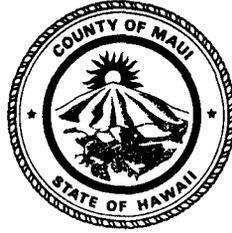


ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

OFFICE OF THE  
COUNTY COUNCIL

2016 MAR -3 PM 11:29

RECEIVED

---

MEMO TO: Riki Hokama, Chair  
Budget and Finance Committee

FROM: Jeffrey Ueoka, Deputy Corporation Counsel *JU*

DATE: March 3, 2016

SUBJECT: **DISPARITY OF REAL PROPERTY ASSESSMENTS FOR  
AGRICULTURAL VERSUS NON-AGRICULTURAL LANDS**  
(BF-70)

Attached is the proposed, revised bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY CODE, RELATING TO REAL PROPERTY TAX AGRICULTURAL CLASSIFICATION". If you have any questions or any other proposed revisions, please contact me.

Attachment  
2016-3082

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2016)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48, MAUI COUNTY  
CODE, RELATING TO REAL PROPERTY TAX AGRICULTURAL  
CLASSIFICATION

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 3.28, Maui County Code, is repealed.

SECTION 2. Section 3.48.005, Maui County Code, is amended to read as  
follows:

**“3.48.005 Definitions.** Wherever used in this chapter, the  
following definitions shall apply:

“Department” means the department of finance.

“Director” means the director of finance of the County [or an  
authorized subordinate].

“Kuleana land” means those lands granted to native tenants  
pursuant to L. 1850, p. 202, entitled “An Act Confirming Certain  
Resolutions of the King and Privy Council Passed on the 21st Day of  
December, A.D. 1849, Granting to the Common People Allodial Titles  
for Their Own Lands and House Lots, and Certain Other Privileges”,  
as originally enacted and as amended.

“Property” or “real property” means and includes all land and  
appurtenances thereof and the buildings, structures, fences, and  
improvements erected on or affixed to the same; and any fixture  
which is erected on or affixed to such land, buildings, structures,  
fences, and improvements, including all machinery and other  
mechanical or other allied equipment and the foundations thereof:

1. Whose use [thereof] increases the value [to], or is  
necessary to the utility of such land, buildings, structures,  
fences, and improvements; or

2. Whose removal therefrom cannot be  
accomplished without substantial damage to such land,  
buildings, structures, fences, and improvements, excluding,  
however, any growing crops; or

3. [Any] Including any and all wind energy  
conversion property that is used to convert wind energy to a

form of usable energy, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, and other such components.

“Unusable or unsuitable land for agricultural use” means land that is not usable or suitable for any agricultural use, such as gulches or eroded bedrock, as determined in the director’s sole discretion.”

SECTION 3. Section 3.48.185, Maui County Code, is amended to read as follows:

**“3.48.185 Time of assessment and levy.** For real property tax purposes, "tax year" means the fiscal year beginning July [1<sup>st</sup>] 1 of each calendar year and ending June [30<sup>th</sup>] 30 of the following calendar year. [Real property shall be assessed, and taxes shall be levied thereon, as of January 1st preceding each tax year upon the basis of valuations determined in the manner and at the time provided in this chapter.] The “assessment year” means the calendar year beginning on January 1 and ending on December 31. The assessed values, tax rate classifications, and exemptions for an assessment year, shall be the basis for the tax bills for the subsequent tax year.”

SECTION 4. Section 3.48.290, Maui County Code, is amended to read as follows:

**“3.48.290 Considerations by director.** The director [of finance] shall cause the fair market value of all taxable real property to be determined and annually assessed by the market data and cost approaches to value using appropriate systematic methods suitable for mass valuation of properties for taxation purposes, so selected and applied to obtain, as far as possible, uniform and equalized assessments throughout the [county;] County; provided, that the value of land classified and used for agriculture[, whether such lands are] and dedicated pursuant to section [3.48.350] 3.48.351 [or not,] shall, for real property tax purposes, be the value of such land for agricultural use without regard to any value that such land might have for other purposes or uses, or to neighboring land uses, and determined as provided in section [3.48.320;] 3.48.351; and provided further that, for real property tax purposes, the value of land leased under [Section] section 207 of the Hawaiian Homes Commission Act, 1920, shall be no value. In making such determination and assessment, the director shall separately value

and assess, within each class established [in accordance with] pursuant to section 3.48.305, buildings and all other real property, exclusive of buildings.”

SECTION 5. Section 3.48.305, Maui County Code, is amended by amending subsection B to read as follows:

“B. In assigning land to one of the general classes, the director shall give major consideration to the districting established by the land use commission pursuant to chapter 205 of the Hawaii Revised Statutes, the districting established by the County in its general plan and zoning ordinance, use classifications established in the general plan of the State, and such other factors that influence highest and best use, except that:

1. A parcel or a portion of a parcel that is used exclusively as the owner’s principal residence, notwithstanding any long-term residential uses on a portion of the parcel, and has been granted a home exemption in accordance with sections 3.48.410 and 3.48.475, shall be classified as “homeowner” without regard to its highest and best use[;].

