

(November 19, 2014)

FLOOR AMENDMENT #1

Bill No. 2546, Draft 2, Relating To Real Property Taxes (*Agronomics / Agricultural Use Definition / Reporting*)

Introduced by: JOANN A. YUKIMURA

1. Amend Bill No. 2546, Draft 2 by repealing SECTION 1, SECTION 2, SECTION 3, and SECTION 4 in its entirety.
2. Amend Bill No. 2546, Draft 2 by adding a new SECTION 1, which amends Chapter 5A, Section 5A-9.1, of the Kaua'i County Code 1987, as amended, to read as follows:

“SECTION 1. Chapter 5A, Section 5A-9.1, of the Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

**“Sec. 5A-9.1 Dedication of Lands.**

(a) Definitions. As used in this Section:

“Agricultural use” means the use of land on a continuous and regular basis that demonstrates that the owner intends to obtain a monetary profit from cash income received by:

- (1) Raising, harvesting, and selling crops;
- (2) Feeding, breeding, managing, and selling of livestock, poultry, or honey bees, or any products thereof;
- (3) Ranching of livestock;
- (4) Dairying or selling of dairy products;
- (5) Animal husbandry, provided that the exclusive husbandry of horses for recreational or hobby purposes shall not be considered an agricultural use under this Section;
- (6) Aquaculture;
- (7) Horticulture;
- (8) Participating in a government-funded crop reduction or set-aside program; or
- (9) Cultivating of trees on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising such trees.

Factors that shall be considered to determine whether an owner intends to obtain a monetary profit from the listed activities include, but are not be limited to, evidence that the land enjoys County Department of Water agricultural water rates, filed copies from the

immediate preceding year of U.S. Internal Revenue Service Schedule F forms showing profit or loss from farming, filed copies of federal fuel tax exemption claims made pursuant to Sec. 6427(c) of the U.S. Internal Revenue Code, sales receipts generated from the listed activities, a valid, current, State general excise tax license, and covenants, conditions and restrictions encumbering or affecting the property which prohibit or limit agricultural activities.

Physical evidence such as grazing livestock, fences, artificial or natural windbreaks, water facilities, irrigation systems, or crops that are actually in cultivation, or indicia that farm management efforts such as weed control, pruning, plowing, fertilizing, fencing, or pest, insect, or disease control are occurring on the land, shall also be used as factors to determine whether the land is being used for any of the listed activities.

Agricultural dedication applications involving petitioned areas that are less than one hundred (100) acres in size must have the petitioned area entirely in cultivation and/or production at the time of filing of the petition to dedicate. For agricultural dedication applications that involve petitioned areas of one hundred (100) acres or more, the larger of one hundred (100) acres or fifty percent (50%) of the petitioned area must be in cultivation and/or production at the time of the filing of the application to dedicate. Any approved petitioned areas that exceed the one hundred (100) acre or fifty percent (50%) requirement (aforementioned), but not yet in cultivation and/or production at the time of filing, shall be planted at a rate of ten percent (10%) per year, each year thereafter.

For parcels involved in the ranching of livestock, the entire dedicated area shall have established fences and livestock present at the time of filing a petition to dedicate.

Land areas which are part of a tree farm management plan that was prepared, submitted and is in compliance with K.C.C. Section 5A-11.26 shall be deemed to be in "agricultural use," notwithstanding the fact that said areas are not in cultivation and are yet to be planted. Any area that is not in cultivation or production at the time of the filing of a petition to dedicate shall be planted at a rate of ten percent (10%) per year, each year thereafter, as detailed in a farm management plan to be submitted with the application for agricultural dedication; provided that if the existing tree farm management plan specifies a rate of planting other than ten percent (10%) per year, the rate of planting specified in the tree farm management plan shall prevail and control.

The term "agricultural use" shall not mean uses primarily as yard space, landscaped open areas, botanical gardens, or the raising of livestock or fruit trees primarily for home use.

