DEPARTMENT OF FINANCE
COUNTY OF HAWAIʻI
STATE OF HAWAIʻI

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE

RULE 31

RESERVED

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DEPARTMENT OF FINANCE
COUNTY OF HAWAIʻI
STATE OF HAWAIʻI

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE

RULE 31A

RULES AND REGULATIONS RELATING TO LONG-TERM COMMERCIAL AGRICULTURAL USE DEDICATION UNDER CHAPTER 19, ARTICLE 8, SECTION 19-60, HAWAIʻI COUNTY CODE 1983 (2016 EDITION, AS AMENDED)

Rule 31A.1 Purpose of rules; designation to real property tax office.

These rules and regulations are intended to implement the provisions of chapter 19, article 8, section 19-60 of the county code, relating to long-term commercial agricultural use dedication. The director designates the real property tax office to perform the administration of the long-term commercial agricultural program.

Rule 31A.2 Definitions.

A. As used in these rules and regulations, these terms shall have the following meaning:

1. "Agricultural use" shall mean lands used on a continuous and regular basis for intensive agriculture, orchards, feed crops and fast rotation forestry or pasture and slow rotation forestry on lands zoned by the county to be in the districts of agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project district. The term "agricultural use" does not include or apply to areas used primarily as farm dwelling sites, such as, but not limited to, yard space, setbacks, or open landscape associated with residential use planted with ornamental plants, fruit or ornamental trees and vegetables primarily for home use or recreation.

2. "Change of use date" means the effective date of change of use dedication approved by the real property tax office.

3. "Commercial dedicated agricultural use value" shall mean the agricultural use values established under the provisions of section 19-53(a)(2) of the county code.

4. "Commercial agricultural activities" shall mean farm operations, that may include multiple parcels that need not be contiguous, that generate income, monetary gain, or economic benefit in the form of money or money's worth of a minimum $2,000 annual

gross income per farm operation or adhere to generally accepted standards or recognized practices within that agricultural industry.

5. "Commercially viable agricultural operation" shall mean an agricultural business or service with the ability to compete effectively and to make a profit, either without subsidies or with reliable, long- term subsidies as demonstrated by an analysis of comparable practices within the area of operation under comparable conditions.

6. "Date of the dedication" means the effective date of dedication approved by the real property tax office.

7. "Dedicated area" means the land area approved as dedicated lands by the real property tax office.

8. "Diversified agriculture" means a blend of agricultural activities while transitioning from one category to the other during the term of the dedication or on a continuous and regular basis.

9. "Farm dwelling site" means that portion of the land not exceeding one-fourth acre which is used for residential purposes, including the land upon which any house is located, together with all accessory buildings and the land designated to be the yard space.

10. "Farm equipment" means machinery, implements, and tools used exclusively and directly for farming or ranching operations.

11. "Farm plan" means an agricultural business plan, in a form prescribed by the director, that describes the agricultural practices of a commercially viable agricultural operation, all relevant tax map key numbers, and a financial projection.

12. "Fertilizers" means a natural or synthetic material added to the soil to supply plant nutrients.

13. "Long-term commercial agricultural use dedication" means the use of land on a continuous and regular basis for a minimum of ten (10) years that demonstrates the owner is engaged in commercial agriculture activities from intensive agriculture; orchards; feed crops and fast rotation forestry; pasture and slow rotation forestry; or diversified agriculture.

14. "Owner" means the fee simple owner, or a recorded lessee of the land with a term of five (5) or more years remaining on the lease as of the date of the dedication and who is responsible for payment of the real property taxes.

15. "Soil amendments" means material added to the soil to improve its physical properties such as compost, agricultural lime, greensand, or manure.

16. "Violation" means the failure by the owner or any owner by succession who signed a notarized affidavit to use the land for the general agricultural category, that was listed on the petition and approved by the real property tax office, for a period of six consecutive

months. It also means the overt act of changing between commercial agricultural categories without prior notification and approval of such change by the real property tax office for any period of time during the life of the dedication or any failure by the owner to observe any of the terms, conditions, or restrictions of the dedication.

B. Use of gender and number. Words importing the singular number shall extend to and include the plural; words importing the plural shall extend to and include the singular; words importing the masculine or the feminine gender shall extend to and include the male or the female as the case may be.

Rule 31A.3 Dedication; requirements.

A. The dedication of lands for long-term commercial agricultural use shall be initiated by the property owner by filing a complete application with the real property tax office on or before September 1 for the dedication to become effective on July 1 of the following tax year if the application is approved. If an applicant submits an incomplete application before the September 1 deadline, the real property tax office shall make reasonable efforts to notify the applicant of the deficiency in the application, and it shall be the responsibility of the applicant to correct the deficiency and return the completed application to the real property tax office by the September 1 deadline. The real property tax office shall either disapprove or approve all timely and complete applications for dedication by December 15. Where multiple parcels are being considered for dedication, a separate application for dedication is required for each parcel with its own tax map key to apply for, and receive if approved, the agricultural preferential assessment value.

1. The application for dedication shall be submitted on a form prescribed by the real property tax office. Applications shall be available at the physical locations of the real property tax office and the real property tax office website.

2. All applicants shall submit the Schedule F (IRS Form 1040) or State of Hawaiʻi tax form G-49 from the previous tax year as evidence of long-term commercial agricultural use minimum of $2,000 annual gross income.

3. In addition, the application shall include at least one of the following:

   a. A farm plan, as defined;
   b. Documentation of organic certification from U.S. Department of Agriculture;
   c. A plan from U.S. Department of Agriculture, Natural Resources Conservation Service;
   d. Documentation of food safety certification from the U.S. Department of Agriculture;
   e. Receipts demonstrating an investment of a minimum of $10,000 in farm equipment, fertilizers, or soil amendments for use on the subject property within the previous two years of the application for dedication; or
   f. Documentation of an agricultural conservation easement with a term of at least ten (10) years, that has been recorded with the state bureau of conveyances.

B. The proposed parcel included within the application for dedication shall be located within a county-zoned district of agricultural, residential and agricultural, family agricultural, intensive agricultural, agricultural project district, or any other county-zoned district meeting the approval of the director of planning in accordance with chapter 25 of the county code; provided that, with respect to any parcel located within county-zoned districts other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the real property tax office shall make additional findings of fact on the petition for dedication as set forth in rule 31A.4.

C. Only the following five (5) general agricultural categories shall be eligible and considered for dedication of land for long-term commercial agriculture use:

1. Intensive agriculture, which includes such crops as vegetables, ginger, taro, herbs, nurseries, foliage, cut and potted flowers, piggeries, dairy, poultry, feedlots, aquaculture, honey, and honeybees.

2. Orchards, which includes such crops as macadamia nuts, guava, banana, papaya, avocado, grapes, passion fruit, coffee, citrus, cacao, pineapple, and tropical specialty fruits.

3. Feed crops and fast rotation forestry, which includes forage crops, seed crops, cane, short rotation forestry, biomass, and grasses.

4. Pasture and slow rotation forestry, which includes pasture and longer rated forestry.

5. Diversified agriculture, which includes a blend of agricultural activities.

D. Lands petitioned for dedication shall be of the following minimum lot size schedule in each of the following five agricultural categories.

1. Intensive agriculture: 0.25 acres
2. Orchards: 1.0 acre
3. Feed crops or fast rotation forestry: 2.5 acres
4. Pasture or slow rotation forestry: 5.0 acres
5. Diversified agriculture: 0.25 acres

Exceptions to these minimum lot sizes are allowed where the dedication application indicates a commercially viable agricultural operation on a smaller lot. Where a parcel does not meet the minimum size requirements, but all or a portion of land is in active agriculture by way of lease to a farm or ranch, the lease shall be recorded with the state bureau of conveyances to be eligible for consideration of the dedication. The lessee shall complete the application and provide documentation for the commercially viable agricultural operation.

E. The land dedicated for long-term commercial agricultural use for the following three (3) agricultural categories shall not be fallow for more than three (3) out of every ten (10) years of the dedication period, unless the dedication application describes and provides reasons why it is necessary to have greater fallow periods, whose determination of necessity shall be subject to review of the real property tax office:

1. Intensive agriculture;
2. Orchards; and
3. Diversified agriculture.

For purposes of this section, the term "fallow" shall mean cultivated land that is allowed to lie idle during the growing season.

