

NOTE: Material to be repealed is in red font, bracketed, and stricken. New material is in red font, underscored, and/or placed within quotation marks. In printing this rule, the brackets, bracketed and stricken material, underscoring, and quotation marks need not be included.

Rule 31, of the Rules and Regulations of the Director of Finance, is repealed in its entirety.

**~~DEPARTMENT OF FINANCE
COUNTY OF HAWAII
STATE OF HAWAII~~**

~~RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE~~

~~RULE 31~~

**~~RULES AND REGULATIONS RELATING TO COMMERCIAL AGRICULTURAL
USE DEDICATION UNDER CHAPTER 19, ARTICLE 8, SECTION 19-60,
HAWAII COUNTY CODE 1983 (2005 EDITION, AS AMENDED)~~**

~~Rule 31.1 — Purpose of Rules:~~

~~————— These rules and regulations are intended to implement the provisions of Chapter 19, Article 8, Section 19-60, Hawaii County Code 1983 (2005 Edition, as amended), relating to the commercial agricultural use dedication.~~

~~Rule 31.2 — 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 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, set backs, or open landscape associated with residential use planted with ornamental plants, fruit or ornamental trees and vegetables primarily for home use or recreation.~~
- ~~(2) — The term “commercial dedicated agricultural use value” shall mean the agricultural use values established under the provisions of Section 19-53(a)(2), Hawaii County Code 1983 (2005 Edition, as amended).~~
- ~~(3) — The term “date of the petition” shall mean the effective date of dedication.~~
- ~~(4) — The term “dedicated area” shall mean the land area approved as dedicated lands by the Director.~~

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- ~~(5) 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 any house is located, together with all accessory buildings and the land designated to be the yard space.~~
- ~~(6) The term “owner” shall mean the fee owner or the lessee of real property with a recorded lease that possesses an unexpired lease term of not less than five years from the effective date of the dedication.~~
- ~~(7) The term “tax year” shall mean the period commencing from July 1 of a calendar year and ending on June 30 of the following calendar year.~~
- ~~(8) A “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 Director, 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 Director 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 31.3 Petitions to Dedicate; Requirements.~~

- ~~(a) The dedication of lands for commercial agricultural use shall be initiated by filing two copies of the petition with the Director of Finance on or before September 1 for the dedication to become effective in the following tax year.
 - ~~(1) The petitions for dedication shall be submitted on a form prescribed by the Director. Petitions shall be available at the offices of the Real Property Division and County of Hawai‘i website.~~
 - ~~(2) The Director may require evidence of commercial agricultural activities as defined in Section 19-2, Hawai‘i County Code 1983 (2005 Edition, as amended). This may be evidenced by, but is not limited to, the following indicia:
 - ~~(A) Copy of the State of Hawai‘i General Excise Tax Return showing income for the petitioned agricultural activity.~~~~~~

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- ~~(B) — Copy of Federal or State Income Tax Return with applicable farm schedule.~~
- ~~(C) — Other written verification acceptable to the Director.~~
- ~~(3) — Lands petitioned for dedication shall be of the following minimum lot size:
 - ~~(A) — Intensive Agriculture: 0.25 acre.~~
 - ~~(B) — Orchard: 1.0 acre.~~
 - ~~(C) — Feed Crops or Fast Rotation Forestry: 5.0 acres.~~
 - ~~(D) — Pasture or Slow Rotation Forestry: 10.0 acres.~~
 - ~~(E) — Exceptions to these minimum lot sizes shall be with the approval of the Director.~~~~
- ~~(b) — Each petition for dedication shall be signed by all owners, shall state the general agricultural category to which the land is to be dedicated, and shall be accompanied by the following:
 - ~~(1) — A tax map or an appropriate facsimile thereof delineating the area to be dedicated. The farm dwelling shall be delineated in the petition and shall not be included in the dedicated area.~~~~
- ~~(c) — Separate petitions shall be filed for each parcel or portion thereof to be dedicated.
 - ~~(1) — Where a County zoning boundary divided a contiguous parcel of land so that a portion thereof is situated in any County zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, each such portion shall be treated as a separate petition. Where the owner dedicates the contiguous parcel, a separate petition shall be filed for that portion situated in the agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district and a separate petition shall be filed for that portion situated in any other County zoned districts meeting with the approval of the Director of Planning.~~~~
- ~~(d) — Petitions to be for ten-year dedication.
 - ~~(1) — Where the land to be dedicated is within an agricultural, residential and agricultural, family agricultural, intensive agricultural or agricultural project district, the petitioner shall indicate on the petition that the dedication shall be for a ten-year period or, in the case of an acceptable recorded lease, the remaining term of the lease.~~~~

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- ~~(2) The provision for twenty-year agricultural dedications has been repealed. Until its dedication term expires, an existing twenty-year dedication may continue to be assessed at fifty percent of its agricultural use value and shall be subject to the conditions and provisions of the effective commercial agricultural use dedication.~~
- ~~(e) Petitions shall be submitted for changes in dedicated use.
 - ~~(1) Where the owner desires to change the dedicated use, the owner shall petition the Director for such a change in use.~~
 - ~~(2) Upon receipt of any such petition, the Director shall review the petition and require the findings to be made in the same manner as they are required for the initial petition for dedication.~~~~
- ~~(f) Each petition and document filed shall be reviewed within a reasonable period, and any errors or deficiencies shall be corrected by the petitioner. No petition for dedication shall be deemed to have been filed unless the petition is complete in form and any and all errors or deficiencies have been corrected.
 - ~~(1) The Director shall assign an appropriate number to each petition.~~~~