"Homesite" means any portion of land, on a dedicated parcel intended for existing or future residential use that is not in a dedicated or unusable area, including garages, sheds, yard space, landscaped open areas, and driveways, and not including non-agricultural use

areas such as areas left fallow and/or overgrown with weeds, or portions of driveways used for agricultural use.

Any undedicated or unusable land area on a dedicated parcel will be valued at its proportional share of the fair market value of the total land area of the said parcel. The homesite area for each residential building that is twenty percent (20%) or more complete as of the October 1st assessment date, shall be valued on a building by building basis, at its highest and best use, based on comparable values or similar size lands used as residential use as reflected in the market and shall not include the value of any additional density allowed by the County of Kaua'i's Comprehensive Zoning Ordinance.

"Owner" means possessors of fee simple estates and lessees and licensees holding leases or licenses whose terms extend for at least ten (10) or twenty (20) years, as the case may be, from the year in which the petition to dedicate is filed.

"Parcel" means a subdivided lot or an "apartment" created by the submission of land to a condominium property regime pursuant to the provisions of Haw. Rev. Stat. Chapter 514A or 514B.

"Petitioned area" means lands within a parcel which are intended to be dedicated to an approved "agricultural use" as described in Sec. 5A-9.1(a).

"Unusable" means land which is physically incapable of being put to any agricultural use such as gulches, mountains, or pali, eroded bedrock, or rocky, hilly, or barren land.

(b) A special agricultural dedication area is established to enable the owner of any parcel of land within an agricultural district, a rural district, a conservation district, or an urban district to dedicate the land for a specific ranching or other agricultural use and to have his or her land assessed at its value in such use; provided that if the land is located within an urban district, or within an agricultural district, a rural district or a conservation district with an area of less than five (5) acres in size:

(1) The land dedicated must be used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like, or used for ranching of livestock;

(2) The land dedicated must have been substantially and continuously used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like, or the ranching of livestock for the five (5) year period immediately preceding the dedication application; and

(3) The dedication shall be recorded either with the Assistant Registrar of the Land Court or with the Bureau of Conveyances, as the case may be; and provided further that land situated within an agricultural district, which may be further subdivided, may be dedicated for a period of twenty (20) years

and shall be taxed at fifty percent (50%) of its assessed value in such use, provided that such dedication is recorded with the Assistant Registrar of the Land Court or the Bureau of Conveyances, as the case may be.

Notwithstanding that a lease or license may be for a term of less than ten (10) or twenty (20) years, a lessee or licensee may dedicate his or her land for any period of time remaining under his or her original lease or license if the Director determines that the lessee or licensee has satisfied the following conditions:

(1) The lessee or licensee must file a petition to dedicate the leased or licensed land by December 31, 1999;

(2) The term of the lease or license must extend through at least January 1, 2000;

(3) The lease or license must have been executed and in existence by the lessee and lessor or licensee and licensor as of August 12, 1999;

(4) The land must be dedicated only for a time period within the remaining term of the original lease or license; the dedication period shall not encompass any periods which represent renewals or enlargements of, or extensions or additions to, the original term or length of the lease or license; and

(5) The petition must satisfy all requirements of this Section otherwise relating to petitions to dedicate land to agricultural use including, but not limited to, the requirement that all lessors or licensors have consented to the lease or license, and the requirements relating to the two (2) findings of fact described in Subsection (e) of this Section.

Lands which have been dedicated for any period of time remaining under the original term of a lease or license shall both (A) be given the same agricultural use values as lands dedicated to agricultural use for ten (10) years, and (B) be subject to all provisions of this Section relating to ten (10) and twenty (20) year dedications.

(c) If any owner desires to use his or her land for a specific ranching or other agricultural use and to have his or her land taxed at its assessed value in this use or fifty percent (50%) of its assessed value, as the case may be, he or she shall so petition the Director and declare in his or her petition that his or her land can best be used for the purpose for which he or she requests permission to dedicate his or her land, and if his or her petition is approved, he or she will use his or her land for this purpose; provided that, where the owner is a lessee or licensee, the petition shall include: (1) a legible copy of the executed lease or license for the land being dedicated indicating the consideration being paid by the lessee or licensee; and (2) notarized signatures of all lessors or licensors, as the case may be, evidencing that they have consented to the application to dedicate under the terms and conditions of this Section.