F. Each application for dedication shall be signed by all living owners of the land, shall indicate the general agricultural category to which the land is to be dedicated, and shall include a map delineating the area to be dedicated. Any farm dwelling site shall be indicated in the application and shall not be in the dedicated area.

G. A separate application shall be filed for each parcel or portion thereof to be dedicated; however, one farm plan listing all tax map key numbers may be submitted. For parcels where animals are grazing on a rotational basis, all TMK numbers for where the animals are rotated shall be included with a farm plan indicating the rotation schedule.

H. Applications shall be for a ten-year dedication term unless the remaining recorded lease is for a term of less than ten (10) years; provided that a minimum of five years remaining on the lease is required. The provision for a twenty (20) year agricultural dedication has been repealed.

I. The real property tax office shall utilize and refer to the agricultural use guidelines for density, crops types to agricultural categories and rotation schedule for proper ranching management. The agricultural use guidelines provide for fair and equitable treatment of the real property tax office's validation process to approve or disapprove a preferential agricultural use value.

J. Each timely, completed application and document filed shall be reviewed, and any errors or deficiencies shall be corrected by the applicant. No application for dedication shall be deemed to have been filed unless the application is complete in form and any and all errors or deficiencies have been corrected. The real property tax office shall assign a dedication number to each completed and timely submitted application.

K. The real property tax office shall conduct site inspections for all parcels included within each timely, completed application. Thereafter, the real property tax office shall conduct periodic inspections of dedicated lands and shall note any violations for appropriate action pursuant to rule 31A.8. Submittal of an application by the owner or lessee shall constitute an acknowledgement that site visit inspections may be performed without prior notice, unless the application requests that the real property tax office provide prior notification of the site inspection. In the event the application requests such prior notice, the real property tax office will make reasonable efforts to contact the applicant, which may include but is not limited to telephone calls or email.

Rule 31A.4 <u>Findings of facts.</u>

The real property tax office shall, by December 15 of each year, make a finding of fact as to whether the land in the application has been approved in full, approved in part, or denied. The following criteria must be considered:

A. That the land has been visually inspected to confirm active agricultural use as noted in the application.

   1. Criteria for active agricultural use may include, but is not limited to, the following:

      a. For intensive agriculture, orchards, diversified agriculture, or feed crops and fast rotation forestry, plantings must be observed at time of inspection. Rows of plantings, including crops, must be made in a manner as to maximize the productivity of the land being committed to the agricultural dedication.

   2. Criteria for active agricultural use for pasture and slow rotation forestry may include, but is not limited to, the following:

      a. Permanent water source and perimeter fencing or another barricade sufficient to restrain freely grazing animals.
      b. Only the areas with perimeter fencing or barricades shall be included in the total dedicated area.
      c. Where multiple parcels are contiguous and have animals grazing, perimeter fencing may be around the exterior boundary of all parcels.

B. That the productivity ratings of the land provide that the land is well suited for the intended long-term commercial agricultural use.

C. A study of the ownership of the land to ensure the application is submitted by the proper owner.

D. The size of the farm operation as a whole.

E. The present use of other surrounding similar lands.

F. The size or area for the proposed agricultural use is adequate or sufficient.

G. The use is permissible under the county-zoning district or ordinance. For parcels located within county-zoned districts other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the real property tax office shall make additional findings of fact on the economic feasibility of the intended use of the land in accordance with allowable uses for planning purposes.

H. The intended use does not conflict with either the general plan of the county or any applicable community development plan for the area.

Rule 31A.5 <u>Approval or disapproval</u>.

A. If all findings of fact from rule 31A.4, as applicable, are approved in full, or approved in part, the real property tax office shall accept the application for dedication and declare that the land be dedicated.

B. The real property tax office shall notify the owner of record, the lessee, and the person named on the application for petition, if different from the owner or lessee, of approval or disapproval of the application for dedication no later than December 15. Upon approval, the dedication shall become effective July 1 of the following tax year, but the assessed value shall be determined on the assessment date of January 1.

C. The application number and the effective date of the dedication are to be noted on appropriate records accessible to the public.

D. If the application for dedication was not approved in full, the notice shall state the reasons for such disapproval.

E. Upon approval, the owner(s) of record or the real property tax office shall record the dedication in accordance with the requirements of the Hawai'i bureau of conveyances within ninety (90) days of the date the application for dedication was approved. The county shall not be responsible for any recording fees.

F. The land dedicated for long-term commercial agricultural use for intensive agriculture, orchards, or diversified agriculture shall not grow any crops designated as noxious weeds for eradication or control purposes by the state department of agriculture, set forth in chapter 68, subtitle 6, title 4, of the Hawai'i Administrative Rules, as amended, or any crops included in schedule I of the Controlled Substances Act in 21 U.S.C. § 812.

Rule 31A.6 <u>Effects of dedication; enforceable restriction upon use; changes in dedicated use.</u>

A. The effective date of any approved application for dedication shall be July 1. The real property tax office shall assess, at the applicable agricultural use value, only those areas actually in active agricultural use as of the assessment date of January 1. A farm plan is required when there is an anticipated or intended agricultural use within the first year of the dedication period, and the application shall not be accepted or assessed as dedicated agricultural use, unless the anticipated or intended uses are included in the farm plan approved by the real property tax office.

B. Unless otherwise provided, each approved application for long-term commercial agriculture dedication shall constitute a forfeiture on the part of the owner of any right to change the use of the land, except where the use is for another long-term commercial agriculture dedication for a minimum period of ten (10) years or the use is for a native forest dedication for a minimum period of twenty (20) years.

C. In the case of a change in zoning not as a result of an application by an owner or lessee such that the dedicated land is placed within any zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the dedication may be canceled by the owner within sixty (60) calendar days of the change in zoning. The owner shall provide written notice to the real property tax office of the cancellation within the sixty (60) calendar day period.

D. The dedication shall bind and inure to each successor owner unless the dedication is properly cancelled by the owner and released by the real property tax office. The dedication shall be cancelled if the dedicated land, or any portion thereof, is sold by way of a conveyance subject to conveyance tax under the terms of chapter 247, Hawai'i Revised Statutes; provided that the dedication shall not be canceled if a notarized affidavit is signed by all new owners of the land stating that the land will continue to be subject to the full requirements of the dedication, including any penalties for violation.

E. Where dedicated land has been subdivided, each parcel shall be independently subject to the provisions of the original dedication. The owner shall notify the real property tax office, within thirty (30) calendar days, of any subdivision of the dedicated land and shall submit a copy of the approved subdivision map or the registered file plan number, whichever is applicable.

   1. The real property tax office shall note the dedication upon appropriate records of each subdivided parcel and record the subdivided dedication. The owner shall be responsible for all recording fees.

   2. The owner(s) shall inform each prospective purchaser of a subdivided parcel of the dedicated status of the land.

   3. Each owner of a subdivided parcel may, independently of any other owner, apply for a change in dedicated use or may provide the notice of cancellation to the real property tax office within sixty (60) calendar days.

   4. Any action taken by the owner of a subdivided parcel shall not have any effect on the owners of the other parcels resulting from the subdivision.

F. If any owner wishes to change its dedicated use from one commercial agricultural category to another category, the owner shall submit for evaluation a change of use form to the real property tax office that identifies the new proposed commercial agricultural category.

   1. The owner shall submit the change of use form within six (6) months from the date that the land was last used for the approved dedicated agricultural use.

      a. Any change of use form received after the sixth month shall be deemed in violation of the original terms, conditions, and restrictions of the dedicated use of the land, and the dedication shall be cancelled, and retroactive assessments may be imposed.

   2. The owner's change of use form shall be subject to the dedication requirements of rule 31A.3, as applicable, and required findings of facts of rule 31A.4, as applicable; provided the deadline for the real property tax office to approve or disapprove the change of use form shall be within ninety (90) calendar days from receipt.