~~Rule 31.4 Findings of Facts.~~

- ~~(a) The Director shall, by November 15 of each year, make the following findings with respect to petitions filed by September 1 of said year:
 - ~~(1) Whether the petitioned land is actually put to the general agricultural category, and is reasonably suited for such use.~~
 - ~~(2) The productivity ratings of the land for those uses to which it is best suited.~~
 - ~~(3) The adequacy or sufficiency of the size or area of the unit for the petitioned use and the present use of the surrounding lands.~~
 - ~~(4) Whether the petitioned use is permissible under the County zoning district or ordinance.~~
 - ~~(5) Whether the use is in conflict with the general plan of the County and the overall development plan of the State.~~~~

~~Rule 31.5 Approval or Disapproval of the Petition.~~

- ~~(a) For lands in any County zoned district including agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district, the Director~~

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~~shall approve the petition if the findings of facts, including the economic feasibility of the petitioned use, are all favorable to the owner.~~

- ~~(b) The Director shall disapprove the petition if any of the findings are not favorable to the owner or if he determines good cause exists for such disapproval.~~
- ~~(c) Notice of the approval or disapproval of the petition shall be sent to the petitioner. If the petition is disapproved, the notice shall state the reasons for such disapproval.~~
- ~~(d) The Director shall notify the petitioner of approval or disapproval of the petition no later than December 15. Upon approval, the dedication shall become effective July 1 of the following tax year, but the assessed value will be determined on the assessment date of January 1. The petition number and the effective date of the dedication are to be noted on appropriate records accessible to the public.~~
- ~~(e) In order to place prospective buyers on notice of the dedicated status and the retroactive tax liability, the petitioner shall, within ninety days of the notice of approval of the petition, record the notice of dedication in accordance with the procedures established by the Bureau of Conveyances. The petitioner shall furnish the Director with a copy of the recorded notice. Failure to record the notice, within the prescribed period, shall be grounds for disallowance of the dedication.~~

~~Rule 31.6 Effects of Dedication and Enforceable Restriction Upon Use.~~

- ~~(a) Each approved dedication shall constitute a forfeiture on the part of the owner of any right to change the use of the land for the term of the dedication. Each dedication shall be deemed breached and cancelled or continued as follows:
 - ~~(1) The dedication shall bind and inure to each successor owner unless properly cancelled by the owner or released by the Director. The dedication is cancelled if the dedicated property 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, unless a notarized affidavit is signed by the owner stating that the land will continue to be subject to the full requirements of the dedication, including any penalties for violation.~~
 - ~~(2) Where dedicated land has been subdivided, each parcel shall be independently subject to the provisions of the original dedication. The owner shall notify the Director of any subdivision of his land and shall submit a copy of the approved subdivision map or the registered file plan number if applicable.
 - ~~(A) The Director shall note the dedication upon appropriate records of each subdivided parcel and record the subdivided dedication.~~~~~~

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- ~~(B) — The owner shall inform each purchaser of a subdivided parcel of the dedicated status of the land. (Dedicated lands may be freely sold or conveyed in the same manner as any land.)~~
- ~~(C) — Each owner of a subdivided parcel may, independently of any other owner, petition for a change in dedicated use or to give the notice of cancellation.~~
- ~~(D) — 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.~~
- ~~(3) — Although the date of assessment is January 1, the effective date of the dedication shall be July 1. The Director will assess, at the applicable agricultural use value, only those areas actually in agricultural use as of the assessment date. Anticipated or planned agricultural uses will not be accepted nor assessed as dedicated agricultural uses unless these uses are included in a farm plan approved by the Director.~~
- ~~(b) — If any owner desires to change from a specific general agricultural category to another general agricultural category, the owner shall submit a change of use petition identifying the new general agricultural category. An owner who changes the use without prior notification and approval of the change use petition by the Director is in violation of the dedication.~~
 - ~~(1) — Each request for a change in dedicated use shall be made by petition and shall be subject to the required findings of facts and approval in the same manner as the initial petition for dedication.~~
 - ~~(2) — Upon approval of a petition to change the use, the land shall be assessed at its value in such approved use.~~
 - ~~(3) — The petition to change the use shall be submitted within six months of the date that the land was last used for the dedicated agricultural purpose. Any change of use petitions that are received after the sixth month shall be deemed in violation of the original terms, conditions and restrictions of the use of land, and the dedication shall be cancelled and retroactive assessments shall be imposed.~~
- ~~(c) — The Director shall be responsible for periodic inspection of dedicated lands and shall note all violations for appropriate action pursuant to Rule 31.8.~~
- ~~(d) — An owner shall be allowed up to twenty four months from the effective date of the petition to convert to the new commercial agricultural category. If the owner fails to make the conversion within the specified time limit, retroactive taxes and penalties will be imposed.~~

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- ~~(1) The petition to change use shall specify in detail the owner's plan to convert from an existing commercial agricultural activity to the new commercial agricultural activity.~~
- ~~(2) The process of conversion shall begin at the time that the Director approves the petition to change use.~~
- ~~(3) Failure to initiate the approved change in use or conversion plan shall cancel the dedication and special tax assessment retroactive to the date of the original dedication and the deferred or rollback tax schedule provided in Section 19-60, Hawai'i County Code 1983 (2005 Edition, as amended). Failure to initiate the approved change in use or conversion plan means failure for a period of six consecutive months to show any visible signs of converting to the new commercial agricultural activity. If the land should remain vacant, idle, or fallow for six consecutive months from the date of approval to change use, the owner is deemed to be in violation of the dedication.~~
- ~~(4) The petitioner shall submit annual progress reports explaining their efforts in converting from one commercial agricultural activity to another commercial agricultural activity. The progress report shall be submitted to the Director on or before the anniversary date of the approved petition to change use.~~