(d) If the owner desires to change from one specific ranching or other agricultural use to another ranching or other agricultural use, the owner shall so petition the Director of Finance and declare in the petition that:

(1) The owner's land can best be used for a ranching or other agricultural purpose other than that for which the owner originally requested permission; and

(2) The owner will use the land for that new purpose if the owner's petition is approved.

(e) Upon receipt of a petition as provided above in Subsections (c) and (d) of this Section, the Director shall make a finding of fact as to whether the land in the petitioned area is reasonably well suited for the intended use. The finding shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of the operating unit, the present use of surrounding similar lands, and other criteria as the Director may deem appropriate.

The Director shall also make a finding of fact as to whether the intended use is in conflict with the development plan of the district in which the land is situated or the overall development plan of the State. If both findings are favorable to the owner, the Director shall approve the petition and declare that the owner's land is dedicated land; provided, that for lands in urban districts, the Director shall make further findings respecting the economic feasibility of the intended use of the land. If all three (3) findings are favorable, the Director shall approve the petition and declare the land to be dedicated. In order to place prospective buyers on notice of the roll back liability, the petitioner shall within thirty (30) days of notice of approval record the dedication in accordance with the procedures of the Bureau of Conveyances or the Assistant Registrar of the Land Court of the State of Hawai'i, as the case may be. After December 31, 2003, only properties with dedications recorded in accordance with the procedures of the said Bureau of Conveyances or Land Court, as the case may be, shall receive assessments based on their dedicated uses as follows:

(f) The approval by the Director of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of his or her land to a use other than agricultural use for a minimum period of ten (10) years or twenty (20) years, as the case may be, subject to cancellation as follows:

(1) At the end of its initial ten (10) or twenty (20) year period, each dedication shall terminate. After the ninth (9th) or the nineteenth (19th) years of a ten (10) year or a twenty (20) year dedication, as the case may be, the owner may apply to dedicate his or her lands under the ordinance, rules and regulations that are in force at the time the application for dedication is received by the Director. The application for dedication shall be treated as a new dedication.

(2) Upon any conveyance or change in ownership during the period of dedication subject to State conveyance tax pursuant to Haw. Rev. Stat. Chapter 247, the dedication shall be cancelled, unless the new owner shall, in writing, assume the dedication for the remainder of the dedication period.

(3) In the case of a change in major land use classification not as a result of a petition by any property owner or lessee such that the owner's land is placed within an urban district, the owner may cancel the dedication within sixty (60) days of the change.

(4) In the case where the owner intends to convey or lease dedicated land for nominal consideration to a non-profit entity to be used for non-profit purposes, the owner may petition the Director for a thirty-six (36) month transition period to the non-profit use on or before September 30th. If at the end of the thirty-six (36) month transition period the land meets all the requirements for exemption under Sec. 5A-11.10, the dedication on that land shall be canceled. Upon request, the Director may extend the thirty-six (36) month transition period due to delays beyond the control of the owner or non-profit entity.

(5) In the case where subdivision of the land or submission of the land to a condominium property regime results in one (1) or more subdivided parcels of land or "apartments," as defined in Haw. Rev. Stat. Chapter 514A or 514B, of less than five (5) acres.

No later than May 1st of the last year of any ten (10) and twenty (20) year dedication, the Director shall mail to the owner, at the owner's last known address, written notice that the property under dedication shall cease to be dedicated after September 30th of the last year of that ten (10) or twenty (20) year dedication unless the owner petitions to re-dedicate the property to agricultural use and the petition is approved by the Director.