3. If the change of use form is approved, the real property tax office shall provide a written notice of its approval and indicate the effective change of use date. The owner shall have twenty-four (24) months from the effective change of use date to convert to the new long-term commercial agricultural use category. The change of use shall not alter the initial dedication period, and the conversion to the new use shall be completed prior to the end of the initial dedication period.

    a. Failure to initiate the approved change in use or conversion plan may cancel the dedication and subject special tax assessments retroactive to the date the assessment was made but for not more than ten (10) years.

    b. Failure for a period of six (6) consecutive months to show any visible signs of converting to the new commercial agricultural activity shall constitute a failure to initiate the approved change in use or conversion plan.

    c. The owner or lessee shall submit annual progress reports explaining the efforts in converting to the change of use. The progress report shall be submitted to the real property tax office on or before the anniversary of the change of use date, and yearly thereafter.

4. If the change of use form or the native forest dedication application is disapproved, the written notice shall state the reasons for such disapproval.

Rule 31A.7 Special tax assessment of dedicated lands.

A. The determination of the value of dedicated lands for long-term commercial agricultural use, which includes intensive agriculture, orchards, feed crops and fast rotation forestry, pasture and slow rotation forestry, and diversified agriculture, shall be based upon considerations prescribed in chapter 19, article 7, section 19-53(a)(2), and chapter 19, article 8, section 19-60(c) of the county code, including the following:

    1. Rent;
    2. Productivity;
    3. Nature of actual commercial agricultural use;
    4. The advantage or disadvantage of factors, such as location, accessibility, transportation facilities, size, shape, topography, water privileges, availability of water and its cost, easements and appurtenances; and
    5. Opinions of persons who may be considered to have special knowledge of land values, such as agriculturalists and/or experts in the field.

B. In the event of any violations, pursuant to rule 31A.8, or cancellations, pursuant to rule 31A.9, of the dedicated use, dedicated lands shall be assessed at their highest and best use as though not dedicated for purposes of determining and computing retroactive taxes.

C. All portions of land, excluding the farm dwelling site, that are not dedicated for long-term commercial agricultural use, shall be assessed based on the proportional market value of the total property.

D. Each farm dwelling site, if any, shall not exceed one-fourth acre and shall be assessed at the highest commercial agricultural use value. The farm dwelling site area for the parcel shall be determined when the owner applies for the long-term commercial agricultural use dedication. The assigned appraiser for that zone shall be responsible for verifying the accuracy of the farm dwelling site area listed in the application and shall make corrections upon observation of the land, if necessary.

E. The real property tax office shall report the total market value of land, along with the assessed value of land for tax assessment purposes.

Rule 31A.8 <u>Retroactive assessment, violation, and penalty</u>.

A. The retroactive assessment and penalty provisions of chapter 19, article 8, section 19-60(g) of the county code, shall be imposed by the real property tax office for any violation of the dedication.

1. The retroactive assessment shall be the difference in the amount of taxes between what should have been paid when assessed at the highest and best use and the amount paid based upon its assessment for dedicated uses for each year the land has been dedicated, based on the rollback tax schedule provided in section 19-60(g)(3)(F) of the county code or the latest renewal date of the dedication. The retroactive assessment shall be subject to a penalty of ten percent per year.

B. Whenever a violation of the dedication occurs (whether in whole or in part of the area in the dedication), the owner shall first be provided written notice of such violation. The notice of such violation shall be mailed to the last known address on file with the real property tax office. Each owner shall be afforded an opportunity to discuss the violation informally with the real property tax office. In the absence of any appropriate justification, the real property tax office shall cancel the dedication and subject the lands to retroactive assessments and penalties. A violation occurs upon any one of the following:

1. Failure of the owner to comply with any restriction, condition, or provision on the use of the dedicated land;

2. If the dedicated land, or any portion thereof, is sold by way of a conveyance subject to the conveyance tax under the terms of chapter 247, Hawai'i Revised Statutes, provided that the dedication shall not be canceled if a notarized affidavit is signed by all new owners of the land stating that the land will continue to be subject to the full requirements of the dedication, including any penalties for violation;

3. For an approved change of use pursuant to Rule 31A.6, the failure to initiate the approved change in use or conversion plan for a period of six (6) consecutive months, or if the land remains vacant, idle, or fallow for twelve (12) consecutive months from the date of approval of the change in use; or

4. The land dedicated for intensive agriculture, orchards, or diversified agriculture is fallow for no more than three (3) out of every ten (10) years of the dedication period, except when greater fallow periods are necessary as described in the dedication application or change of use form.

C. If a violation occurs with respect to only a portion of the dedicated lands, such as when a portion of the land is subsequently applied to a use other than its dedicated use or such portion is not put to its long-term commercial agricultural use, the real property tax office shall cancel only that portion that is in violation and subject that portion to retroactive assessment and penalties.

D. In situations where the owner has satisfied the original terms and conditions of the dedication and has renewed the dedication, the real property tax office shall, in cases of violation, calculate the deferred or rollback taxes from the date of violation back to the latest renewal date and apply the deferred or rollback tax schedule provided in section 19-60(g)(3)(F) of the county code.

E. A change in zoning as a result of an application by an owner or lessee such that the dedicated land is placed within any zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, shall be deemed to constitute an overt act of changing the use of the dedicated land and may be subject to a retroactive assessment including rollback taxes and penalties.

F. All unpaid taxes, including retroactive assessments and penalties shall constitute a paramount lien upon the property.

Rule 31A.9 Cancellation (withdrawal) without penalty.

A. Where lands have been rezoned in any county-zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district by the county council not as a result of a petition initiated by the owner of the dedicated land, such owner may cancel the dedication within sixty (60) days after the reclassification and shall not be subject to the retroactive assessment and penalty provisions by this rule 31A, or by the provisions of chapter 19, article 8, section 19-60 of the county code. If the owner desires to cancel the dedication, the owner shall notify the real property tax office in writing of the cancellation. The notice of cancellation shall be accompanied by a copy of the notice of zoning change from the county Council.

B. All cancellations shall become effective July 1 of the following tax year.

C. The real property tax office may cancel a dedication without rollback taxes or penalties in the event of any of the following:

1. A recognized natural disaster beyond the farmer's control;

2. The land can no longer be used for the dedicated agricultural use, which final determination shall be made by the real property tax office; or

3. The death or severe disability of the principal farmer such that the farm operation cannot continue. Corporations and partnerships are not eligible for this death or severe disability exemption.

D. The dedication shall be canceled upon expiration of the dedication. At least one hundred eighty (180) days prior to the ending of the dedication period, the real property tax office shall notify the owner by mail of such expiration. If the owner desires, the owner shall reapply for renewal of the dedication by filing a renewal petition on or before September

1 of the last year of the dedication.

Rule 31A.10 Appeals.

The owner may appeal any disapproved petition or cancellation of dedication to the county tax board of review. Appeals shall be governed by the appropriate sections of chapter 19 of the county code.

Rule 31A.11 Severability.

If any provision of these rules or the applicability thereof should be held invalid for any reason, such invalidity shall not affect other provisions or applications, which can be given effect without the invalid provisions or applications and to this end, these rules are declared to be severable.

Rule 31A.12 Effective date.

These rules and regulations shall take effect ten (10) days after filing with the county clerk.

DEPARTMENT OF FINANCE
COUNTY OF HAWAIʻI
STATE OF HAWAIʻI

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE

RULE 31B

RULES AND REGULATIONS RELATING TO SHORT-TERM COMMERCIAL AGRICULTURAL USE DEDICATION UNDER CHAPTER 19, ARTICLE 8, SECTION 19-61, HAWAIʻI COUNTY CODE 1983 (2016 EDITION, AS AMENDED)

Rule 31B.1 Purpose of Rules; designation to real property tax office.

These rules and regulations are intended to implement the provisions of Chapter 19, Article 8, Section 19-61 of the county code, relating to the short-term commercial agricultural use dedication. The director of finance designates the real property tax office to perform the administration of the short-term commercial agricultural program.

Rule 31B.2 Definitions.

A. As used in these rules and regulations, these terms shall have the following meaning:

1. "Agricultural use" shall mean lands used on a continuous and regular basis for intensive agriculture, orchards, feed crops and fast rotation forestry or pasture and slow rotation forestry on lands zoned by the county to be in the districts of agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project district. The term "agricultural use" does not include or apply to areas used primarily as farm dwelling sites, such as, but not limited to, yard space, setbacks, or open landscape associated with residential use planted with ornamental plants, fruit or ornamental trees and vegetables primarily for home use or recreation.

2. "Change of use date" means the effective date of change of use dedication approved by the real property tax office.

