.
Transfer of Development Rights	Montgomery County	A method for protecting land from development by transferring the rights to develop in one area to another.
Purchase of Development Rights	Montgomery County	Program allowing owners to sell the rights to develop their properties (versus transfer), while retaining their property ownership.

Table 2: Summary of Rural Land Management Tools at for Commonwealth of Kentucky and Lexington-Fayette County.

TOOL	ENTITY	BRIEF DESCRIPTION
Purchase of Agricultural Conservation Easement Program	State	Authorizes the state to purchase agricultural conservation easements to ensure that lands currently in agricultural use remain viable for agriculture and are not converted to other uses.
Agricultural District Law	State	State legislation aimed at protecting the best agricultural land for food and fiber production and discouraging its conversion to non-agricultural uses.
Rural Service Area Land Management Plan	Lexington-Fayette County	A land use plan that utilizes preservation tools to protect and preserve the rural service area and to keep the County's agricultural economy viable and strong.
Residential Infill and Redevelopment	Lexington-Fayette County	County program to encourage the development of vacant land in the inner city as well as redevelopment of inner city sites.
Amendments to Zoning Ordinance and Subdivision Rules	Lexington-Fayette County	Amendments to existing zoning and subdivision rules and regulations that included new or revised provisions to county ordinances in order to establish base development rights within the Rural Service Area.
Purchase of Development Rights	Lexington-Fayette County	County program that allows owners to sell the rights to develop their properties while retaining property ownership.
Greenways Master Plan	Lexington-Fayette County	Communicates the importance and need for greenways, and recommends a county-wide system of interconnected greenways.

Table 3: Summary of Rural Land Management Tools for the State of Washington and Skagit County.

TOOL	ENTITY	BRIEF DESCRIPTION
Growth Management Act	State	Umbrella state legislation that authorizes and requires various rural land planning tools including comprehensive planning, urban growth boundaries and limited areas of more intensive rural development.
The Comprehensive Plan “Rural Element”	State/Skagit County	The state provides very clear guidance on which issues must be addressed for rural planning at the county level including preservation, infrastructure, economic development and directing growth.
Urban Growth Areas (UGA’s)	State/Skagit County	State legislation enables the establishment of UGA’s, which are then delineated through the county comprehensive planning process.
Limited Areas of More Intensive Rural Development (LAMIRD’s)	State/Skagit County	State legislation enables the establishment of LAMIRD’s to help smaller scale village-style economic centers get established in rural areas. Skagit implements this provision through Village Center Zoning.
Open Space Taxation Act (OSTA)	State/Skagit County	Allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use.
Small Farms Program	Washington State University	Provides research-based information and educational programs for farmers, consumers, decision-makers, and others involved in local food systems.
Food Alliance Program	Washington State University	Creates market incentives for the adoption of sustainable agricultural practices, with a special commitment to supporting the profitability and continued survival of small and mid-sized family-owned farms and ranches.
“From the Heart of Washington” Program	State Department of Agriculture	Public Awareness program designed to promote local food and agricultural products.
Accessory Uses	Skagit County	Provides opportunities for cottage industry development based on extractive industries.
Site Plan Review	Skagit County	Coordinated inter-agency review for more intensive development in rural areas to ensure the character, scale and environmental impacts are sustainable.
Transfer of Development Rights	Skagit County	Provides the opportunity to transfer the development potential from a “sending” area to a “receiving” area as defined in the Comprehensive Plan.
Purchase of Development Rights	Skagit County	Provides the opportunity to purchase the development rights associated with a tract of land in order to place a conservation or agricultural easement on that land.
Cluster Subdivisions	Skagit County	Depending on base zoning, these provisions allow for more compact development of residential areas to allow for greater open space protection or the future establishment of village centers.

Table 3. (continued)

TOOL	ENTITY	BRIEF DESCRIPTION
Affordable Housing Technical Assistance and Incentives	Skagit County	Provides technical guidance to developers regarding the potential location, densities and affordability restrictions desired by the county. Also provides for development of surplus county lands and the waiver of impact fees to provide further incentives.
Low Impact Development	Skagit County	Streamlined permitting for better clearing and grading techniques and mandates to reduce impervious cover and maintain natural drainage patterns.
Rural Design Standards	Skagit County	Provides design standards that specifically address the unique character of rural areas and infrastructure.
Agricultural Density Zoning	Skagit County	Specifies a sliding scale of housing density from 1 unit per 5 acres to 1 unit per 80 acres depending on the designated land use.
Right-to-Farm Policies	Skagit County	Provides outreach materials and signage to educate residents regarding the cultural importance of maintaining active agriculture.
Cottage Industry/Small-Scale Business (CSB)	Skagit County	Designation provides for the expansion of isolated businesses associated with local industry.
Major Development or Master Planned Resorts	Skagit County	Takes advantage of strategic location between two economic centers and provides opportunities to develop resort areas while maintaining surrounding rural character.
Planned Unit Development	Skagit County	Allows for the coordinated development of larger tracts of land in a more flexible and potentially more dense manner.