(g) The Director may, at any time while the land is dedicated to agricultural use, require owners to submit evidence that the land enjoys County Department of Water agricultural water rates, filed copies from the immediate preceding year of Schedule F forms submitted to the U.S. Internal Revenue Service, filed copies of claims for exemption from federal income taxation made under Sec. 6427(c) of the U.S. Internal Revenue Code, sales receipts generated from the activities listed under the definition of the term "agricultural use," and a valid, current, State general excise tax license, in order to verify that the land is in agricultural use. Also at any time during the dedication period, the Director may require owners to submit such other additional information and documents as the Director may deem necessary to verify that the dedicated land is in agricultural use. Any such requirements shall be established by administrative rule adopted pursuant to Chapter 91, Haw. Rev. Stat.

(h) Real Property in Agricultural Use. In assessing agricultural land based on its agricultural use, there shall be three (3) agricultural use valuation categories:

(A) Pasture

(B) Diversified Agriculture

(C) Biotech Research

Biotech Research shall include any parcel greater than one acre, any part of which is used within a calendar year for biotech crop research or biotech crop cultivation. "Biotech crop research" and "biotech crop cultivation" involves crops regulated by the Federal Government and whose deoxyribonucleic acid (DNA) has been manipulated through genetic engineering techniques resulting in the introduction of new trait(s) that do not occur naturally in the species.

Persons whose lands are being assessed under the Biotech Research category shall submit a legible copy of all executed leases which include information concerning the term or period of the lease, location and size of agriculture land being assessed, the dollar amount of the lease rent, a legible map, plot plan or site plan that specifically describes the land area which is in agricultural use, and a description of the agricultural use that is occurring on the land.

If the agricultural use valuation exceeds the market value of a parcel receiving agricultural dedication benefits, the owner may cancel their dedication without the imposition of any roll back taxes or penalties whatsoever.

[(h)] (i) Failure of the owner to keep his or her land in agricultural use shall cancel the dedication and special tax assessment privilege retroactive to the date of the dedication, but in any event, shall not exceed the term of the original dedication, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten percent (10%) a year penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, shall be a paramount lien upon the property pursuant to Sec. 5A-5.1.

(1) Failure to keep his or her land in agricultural use means either:

(A) Failure to keep the land in agricultural use for a period of twelve (12) consecutive months; or

(B) The subdivision of the land or submission of the land to a condominium property regime resulting in one (1) or more subdivided parcels of land or "apartments" as defined in Haw. Rev. Stat. Chapter 514A or 514B of less than five (5) acres; or

(C) The overt act, for any period of time, of changing the agricultural use to either an unapproved agricultural use or a non-agricultural use; provided that the following events shall not constitute either a failure by the owner to keep his or her land in agricultural use or an overt act of changing the agricultural use:

(i) A change in land use classification upon petition by the owner of such dedicated lands; or

(ii) The petition by the owner for a change in use as provided in Subsection (d) of this Section and the owner's subsequent change in use of such dedicated lands; or

(iii) The declaration by the owner of an intent to change the use of the land to a non-profit use according to Subsection (f)(4) of this Section and the owner's subsequent change in use of such dedicated lands.

(2) If an owner is permitted to change his or her use as provided in Subsections (d) and (e) of this Section, he or she shall be allowed up to twelve (12) months for parcels up to and including fifty (50) acres in size and twenty-four (24) months for parcels over fifty (50) acres in size, from the date of the approval of his or her petition to convert to the new ranching or agricultural use. If the owner fails to make the conversion within the specified time limit he or she will be subject to the taxes and penalties provided above. For purposes of assessment of taxes and penalties, the conversion period shall be considered in addition to the specified dedication period; except, however, in the case of leased lands whose term expires prior to or in conjunction with the end of the dedication period, the conversion period shall be considered as a part of the dedication period. The petitioner shall submit progress reports of his or her efforts in converting from one (1) agricultural use to another agricultural use to the Director of Finance by the anniversary date of the petition approval and yearly, thereafter, as long as such conversion period remains.

(3) If an owner has declared an intention to convey or lease the dedicated land to a non-profit entity to be used for non-profit purposes as provided in Subsection (f)(4) of this Section, there shall be allowed thirty-six (36) months from the effective date of the declaration to complete the change to a non-profit use. If the land does not meet the requirements for exemption under Sec. 5A-11.10 after the thirty-six (36) month transition period, the owner shall be subject to the taxes and penalties provided above. Upon request, the Director may extend the thirty-six (36) month transition period due to delays beyond the control of the owner or non-profit entity.