~~Rule 31.7 Special Tax Assessment of Dedicated Lands.~~

- ~~(a) The determination of the value of dedicated lands shall be based upon considerations prescribed in Chapter 19, Article 7, Section 19-53(a)(2), and Article 8, Section 19-60(c), Hawai'i County Code 1983 (2005 Edition, as amended).~~
- ~~(b) Dedicated lands shall also be assessed at their highest and best use as though not dedicated for purposes of determining and computing retroactive taxes in the event of any violations or cancellations.~~
- ~~(c) All portions of land, excluding the farm dwelling site, that is not dedicated for commercial agricultural use, shall be assessed based on the proportional market value of the total property.~~
- ~~(d) The 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 area for the parcel shall be determined when the owner applies for 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 make corrections, if necessary.~~
- ~~(e) The Director shall report the total market value of land, along with the assessed value of land for tax assessment purposes.~~

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~~Rule 31.8 — Retroactive Assessment, Violation, and Penalty.~~

- ~~(a) — Whenever a violation of the dedication occurs, the owner shall first be notified of such violation. The notice of such violation may be mailed to the last known address on file with the Director. Each owner shall be afforded an opportunity to discuss the violation with the Director and he may be allowed a conference prior to final cancellation of the dedication. In the absence of any justifiable excuse, the Director shall cancel the dedication and subject the lands to retroactive assessments and penalties.~~
- ~~(1) — The retroactive assessment and penalty provisions of Chapter 19, Article 8, Section 19-60(g), Hawai‘i County Code 1983 (2005 Edition, as amended), shall be imposed by the Director for any violation of the dedication.~~
- ~~(2) — 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 commercial agricultural use, the Director shall cancel only that portion that is involved in the violation and subject that portion to retroactive assessment and penalties.~~
- ~~(3) — In situations where the owner has satisfied the original terms and conditions of the dedication and has renewed the dedication, the Director 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), Hawai‘i County Code 1983 (2005 Edition, as amended).~~
- ~~(b) — The retroactive assessment shall be the difference in the amount of taxes between what could 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 retroactive to the date of the dedication or the latest renewal date. The sum of the retroactive years, however, shall not exceed the deferred or rollback tax schedule provided in Section 19-60, Hawai‘i County Code 1983 (2005 Edition, as amended). In the case of lands that may be subject to both the deferred or rollback tax under the conversion provision of Section 19-57 and violation of the dedication provision under Section 19-60, the sum of the deferred or rollback and the retroactive periods shall not exceed the deferred or rollback tax schedule provided in Section 19-60(g)(3)(F). The retroactive assessment shall be subject to a penalty of ten percent per annum.~~
- ~~(c) — All unpaid taxes, including retroactive assessments and penalties shall constitute paramount liens upon the property as provided in Chapter 19, Hawai‘i County Code 1983 (2005 Edition, as amended).~~
- ~~(d) — A change in any County zoned district other than agricultural, residential and agricultural, family agricultural, intensive agricultural, or agricultural project district upon a petition by the owner shall not be deemed to constitute an overt act of changing~~

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~~the use of the dedicated land, provided, that the land shall continue to be subject to the terms and conditions of the dedication.~~

~~Rule 31.9 — 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, such owner may cancel the dedication within sixty days after the reclassification and shall not be subject to the retroactive assessment and penalty provisions of Chapter 19, Article 8, Section 19-60, Hawai'i County Code 1983 (2005 Edition, as amended).~~

~~(1) — The owner shall, if he desires to cancel the dedication, notify the Director of such cancellation by written notice to the Director. The notice of cancellation shall be accompanied by a copy of the notice of zoning change from the County Council.~~

~~(2) — All cancellations shall become effective July 1 of the following tax year.~~

~~(b) — Upon expiration of the minimum period of dedication, the dedication will be cancelled unless the owner submits a renewal petition on or before September 1 of the last year of dedication. At least one hundred eighty days prior to any cancellation or termination, the Department of Finance shall notify the owner by mail of such cancellation or termination.~~

~~(1) — The Department of Finance shall notify the owner by mail of the expiration of the dedication period by June 30 preceding the last year of dedication.~~

~~(2) — The dedication will be extended another year if the Department of Finance fails to mail the notice of expiration by the June 30 deadline.~~

~~Rule 31.10 — Appeals.~~

~~— The owner may appeal any disapproved petition or cancellation of dedication as in the case of an appeal from an assessment. Appeals shall be governed by the appropriate sections of Chapter 19 of the Hawai'i County Code 1983 (2005 Edition, as amended), and may be taken directly to the Tax Appeal Court without appealing to the Board of Review.~~

~~Rule 31.11 — 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.~~

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~~Rule 31.12~~ Effective Date:

~~These rules and regulations shall take effect ten days after filing with the County Clerk.]~~

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The Rules and Regulations of the Director of Finance, Department of Finance, County of Hawai'i, State of Hawai'i, is amended by adding a new rule to be appropriately designated and to read as follows:

**“DEPARTMENT OF FINANCE
COUNTY OF HAWAI'I
STATE OF HAWAI'I**

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,
HAWAI'I 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

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- 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 intensive agriculture and orchards while transitioning from one category to the other during the term of the dedication.
 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

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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 Hawai'i 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.

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- 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 intensive agriculture and orchards.
- 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: 5.0 acres
 4. Pasture or slow rotation forestry: 10.0 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:

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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.

Rule 31A.4 Findings of facts.

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

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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 Approval or disapproval.

- 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.

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- 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 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 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

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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.
 - i. 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

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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.

- i. 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.
 - ii. 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.
 - iii. 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

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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 Retroactive assessment, violation, and penalty.

- 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

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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 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

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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.”