3. "Commercial dedicated agricultural use value" shall mean the agricultural use values established under the provisions of section 19-53(a)(2) of the county code.

4. "Commercial agricultural activities" shall mean farm operations, that may include multiple parcels that need not be contiguous, that generate income, monetary gain, or economic benefit in the form of money or money's worth of a minimum $2,000 annual gross income per farm operation or adhere to generally accepted standards or recognized practices within that agricultural industry.

5. "Commercially viable agricultural operation" shall mean an agricultural business or service with the ability to compete effectively and to make a profit, either without subsidies or with reliable, long- term subsidies as demonstrated by an analysis of comparable practices within the area of operation under comparable conditions.

6. "Date of the dedication" means the effective date of dedication approved by the real property tax office.

7. "Dedicated area" means the land area approved as dedicated lands by the real property tax office.

8. "Diversified agriculture" means a blend of agricultural activities while transitioning from one category to the other during the term of the dedication or on a continuous and regular basis.

9. "Farm dwelling site" means that portion of the land not exceeding one-fourth acre which is used for residential purposes, including the land upon which any house is located, together with all accessory buildings and the land designated to be the yard space.

10. "Farm equipment" means machinery, implements, and tools used exclusively and directly for farming or ranching operations.

11. "Farm plan" means an agricultural business plan, in a form prescribed by the director, that describes the agricultural practices of a commercially viable agricultural operation, all relevant tax map key numbers, and a financial projection.

12. "Fertilizers" means a natural or synthetic material added to the soil to supply plant nutrients.

13. "Owner" means the fee simple owner, or a recorded lessee of the land with a term of three (3) or more years remaining on the lease as of the date of the dedication and who is responsible for payment of the real property taxes.

14. "Short-term commercial agricultural use dedication" means the use of land on a continuous and regular basis for a minimum of three years that demonstrates the owner is engaged in commercial agricultural activities from: Intensive agriculture; orchards; feed crops and fast rotation forestry; pasture and sole rotation forestry; or diversified agriculture.

15. "Soil amendments" means material added to the soil to improve its physical properties such as compost, agricultural lime, greensand, or manure.

16. "Violation" means the failure by the owner or any owner by succession who signed a notarized affidavit to use the land for the general agricultural category, that was listed on the petition and approved by the real property tax office, for a period of six consecutive months. It also means the overt act of changing between commercial agricultural categories without prior notification and approval of such change by the real property tax

office for any period of time during the life of the dedication or any failure by the owner to observe any of the terms, conditions, or restrictions of the dedication.

B. Use of gender and number. Words importing the singular number shall extend to and include the plural; words importing the plural shall extend to and include the singular; words importing the masculine or the feminine gender shall extend to and include the male or the female as the case may be.

Rule 31B.3 <u>Dedication; requirements.</u>

A. The dedication of lands for short-term commercial agricultural use shall be initiated by the property owner filing a complete application with the real property tax office on or before September 1 for the dedication to become effective on July 1 of the following tax year if the application is approved. If an applicant submits an incomplete application before the September 1 deadline, the real property tax office shall make reasonable efforts to notify the applicant of the deficiency in the application, and it shall be the responsibility of the applicant to correct the deficiency and return the completed application to the real property tax office by the September 1 deadline. The real property tax office shall either disapprove or approve all timely and complete applications for dedication by December 15. Where multiple parcels are being considered for dedication, a separate application for dedication is required for each parcel with its own tax map key to apply for, and receive if approved, the agricultural preferential assessment value.

1. The application for dedication shall be submitted on a form prescribed by the real property tax office. Applications shall be available at the physical locations of the real property tax office and the real property tax office website.

2. All applicants shall submit the Schedule F (IRS Form 1040) or State of Hawai'i tax form G-49 from the previous tax year as evidence of short-term commercial agricultural use minimum of $2,000 annual gross income.

3. In addition, the application shall include at least one of the following:

   a. A farm plan, as defined;
   b. Documentation of organic certification from U.S. Department of Agriculture;
   c. A plan from U.S. Department of Agriculture, Natural Resources Conservation Service;
   d. Documentation of food safety certification from the U.S. Department of Agriculture; or
   e. Receipts demonstrating an investment of a minimum of $10,000 in farm equipment, fertilizers, or soil amendments for use on the subject property within the previous two years of the application for dedication.

B. The proposed parcel included within the application for dedication shall be located within a county-zoned district of agricultural, residential and agricultural, family agricultural, intensive agricultural, agricultural project district, or any other county-zoned district meeting with the approval of the county director of planning in accordance with chapter 25 of the county code; provided that, with respect to any parcel located within county-zoned districts other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the real property tax office shall make additional findings of fact on the petition for dedication as set forth in rule 31B.4.

C. Only the following five (5) general agricultural categories shall be eligible and considered for dedication of land for short-term commercial agriculture use:

   1. Intensive agriculture, which includes such crops as vegetables, ginger, taro, herbs, nurseries, foliage, cut and potted flowers, piggeries, dairy, poultry, feedlots, aquaculture, honey, and honeybees.

   2. Orchards, which includes such crops as macadamia nuts, guava, banana, papaya, avocado, grapes, passion fruit, coffee, citrus, cacao, pineapple, and tropical specialty fruits.

   3. Feed crops and fast rotation forestry, which includes forage crops, seed crops, cane, short rotation forestry, biomass, and grasses.

   4. Pasture and slow rotation forestry, which includes pasture and longer rated forestry.

   5. Diversified agriculture, which includes a blend of agricultural activities.

D. Lands petitioned for dedication shall be of the following minimum lot size schedule in each of the following five agricultural categories.

   1. Intensive Agriculture: 0.25 acres
   2. Orchards: 1.0 acre
   3. Feed Crops or Fast Rotation Forestry: 2.5 acres
   4. Pasture or Slow Rotation Forestry: 5.0 acres
   5. Diversified agriculture: 0.25 acres

   Exceptions to these minimum lot sizes are allowed where the dedication application indicates a commercially viable agricultural operation on a smaller lot. Where a parcel does not meet the minimum size requirements, but all or a portion of land is in active agriculture by way of lease to a farm or ranch, the lease shall be recorded with the State of Hawai'i bureau of conveyances to be eligible for consideration of the dedication. The lessee shall complete the application and provide documentation for the commercially viable agricultural operation.

E. The land dedicated for short-term commercial agricultural use for the following three (3) agricultural categories shall not be fallow for more than one (1) of out every three (3) years of the dedication period, unless the dedication application describes and provides reasons why it is necessary to have greater fallow periods, whose determination of necessity shall be subject to review of the real property tax office:

   1. Intensive agriculture;
   2. Orchards; and
   3. Diversified agriculture.

For purposes of this section, the term "fallow" shall mean cultivated land that is allowed to lie idle during the growing season.

F. Each application for dedication shall be signed by all living owners of the land, shall indicate the general agricultural category to which the land is to be dedicated, and shall include a map delineating the area to be dedicated. Any farm dwelling site shall be indicated in the application and shall not be in the dedicated area.

G. A separate application shall be filed for each parcel or portion thereof to be dedicated; however, one farm plan listing all tax map key numbers may be submitted. For parcels where animals are grazing on a rotational basis, all TMK numbers for where the animals are rotated shall be included with a farm plan indicating the rotation schedule.

H. Applications shall be for a three-year dedication term, or in the case of a recorded agricultural lease, a minimum of three (3) years remaining on the lease as of the date of the dedication.

I. The real property tax office shall utilize and refer to the agricultural use guidelines for density, crops types to agricultural categories and rotation schedule for proper ranching management. The agricultural use guidelines provide for fair and equitable treatment of the real property tax office's validation process to approve or disapprove a preferential agricultural use value.

J. Each timely, completed application and document filed shall be reviewed, and any errors or deficiencies shall be corrected by the applicant. No application for dedication shall be deemed to have been filed unless the application is complete in form and any and all errors or deficiencies have been corrected. The real property tax office shall assign a dedication number to each completed and timely submitted application.

K. The real property tax office shall conduct site inspections for all parcels included within each timely, completed application. Thereafter, the real property tax office may conduct periodic inspections of dedicated lands and shall note any violations for appropriate action pursuant to rule 31B.8. Submittal of an application by the owner or lessee shall constitute an acknowledgement that site visit inspections may be performed without prior notice, unless the application requests that the real property tax office provide prior notification of the site inspection. In the event the application requests such prior notice, the real property tax office will make reasonable efforts to contact the applicant, which may include but is not limited to telephone calls or email.

