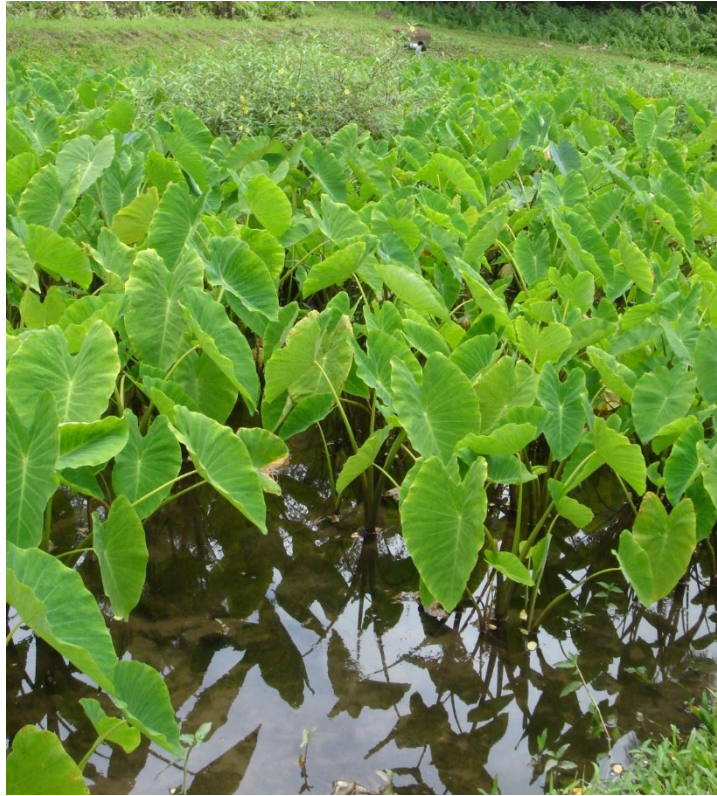


# Reconciliation Report

## for Waiāhole Valley Agricultural Park



Prepared for:



Prepared by:



November 2022

# RECONCILIATION REPORT OF THE SMS PLAN AND THE WWCA PLAN FOR WAIĀHOLE VALLEY AND THE WAIĀHOLE COMMUNITY

## INTRODUCTION AND BACKGROUND

This *Reconciliation Report of the SMS Plan and the WWCA Plan for Waiāhole Valley and the Waiāhole Community* (Reconciliation Report) has been developed at the request of the Hawai'i Housing Finance and Development Corporation (HHFDC), which is the State agency that owns most of the land in Waiāhole Valley and is the lessor for most of the Valley's residential and agricultural lots.

In 2017, HHFDC contracted with SMS Research & Marketing Services, Inc. to develop the *Waiāhole Valley Community Strategic Plan* (SMS Plan, see APPENDIX A for a copy). The SMS Plan was presented to the HHFDC Board of Directors (Board) on March 14, 2019, and representatives of the Waiāhole community who attended the Board meeting voiced their concerns about some of the recommendations contained in the SMS Plan. The community representatives asked that the Board defer approval of the SMS Plan until they had an opportunity to develop their own plan that considered their input. The Board voted to defer approval of the SMS Plan and requested that HHFDC further engage in discussions with the Waiāhole community in order to reach consensus on a revised plan.

Under the leadership of the Waiāhole-Waikane Community Association (WWCA), community members worked diligently during the next several months to discuss and document their planning ideas. In May 2019, the WWCA group submitted the *Waiāhole-Waikāne Strategic Plan* (WWCA Plan) to the HHFDC (See Appendix B for a copy of the WWCA Plan).

Subsequently, the Board determined that additional work was needed to resolve differences between the SMS and WWCA plans. To assist in the reconciliation process, HHFDC selected Townscape, Inc., Environmental and Community Planners (Townscape) as the consultant for this additional planning work. Townscape developed a scope of work that emphasized a community-based action plan process. HHFDC issued a Notice to Proceed to Townscape for this next phase of the Waiāhole planning process effective November 8, 2019. (See APPENDIX C for a copy of the scope of work.)

The WWCA Steering Committee was formed and included a number of public agencies that needed to be consulted to address Waiāhole planning issues. Consulted agencies included HHFDC, the Department of Hawaiian Home Lands, the Commission on Water Resource Management, the State Department of Health, the State Agribusiness Development Corporation, the State Energy Office, and the US Department of Agriculture Farm Service Agency. (See APPENDIX D for a list of participants.) Between November 2019 and early-March 2020, Townscape participated in a total of 27 meetings covering various elements of the WWCA Plan planning process.

In March 2020, the Corona Virus Disease of 2019 (COVID) pandemic caused the State Government to issue strict limitations on in-person gatherings. For the rest of 2020 and into most of 2021, COVID restrictions adversely impacted the WWVC Steering Committee's ability to effectively gather input. Specifically, in-person meetings and group site visits were generally not permissible until well into calendar year 2021.

Townscape's planning process emphasized the need for a community-based, action-oriented plan. (See Appendix E for action plan elements from Townscape's work.) However, due to the severe disruption of the planning process caused by statewide COVID restrictions, these action-plan elements are not nearly as comprehensive as they could or should have been.

As directed by HHFDC, the Reconciliation Report focused on resolving the differences in recommendations between the SMS Plan and the WWCA Plan. The reconciliation analysis is based on the planning and research work for Waiāhole that was conducted by Townscape, as well as meetings with WWCA, HHFDC, public agencies, and private entities. Most of these meetings took place between September 2019 and March 2020, before the COVID restrictions of early 2020 was mandated. Given that 18 months have passed since Townscape was last able to meet frequently with Waiāhole community members to discuss these planning issues, some of the reconciliation analysis may be out of date.