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The Rules and Regulations of the Director of Finance, Department of Finance, County of Hawai'i, State of Hawai'i, is amended by adding a new rule to be appropriately designated and to read as follows:

**“DEPARTMENT OF FINANCE
COUNTY OF HAWAI'I
STATE OF HAWAI'I**

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,
HAWAI'I 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.

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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 intensive agriculture and orchards while transitioning from one category to the other during the term of the dedication.
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

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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 Dedication; requirements.

- 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-

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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 intensive agriculture and orchards.

- 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: 5.0 acres
4. Pasture or Slow Rotation Forestry: 10.0 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.

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- 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; provided that the total combined period of dedication for short-term commercial agricultural use for the same owner and same parcel shall not exceed three (3) consecutive three (3) year terms.
- 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.

Rule 31B.4 Findings of facts.

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:

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- 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 Approval or disapproval.

- 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.

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- 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.

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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.
 - i. 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.
 - ii. 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.
 - iii. 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.

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- 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

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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 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 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:

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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.”

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**DEPARTMENT OF FINANCE
COUNTY OF HAWAII
STATE OF HAWAII**

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE

RULE 32

RULES AND REGULATIONS RELATING TO DEDICATION OF LANDS IN URBAN DISTRICTS FOR LANDSCAPING, OPEN SPACES, PUBLIC RECREATION AND OTHER SIMILAR USES UNDER CHAPTER 19, ARTICLE 10, SECTION 19-80, HAWAII COUNTY CODE 1983 (2016 EDITION, AS AMENDED)

Rule 32.1 Purpose of Rules.

These rules and regulations are intended to clarify and implement the provisions of Chapter 19, Hawai'i County Code, which exempts from real property taxation, such portions of land in urban districts which are dedicated for landscaping, open spaces, public recreation or other similar uses and are approved by the ~~[D]~~director for such use or uses.

Rule 32.2 Definitions.

A. As used in these rules and regulations:

1. ~~[The term "Director" shall mean the County Director of Finance or his designee.]~~

2. The term "historic district" or "historical site" means the area defined and delineated to be a historic district or historical site by the Department of Land and Natural Resources.

3. The term "landscaping" means lands, which are open to the public for their visual enjoyment and, which are improved by cultivated plantings or gardening; flower gardens, rock, gravel or sand arrangements; and by other elements of landscape architecture such as paved terraces, arbors, colonnades or arcades, ornamental fountains, sculptures, benches, etc.

4. The term "open spaces" means undeveloped or predominantly undeveloped lands open to the public for pedestrian use and momentary repose, relaxation and contemplation such as trails, streambeds, ponds, benches, groves, ravines, and other areas of topographic, vegetative or historic-archaeological interest; rights-of-way for ingress or egress to beaches and mountain areas, scenic lookouts or other sites characterized by natural scenic beauty whose existing openness, natural condition, if retained, would maintain or enhance the conservation of natural scenic resources or would enhance the present or potential value of the surrounding area.

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6.5. The term "owner" means anyone who owns the land in fee or who is a lessee of real property whose lease term extends at least ten years from the date of the dedication; provided, however, that the "owner" must also be the actual user of the land to be dedicated.

7.6. The term "public recreation" means lands which may be developed for use by the public as parks, play lots, playgrounds, historical sites, picnic or campgrounds, boating or fishing facilities, wildlife refuges, fish and game reserves, scenic sites or any other similar non-commercial recreational use.

8.7. The term "urban district" means lands designated urban by the State Land Use Commission.

9.8. The term "yard area" means the open grounds in front of and around a dwelling which provide utility to the inhabitants therein.

- B.** Use of gender and number. Words importing the singular number may extend and be applied to several persons or things; words importing the plural may include the singular; and words importing the masculine gender may be applied to females.

Rule 32.3 Minimum Land Area Acceptable for Dedication.

The land to be dedicated, excepting land designated as historic district or site, shall contain the minimum area set forth herein and shall exclude areas used for vehicular movements and parking.

- A.** Land to be dedicated for "landscaping" use shall have a minimum area of not less than five hundred square feet exclusive of all easements except underground and overhead utility easements. A residential parcel dedicated for landscaping shall have a minimum area of not less than two thousand square feet, exclusive of the above-mentioned easements; provided that the minimum area of the parcel is not used as yard area, is contiguous to the residential parcel, and shall not be applied to meet the minimum zoning requirement area of the parcel.
- B.** Land to be dedicated for "open space" use shall have a minimum area of not less than five hundred square feet with a minimum width of not less than ten feet and shall be exclusive of any easements except underground and overhead utility easements. A residential parcel dedicated for open space use shall have a minimum area, exclusive of the aforesaid easements, of not less than five thousand square feet; provided that the minimum area is not used as yard area.
- C.** Land to be dedicated for "public recreation" use shall have a minimum area of not less than five acres exclusive of all easements except underground and overhead utility

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easements. Land to be dedicated for playground and beach parks shall have a minimum area of not less than two and one-half acres. For high population density areas without adequate recreational facilities, the land dedicated for public recreation shall have a minimum area of not less than five thousand square feet and if the land is a residential parcel, the land must not be in use as yard area.

Rule 32.4 Filing of Petition.

A. Any owner of taxable real property in the urban district desiring to dedicate a portion or portions thereof for landscaping, open space, public recreation and other similar uses shall file the petition by September 1 of any year for dedication desired for the following tax year. Petition forms required to be prepared and filed by the owner shall be obtained from the ~~[D]director [of Finance].~~

B. Each owner shall complete the form prescribed by the Director and file the same with the ~~[D]director.~~ The following additional information shall be submitted:

1. The exact area, shown on a map of the land to be dedicated.
2. The cost of construction improvements.
3. The annual maintenance cost of the land to be dedicated and improvements thereon.
4. That such land is not within the setback and open space requirements of applicable zoning and building code laws and ordinances, including allowances for bonus floor area, except for land within a historic district or historical site, these requirements herein shall not apply.
5. That such land shall be used, improved and maintained in accordance with and for the sole purpose for which it was dedicated.
6. Any other information as the ~~[D]director~~ may require as being pertinent to the dedication.