Rule 31B.4 <u>Findings of facts.</u>

The real property tax office shall, by December 15 of each year, make a finding of fact as to whether the land in the application has been approved in full, approved in part, or denied. The following criteria must be considered:

A. That the land has been visually inspected to confirm active agricultural use as noted in the application.

1. Criteria for active agricultural use may include, but is not limited to, the following:

a. For intensive agriculture, orchards, diversified agriculture, or feed crops and fast rotation forestry, plantings must be observed at time of inspection. Rows of plantings, including crops, must be made in a manner as to maximize the productivity of the land being committed to the agricultural dedication.

2. Criteria for active agricultural use for pasture and slow rotation forestry may include, but is not limited to, the following:

   a. Permanent water source and perimeter fencing or another barricade sufficient to restrain freely grazing animals.
   b. Only the areas with perimeter fencing or barricades shall be included in the total dedicated area.
   c. Where multiple parcels are contiguous and have animals grazing, perimeter fencing may be around the exterior boundary of all parcels.

B. That the productivity ratings of the land provide that the land is well suited for the intended long-term commercial agricultural use.

C. A study of the ownership of the land to ensure the application is submitted by the proper owner.

D. The size of the farm operation as a whole.

E. The present use of other surrounding similar lands.

F. The size or area for the proposed agricultural use is adequate or sufficient.

G. The use is permissible under the county-zoning district or ordinance. For parcels located within county-zoned districts other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the real property tax office shall make additional findings of fact on the economic feasibility of the intended use of the land in accordance with allowable uses for planning purposes.

H. The intended use does not conflict with either the general plan of the county or any applicable community development plan for the area.

Rule 31B.5 <u>Approval or disapproval.</u>

A. If all findings of fact from rule 31B.4, as applicable, are approved in full, or approved in part, the real property tax office shall accept the application for dedication and declare that the land be dedicated.

B. The real property tax office shall notify the owner of record, the lessee, and the person named on the application for petition, if different from the owner or lessee, of approval or disapproval of the application for dedication no later than December 15. Upon approval, the dedication shall become effective July 1 of the following tax year, but the assessed value shall be determined on the assessment date of January 1.

C. The application number and the effective date of the dedication are to be noted on appropriate records accessible to the public.

D. If the application for dedication was not approved in full, the notice shall state the reasons for such disapproval.

E. The land dedicated for short-term commercial agricultural use for intensive agriculture, orchards, or diversified agriculture shall not grow any crops designated as noxious weeds for eradication or control purposes by the state department of agriculture, set forth in chapter 68, subtitle 6, title 4, of the Hawai'i Administrative Rules, as amended, or any crops included in schedule I of the Controlled Substances Act in 21 U.S.C. § 812.

Rule 31B.6 Effects of dedication; enforceable restriction upon use; changes in dedicated use.

A. The effective date of any approved application for dedication shall be July 1. The real property tax office shall assess, at the applicable agricultural use value, only those areas actually in active agricultural use as of the assessment date of January 1. A farm plan is required when there is an anticipated or intended agricultural use within the first year of the dedication period, and the application shall not be accepted or assessed as dedicated agricultural use, unless the anticipated or intended uses are included in the farm plan approved by the real property tax office.

B. Unless otherwise provided, each approved application for short-term commercial agriculture dedication shall constitute a forfeiture on the part of the owner of any right to change the use of the land, except where the use is for another short-term commercial agriculture dedication for a minimum period of three (3) years or the use is for a native forest dedication for a minimum period of twenty (20) years.

C. In the case of a change in zoning not as a result of an application by an owner or lessee such that the dedicated land is placed within any zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the dedication may be canceled by the owner within sixty (60) calendar days of the change in zoning. The owner shall provide written notice to the real property tax office of the cancellation within the sixty (60) calendar day period.

D. The dedication shall bind and inure to each successor owner unless the dedication is properly cancelled by the owner and released by the real property tax office. The dedication shall be cancelled if the dedicated land, or any portion thereof, is sold by way of a conveyance subject to conveyance tax under the terms of chapter 247, Hawai'i Revised Statutes.

E. Where dedicated land has been subdivided, each parcel shall be independently subject to the provisions of the original dedication. The owner shall notify the real property tax office, within thirty (30) calendar days, of any subdivision of the dedicated land and shall submit a copy of the approved subdivision map or the registered file plan number, whichever is applicable.

1. The real property tax office shall note the dedication upon appropriate records of each subdivided parcel.

2. The owner(s) shall inform each prospective purchaser of a subdivided parcel of the dedicated status of the land.

3. If the subdivision results in a change in ownership that is subject to conveyance tax under chapter 247, Hawai'i Revised Statutes, then each owner of the subdivided parcels shall apply for a new short-term commercial agricultural use dedication.

4. Failure of the new owner to apply for a new short-term commercial agricultural use dedication by the statutory deadline shall result in the loss of the preferential agricultural use assessment value.

F. If any owner wishes to change its dedicated use from one commercial agricultural category to another, the owner shall submit for evaluation a change of use form within twelve (12) months from the effective date of the dedication to the real property tax office that identifies the new proposed commercial agricultural category.

1. The owner's change of use form shall be subject to the dedication requirements of rule 31B.3, as applicable, and required findings of facts of rule 31B.4, as applicable.

2. If the change of use form is approved, the real property tax office shall provide a written notice of its approval and indicate the effective change of use date. The owner shall have twelve (12) months from the effective change of use date to convert to the new short-term commercial agricultural use category. The change of use shall not alter the initial dedication period, and the conversion to the new use shall be completed prior to the end of the initial dedication period.

   a. Failure to initiate the approved change of use or conversion plan may cancel the dedication and subject special tax assessments retroactive to the date the assessment was made but for not more than three (3) years.

   b. Failure for a period of six (6) consecutive months to show any visible signs of converting to the new commercial agricultural activity shall constitute a failure to initiate the approved change of use or conversion plan.

   c. The owner or lessee shall submit a progress report explaining the efforts in converting to the change in use at the conclusion of the change of use. The progress report shall be submitted to the real property tax office on or before the anniversary of the change of use date, and yearly thereafter.

3. If the change of use form is disapproved, the written notice shall state the reasons

for such disapproval.

Rule 31B.7 Special tax assessment of dedicated lands.

A. The determination of the value of dedicated lands for short-term commercial agricultural use shall be assessed at two times the value of the lands dedicated for long-term commercial agricultural use.

B. The agricultural use value shall be based upon considerations prescribed in chapter 19, article 7, section 19-53(a)(2), and chapter 19, article 8, section 19-60(c) of the county code, including the following:

1. Rent;
2. Productivity;
3. Nature of actual commercial agricultural use;
4. The advantage or disadvantage of factors, such as location, accessibility, transportation facilities, size, shape, topography, water privileges, availability of water and its cost, easements and appurtenances; and
5. Opinions of persons who may be considered to have special knowledge of land values, such as agriculturalists and/or experts in the field.

C. In the event of any violations, pursuant to rule 31B.8, or cancellations, pursuant to rule 31B.9, of the dedicated use, dedicated lands shall be assessed at their highest and best use as though not dedicated for purposes of determining and computing retroactive taxes.

D. All portions of land, excluding the farm dwelling site, that are not dedicated for short-term commercial agricultural use, shall be assessed based on the proportional market value of the total property.

E. Each farm dwelling site, if any, shall not exceed one-fourth acre and shall be assessed at the highest commercial agricultural use value. The farm dwelling site area for the parcel shall be determined when the owner applies for the short-term commercial agricultural use dedication. The assigned appraiser for that zone shall be responsible for verifying the accuracy of the farm dwelling site area listed in the application and shall make corrections upon observation of the land, if necessary.

F. The real property tax office shall report the total market value of land, along with the assessed value of land for tax assessment purposes.

Rule 31B.8 Retroactive assessment, violation, and penalty.

A. The retroactive assessment and penalty provisions of chapter 19, article 8, section 19-61(f) of the county code, shall be imposed by the real property tax office for any violation of the dedication.