The SMS Plan was organized in seven main sections:

- HISTORICAL BACKGROUND
- COMMUNITY-BASED PLANNING PROCESS
- STRATEGIC PLAN VISION
- STRATEGIC PLAN GOALS
- STRATEGIC PLAN RECOMMENDATIONS
- HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
- ACTION PLANS

The WWCA Plan was organized to follow the SMS Plan organization, but included several additions that are noted in **BOLD FONT** below:

- **Letter dated May 15, 2019 addressed to Mr. Chris Woodard**
- **INTRODUCTION**
- HISTORICAL BACKGROUND
- COMMUNITY-BASED PLANNING PROCESS
- STRATEGIC PLAN VISION STATEMENT
- STRATEGIC PLAN GOALS
- STRATEGIC PLAN RECOMMENDATIONS
- HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
- ACTION PLAN
- **APPENDIX A: COMMUNITY-BASED MEETINGS**
- **APPENDIX B: BALLOT**
- **APPENDIX C: LIST OF COMMUNITY-BASED STRATEGIC PLAN RECOMMENDATIONS**

The general format of this Reconciliation Report follows the organization of the SMS and the WWCA plans. For each section of this report, it summarized policies and recommendations presented by the SMS and WWCA plans. The Reconciliation Report then discussed any policies or recommendations where the two plans may differ or conflict. For each of the policies and recommendations that may conflict, this report proposes ways in which significant differences might be reconciled. This concept of reconciling the two plans is the overall purpose of this planning report.

Generally, this Reconciliation Report minimizes direct quotes from the two plans, as including extensive direct quotes would have resulted in a lengthy document. To facilitate the review of this Reconciliation Report, quotes from the two plans are shown in *italics*. The quotes from the two plans are almost entirely from the **specific recommendations** that are presented in the plans. The reader of this report can refer to the two plans for more details.

The differences between the two plans are highlighted below in **BOLD FONT**.

- 1. The WWCA Plan: Letter dated May 15, 2019 addressed to Mr. Chris Woodard and signed by Laurence Uyemura, President, WWCA.** This letter summarizes the intensive community planning process that the WWCA organized and facilitated between March 25, 2019 and May 2019. The letter expresses the goal of creating a “joint HHFDC & Waiāhole-based plan.” The SMS Plan did not contain a comparable letter of transmittal for it.
- 2. The WWCA Plan: INTRODUCTION.** This one-page INTRODUCTION further summarizes the timing and objectives of the WWCA “Community-Based” planning process that took place between April and May 2019. The SMS Plan did not contain a comparable INTRODUCTION section.

### **3. HISTORICAL BACKGROUND**

**The SMS Plan** provided three-plus pages of historical information with highlights of Waiāhole Valley history from “the time of Captain James Cook’s arrival in 1778,” through the ownership of the Valley by the McCandless and Marks families, to the acquisition of Waiāhole Valley by the Hawai’i Housing Authority in 1977. This HISTORICAL BACKGROUND section also includes some information on the “Declaration of Restrictive Covenants for Waiāhole Valley Agricultural Park and Residential Lots Subdivision and Homestead Road Lands,” the 1998 issuance of 90 Waiāhole Valley long-term leases and the HHFDC determination in 2016 that “a strategic plan should be developed for Waiāhole Valley.” This section of the SMS Plan also summarizes the “rationale for undertaking the strategic plan” with the following points:

- Project operating expenses exceed revenues
- Housing conditions are largely substandard, primarily attributable to lessees’ inability to obtain mortgage loans for renovations or new construction
- Agricultural-lot utilization is low
- There is no disposition process in place for vacant residential and agricultural lots
- Water system issues include the failing potable-water system and maintenance issues with irrigation systems
- With two exceptions, all leases are scheduled for rent renegotiation in 2023.

**The WWCA Plan** provided a four-page summary of the HISTORICAL BACKGROUND of Waiāhole Valley, with the subtitle: “Ancient Abundance, Modern Challenges, Restoration-Resilience-Renewal.” Most of the text of this summary focuses on “Modern Challenges,” with subsections entitled:

- Water Diversion – The Waiāhole Ditch Project
- Waiāhole Ditch 100 years later
- Land Struggles
- Restoration-Resilience-Renewal
- The Rationale for undertaking the Strategic Plan: “Project operating expenses (to-date) exceed revenues.”

#### **Historical Background: Analysis and Reconciliation**

The “Historical Background” sections of the two reports differ in a number of ways, although these two “Background” sections are not directly contradictory. The WWCA Plan’s Historical Background narrative provides a much more detailed account of the “Land Struggles” that began in 1959, when the Marks family “began actively to pursue development options for their land holdings in the Valley,” through the 1977 acquisition of 795 acres of land in Waiāhole Valley by the State and the

subsequent implementation by the State of infrastructure improvements and long-term leases for Waiāhole families.

#### 4. COMMUNITY-BASED PLANNING PROCESS

This section of the SMS Plan provides information on the following subjects:

- Waiāhole Valley “property owners and lot types”
- Waiāhole Historical Document Analysis
- Initial Tour of the Valley – February 2017
- Stakeholder Interviews
- Waiāhole Residents and Farmers Interview Summary – “A total of 31 community members were interviewed.”
- Survey #1 (Issues Survey)
- Waiāhole Valley Community Meeting #1
- Survey #2 (Solutions Survey)
- Waiāhole Valley Community Meeting #2
- Developing the Plan

This section of the WWCA Plan has the following sub-sections:

- Educating the Community about the SMS/HHFDC Plan
- Soliciting and Recording Community Feedback Regarding the SMS/HHFDC Plan
- Soliciting and Recording Ideas from the Community Regarding Improving the SMS/HHFDC Plan and thus Create a Community-Based Plan
- Writing a Draft Community-Based Plan Incorporating the Feedback from (2) & (3)
- Disseminating the Draft Community-Based Plan to All Waiāhole Residents
- Seeking the approval of the Draft Community-Based Plan from the Community
- Deliberating with HHFDC to Create a Consensus Plan
  - Submit the Consensus Plan to the HHFDC by June 4th – “To be written”

#### **Community-Based Planning Process – Analysis and Reconciliation**

The descriptions of the “community-based planning process” that are provided in the two plans do not need to be “reconciled,” as these sections are descriptions of planning process and are not “findings and recommendations.” However, it is instructive to note that the tone (or “voice”) of these two descriptions of the Waiāhole Valley “community-based planning process” are different: the tone/voice of the SMS Plan is the tone/voice of a consultant reporting to the consultant’s public agency client, whereas the tone/voice of the WWCA Plan is the tone/voice of community members reporting to both the HHFDC and to the community.