Rule 32.5 Findings and Review of Petitions.

A. The ~~[D]director~~ shall make a finding based on the consideration of the relevant facts as to whether the use to which such land will be dedicated has a benefit to the public at least equal to the value of the current real property taxes payable for such land. Such findings shall be measured by:

1. The cost of constructing the improvements.
2. The cost of continuing maintenance thereof.
3. The aesthetic value thereof.
4. Other factors such as the imposition of stricter zoning requirements relating to the proper development of the neighborhood and the welfare of the general public as the ~~[D]director~~ may deem pertinent.

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B. If the [D]director finds that the public benefit is at least equal to the value of current real property taxes for such land, he shall approve the petition and so notify the owner by December 15. If the [D]director finds that the public benefit is not at least equal to the value of current real property taxes for such land, he shall disapprove the petition and so notify the owner and shall state the reasons therefor by December 15.

C. If the petition is approved, the exemption based upon the use requested in the dedication shall become effective July 1 of the tax year following the approval for dedication. The assessed values exempted, determined on assessment date January 1, shall be annually posted and recorded appropriately by the [D]director for reference in case of retroactive assessments. Notwithstanding any provision to the contrary, the dedicated land parcel shall be subject to the minimum tax provisions of [C]chapter 19 of the county code.; ~~Hawai'i County Code.~~

Rule 32.6 Posting of Sign.

Upon approval of the petition, the owner shall place and maintain on the dedicated premises a conspicuous sign or signs, to be approved by the [D]director, which shall note thereon the area, date and nature of dedication, and which shall be so conspicuously posted as to give the public notice of the dedication.

Rule 32.7 Enforceable Restrictions on Land Dedicated.

The approval of the petition by the [D]director shall constitute a forfeiture on the part of the owner of any right to change the use of his land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by either the owner or the [D]director upon five years' written advance notice at any time after the end of the fifth year. The owner shall notify the [D]director in writing whenever any changes in improvement, use, or transfer of the dedicated property are under consideration.

Rule 32.8 Revocation of Dedication and Retroactive Assessment.

In the event that the owner fails to observe the restriction on the use, improvement and maintenance of his land by failing for a period of over twelve consecutive months to use, improve and maintain the land in the manner requested in the petition or any overt act changing the use for any period or the transfer of the land, the [D]director shall cancel the special tax

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exemption privilege retroactive to the date of the dedication, and all differences in the amount of taxes that were paid and those that would have been due from the assessment of the tax exempted portion of his land shall be payable together with interest of five percent per annum for the respective dates that the payments would have been due. Whenever necessary, pertinent provisions of ~~[C]chapter 19 of the county code[, Hawai'i County Code,]~~ relating of real property tax, shall be applied when the retroactive assessment is imposed.

Rule 32.9 Appeal.

The owner may appeal any disapproved petition or if aggrieved by the retroactive assessment as in the case of real property tax appeal. Appeals shall be governed by the appropriate sections of ~~[C]chapter 19 of the county code[, Hawai'i County Code,]~~ and may be taken to the tax board of review~~[Board of Review]~~ or be taken directly to the Tax Appeal Court without appealing to the tax board of review ~~[Board of Review]~~.

Rule 32.10 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 32.11 Effective Date.

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

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Rule 33, of the Rules and Regulations of the Director of Finance, is repealed in its entirety.

**~~{DEPARTMENT OF FINANCE
COUNTY OF HAWAI'I
STATE OF HAWAI'I~~**

~~RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE~~

~~RULE 33~~

**~~RULES AND REGULATIONS RELATING TO DEDICATION OF RESIDENTIAL
PROPERTIES TO NONSPECULATIVE RESIDENTIAL USE UNDER
ARTICLE 7, CHAPTER 19, SECTION 19-58.1, HAWAI'I COUNTY
CODE 1983 (2005 EDITION, AS AMENDED)~~**

~~Rule 33.1 — Purpose of Rules:~~

~~— These rules and regulations are intended to implement the provisions of Article 7, Chapter 19, Section 19-58.1, Hawai'i County Code 1983 (2005 Edition, as amended), relating to the dedication of residential property for nonspeculative residential use.~~

~~Rule 33.2 — Definitions:~~

~~(a) — As used in these rules and regulations:~~

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- ~~(1) The term “owner” shall mean the fee owner or the lessee of real property with an unexpired lease term of not less than ten years from the effective date of the petition.~~
- ~~(2) The term “Director” shall mean the County Director of Finance or the designated representative.~~
- ~~(3) The term “home exemption” shall mean the claim for home exemption filed by the property owner pursuant to Article 10, Chapter 19, Sections 19-71 and 19-72, Hawai‘i County Code 1983 (2005 Edition, as amended).~~
- ~~(4) The term “fair market value” shall mean the highest monetary price which a property, if offered for sale for a reasonable period of time in a competitive market, would bring to a seller who is willing, but not compelled to sell, from a buyer who is willing, but not compelled to buy, both parties being fully informed of all the purposes to which the property is best adapted and the ways it is capable of being used.~~
- ~~(5) The term “fulfillment” or “fulfills” the requirements of the dedication shall mean the owner or lessee shall have complied with all of the terms and conditions of the dedication for the minimum period of the dedication.~~
- ~~(6) The term “nonspeculative residential use” shall mean real property which is owned or leased, occupied, and used exclusively as a principal home.~~
- ~~(7) The term “commercial activities” shall mean use of the property to generate income, monetary gain or economic benefit in the form of money or money’s worth. Commercial activities shall include any income producing activities, short or long term rental of the property, ohana dwellings if not qualifying for the~~