Section 2. Providing a Framework for Rural Planning and Identifying Opportunities in Hawaii

Comprehensive Planning for Rural Areas

Planning for the sustainable development of rural areas can take many forms and can examine several different issues relative to growth management. From the perspective of true Comprehensive Plans, the program examined in this Assessment that provides the highest level of guidance for rural areas is Washington State’s Growth Management Act. The guidance at the state level for the rural element reflects a respect for the different characteristics of its counties and therefore does not specify the types of “rural densities” that would be appropriate for different areas. These densities are to be determined by the counties. However, the rural element must provide an explanation of how these densities were chosen and how they are consistent with local needs and character. Also included among these county-specific discussions, the state requires a detailed examination of growth management tools, critical areas, rural industry management, and identification of areas suitable for more intense development.

In Hawaii, the County General Plan is the equivalent to what may be called the “Comprehensive” or “Master Plans” in other states. The state statute that specifically addresses the elements of a County General Plan is Chapter 226-58, which contains a broad reference to

state policies and programs that should serve as a framework for the objectives in the County Plan. Many of these objectives are outlined in the preceding sections of Chapter 226 and deal generally with issues of housing, transportation, infrastructure, and others. The vague language of this statute reflects the need for flexibility as the four counties of Hawaii face very different challenges relative to providing housing, infrastructure, natural resource protection and economic opportunity.

An examination of the language provided by a state like Washington perhaps provides insights into how Hawaii's language could be revised in a way that respects the unique qualities of the four counties while providing a more specific planning framework for their rural areas. The Washington State statute specifically acknowledges several fundamental planning principles that are absent or only peripherally addressed in the Hawaii statutes. These include, but are not limited to:

- Appropriate rural housing densities will change from one County or one landscape to another;
- There should be different infrastructure standards in rural areas as compared to suburban or urban environs;
- A variety of innovative tools that are specific to rural areas should be identified in a rural planning element;
- A rural planning element should specifically address measures that can be used to prevent sprawl;
- Techniques should also be identified that will limit the amount of conflicts between agricultural use and residential and/or commercial.

Thresholds and Standards for Local Zoning Initiatives

In the research performed for this Assessment, statutory thresholds and standards that have been developed by state agencies for rural development are rare. Other thresholds and standards that potentially apply to local zoning initiatives are those for innovative land use tools including transfer of development rights, cluster housing or conservation subdivision design, planned unit development, and others. Similar to basic density and dimensional thresholds, state legislation often enables these techniques with vague language and leaves the details of the program to be worked out in the local ordinance development process.

The research performed in Montgomery County, MD revealed that the success of their TDR program relies heavily on the down-zoning of agricultural lands to 1 unit per 25 acres for actual development. If a landowner chooses to transfer his or her rights, however, the transferable density is 1 unit per 5 five acres. This five-fold increase in property yield serves as a tremendous incentive and has made Montgomery County's TDR program one of the most successful in the country. Montgomery County also uses a transect approach to transition from urban to increasingly rural areas. Allowable densities immediately adjacent to urban areas can be as high as one unit per 4,000 square feet and gradually decrease to as low as one unit per 25 acres in the furthest outlying rural areas.

Although not specifically researched for this report, York and Lancaster Counties in Pennsylvania have developed two approaches to establishing allowable densities in rural areas: sliding scale zoning and fixed-area ratio zoning. Although the details of these approaches are provided in the full Assessment, the two models have the following common features:

- Provide minimum and maximum lot areas for uses other than farming – homes and farm support businesses
- Limit the number of development rights on a parcel
- Locate dwelling or non-farm uses on areas of the farm property which are the least suitable for agriculture use
- The area remaining after all development rights have been used may not be further subdivided.