#### 5. STRATEGIC PLAN VISION STATEMENT

The SMS Plan has a brief “STRATEGIC PLAN VISION” statement on Page 12:

*“Waiāhole Valley is a self-sustaining, thriving rural agricultural community.”*

*“This vision can be fulfilled through:*

- Preservation of rural character;*
- Proliferation of diversified agriculture;*

*Decent, affordable housing;  
Vibrant community life; and  
Economic and educational opportunities.”*

The WWCA Plan reiterates the same five vision elements from the SMS Plan and adds one additional vision element: *“Restoration of the waters into our systems of ‘auwai, educational labs for community residents...”* For each of the now six vision elements, the WWCA Plan also provides some text that further defines the particular vision element. For example, for the vision element *“Preservation of rural character”* the WWCA Plan provides the following explanatory text:

*“Keep Country, Country – Waiāhole-Waikāne is a natural wonder for the entire island. It is sustained by its natural ecosystem connected from makai to mauka and with a multitude of ‘auwai trailing alongside farmlands and families. We mālama the ‘āina and kōkua our neighbors, sharing the gift of aloha for all who come to our beautiful valleys.”*

### **Analysis and Reconciliation**

The *“STRATEGIC PLAN VISION STATEMENTS”* in the two plans are generally compatible. The more detailed Vision Statement in the WWCA Plan provides a framework for many of the detailed plan recommendations that follow in the text of that Plan.

### **6. STRATEGIC PLAN GOALS**

The SMS Plan provides *“STRATEGIC PLAN GOALS”* on pages 13 and 14 of the report. Each of the major goals in the SMS Plan has a number of sub-goals. The SMS Plan goals and subgoals are (verbatim from the SMS Plan):

- *“Residential lots are maintained, and residents can access financing.”*
  - *HHFDC leases have been rewritten in a manner that will enable households to have access to mortgage loans to rehabilitate their homes.*
  - *HHFDC lessees have their rents established (fixed without reopening) for a term of years that will provide residents and farmers with the clarity they need for future planning and financing.*
  - *Vacant lots have been cleared and developed.”*
- *“Agriculture in the Valley is thriving.”*
  - *All agricultural lots in the Valley are being actively cultivated.*
  - *Farming in the Valley is economically viable.*
  - *Economic development efforts within the community are focused on supporting agricultural endeavors.”*
- *“Infrastructure for the residential and agricultural lots within the Valley is adequate to support robust agriculture in addition to domestic demand from a rural lifestyle.”*
  - *Waiāhole Valley potable water service reliability is comparable to the rest of the island, if not better.*
  - *Waiāhole Valley potable water infrastructure is continually being maintained or improved.*
  - *Revenue generation from lease rents and water fees will be sufficient to cover ongoing potable water infrastructure operating and maintenance costs.*



- *The Waiāhole Homesteads ‘auwai (the ‘auwai) and McCandless irrigation systems are being appropriately managed.*
- *Community members feel safe and secure.*
  - *Street lighting is maintained.*
  - *Sidewalks are walkable and safe for residents.*
- *Cesspools are being converted to septic systems.”*
- *“Waiāhole residents and farmers are working together to strengthen their community through support for agriculture and economic development.*
  - *Albizia trees are eliminated where they pose the greatest threat to electrical wires and other infrastructure. Community members are educated in how to minimize Albizia trees spreading in the future.”*

The WWCA Plan contains a somewhat different and more detailed statement of Strategic Plan Goals on pages 13 and 14:

- *“Agriculture in the Valley is thriving, environmentally safe and sustainable.*
  - *All agricultural lots in the Valley are being actively cultivated.*
  - *Economic development efforts within the community are focused on supporting agricultural endeavors, and mechanisms are in place to continually and positively impact the economic viability of farming.*
  - *Traditional agricultural/cultural practices are supported.”*
- *“Long-term leases will be successfully re-negotiated to the satisfaction of lessees and lessor.*
  - *Financing: Holders of both residential and agricultural lots have access to tools to ensure appropriate financing for rehabilitation of homes, support for agricultural enterprises and energy-savings.*
  - *Fixed Rent: An agreed-upon rent schedule is established with HHFDC (fixed, without reopening) for a term that will provide residents and farmers with the clarity they need for future planning and financing.”*
- *“Infrastructure for the residential and agricultural lots within the Valley is adequate and sustainably financed to support robust agriculture in addition to existing domestic demand of a rural lifestyle.*
  - *Revenue generation from lease rents and water fees will be sufficient to cover ongoing potable water infrastructure operating and maintenance costs or other financing options will be developed, by agreement between HHFDC and the community, to accomplish the same.*
  - *Traditional ‘auwai systems will be preserved, restored and enhanced where practicable in support of traditional forms of agriculture for which the area is known.*
  - *The McCandless Line (Irrigation) system will be appropriately managed and considered as a viable part of the overall water supply for Waiāhole Valley where practicable.”*

**Next Steps:** *A schedule of Action Plans will be in place, developed and ready for implementation according to a prioritized schedule, the product of close collaboration between HHFDC planners and the Waiāhole-Waikāne community.*

- **Carrying Cost for Waiāhole:** *There is an existing imbalance between HHFDC’s costs and funding for Waiāhole Valley*
    - *To address this long standing concern, HHFDC and the community will need to discuss and explore options using open disclosure of facts and information.*
    - *Eliminate the burden of DURF subsidies to enable these financial resources to be redirected to HHFDC’s core mission, while also eliminating pressure of further urban development of Waiāhole-Waikāne.*
  - **Unassigned Lots:** *Vacant lots have been cleared and developed according to an Action Plan for disposition and use between HHFDC and the community, supportive of the vision for these “Two Green Valleys”.*
  - **Whole Ahupua’a Health and Safety:** *Plans are in place to ensure that Community members and those who visit Waiāhole/Waikāne feel safe and secure, free of environmental degradation.*
    - *Street lighting is maintained in residential areas without encroaching into the rural character of agricultural and environmentally protected areas.*
    - *Sidewalks are walkable and safe for residents, especially in the vicinity of the piko of the community where residential, educational, and recreational activities are concentrated.*
    - *Waiāhole becomes a successful pilot project for low-cost, environmentally sound compliance with newly-enacted State laws relating to septic systems.*
    - *Watersheds, streams and Kāne’ohe Bay fisheries are protected through best management practices for land use, natural resource stewardship, and invasive species controls.*
- **A Bright Future:** *Waiāhole residents, farmers, and the State are working together to strengthen their community through support for agriculture, educational, socio-economic, and cultural development for all ages.”*