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~~home exemption as of the effective date of the dedication, or the use of residential structures as home office, bed and breakfast operations, or other income-generating purposes.~~

~~(8) The term “tax year” shall mean the period commencing from July 1 of a calendar year and ending on June 30 of the following calendar year.~~

~~(9) The term “violation” shall mean failure by the owner to observe the terms and conditions of the dedication for a period of ten consecutive years following approval of the petition to dedicate the property to nonspeculative residential use.~~

~~Rule 33.3 Petitions to Dedicate, Deadline, and Place to File.~~

~~(a) The dedication of real property to nonspeculative residential use shall be initiated by filing two copies of the petition with the Director of Finance on or before September 1 of each calendar year to become effective on July 1 of the next calendar year.~~

~~(1) The 1991 deadline for filing petitions to dedicate property to nonspeculative residential use is extended from September 1, 1991 to November 1, 1991. The extension is only applicable to the 1991 calendar year. After 1991, the petition must be filed on or before September 1 of the calendar year to become effective on July 1 of the next calendar year.~~

~~(2) The petitions for dedication shall be submitted on a form prescribed by the Director. Petitions shall be available at the East and West Hawai‘i Real Property Tax Offices.~~

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~~(b) Separate petitions shall be filed for each parcel to be dedicated to nonspeculative residential use dedication.~~

~~(c) Petitions to be for ten year periods:~~

~~(1) Each petition to dedicate shall be for a ten year period. The owner or lessee shall reapply for renewal of the dedication by filing a new application with the Director on or before September 1 of the tenth year. Failure to submit the application for renewal will result in cancellation of the dedication, however, retroactive taxes will not be imposed.~~

~~(2) Each petition shall be reviewed within a reasonable period, and any errors or deficiencies shall be corrected by the petitioner. No petition for dedication shall be deemed to have been filed unless the petition is complete in form and any errors or deficiencies have been corrected.~~

~~(3) All persons having or claiming an interest or title in the dedicated property are required to sign the petition.~~

~~(4) The Director shall assign an appropriate number to each petition.~~

~~Rule 33.4 Special Requirements for Dedication.~~

~~(a) The special requirements set forth below are established in order to administer the provisions of this section.~~

~~(1) The owner of the dedicated property shall use the property exclusively for residential use. If the property, or any portion thereof, is used for commercial~~

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~~activities, the property is not eligible for dedication to nonspeculative residential use. Those owners who have dedicated their property to a ranching or other agricultural use or receive the benefit of the agricultural use assessment shall not be eligible to dedicate the property to nonspeculative residential use.~~

- ~~(2) The owner shall use the property as a principal home and maintain the home exemption for ten consecutive years from the effective date of the dedication.~~
- ~~(3) In situations where an owner or lessee owns or leases adjoining properties or parcels, each identified by a separate tax map key, only one property or parcel may be dedicated to the nonspeculative residential use.~~
- ~~(4) A husband and wife, although living separate and apart, shall be entitled to dedicate only one parcel to the nonspeculative residential use.~~
- ~~(5) In situations where the property is owned by more than one person, the property is eligible for dedication to nonspeculative residential use provided all of the owners agree to the terms and conditions of the dedication and at least one of the owners qualifies for the home exemption and uses the property as a principal home.~~

~~Rule 33.5 Findings of Facts.~~

- ~~(a) The Director shall, by December 15 of each year, make the following findings with respect to petitions filed by September 1 of each year.~~
 - ~~(1) Whether the property is used exclusively for residential use by the owner. In making such determination, the Director shall consider the actual use of the~~

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~~property, rather than the land use districting, zoning, or permitted use as established by the Land Use Commission or the Planning Commission.~~

- ~~(2) Whether the property qualifies for the home exemption as defined in Article 7, Chapter 19, Section 19-71, Hawai'i County Code 1983 (2005 Edition, as amended).~~
- ~~(3) The Director shall cause an inspection to be made of the dedicated property to determine the fair market value, i.e. dedicated value, of the property for purposes of the nonspeculative residential use dedication. Failure to allow inspection, by the owner, shall be grounds for disallowance of the dedication.~~

~~Rule 33.6 Approval or Disapproval of the Petition.~~

- ~~(a) The Director shall approve the petition if the requirements of Section 33.4 are met and the findings of facts are favorable to the owner.~~
- ~~(b) The Director shall disapprove the petition if the findings of facts are not favorable to the owner or if the Director determines that good cause exists for disapproval.~~
- ~~(c) Notice of the approval or disapproval of the petition shall be sent to the petitioner. If the petition is disapproved, the notice shall state the reasons for disapproval.~~
- ~~(d) The Director shall notify the petitioner of approval or disapproval of the petition by December 31. Upon approval, the dedication shall become effective July 1 of the following tax year; however, the fair market value, i.e. dedicated value, shall be determined as of the January 1 assessment date. The petition number and the effective date of the dedication shall be noted on appropriate records accessible to the public.~~

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- ~~(e) — In order to place prospective buyers and other persons on notice of the dedicated status and the retroactive tax liability, the petitioner shall, within sixty days of the notice of approval of the petition, record the notice of dedication in accordance with the procedures established by the Bureau of Conveyances. The petitioner shall furnish the Director with a copy of the recorded notice. Failure to record the notice, within the prescribed period, shall be grounds for disallowance of the dedication.~~