1. The retroactive assessment shall be the difference in the amount of taxes between what should have been paid when assessed at the highest and best use and the amount paid based upon its assessment for dedicated uses for each year the land has been dedicated. The retroactive assessment shall be subject to a penalty of ten percent per year.

B. Whenever a violation of the dedication occurs (whether in whole or in part of the area in the dedication), the owner shall first be provided written notice of such violation. The notice of such violation shall be mailed to the last known address on file with the real property tax office. Each owner shall be afforded an opportunity to discuss the violation informally with the real property tax office. In the absence of any appropriate justification, the real property tax office shall cancel the dedication and subject the lands to retroactive assessments and penalties. A violation occurs upon any one of the following:

1. Failure of the owner to comply with any restriction, condition, or provision on the use of the dedicated land;

2. For an approved change of use pursuant to Rule 31B.6, the failure to initiate the approved change in use or conversion plan for a period of six (6) consecutive months, or if the land remains vacant, idle, or fallow for more than twelve (12) consecutive months from the date of approval of the change in use; or

3. The land dedicated for intensive agriculture, orchards, or diversified agriculture is fallow for no more than one (1) out of every three (3) years of the dedication period, except when greater fallow periods are necessary as described in the dedication application or change of use form.

C. If a violation occurs with respect to only a portion of the dedicated lands, such as when a portion of the land is subsequently applied to a use other than its dedicated use, the real property tax office shall cancel only that portion that is in violation and subject that portion to retroactive assessment and penalties.

D. In situations where the owner has satisfied the terms and conditions of the initial dedication and has renewed the dedication, the real property tax office shall, in cases of violation, calculate the deferred or rollback taxes from the date of violation back to the latest renewal date.

E. A change in zoning as a result of an application by an owner or lessee such that the dedicated land is placed within any zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, shall be deemed to constitute an overt act of changing the use of the dedicated land and shall be subject to a retroactive assessment including rollback taxes and penalties.

F. All unpaid taxes, including retroactive assessments and penalties shall constitute paramount lien upon the property.

Rule 31B.9 <u>Cancellation (withdrawal) without penalty.</u>

A. Where lands have been rezoned in any county-zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district by the county council not as a result of a petition initiated by the owner of the dedicated land, such owner may cancel the dedication within sixty (60) days after the rezoning and shall not be subject to the retroactive assessment and penalty provisions.

B. All cancellations shall become effective July 1 of the following tax year.

C. The real property tax office may cancel a dedication without rollback taxes or penalties in the event of any of the following:

  1. A recognized natural disaster beyond the farmer's control;

  2. The land can no longer be used for the dedicated agricultural use, which final determination shall be made by the real property tax office; or

  3. The death or severe disability of the principal farmer such that the farm operation cannot continue. Corporations and partnerships are not eligible for this death or severe disability exemption.

D. The dedication shall be canceled upon expiration of the dedication. At least one hundred eighty (180) days prior to the ending of the dedication period, the real property tax office shall notify the owner by mail of such expiration. If the owner desires, the owner shall reapply for renewal of the dedication by filing a renewal petition on or before September 1 of the last year of the dedication.

Rule 31B.10 Appeals.

The owner may appeal any disapproved petition or cancellation of dedication to the county tax board of review. Appeals shall be governed by the appropriate sections of chapter 19 of the county code.

Rule 31B.11 Severability.

If any provision of these rules or the applicability thereof should be held invalid for any reason, such invalidity shall not affect other provisions or applications, which can be given effect without the invalid provisions or applications and to this end, these rules are declared to be severable.

Rule 31B.12 Effective date.

These rules and regulations shall take effect ten (10) days after filing with the county clerk.

DEPARTMENT OF FINANCE
COUNTY OF HAWAIʻI
STATE OF HAWAIʻI

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE

RULE 34

RULES AND REGULATIONS RELATING TO THE NONDEDICATED AGRICULTURAL USE ASSESSMENT UNDER CHAPTER 19, ARTICLE 7, SECTION 19-57, HAWAII COUNTY CODE 1983 (2016 EDITION, AS AMENDED)

Rule 34.1 Purpose of Rules.

A. These rules and regulations are intended to implement the provisions of chapter 19, article 7, section 19-57 of the county code, relating to nondedicated agricultural use assessment of land classified and used for agriculture.

B. The purpose of section 19-57 (to be consistent with Act 175, Session Laws of Hawaii 1973) is to encourage the owners of land, which are situated within the agricultural district and suitable for agriculture, to put that land to agricultural uses on a continuous and regular basis, and to discourage the conversion of such lands or the reduction or subdivision of agricultural land parcels to less than reasonable economic size. Such lands classified and used for agriculture shall be assessed at their use in agriculture without regard to market value or neighboring land values.

Rule 34.2 Definitions.

A. As used in these rules and regulations:

1. The term "agricultural use" shall mean lands used on a continuous and regular basis for intensive agriculture, orchards, feed crops and fast rotation forestry or pasture and slow rotation forestry on lands owned by the County to be in the districts of agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project district. The term "agricultural use" does not include nor apply to areas used primarily as farm dwelling sites, such as, but not limited to, yard space, setbacks, or open landscape associated with residential use planted with fruit and ornamental trees, flowers, and vegetables primarily for home use or recreation.

2. The term "conversion" shall mean (i) the change of zoning to any County-zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district as a result of a petition by the owner or lessee; (ii) the government approved subdivision of agricultural land into parcels of less than five acres; or (iii) a condominium property regime is declared for the property having condominium units with an area equivalent to less than five acres in size.

3. The term "farm dwelling site" shall mean that portion of the land not exceeding one-fourth acre which is used for residential purposes, including the land upon which the

house is located, together with all accessory buildings and the land designated to be the yard space.

B. Use of gender and number. Words importing the singular number shall extend to and include the plural; words importing the plural shall extend to and include the singular; and words importing the masculine or the feminine gender shall extend to and include the male and the female as the case may be.

Rule 34.3 Land Subject to the Deferred or Rollback Tax.

Agricultural lands shall be subject to the deferred or rollback tax when:

A. The land is zoned by the county to be in the districts of agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project district.

B. The land is committed to a specific nondedicated agriculture use.

C. The land has been assessed by the director according to its value in nondedicated agricultural use.

D. The land has not been dedicated under the provisions of chapter 19, article 8, section 19-60 of the county code.

Rule 34.4 Assessment of Lands Subject to the Deferred or Rollback Tax.

A. Where lands have been annually applied for, approved and used for nondedicated agricultural purposes, the director shall:

1. Classify the land in its nondedicated agricultural use, and determine the assessed value of the land in its nondedicated agricultural use.

2. Classify the land according to its highest and best use and determine the assessed value of the land according to such highest and best use.

3. Record the assessed value of the land (i) in its highest and best use and (ii) in its nondedicated agricultural use for at least the current and past two years.

4. Tax the land according to its nondedicated agricultural use assessment.

B. All portions of land, excluding the farm dwelling site, that are not committed or used for a specific agricultural use shall be assessed based on the proportional market value of the total property.

The farm dwelling site for the parcel, if any, shall not exceed one-fourth acre, shall be reported on the "Non-Dedicated Agricultural Use Application," and shall be assessed at the highest commercial agricultural use value. The assigned appraiser for the zone shall be responsible for verifying the accuracy of this area and make corrections, if necessary.

C. The director shall report the total market value of land, along with the assessed value of land, for tax assessment purposes.

Rule 34.5 Valuation Considerations.

A. The agricultural use value of lands classified and used for nondedicated agriculture use shall be assessed at two times the commercial dedicated agricultural use value as established by the Director, as prescribed in chapter 19, article 8, section 19-60(c) of the county code.

B. The farm dwelling site shall be assessed at the highest commercial agriculture use value as prescribed in chapter 19, article 8, section 19-60(c) of the county code, provided that the maximum farm dwelling site shall not exceed one-fourth acre.

Rule 34.6 Reserved.

Rule 34.7 Liens.

All taxes and penalties due and owing as deferred taxes shall attach to the land as a paramount lien pursuant to chapter 19, article 5, section 19-37 of the county code.

Rule 34.8 Appeals.