### **Analysis and Reconciliation**

The STRATEGIC PLAN GOALS articulated in the SMS and WWCA plans are generally compatible. Some of the GOALS stated in the WWCA Plan are more detailed than the goals contained in the SMS Plan, including the following:

- *“Traditional agricultural/cultural practices are supported.”*
- *“Traditional ‘auwai systems will be preserved, restored and enhanced where practicable in support of traditional forms of agriculture for which the area is known.”*
- *“The McCandless Line (Irrigation) system will be appropriately managed and considered as a viable part of the overall water supply for Waiāhole Valley where practicable.*
- *“Next Steps: A schedule of Action Plans will be in place, developed and ready for implementation according to a prioritized schedule, the product of close collaboration between HHFDC planners and the Waiāhole-Waikāne community.”*
- *“Unassigned Lots: Vacant lots have been cleared and developed according to an Action Plan for disposition and use between HHFDC and the community, supportive of the vision for these ‘Two Green Valleys.’”*

The WWCA Plan uses the word “traditional” in several of the goal statements, for example “traditional agricultural/cultural practices”; “traditional ‘auwai systems.” The SMS Plan generally does not use the term “traditional.”



The use of the term “traditional” in the WWCA Plan and the absence of this term in the SMS Plan does not make the two plans “incompatible.” However, it is important to note that cultural and community traditions are key elements of the the Walāhole community’s feelings and perspectives. Any future HHFDC planning initiatives for Waiāhole should be attuned to these cultural and community traditions.

## **7. STRATEGIC PLAN RECOMMENDATIONS**

The SMS Plan recommendations were organized in five major sections:

RESIDENTIAL AND AGRICULTURAL LEASES  
AGRICULTURAL STRATEGIC PLAN RECOMMENDATIONS  
COMMUNITY INFRASTRUCTURE AND ISSUES  
THRIVING COMMUNITY  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

The WWCA Plan recommendations were organized in the same five major sections.

Following is a summary of the SMS and WWCA plans recommendations, together with an analysis of important differences in the two sets of recommendations and some thoughts on how these differences can be reconciled.

### **7.1 RECOMMENDATIONS ON RESIDENTIAL AND AGRICULTURAL LEASES**

The SMS Plan recommendations on residential and agricultural leases are summarized as follows:

- *“To better manage all of the issues related to complying with the Declaration and managing leases, an option for future consideration is to convert the parcels owned by HHFDC to a Community Land Trust. Community Land Trusts are nonprofit, community-based organizations designed to ensure community stewardship of land. They are primarily used to ensure long-term housing affordability.”*
- *“Voluntary Lease Modifications: Implement changes to facilitate lessee mortgage financing. In return for enabling lessees to have greater opportunities to finance home improvements, increase lease rents closer to market values over time.”*
- *“Develop a long-term plan to oversee the Valley and manage the leases in a way that better meets the needs of residents and farmers and is designed for the long-term future of the valley beyond 2053.”*
- *“HHFDC should make lease enforcement a priority by addressing: Lease rent collection; Evidence of liability insurance, Payment of real property taxes, Payment of water-service charges and Agricultural lot percentage rent collection and tax-return submission. The next level priority should be: Observance of City ordinances; and Observance of residency requirement.”*
- *“HHFDC should require an increase in staffing and/or budget to enable a greater level of enforcement.”*
- *“It is important that the vacant lots be developed for security and financial reasons for HHFDC. HHFDC should issue a Request for Proposals (RFP) to construct affordable, single-family homes on all nine vacant lots. It is suggested that preference be given to a non-profit housing developer such as Self-Help Housing Corporation of Hawai‘i or Honolulu Habitat for Humanity to build housing on vacant lots.”*

The WWCA Plan recommendations on residential and agricultural leases are summarized as follows:

- *“Work with HHFDC to learn more about community land trusts, particularly their advantages and disadvantages, and study other community land trusts here in Hawaii to learn if their communities have viewed them as successes or failures. It is recommended that the community seek legal counsel through the WWCA to explore whether it makes sense for residents to support applying the concept of community land trust to Waiāhole.”*
- *“Regarding (SMS Recommendations on leases) 1 (implement changes to facilitate mortgage financing) and 2 (increase lease rents closer to market value over time), the overwhelming majority of residents did not find attractive the offer to voluntarily enter into lease modifications. This is because, in part, some items were unclear such as (a) lease rents increasing over an unspecified period of time... and (b) rents increasing to values approaching market values – what are market values?” The WWCA Plan also noted that: “Some residents welcomed HHFDC’s attempt to make the leases amendable to mortgage-loan financing, but were concerned about potentially negative outcomes related to loan foreclosures.”*
- *Community-Plan recommendations: “Until such time as more specific information can be provided regarding the magnitude of rent increases, the timing of rent increases, as well as borrower- and lender-rights pertaining to mortgage-loan financing, residents should not enter into voluntary lease modifications.” “Work with HHFDC to learn more about “sustainable affordable lease” and “community land trust” and seek legal counsel to explore whether it makes sense for residents to support applying these concepts to Waiāhole.”*
- *“The residents’ reaction to HHFDC’s intentions to elevate lease enforcement was one of concern and consternation. Under the section heading of ‘Roles and Responsibilities’ (see page 31), lease enforcement will be discussed later in this document and a Community Plan Recommendation will be offered.”*
- *WWCA Plan Recommendations: “(1) Hire Waiāhole residents to clear and maintain the 9 vacant residential lots. (2) Determine whether it is possible to convert some or all of the residential lots into agricultural lots. If possible, then: (2a) Convert one or two lots into a community garden. (2b) Convert one or two lots into schools teaching farming, culinary arts, and/or other rural agricultural endeavors for residents and/or interns. (3a-1) If the vacant residential leases must remain residential, then allocate new housing to family members of current Waiāhole/Waikāne residents. (3a-2) If the vacant residential leases must remain residential, then move families residing on agricultural lots who are either (1) too old to continue farming or (2) are not farming and do not intend to farm onto these vacant residential lots. This would allow the fallow agricultural lots to be opened to new/younger farmers who can and will farm. (3b) If (3a) is not permitted under the Fair Housing Act, then establish a “housing panel” comprised of Waiāhole residents for the purpose of selecting families for these lots based on an extensive interview and screening process to ensure that the new residents are compatible with Waiāhole’s vision and mission statements.”*

## **DISCUSSION AND RECONCILIATION OF SMS AND COMMUNITY RECOMMENDATIONS ON RESIDENTIAL AND AGRICULTURAL LEASES**

The issues relating to Waiāhole residential and agricultural leases are complex. The lease issues that need to be reconciled include the following:

- a. Lease rent increases
- b. Voluntary lease modifications
- c. Enforcement of lease terms
- d. Vacant residential lots

Since the submittal of the WWCA Plan to the Board in May 2019, HHFDC scheduled and facilitated two virtual meetings with the Waiāhole community to discuss the lease renegotiation schedule and process. These meetings took place on October 5, 2020 and April 29, 2021.