Any other provisions to the contrary notwithstanding, when a portion of the dedicated land is subsequently applied to a use other than the use set forth in the original petition, only such portion as is withdrawn from agricultural use and applied to a use other than ranching or another agricultural use shall be taxed as provided by this Subsection.

~~[(i)]~~ (j) Cancellation Without Rollback Taxes and Penalties. Notwithstanding any provision in this Section to the contrary, the occurrence of any of the following events shall cause the dedication to be canceled without the imposition of any roll back taxes or penalties whatsoever:

(1) The death of the owner; or

(2) Events beyond the owner's control make it unfeasible to continue the agricultural use of the dedicated parcel including, but not limited to:

(A) A serious or debilitating long-term illness or injury suffered by the owner,

(B) A natural disaster such as a windstorm, flood, disease, or infestation which destroys the crop or livestock on the dedicated parcel, or

(C) The taking of the dedicated parcel or any portion thereof by a governmental entity, provided that where only a portion of the parcel is taken, the cancellation shall be effective only as to the portion taken; or

(3) The dedicated land, or portion thereof, has been designated and approved for commercial alternative energy facilities and future land assessments will be valued according to the land's industrial market value.

~~[(j)]~~ (k) The Director shall prescribe the form of the petition. In all cases, a separate petition shall be required for each individual parcel or apartment of a condominium property regime. The petition shall be filed with the Director by July 1st of any calendar year and shall be approved or disapproved by September 15th. If approved, the assessment, based upon the use requested in the dedication, shall be effective on October 1st.

~~[(k)]~~ (l) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

~~[(l)]~~ (m) A special land reserve is established to enable the owner of any parcel of land within an urban district to dedicate his or her land for a specific livestock use such as feed lots, calf-raising and like operations in dairy, beef, swine, poultry and aquaculture, but excluding grazing or pasturing, and to have his or her land assessed at its value in such use; provided that:

(1) The land dedicated must be used for livestock uses such as feed lots, calf-raising, and like operations in dairy, beef, swine, poultry and aquaculture but excluding grazing or pasturing;

(2) The land dedicated must have been substantially and continuously used in the livestock uses enumerated in Paragraph (1) of this Subsection; and

(3) Such livestock use must be compatible with the surrounding uses.

[(m)] (n) Rules of Construction. The following rules of construction shall apply to this Section.

(1) Number and Gender. Words in the masculine gender shall signify both the masculine and feminine gender, and also refer to corporations, partnerships, firms, and other business entities. Words in the singular or plural number shall signify both the singular and plural number.

(2) "Month," "Year," "Day." Unless otherwise specified, the word "month" means a calendar month, the word "year" means a calendar year, and the word "day" means a calendar day.

(3) Words to Have Their Usual Meaning. Except as defined in this Section, the words of this Section are generally to be understood in their most known and usual significance, without attending so much to their literal and strictly grammatical construction, as to their general or popular use or meaning.

(4) Construction of Ambiguous Context. Where words in this Section are ambiguous:

(A) The meaning of the ambiguous words may be sought by examining the context with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning;

(B) The reason and spirit of the law, and the cause which induced the Council to enact it, may be considered to discover their true meaning; and

(C) Every interpretation which leads to an absurdity shall be rejected."

3. Amend Bill No. 2546, Draft 2 by renumbering SECTION 5, SECTION 6, and SECTION 7 accordingly:

“[SECTION 5.] SECTION 2. If any provision of this Ordinance, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

[SECTION 6.] SECTION 3. Material to be deleted is bracketed. New material is underscored. When revising, compiling, or printing this Ordinance, the brackets, bracketed material, and underscoring need not be included.

[SECTION 7.] SECTION 4. This Ordinance shall take effect upon its approval.”

(Material to be deleted is bracketed. New material to be added is underscored.)  
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