The owner shall have thirty days from the mailing of the notice of deferred tax assessment, and within the time prescribed following a subdivision to appeal the assessment of the deferred tax. Appeals shall be governed by the appropriate sections of chapter 19 of the county code, and may be taken to the tax board of review or be taken directly to the Tax Appeal Court without appealing to the tax board of review.

Rule 34.9 Severability.

If any provision of these rules or the applicability thereof should be held invalid for any reason, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provisions or applications and to this end these rules are declared to be severable.

Rule 34.10 Effective Date and Sunset Date.

These rules and regulations shall take effect ten (10) days after filing with the county clerk. Rule 34 shall automatically sunset on January 1, 2029 (however, the tax benefit shall end on June 30, 2029).

DEPARTMENT OF FINANCE
COUNTY OF HAWAIʻI
STATE OF HAWAIʻI

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE

RULE 34A

RULES AND REGULATIONS RELATING TO COMMUNITY FOOD SUSTAINABILITY USE ASSESSMENT UNDER CHAPTER 19, ARTICLE 7, SECTION 19-57.1, HAWAIʻI COUNTY CODE 1983 (2016 EDITION, AS AMENDED)

Rule 34A.1 Purpose of Rules; designation to real property tax office.

These rules and regulations are intended to implement the provisions of chapter 19, article 7, section 19-57.1 of the county code, relating to the community food sustainability use assessment. The director designates the real property tax office to perform the administration of the community food sustainability use assessment.

Rule 34A.2 Definitions.

A. As used in these rules and regulations, these terms shall have the following meaning:

1. "Agricultural use" shall mean lands used on a continuous and regular basis for intensive agriculture, orchards, or diversified agriculture on lands zoned by the county to be in the districts of agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project district. The term "agricultural use" does not include or apply to areas used primarily as farm dwelling sites, such as, but not limited to, yard space, setbacks, or open landscape associated with residential use planted with ornamental plants, fruit or ornamental trees and vegetables primarily for home use or recreation.

2. "Commercially viable agricultural operation" shall mean an agricultural business or service with the ability to compete effectively and to make a profit, either without subsidies or with reliable, long- term subsidies as demonstrated by an analysis of comparable practices within the area of operation under comparable conditions.

3. "Community Food Sustainability Use Assessment" means the use of land on a continuous and regular basis that demonstrates the owner is engaged in agricultural activities to provide food to the community, including intensive agriculture, orchards, diversified agriculture, or pasture for food production.

4. "Diversified agriculture" means a blend of agricultural activities while transitioning from one category to the other during the term of the dedication or on a continuous and regular basis.

5. "Farm dwelling site" means that portion of the land which is used for residential purposes, including the land upon which any house is located, together with all accessory buildings and the land designated to be the yard space.

6. "Farm equipment" means machinery, implements, and tools used exclusively and directly for farming or ranching operations.

7. "Farm plan" means an agricultural business plan, in a form prescribed by the director, that describes the agricultural practices of a commercially viable agricultural operation, all relevant tax map key numbers, and a financial projection.

8. "Fertilizers" means a natural or synthetic material added to the soil to supply plant nutrients.

9. "Intensive agriculture" includes, but is not limited to, such crops as vegetables, ginger, taro, herbs, nurseries, foliage, cut and potted flowers, piggeries, dairy, poultry, feedlots, aquaculture, honey and honeybees.

10. "Orchards" includes, but is not limited to, such crops as macadamia nuts, guava, banana, papaya, avocado, grapes, passion fruit, coffee, citrus, cacao, pineapple, noni and tropical specialty fruits.

11. "Owner" means the fee simple owner, or a recorded lessee of the land with a term of five (5) or more years remaining on the lease as of the date of the community food sustainability use assessment and who is responsible for payment of the real property taxes.

12. "Soil amendments" means material added to the soil to improve its physical properties such as compost, agricultural lime, greensand, or manure.

13. "Violation" means the failure by the owner or any owner by succession who signed the community food sustainability use assessment application to use the land for the general agricultural category, that was listed on the petition and approved by the real property tax office, for a period of six consecutive months. It also means the overt act of changing between commercial agricultural categories without prior notification and approval of such change by the real property tax office for any period of time during the term of the use assessment except as allowed under the diversified agricultural use category, or any failure by the owner to observe any of the terms, conditions, or restrictions of the use assessment.

B. Use of gender and number. Words importing the singular number shall extend to and include the plural; words importing the plural shall extend to and include the singular; words importing the masculine or the feminine gender shall extend to and include the male or the female as the case may be.

Rule 34A.3 <u>Use Assessment; requirements.</u>

A. Lands committed to the community food sustainability use assessment shall be initiated by the property owner filing a complete application with the real property tax office on or before December 31 for the agricultural use assessment to become effective on July 1 of the following tax year if the application is approved. If an applicant submits an incomplete application before the December 31 deadline, the real property tax office shall make reasonable efforts to notify the applicant of the deficiency in the application, and it shall be the responsibility of the applicant to correct the deficiency and return the completed application to the real property tax office by the December 31 deadline. Where multiple parcels are being considered for the agricultural use assessment, a separate application is required for each parcel with its own tax map key to apply for, and receive if approved, the agricultural preferential assessment value.

1. The application for the agricultural use assessment shall be submitted on a form prescribed by the real property tax office. Applications shall be available at the physical locations of the real property tax office and the real property tax office website.
2. In addition, the application shall include at least one of the following:

    a. A farm plan, as defined;
    b. Documentation of organic certification from U.S. Department of Agriculture;
    c. A plan from U.S. Department of Agriculture, Natural Resources Conservation Service;
    d. Documentation of food safety certification from the U.S. Department of Agriculture; or
    e. Receipts demonstrating an investment of a minimum of $10,000 in farm equipment, fertilizers, or soil amendments for use on the subject property within the previous two years of the application for the community food sustainability use assessment.

B. The proposed parcel included within the application for the agricultural use assessment shall be located within a county-zoned district of agricultural, residential and agricultural, family agricultural, intensive agricultural, agricultural project district.

C. Only the following three (3) general agricultural categories shall be eligible and considered for the agriculture use assessment:

1. Intensive agriculture, which includes such crops as vegetables, ginger, taro, herbs, nurseries, foliage, cut and potted flowers, piggeries, dairy, poultry, feedlots, aquaculture, honey, and honeybees.

2. Orchards, which includes such crops as macadamia nuts, guava, banana, papaya, avocado, grapes, passion fruit, coffee, citrus, cacao, pineapple, and tropical specialty fruits.

3. Diversified agriculture, which includes a blend of agricultural activities.

D. Lands committed to the community food sustainability use assessment shall not be fallow for more than one (1) of out every five (5) years of the agricultural use assessment period, unless the agricultural use assessment application describes and provides reasons why it is necessary to have greater fallow periods, whose determination of necessity shall be subject to review of the real property tax office:

1. Intensive agriculture;
2. Orchards; and
3. Diversified agriculture.

For purposes of this section, the term "fallow" shall mean cultivated land that is allowed to lie idle during the growing season.

E. Each application for the agricultural use assessment shall be signed by all living owners of the land, shall indicate the general agricultural category to which the land is to be committed to community food production, and shall include a map delineating the area to be committed. Any farm dwelling site shall be indicated in the application and shall not be included in the agricultural use assessment area.

F. A separate application shall be filed for each parcel or portion thereof to be committed to agricultural use; however, one farm plan listing all tax map key numbers may be submitted.

G. Applications shall carry a specified term of five years, or in the case of a recorded agricultural lease, a minimum of five (5) years remaining on the lease as of the date of the agricultural use assessment.

H. The real property tax office shall utilize and refer to the agricultural use guidelines for density, crop types to agricultural categories for proper agricultural land management. The agricultural use guidelines provide for fair and equitable treatment of the real property tax office's validation process to approve or disapprove a preferential agricultural use value.

I. Each timely, completed application and document filed shall be reviewed, and any errors or deficiencies shall be corrected by the applicant. No application for the agricultural use assessment shall be deemed to have been filed unless the application is complete in form and any and all errors or deficiencies have been corrected.

J. The real property tax office shall conduct site inspections for all parcels included within each timely, completed application. Thereafter, the real property tax office may conduct periodic inspections of lands receiving the agricultural use assessment and shall note any violations for appropriate action pursuant to rule 34A.8. Submittal of an application by the owner or lessee shall constitute an acknowledgement that site visit inspections may be performed without prior notice, unless the application requests that the real property tax office provide prior notification of the site inspection. In the event the application requests such prior notice, the real property tax office will make reasonable efforts to contact the applicant, which may include but is not limited to telephone calls or email.