~~Rule 33.7 — Effects of Dedication and Enforceable Restrictions Upon Use.~~

- ~~(a) — Each approved dedication shall constitute forfeiture on the part of the owner of any right to change the use of the property in any manner that would cause it to become ineligible for the home exemption.~~
- ~~(b) — Each approved dedication shall constitute a forfeiture on the part of the owner to change the use of the property from exclusively residential use to any other use.~~
- ~~(c) — Any violation of the terms and conditions of the dedication will result in cancellation of the dedication and imposition of retroactive taxes. A breach of the dedication shall occur in the following instances:~~
- ~~(1) — Failure by the owner to maintain the home exemption status of the property.~~
 - ~~(2) — Violation of the exclusive residential use provision, including dedicating the property to a ranching or other agricultural use or receiving the benefit of the agricultural use assessment.~~

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- ~~(3) — Upon subdivision of the dedicated property into condominium units or separate parcels or lots.~~
- ~~(4) — Upon sale of the dedicated property or any portion thereof by way of a conveyance which is subject to the conveyance tax which is imposed under the terms of Chapter 247, Hawai'i Revised Statutes.~~
- ~~(5) — Failure by the owner to obtain required building permits for the construction of new or additional improvements or renovations of the dedicated property.~~

~~Rule 33.8 — Special Tax Assessment of Dedicated Property.~~

- ~~(a) — The following procedures are established for determining the fair market value, i.e., dedicated value, and subsequent assessed values for properties that are dedicated to nonspeculative residential use:
 - ~~(1) — Upon receipt of the petition, the Director shall cause an inspection to be made of the dedicated property and a determination of the fair market value, i.e., dedicated value, for purposes of the nonspeculative residential use dedication.~~
 - ~~(2) — The fair market value, i.e., dedicated value, shall be established as of the January 1 assessment date following the December 31 approval date of the petition to dedicate to nonspeculative residential use.~~
 - ~~(3) — The fair market value, i.e., dedicated value, shall be frozen for the ten-year dedication period, except for adjustments due to added improvements or renovations which are made to the dedicated property and adjustments due to a~~~~

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~~change in the methodology used by the Director for establishing the fair market value for the dedicated property.~~

~~(4) The Director shall utilize the market data approach or the sales comparison method in determining the fair market value, i.e., dedicated value, for purposes of the nonspeculative residential use dedication. The Director shall establish the fair market value, i.e., dedicated value, based upon a comparison of sales prices of similarly improved properties.~~

~~(A) If the Director is unable to determine the fair market value, i.e., dedicated value, based upon the market data approach, the value established by the cost approach shall serve as the dedicated value until the fair market value is developed utilizing the market data approach. Upon completion of the market data approach calculation, that value shall serve as the new dedicated value for the remaining term of the dedication.~~

~~(5) The dedicated value will serve as the assessment for the dedicated property provided that this value does not exceed the fair market value of the property for any corresponding assessment period. In the event that the dedicated value is greater than the fair market value, for any corresponding assessment period, the lower of the two values shall be used as the basis for the nonspeculative residential use assessment.~~

~~(6) In situations where improvements are added or renovations made to the dedicated property, the fair market value of the improvements or renovations shall be determined and added to the previous dedicated value. The sum of the amounts shall serve as the new dedicated value for purposes of the dedication. The recalculated value shall be frozen for the remaining term of the dedication.~~

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- ~~(7) — Upon the expiration of any ten-year dedication period, whether original or renewal, the assessed valuation of the property shall be based upon fair market value.~~
- ~~(8) — In the case of a renewal which immediately follows an expiring term, the assessment base for the new dedication period shall be the dedicated value on the expiration date plus fifty percent of the difference between the dedicated value and the fair market value as of the January 1 assessment date, following the termination of the dedicated term.~~
- ~~(9) — The Director shall record the frozen dedicated value and the fair market value on appropriate records accessible to the public.~~

~~Rule 33.9 — Retroactive Assessment: Violation.~~

- ~~(a) — Whenever a violation of the dedication occurs, the owner shall first be notified of such violation. The notice of such violation shall be mailed to the last known address on file with the Director. Each owner shall be afforded an opportunity to discuss the violation with the Director and will be allowed a conference prior to final cancellation of the dedication. In the absence of any justifiable excuse, the Director shall cancel the dedication and subject the property to retroactive assessment.~~
- ~~(b) — If the dedicated property is placed in a general class with preferential tax rates, due in part to the claim for home exemption and use of the property as a principal home, and the owner violates the term and conditions of the dedication by failing to maintain the home exemption, the Director shall use the applicable tax rate corresponding to the general class of the property without the home exemption for purposes of calculating the retroactive assessment.~~

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~~(c) — The retroactive assessment shall be calculated as the cumulative difference between the dedicated value and the fair market value of the property retroactive to the date of the current ten-year dedication period. If the dedicated property is sold, the retroactive assessment for that year shall be calculated as the difference between the dedicated value and the higher of either the actual selling price or the fair market value of the property.~~

~~(d) — An example of the retroactive assessment calculation is provided below:~~

YEAR	DEDICATED VALUE	FAIR MARKET VALUE	RETROACTIVE CALCULATION
1	\$150,000	\$150,000	\$100,000 — 150,000 = —0
2	150,000	200,000	200,000 — 150,000 = 50,000
3	150,000	225,000	225,000 — 150,000 = 75,000
4	150,000	*250,000	250,000 — 150,000 = 100,000
* Sale price of property; violation due to sale of property.			