On the issue of lease rent increases, HHFDC stated to the community that the HHFDC’s objective, subject to the approval of the Board, is to increase lease rents to a level that will pay for HHFDC’s management costs for Waiāhole, including costs for staff time devoted to Waiāhole planning and management needs, staff time for lease management and enforcement, costs for road maintenance and street lighting, and costs for removal of environmental hazards, including removal of albizia trees that present a hazard to Waiāhole Valley roads and electrical lines. HHFDC has assured the Waiāhole community that, contrary to the recommendations of the SMS Plan, the objective of HHFDC for the renegotiation of Waiāhole lease rents is NOT to increase lease rents to the level of “market rents.”

On the issue of voluntary lease modifications, HHFDC understands the concern that was documented in the WWCA Plan regarding possible new provisions that would allow lessees to use their leases as collateral for personal loans. However, WWCA and Waiāhole community members need to understand that any modification of one or more Waiāhole residential or agricultural leases would be VOLUNTARY – and so, in the event that a lessee decided to have their lease modified to include a provision that allowed use of the lease as collateral for personal loan(s), the lessee could decide if/when they would like to exercise this loan collateral provision. Clearly, no lessee would be “forced” to obtain a loan that was collateralized by their residential or agricultural lease.

On the issue of lease enforcement, the WWCA Plan stated that “The residents’ reaction to HHFDC’s intentions to elevate lease enforcement was one of concern and consternation.” The WWCA Plan discussed the issue of lease enforcement in more detail in the section of their plan on “HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION.” See Section 7.5, HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION Pages 19-20 of this report for a summary of the WWCA Plan recommendations on “third party” enforcement of lease terms.

Some of the WWCA Plan recommendations on vacant residential lots are complex and may be largely unworkable under the requirements of State procurement law and Federal Fair Housing statutes. The WWCA Plan recommendation regarding establishment of a “housing panel comprised of Waiāhole residents for the purpose of selecting families for these lots based on an extensive interview and screening process to ensure that the new residents are compatible with Waiāhole’s vision and mission statements” would raise concerns of conflict with fair housing laws. Recommendations of a “housing panel” may be workable IF these recommendations are understood by both HHFDC and the Waiāhole community to be advisory only.

## **7.2 AGRICULTURAL STRATEGIC RECOMMENDATIONS**

The SMS Plan recommendations on Waiāhole Agriculture are as follows:

- *“Bring the farmers together to explore options to ensure the consistent production of crops that are suited to the Valley environment and have higher potential value.”*
- *“Consider modifying leases to provide an incentive for farmers to cultivate their lands as follows:*
  - *Include audited agriculture output rent incentives to encourage farmers to actively farm.*
  - *For farmers who are older or can no longer farm, for whatever reason, consider options that enable them to sub-lease farm lands to someone outside the family.*

- *Seek opportunities for grants and assistance for low-income farmers to restore fallow lands to and enable agricultural production.*
- *HHFDC must be prepared to enforce lease requirements if agricultural lots still lie fallow after multiple approaches.”*
- *“To bring vacant or fallow lands to a level that can be farmed, farmers will be encouraged to access resources from Rural Economic Development programs and Community Economic Development guidance, grants, and low-interest loans.”*

### **Vacant Agricultural Lots**

- *“For the 13-acre Lot 33, located behind Waiāhole Elementary School, continue ‘landfill remediation.’*
- *For Lot 133 ‘Located on Waiāhole Valley Road,’ continue consideration for use by the Hawai‘i DOA for training in pesticides, food safety and basic agricultural practices.*
- *The third vacant lot, Lot 61, has some challenges due to the slope of the parcel and periodic flooding.....develop and publish an RFP, possibly with assistance from the DOA and CTAHR.”*

### **Agricultural Irrigation Systems**

The SMS Plan briefly reviewed the status of agricultural irrigation water in Waiāhole: from some of the old ‘auwai, from the McCandless System and from the Waiāhole potable water system. The SMS Plan recommends that:

- *“HHFDC should retain counsel with expertise in water rights. They would consult with DLNR Commission on Water Resource Management and advise HHFDC on its rights and responsibilities for the Waiāhole Homesteads ‘auwai and the McCandless system.*
- *Enable maintenance of the water systems by creating a public access zone on the sides of the systems to allow for ongoing maintenance.*
- *Identify a third-party to manage and maintain these water systems and a mechanism whereby fees would be collected from users to fund maintenance services.*
- *Consider lower lease rents for farmers who must access potable water due to the higher cost of production.*
- *Bring farmers together to discuss the FDA Food Safety Modernization Act and its proposed regulations regarding water quality standards and food processing.”*

### **Economic Development**

*“A model that may generate higher incomes may be agriculture-based economic development focused on farmers’ retaining a greater share of the final sales price.*

- *Develop a Waiāhole Valley brand that differentiates the produce and products from similar options around the island. This value-added differentiation will create higher demand and over time a higher price for that product.*
- *Explore the feasibility and benefits of a cooperative processing plant based on the crops being grown.*
- *Explore establishment of a marketplace selling Waiāhole produce, flowers and value-added products such as organic dried fruits, poi, baked goods, etc.”*

The WWCA Plan recommendations for agriculture in Waiāhole Valley are as follows:

- *“Agricultural Production: Waiāhole farmers should explore the formation of a formal or informal farming co-op or farming hui fostering farmers to meet, communicate, problem solve, and potentially partner regarding the challenging agricultural issues confronting the Waiāhole farming community.”*
- *“Regarding allowing elderly farmers to ‘sublease farm lands to someone outside the family,’” the WWCA Plan noted “mixed concern by community residents regarding this recommendation. More information is required before this proposal can be supported.” The WWCA Plan recommended that: “(1) Consider exploring the ‘sublease’ option proposed in the SMS/HHFDC plan and learn the details of such an option; (2) Consider another option whereby the existing farm lot is subdivided into (a) 10,000 sq ft residential lot for the ‘old’ farmer and his family to live on and (b) the remaining portion of the original farm lot is kept agricultural and is leased out by the HHFDC to a new (and younger) farming family.”*
- *“Consider the formation of a Waiāhole farming co-op or farming hui to seek and obtain outside governmental and private assistance as well as funding (e.g. grants) to develop agriculture on vacant lots and to support (and/or expand) current farming on farm lots. The co-op/hui should seek expertise in grant writing from local community members with such experiences and/or seek professional help to write grants.”*
- *“Develop an action plan to explore the most beneficial uses for these three (unleased) lots based on community input as well as favorable costs/benefits to HHFDC.”*

The WWCA Plan recommendations for agriculture are further summarized on page 26, as follows:

- 1) *“Farmers should continue to maintain and operate the ‘auwai and McCandless water systems as they have been doing for the past several decades at no cost to HHFDC.*
  - 2) *Farmers and HHFDC should set up a system whereby farmers maintaining the water systems can be reimbursed for capital repairs (currently all repairs are being funded out-of-pocket by Waiāhole farmers).*
  - 3) *Conduct a survey of farmers currently not using water supplied by the ‘auwai and McCandless water systems for agricultural purposes. Should significant interest exist, explore the possibility of providing water from the ‘auwai and McCandless water systems to these farmers so that their water costs can be lowered dramatically.*
  - 4) *It is important to acknowledge that the WWCA submitted an alternative plan for a new potable water system to the HHFDC in late December 2018. This plan has the potential for significantly lowering the capital and operating costs for a new potable water system. If so, then the WWCA plan would render moot the first four of the five strategic recommendations of the SMS/HHFDC Plan under Agricultural Irrigation Systems.”*
- The WWCA Plan recommendations for Economic Development are as follows:
    - 1) *“Waiāhole farmers should consider building a Waiāhole brand to secure higher prices for their products through the creation of a Waiāhole farming co-op or hui.*
    - 2) *If a Waiāhole brand needs to be copyrighted, then the ownership of the brand should be a Waiāhole farming co-op or hui, with free use granted to all Waiāhole residents and farmers.*
    - 3) *A Waiāhole farming co-op/hui should work with HHFDC and the Department of Education to explore the possibility of using either vacant lots or the Waiāhole Elementary School cafeteria as a possible site for a co-operative processing plant.*

- 4) *A Waiāhole farming co-op/hui should seek HHFDC’s assistance to learn about DOA grants for marketplace planning.”*

## **DISCUSSION AND RECONCILIATION OF SMS AND COMMUNITY RECOMMENDATIONS ON FARMING AND AGRICULTURE**

The two plans are generally in agreement on the following actions:

- Bring Waiāhole farmers together to form a Waiāhole farmers hui or co-op
- Develop a Waiāhole Brand
- Waiāhole farmers should seek grants and other forms of assistance

There are a number of differences in the recommendations on Farming and Agriculture, including:

- Sub-leasing a farm lot whose lessee may be too old to continue farming to an “outside family” – recommended in the SMS Plan but viewed with some concern in the WWCA Plan, which suggested the alternative of subdividing out a 10,000 sf lot for the existing house and elderly occupant(s) and then leasing the remainder of the lot to a Waiāhole person(s) for farming. Regarding reconciliation of these two proposed solutions to this issue, the WWCA Plan recommendation would conflict with Federal fair housing statutes. However, a variation of the WWCA Plan for this issue may be feasible whereby the elderly lessee of record would enter into a private/personal contract with a Waiāhole farmer to continue to farm a portion of the lot. A private agreement of this kind would not be subject to Federal fair housing laws, and would satisfy the HHFDC requirement that the farm lot be actively farmed. However, this private/personal contract method would require an amendment to the Waiāhole DCCRs.
- McCandless and ‘auwai water systems – recommended in the SMS Plan to be managed by a “third party” entity. The WWCA Plan says that these water systems should continue to be managed by community members. Regarding reconciliation of these two recommendations, we believe that HHFDC is well aware of the reservations that the WWCA has regarding “third party” entities taking on significant management roles for Waiāhole infrastructure, natural resources or lease management and enforcement. On the other hand, WWCA needs to understand the problems that HHFDC has with the current informal community management of the McCandless and ‘auwai water systems. These problems include the issues of liability and the costs of maintenance and repairs. A solution to these water system issues may be the development of a written agreement between HHFDC and WWCA regarding ongoing maintenance and repairs for the McCandless and ‘auwai water systems.
- The WWCA Plan also briefly mentions here the WWCA *“alternative plan for a new potable water system... (that would) render moot the first four of the five strategic recommendations of the SMS/HHFDC Plan under Agricultural Irrigation Systems”* – e.g., *“HHFDC should retain counsel with expertise on water rights; Enable maintenance of the water systems by creating a public access zone; Identify a third-party to manage and maintain these water systems; Consider lower lease rents for farmers who must access potable water due to the higher cost of production.”* However, it should be noted that HHFDC still supports the above recommendations in the SMS Plan.

The WWCA proposal for an alternative potable water system will be discussed in some detail in the section of this report on COMMUNITY INFRASTRUCTURE.



## 7.2 COMMUNITY INFRASTRUCTURE RECOMMENDATIONS

The SMS Plan recommendations on Community Infrastructure are summarized as follows:

### Potable Water

*“HHFDC should honor its previous commitment to not increase water rates until construction begins on the new potable-water system. Over time, residential rates should increase to Board of Water Supply (BWS) levels. To encourage agricultural production, HHFDC should consider increasing the agricultural rates to something less than what BWS charges. The long-term ownership of this system will depend on the system design implemented and discussions with BWS.”*

### Cesspools/Septic Systems

*“Encourage and support lower-income household community members to seek financial assistance from low-cost loans or grants that are available through Rural Economic Development or Community Economic Development programs. A nonprofit may be identified to assist with writing grant requests.”*

### Albizia Trees

*“The State of Hawai‘i Invasive Species Council has developed a ‘Strategic Plan for the Control and Management of Albizia in Hawai‘i (2018).’ Using this document as a guideline, HHFDC in conjunction with the community should create a plan for Albizia tree removal and long-term management. The plan may include applying for grants to cut down and minimize regrowth of Albizia trees, especially those that could fall on electrical lines or along the two water infrastructure systems. At the same time, HHFDC should explore options to engage a commercial user of Albizia trees to harvest easily accessible trees.”*