In the Hawaii State Statutes reviewed for this report, the two density thresholds that deserve the most attention ~~include are~~ those set for Rural and Agricultural Districts. ~~The recently passed Act Chapter 205, Hawaii Revised Statutes, specifies that housing densities in that the minimum lot size for the Rural Districts shall not be lower less than one unit per ½ acre. State legislation also specifies that any subdivision, and the minimum lot size within for the Agricultural District shall create lots no smaller be no less than one acre. The minimum lot sizes currently prescribed by Hawaii state law, therefore, provide a significant economic incentive to create suburban sprawl. To maximize the economic yield of a particular tract of land, developers will could logically choose to create subdivisions at densities of one unit per ½ acre or 1 acre, pending where the County Codes follow these the state minimum lot size thresholds.~~

Hawaii should consider revising the density thresholds in these statutes to include much lower densities in both Rural and Agricultural Districts for areas characterized by agricultural activity or natural communities. Where counties identify commercial centers that may become vibrant mixed use communities, the statute should allow for these areas to be developed at much higher densities. This process should build upon the General Plan process and could mimic many of the elements required by Washington State in their rural element piece discussed above.

Policy Guidance for Rural Areas

In the ~~model~~ states examined for this report, Washington and Maryland stand out as two states which provide a significant level of policy guidance for the programs and techniques enabled by existing statutes. In Washington, the Washington State Community Trade and Economic Development agency published *Keeping the Rural Vision, Protecting Rural Character & Planning for Rural Development* in June 1999. This book is a policy guide to accompany the state statutes that require a rural element with the local comprehensive plan and require the identification of specific development densities and planning tools for rural areas. Where the state statutes are silent regarding specific “low” and “high” density rural thresholds, this piece outlines several specific examples for local practitioners to consider. There are also detailed discussions of different service level standards for rural areas, ways to integrate resorts and cottage industry into the rural landscape, the use of land banks for preservation, and several other techniques. Where the state statute prescribes “what to do”, this guidance piece and others provided by state agencies prescribe “how to do it”.

The research conducted for Maryland showed that there are several examples of policy guidance materials that help to expand upon the tools that are enabled at the state level. Similar to the guidance provided by Washington State, the Maryland policy guidance pieces are specifically targeted to address the tools and programs offered at the state level. A comprehensive list of these policy documents is included in the full Assessment.

In Hawaii, the development of state level policy guidance should begin with more prescriptive statutes that outline a stronger comprehensive planning approach to rural areas and a more extensive list of planning tools that could potentially be applied to these areas. With this framework in place, the state can begin to develop policy guidance that is anchored in existing requirements. For example, the limited application of cluster development and transfer of development rights in the four Hawaiian counties speaks to the need for more concrete guidance relative to these and other zoning tools. Although these tools are enabled by statute, county practitioners may not have the resources at their disposal to effectively implement these tools. When detailed planning for issues specific to rural lands becomes more clearly outlined, Hawaii can then provide policy guidance that will lead counties from the planning phase into concrete zoning initiative and incentive programs.

Incentives and Support for Rural Preservation and Rural Industry

The state level program researched for this report offer several examples of incentive programs targeted toward preserving rural lands and/or agricultural operations. These programs are described in detail in the Assessment piece for the three ~~model~~ states and counties. The programs are designed to match specific planning objectives with state level funding including the purchase of development rights, special tax assessments on agricultural property, financial assistance to agricultural enterprise and funding for redevelopment of rural village centers.

Table 4. Incentive Program Summary from Successful States

MARYLAND	
The Rural Legacy Program	Preservation of rural areas through purchased easements.
Smart Growth Priority Funding	Wide variety of funding including rural village centers
Agricultural Land Preservation Program	Permanent preservation of large agricultural tracts through use-tax valuation, sewer exemptions and easement purchase.
Maryland Agricultural and Resource-Based Industry Development Corporation	Capital and credit for agricultural and resource based industry
KENTUCKY	
Purchase of Agricultural Conservation Easement Corporation	Purchase of permanent agricultural easements
Agricultural District Law	Protection against eminent domain, use-tax valuation and utility exemptions.
WASHINGTON	
Washington Open Space Taxation Act	Use-tax valuation
New Farmland Preservation Grant Program	Purchase of agricultural preservation easements

In a state with market pressures as strong as those in Hawaii, strong state level incentives will be a critical component of sheltering rural lands from sprawl. Additionally, Hawaii is faced with existing plantation lands that are characterized by aging infrastructure and centers of mixed use activity that have been neglected as plantation operations have been abandoned over time. County resources are often inadequate to maintain these areas of opportunity and incentive programs could play an important role in revitalizing these potential village centers. Hawaii should therefore strongly consider developing a series of incentives that mirrors the broad scope of what has been implemented in Maryland in order to more effectively support the rural objectives that are already articulated within the State Planning Act.