~~(e) — In cases where the actual selling price of the property is used as the basis for determining the retroactive assessment, the apportionment of value between land and building shall be determined based upon the respective percent of each component when compared to the total assessed value in the tax year in which the violation occurred. The corresponding tax rate shall be used for determining the total tax liability.~~

~~(f) — In addition to the retroactive taxes due, a ten percent interest charge shall be imposed on the total amount of retroactive taxes owed.~~

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~~(g) All unpaid taxes, including retroactive assessments and interest charges, shall constitute a paramount lien upon the property.~~

~~Rule 33.10 Cancellation Without Retroactive Assessment.~~

~~(a) The owner may withdraw from the dedication at any time prior to the Director's approval of the petition to dedicate. Written notice of the withdrawal shall be submitted on or before December 31.~~

~~(b) The owner may cancel the dedication at the end of any ten year period. If the owner or lessee fails to submit a new application to renew the dedication, the dedication shall be cancelled and the property shall be assessed at fair market value on the next assessment date.~~

~~(c) Certain transfers of property will not violate the terms and conditions of the dedication. The dedication shall not be breached if the property is:~~

~~(1) Transferred to the owner's heirs by testacy or intestacy.~~

~~(2) Jointly owned by spouses and upon the death of one spouse ownership is transferred to a surviving spouse.~~

~~(3) Transferred to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.~~

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- ~~(4) Transferred to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.~~
- ~~(5) Subject to a title change between spouses and said change does not result in a loss of the home exemption status.
 - ~~(A) The terms and conditions of the dedication will not be violated in a situation where a single or unmarried person marries and adds the name of a spouse to the title of the property. However, the married persons are not allowed to cancel the dedication until the original or renewal period has expired. Any cancellation, by the married persons, of the original or renewed dedication, will subject the property to retroactive assessment.~~~~
- ~~(6) Within sixty days after receiving title to the property, the heirs, surviving spouse, divorced spouse, or trustee petitions the Director to continue the dedication and the owner continues or would continue to qualify for the home exemption.~~
- ~~(7) The dedication shall not be cancelled if the lessee purchases the leased fee interest from the lessor, however, the lessee is not allowed to cancel the dedication until the original or renewal period has expired. Premature cancellation will result in retroactive assessment.~~
- ~~(8) Retroactive taxes shall not be assessed when:
 - ~~(A) A person receives title to property dedicated to nonspeculative residential use by way of testacy or intestacy and does not petition the Director to continue the dedication.~~~~

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~~(B) — The dedicated property is jointly owned by spouses and upon death of one spouse, ownership is transferred to the surviving spouse, and the surviving spouse does not petition the Director to continue the dedication.~~

~~(C) — The property is wholly or partially destroyed or damaged as a result of fire, seismic or tidal wave, volcanic eruption, earthquake, flood waters and wind or rain storm. The owner may cancel the dedication, without retroactive assessment, by submitting written notice of the cancellation within sixty days of the damage or destruction.~~

~~Rule 33.11 — Appeals.~~

~~— The owner may appeal any disapproved petition as in the case of an appeal from an assessment.~~

~~Rule 33.12 — 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 33.13 — Effective Date.~~

~~— These rules and regulations shall take effect ten days after filing with the County Clerk.]~~

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**DEPARTMENT OF FINANCE
COUNTY OF HAWAII
STATE OF HAWAII**

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 (20~~05~~16 EDITION, AS AMENDED)**

Rule 34.1 Purpose of Rules.

- A.** These rules and regulations are intended to implement the provisions of ~~[C]chapter 19, [A]article 7, [S]section 19-57 of the county code, [Hawaii County Code 1983 (2005 Edition, as amended),]~~ relating to nondedicated agricultural use assessment of land classified and used for agriculture.
- B.** The purpose of ~~[S]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

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

~~4. [The term "tax year" shall mean the period commencing from July 1 of a calendar year and ending on June 30 of the following calendar year.]~~

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 ~~[C]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 ~~[D]director~~ according to its value in nondedicated agricultural use.

D. The land has not been dedicated under the provisions of ~~[C]chapter 19, [A]article 8, [S]section 19-60 of the county code. [, Hawai'i County Code 1983 (2005 Edition, as amended)].~~

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 ~~[D]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.

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C. The ~~[D]~~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 ~~[C]chapter 19, [A]article 8, [S]section 19-60(c) of the county code, [Hawai'i County Code 1983 (2005 Edition, as amended)].~~

B. The farm dwelling site shall be assessed at the highest commercial agriculture use value as prescribed in ~~[C]chapter 19, [A]article 8, [S]section 19-60(c) of the county code, [Hawai'i County Code 1983 (2005 Edition, as amended)]~~, 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 ~~[C]chapter 19, [A]article 5, [S]section 19-37 of the county code, [Hawai'i County Code 1983 (2005 Edition, as amended)]~~.

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 ~~[C]chapter 19 of the county code, [Hawai'i County Code 1983 (2005 Edition, as amended)]~~, and may be taken to the tax board of review [Board of Review] or be taken directly to the Tax Appeal Court without appealing to the tax board of review [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 ~~[C]county [C]clerk.~~
Rule 34 shall automatically sunset on June 30, 2028.

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The Rules and Regulations of the Director of Finance, Department of Finance, County of Hawai'i, State of Hawai'i, is amended by adding a new rule to be appropriately designated and to read as follows:

**“DEPARTMENT OF FINANCE
COUNTY OF HAWAI‘I
STATE OF HAWAI‘I**

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,
HAWAI‘I 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, or diversified agriculture.
 4. “Diversified agriculture" means a blend of intensive agriculture and orchards while transitioning from one category to the other during the term of the community food sustainability use assessment.
 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.

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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 honey bees.
 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 Use Assessment; requirements.

- 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

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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 intensive agriculture and orchards.
- 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.

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- 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.

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.

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- 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

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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

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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.

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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.”