Rule 34A.4 Findings of facts.

The real property tax office shall make a finding of fact as to whether the land in the application has been approved in full, approved in part, or denied. The following criteria must be considered:

A. That the land has been visually inspected to confirm active agricultural use as noted in the application.

1. Criteria for active agricultural use may include, but is not limited to, the following:
   a. For intensive agriculture, orchards, diversified agriculture, plantings must be observed at time of inspection. Rows of plantings, including crops, must be made in a manner as to maximize the productivity of the land being committed to the agricultural use assessment.

B. That the productivity ratings of the land provide that the land is well suited for the intended agricultural use.

C. A study of the ownership of the land to ensure the application is submitted by the proper owner.

D. The size of the farm operation as a whole.

E. The present use of other surrounding similar lands.

F. The size or area for the proposed agricultural use is adequate or sufficient.

G. The use is permissible under the county-zoning district or ordinance.

H. The intended use does not conflict with either the general plan of the county or any applicable community development plan for the area.

Rule 34A.5 Approval or disapproval.

A. If all findings of fact from rule 34A.4, as applicable, are approved in full, or approved in part, the real property tax office shall accept the application for the agricultural use assessment and declare that the land be committed for the use as applied.

B. The real property tax office shall notify the owner of record, the lessee, and the person named on the application for petition, if different from the owner or lessee, of approval or disapproval of the application for the agricultural use assessment. Upon approval, the agricultural use assessment shall become effective July 1 of the following tax year, but the assessed value shall be determined on the assessment date of January 1.

C. If the application for the agricultural use assessment was not approved in full, the notice shall state the reasons for such disapproval.

D. The land committed to the community food sustainability use assessment for intensive agriculture, orchards, or diversified agriculture shall not grow any crops designated as noxious weeds for eradication or control purposes by the state department of agriculture, set forth in chapter 68, subtitle 6, title 4, of the Hawai'i Administrative Rules, as amended; or any crops included in schedule I of the Controlled Substances Act in 21 U.S.C. § 812.

E. If the application is approved, renewal of the application for the assessment, based upon the use requested, shall be required every five years from the initial approval date or earlier, at the discretion of the director, provided that:

1. The documentation provided under subsection 34A.3(A)(2) encompasses at least five years and remains in effect; and

2. Documentation of annual sales or donations of food totaling a minimum of $1,000 are provided to the director at the time of renewal. Sales or donations must be generated from the assessed property. Annual sales shall be documented through excise tax receipts. Donations of food must be to a nonprofit 501(c)(3) organization.

Rule 34A.6 Effects of agricultural use assessment; enforceable restriction upon use; changes in committed use.

A. The effective date of any approved application for agricultural use assessment shall be July 1. The real property tax office shall assess, at the applicable agricultural use value, only those areas actually in active agricultural use as of the assessment date of January 1.

B. Unless otherwise provided, each approved application for the community food sustainability use assessment shall constitute a forfeiture on the part of the owner of any right to change the use of the land.

C. In the case of a change in zoning not as a result of an application by an owner or lessee such that the committed land is placed within any zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the agricultural use assessment shall be canceled without penalty July 1 of the following tax year.

D. The agricultural use assessment shall be canceled without penalty July 1 of the following tax year if the committed land, or any portion thereof, is sold by way of a conveyance subject to conveyance tax under the terms of chapter 247, Hawai'i Revised Statutes.

E. Where committed land has been subdivided into parcels equal to or greater than five acres in size:

1. The agricultural use assessment shall be canceled without penalty July 1 of the following tax year unless the owner of the subdivided parcels has applied for no later than December 31 and been approved for a new agricultural use assessment on the newly subdivided parcels.

2. Failure of the new owner to apply for a new agricultural use assessment by the statutory deadline shall result in the loss of the preferential agricultural use assessment value.

F. If any owner wishes to change the committed use from one agricultural category to another, the owner shall apply for a new agricultural use assessment by the statutory deadline.

Rule 34A.7 Special tax assessment of committed lands.

A. The portion of land committed to specific community food production shall be assessed at 30% of the fair market value.

B. In the event of any violations, pursuant to rule 34A.8, or cancellations, pursuant to rule 34A.9, of the committed use, lands shall be assessed at their highest and best use as though not committed for purposes of determining and computing retroactive taxes.

C. All portions of land, excluding the farm dwelling site, that are not committed for the agricultural use assessment, shall be assessed based on the proportional market value of the total property.

D. A farm dwelling site shall be assessed based on the proportional market value of the total property. The farm dwelling site area for the parcel shall be determined when the owner applies for the agricultural use assessment. The assigned appraiser for that zone shall be responsible for verifying the accuracy of the farm dwelling site area listed in the application and shall make corrections upon observation of the land, if necessary.

E. The real property tax office shall report the total market value of land, along with the assessed value of land for tax assessment purposes.

Rule 34A.8 Retroactive assessment, violation, and penalty.

A. The retroactive assessment and penalty provisions of chapter 19, article 7, section 19-57.1(d) of the county code, shall be imposed by the real property tax office for any violation of the agricultural use assessment.

1. The retroactive assessment shall be the difference in the amount of taxes between what should have been paid when assessed at the highest and best use and the amount paid based upon its assessment for committed uses, but for not more than a period of two plus

the current year.

B. Whenever a violation of the committed use occurs (whether in whole or in part of the area committed) the owner shall first be provided written notice of such violation. The notice of such violation shall be mailed to the last known address on file with the real property tax office. Each owner shall be afforded an opportunity to discuss the violation informally with the real property tax office. In the absence of any appropriate justification, the real property tax office shall cancel the agricultural use assessment and subject the lands to retroactive assessments and penalties. A violation occurs upon any one of the following:

   1. Failure of the owner to comply with any restriction, condition, or provision on the use of the committed land; or

   2. The land committed for intensive agriculture, orchards, or diversified agriculture is fallow for more than one (1) out of every five (5) year period, except when greater fallow periods are necessary as described in the application.

C. If a violation occurs with respect to only a portion of the committed lands, such as when a portion of the land is subsequently applied to a use other than its committed use without the required reapplication, the real property tax office shall cancel only that portion that is in violation and subject that portion to retroactive assessment and penalties.

D. A change in zoning as a result of an application by an owner or lessee such that the committed land is placed within any zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, shall be deemed to constitute an overt act of changing the use of the committed land and shall be subject to a retroactive assessment including rollback taxes and penalties.

E. All unpaid taxes, including retroactive assessments and penalties shall constitute paramount lien upon the property.

Rule 34A.9 Cancellation (withdrawal) without penalty.

A. Where lands have been rezoned in any county-zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district by the county council not as a result of a petition initiated by the owner of the dedicated land, the agricultural use assessment shall be canceled without penalty July 1 of the following tax year.

B. All cancellations shall become effective July 1 of the following tax year.

C. The real property tax office may cancel an agricultural use assessment without rollback taxes or penalties in the event of any of the following:

   1. A recognized natural disaster beyond the farmer's control;

   2. The land can no longer be used for the committed agricultural use, which final determination shall be made by the real property tax office; or

   3. The death or severe disability of the principal farmer such that the farm operation cannot continue. Corporations and partnerships are not eligible for this death or severe disability exemption.

D. The agricultural use assessment shall be canceled upon failure to submit an application to renew the agricultural use assessment every five years from the initial approval date or earlier, at the discretion of the director. If the owner desires, the owner shall reapply for renewal of the agricultural use assessment by filing a renewal application on or before December 31 of the last year of the agricultural use assessment.

Rule 34A.10 Appeals.

The owner may appeal any disapproved application or cancellation of the agricultural use assessment to the county tax board of review. Appeals shall be governed by the appropriate sections of chapter 19 of the county code.

Rule 34A.11 Severability.

If any provision of these rules or the applicability thereof should be held invalid for any reason, such invalidity shall not affect other provisions or applications, which can be given effect without the invalid provisions or applications and to this end, these rules are declared to be severable.

Rule 34A.12 Effective date.

These rules and regulations shall take effect ten (10) days after filing with the county clerk.