### Safety and Security

- *“Lighting and sidewalk issues will continue to be a concern. Community members should be provided with information on who to contact for specific problems.*
- *Owners of lots fronting sidewalks should be reminded of their responsibility to keep the sidewalks accessible, with specific reference made to lease language or the Revised Ordinances of Honolulu.*
- *Cost estimates for expanding street light coverage and sidewalks should be gathered and evaluated as a priority for the community.”*

**The WWCA PLAN recommendations on Community Infrastructure are summarized as follows:**

### Cesspools/Septic Systems

*“1) HHFDC should seek legal expertise to determine which party – the lessee or the lessor – is financially responsible for converting cesspools to septic systems by 2050.*

*2) HHFDC and WWCA should work together to lobby the governor’s office and the legislature to pass a law providing State funding for these conversions.*

*3) HHFDC should contract an engineering or planning firm with septic system experience to explore how best economically, environmentally, and engineering-wise to convert the Waiāhole cesspools to septic systems.”*

**The WWCA PLAN recommendations for community infrastructure are as follows:**

### Potable Water

*“It is unclear to Waiāhole residents and farmers with HHFDC leases as to how water rates can be increased given that the water rates are fixed in their lease agreements. These residents and farmers seek clarification of this issue.*

*The community favors any potential increase in water fees should wait until 2023 when the leases are schedule(d) for re-negotiation.”*

### **Cesspools/Septic Systems**

*“1) HHFDC should seek legal expertise to determine which party – the lessee or the lessor – is financially responsible for converting cesspools to septic systems by 2050.*

*2) HHFDC and WWCA should work together to lobby the Governor’s office and the legislature to pass a law providing State funding for these conversions.*

*3) HHFDC should contract an engineering or planning firm with septic system experience to explore how best economically, environmentally, and engineering-wise to convert the Waiāhole cesspools to septic systems.”*

### **Albizia Trees**

*“1) Residents living on HHFDC and DHHL lots as well as on private property should take responsibility and remove/kill small albizia trees growing on these lands.*

*2) Farmers should consider forming a Waiāhole farming co-op or hui to, among other things, seek EQUIP and other grants funding albizia (and other invasive tree) removal.*

*3) Residents with expertise in albizia control should offer instruction for free to Valley residents regarding best practices for albizia control.*

*4) HHFDC should work with residents or with a Waiāhole farming co-op/hui to survey the number and location of large albizia trees adjacent to critical infrastructure and homes/buildings and then estimate a cost for the removal of these trees.*

*5) Based on the results of (4) above, HHFDC and a Waiāhole farming co-op/hui should seek grants supporting the removal of large albizia trees adjacent to critical infrastructure and homes/buildings. When possible, preference should be given to community-operated contractors/businesses when contracts are awarded to undertake albizia removal.”*

### **Safety and Security**

*“The Community welcomed the above comments and plan (in the SMS Plan) for Safety and Security.”*

## **DISCUSSION AND RECONCILIATION OF COMMUNITY INFRASTRUCTURE RECOMMENDATIONS**

The two plans are generally in agreement on the need for special funding for the replacement of cesspools and that potable water rates should not be raised in the near term. HHFDC has been working with the Waiāhole community to adopt administrative rules for the potable water system, which also would increase water rates. Contrary to what is stated in the WWCA Plan, water rates are not fixed in the lease agreements. The WWCA Plan provided more details on possible strategies for controlling albizia trees.

Interestingly, the WWCA Plan did not provide information on the alternate potable water system that some WWCA members have advocated, that is to divert water from one of the water tunnels that were constructed 100 plus years ago as part of the original WAIĀHOLE DITCH SYSTEM. The alternate potable water system concept included piping of the water from the water tunnel down to the homes and farms in Waiāhole Valley and use of some of that water to power a small hydroelectric system that could provide electrical power to some, but not all, of the homes in Waiāhole Valley. This concept for using tunnel water for Waiāhole potable water and some electrical power raises a number of difficult questions, including:

- State Agency agreements/approvals that would be needed to implement this new water system, including approvals from the Agriculture Development Corporation, the Department of Land and

Natural Resources, the Department of Health, and the Commission on Water Resource Management.

- Significant costs for implementing this concept, including water studies, construction of a bulkhead at the water tunnel to prevent contamination of tunnel water from external sources, construction of a water transmission line and related maintenance roadway, water quality testing and the probable need for construction and operation of a water treatment facility, construction of the hydroelectric station and integration of the station with the Valley's existing electrical power system.
- The uncertainty, cost, and time of obtaining entitlements and permits including a Conservation District Use Permit and United States Army Corps of Engineers permit.
- Potential for lengthy contested-case proceedings since users of Waiahole Ditch water may oppose a reduction in flow for their uses.
- Preliminary analysis by HHFDC's consultants indicated that the electricity that would be generated by a turbine within the potable water system would not cover the construction and maintenance costs of the system.

These issues notwithstanding, it should be understood that there are some Waiāhole community leaders who are strong advocates of/for this "Tunnel Water/Hydro Power Project." Townscape recommend that advocates for this alternate water system work with the WWCA to fund an "Engineering Feasibility Study" and other studies required, including a study of "Groundwater Under the Direct Influence of Surface Water." The cost of studies/planning for a Tunnel Water/Hydro Power Project could be in the range between \$500,000 and \$1,000,000.

### **7.3 THRIVING COMMUNITY RECOMMENDATIONS**

The SMS Plan included the following recommendations on developing a "THRIVING COMMUNITY":

*"Build on the momentum created by this strategic planning process to create more trust within the Valley by focusing on areas where there is common agreement. Within the Valley, there is strong support for farmers and increasing production on agricultural land. We recommend that either HHFDC or the WWCA consider hiring a consultant/facilitator to bring the community together around supporting farmers. The goal is for the facilitator to lead a community-driven effort to organize an entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code that can be self-sustaining and enhance the quality of life within the valley. This organization would lead efforts to write grant requests for:*

- *Agricultural economic development – developing a Waiāhole brand and Farmer's market;*
- *Funding to replace cesspools with septic systems; and*
- *Elimination of Albizia trees.*

*The consultant will reach out to DHHL to connect with their households and private land owners. One goal is to bring the community together regardless of type of lease."*

The WWCA Plan did not provide a "Recommendations" section under this heading of "THRIVING COMMUNITY." The WWCA Plan did include a comment at the end of this section of the SMS Plan, as follows:

*"The community welcomed the above suggestion for the HHFDC to work with DOA or other State departments or agencies to seek funding/consulting for the creation of a Waiāhole farming co-op or hui. The creation of a vibrant and active Waiāhole farming co-op or hui offers the possibility of advancing many of the strategic plan recommendations outlined above."*

#### 7.4 HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

The SMS Plan recommendation is:

*“Given the limited resources within HHFDC, we recommend that HHFDC consider retaining a third-party company to take on responsibility for lease enforcement. HHFDC would be responsible for community relations, lease renegotiations, and management of third parties including property managers, ‘auwai and McCandless systems managers, and (if engaged) a community facilitator. Using a third-party for lease enforcement may make the process less political and able to be achieved more expeditiously.”*

The WWCA Plan stated that *“The proposal by HHFDC to outsource enforcement was overwhelming(ly) the most objectionable recommendation contained in the SMS/HHFDC strategic plan. The Community is very much against this idea. Residents believe there is potential for abuse of this power by the third-party company hired to conduct enforcement, especially since HHFDC states above that there is limited staff (to oversee and monitor such outsourced enforcement).”*

*“At the same time, the Community recognizes the need for enforcement and for residents and farmers to live up to their obligations outlined in their respective leases. The Community doesn’t want deadbeat farmers or undesirable residential tenants any more than the HHFDC does.*

*To that end, the Community proposes the creation of a Waiāhole-based panel with HHFDC representation (“the Panel”) to undertake lease enforcement, focusing on two principal areas:*

- (1) Arbitrate lease disputes when lessees believe that they are unfairly being cited for non-compliance, and*
- (2) Work with lessees who do not dispute being out of compliance but who want to regain compliance.”*

#### **DISCUSSION AND RECONCILIATION OF RECOMMENDATIONS**

“Enforcement” of lease terms is a difficult subject for both HHFDC and for Waiāhole lessees. While it is our understanding that Waiāhole lessees are generally in compliance with the terms of their residential or agricultural leases, we have also heard that there are from time to time lease violations, including the construction of unpermitted houses, conducting of illegal activities, and non-compliance with requirements for active farming on agricultural lots.

Enforcement of lease terms may be especially difficult in a close-knit community like Waiāhole when compared with lease enforcement for other kinds of residential leases like urban public housing projects.

Given the objections voiced in the WWCA Plan, the concept of “outsourcing” lease enforcement for Waiāhole should probably NOT be pursued by the HHFDC. However, the WWCA proposal to create a “Waiāhole-based panel with HHFDC representation to undertake lease enforcement” poses some difficult problems, including:

- There may be no statutory/legal basis for the creation of this kind of Public Agency/Community “Panel” to enforce lease terms;
- IF such a Panel could be legally created, it may sometimes prove difficult for community Panel members to be fair and objective if/when their friends or family members have to appear before the Panel because of lease violations.

As an alternative to the WWCA proposal to create a “Waiāhole-based panel with HHFDC representation to undertake lease enforcement,” Townscape suggests that HHFDC and WWCA work together to create a “Waiāhole-based LEASE ADVISORY PANEL.” This PANEL would consist of representatives from both HHFDC and WWCA. The PANEL’s role would be to review serious lease violation/enforcement issues and to RECOMMEND appropriate action to the HHFDC. This concept would then provide for community oversight and recommendations relating to serious lease issues but would still leave the final determination of corrective actions or penalties up to the HHFDC.

## **8. ACTION PLAN**

The SMS Plan concluded with a 7-page section entitled “ACTION PLANS” that had the following sub-headings/topics:

- RESIDENTIAL LOT LEASES
- AGRICULTURAL LOT LEASES
- AGRICULTURE DEVELOPMENT
- SAFETY & SECURITY ACTIONS
- CESSPOOL ACTIONS
- VACANT RESIDENTIAL LOT ACTIONS
- VACANT AGRICULTURAL LOT ACTIONS
- WATER SYSTEM
- FINANCIAL ANALYSIS
- TIMETABLE

The WWCA Plan noted the following under the title “ACTION PLAN.”

*“The SMS/HHFDC Plan contained action plans that followed from the strategic plan recommendations contained in the report. Because the strategic plan recommendations in the Community-Based Plan are different from those contained in the SMS/HHFDC Plan, the action plans are no longer valid and therefore is (sic) not included in the Community-Based Plan....”*

*“It is (the) desire of the Waiāhole community that a new action plan will be undertaken after the vote of approval of either the Community-Based Plan or the Consensus-Based Plan. The community would welcome the opportunity to work in a collaborative fashion with the HHFDC to produce an action plan starting as soon as June 2019 or early 2020, at the convenience of the HHFDC. It is anticipated that it should take no longer than 6-12 months to produce the new action plan.”*

### **DISCUSSION OF ACTION PLAN ELEMENTS**

In our original PROPOSAL for the development of the “WAIĀHOLE COMMUNITY ACTION PLAN,” Townscape stated that: “Once the critical problems/issues have been identified and described, Townscape will collaborate with WWCA, other Waiāhole community members, and HHFDC to investigate and articulate alternative action strategies and preferred actions and strategies to address these problems and issues.”

Unfortunately, due primarily to the disruption of the Waiāhole planning process caused by the COVID, this key process of developing action strategies was not possible. However, Townscape did draft an action plan for WAIĀHOLE FARMING. This action plan is included as an Appendix to this report.

**APPENDIX A – SMS “WAIĀHOLE VALLEY COMMUNITY STRATEGIC PLAN” March 2019**

**APPENDIX B – WWCA “DRAFT WAIĀHOLE-WAIKĀNE STRATEGIC PLAN” May 21, 2019**

**APPENDIX C – WAIĀHOLE STRATEGIC COMMUNITY PLAN – TOWNSCAPE SCOPE OF WORK**

**APPENDIX D – WAIĀHOLE PLANNING MEETINGS – SEPTEMBER 2020 TO MARCH 2021**

**APPENDIX E – WAIĀHOLE FARMING ACTION PLAN**