2. A parcel that serves as the owner's primary residence and has been granted a bed and breakfast permit, a transient vacation rental permit, or a conditional permit allowing a transient vacation rental use pursuant to title 19 of this code, shall be classified "commercialized residential" without regard to its highest and best use[;].

3. A parcel that is subject to a time share plan as defined in section 514E-1, Hawaii Revised Statutes, as amended, shall be classified as "time share"[; and].

4. A unit and its appertaining common interest that are part of a planned development where transient vacation rentals are permitted, in accordance with chapter 19.32 of this code, shall be classified in accordance with subsection 3.48.305(C)(2)(a). The planned development shall form an entity that shall annually report to the director on a form prescribed by the director, the actual use of each unit in the planned development along with any information deemed relevant by the director to determine the actual use of each unit. If the required annual report is not filed on or before December 1, the director may classify all units in the planned development in accordance with subsection 3.48.305(A) for the following assessment year. The entity shall report any change in actual use of a unit in the planned development within thirty days of that change. The director may investigate

any unit and, if it is determined by the director that the actual use differs from the use reported, reclassify and reassess the unit.”

SECTION 6. Section 3.48.320, Maui County Code, is repealed.

**["3.48.320 Land classified as agriculture or commercialized residential and used for agriculture.** In determining the value of lands which are classified and used for agriculture, or classified as commercialized residential and used for agriculture, whether such lands are dedicated pursuant to section 3.48.350 or not, consideration shall be given to rent, productivity, nature of actual agricultural use, the advantage or disadvantage of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, and to the opinions of person who may be considered to have special knowledge of land values.”]

SECTION 7. Section 3.48.325, Maui County Code, is repealed.

**["3.48.325 Deferred or roll back tax-Change in classification.** A deferred or roll back tax shall be imposed on the owner of agricultural lands assessed according to their agricultural use as provided in section 3.48.290 in the event of a change in land use classification by the authorized state agency to urban or rural districts or upon the subdivision of the land into parcels of five acres or less; provided, that the tax shall not apply if the owner dedicates his land as provided in section 3.48.350 within three years from the date of the change in land use classification and fulfills all of the requirements of the dedication. The deferred tax shall be due and payable at the end of the third year following the change in land use classification, provided that the land shall continue to be used for agriculture during this period.

A. The total amount of deferred taxes shall be computed commencing at the end of the third year following the change in classification where the land has continuously been used for agriculture; provided, however, that where the land has been put to a higher urban or rural use prior to the expiration of the three-year period, the amount of deferred taxes shall be computed commencing at the end of the year in which the land has been put to such higher urban or rural use, and shall be retroactive to the date the assessment was made pursuant to section 3.48.290, provided the retroactive period shall not exceed ten years. Where the owner has subdivided his land into parcels of five acres or less, the deferred tax shall commence from the date the conversion was made retroactive

to the date the assessment was made pursuant to section 3.48.290, but for not more than ten years.

B. Any other provisions to the contrary notwithstanding, the deferred or roll back tax shall apply only if a change in land use classification has been made as a result of a petition by any property owner or lessee and shall apply only upon lands owned by the owner or lessee who has petitioned for the change in classification. The deferred or roll back tax shall not apply to lands owned by any other or lessee who has not petitioned for the change in classification, provided the owner or lessee shall continue to use the land in its agricultural use for a period of three years after the change in land use classification is made, or where the change in classification is initiated by any governmental agency or instrumentality.

C. The deferred or roll back tax shall be based on the difference in assessed value between the highest and best use and the agricultural use of the land, at the tax rate applicable for the respective years.

1. Where the owner subdivides his land into parcels of five acres or less, the deferred tax shall be due and payable within sixty days of such conversion, subject to a ten percent per year penalty.

2. Where the owner changes the land use classification, the deferred tax shall be due and payable within three years of such conversion, except that where the land has been put to its higher urban or rural use, the tax shall be due and payable at the end of the year in which the land has been put to such higher use, subject to a ten percent per year penalty.

D. Any other provisions to the contrary notwithstanding, the land shall continue to be assessed in its agricultural use as provided in section 3.48.290 until the land is put to its higher urban or rural use for a period of three years following the change in classification, whichever is shorter; provided, that for purposes of determining the amount of deferred taxes to be assessed to the owner or lessee, the retroactive period shall include the period during which the land is continued to be assessed in its agricultural use following the change in classification. Any tax due and owing shall attach to the land as a paramount lien in favor of the county as provided for by this chapter.”]

SECTION 8. Section 3.48.330, Maui County Code, is repealed.

**["3.48.330 Unusable or unsuitable land for agricultural use.** Where lands located within agricultural districts are put to agricultural uses, that portion of such lands not usable or suitable for any agricultural use, whether dedicated pursuant to section

3.48.350 or not, the tax upon such unusable or unsuitable land shall be deferred and shall be payable upon conversion as provided under sections 3.48.290 through 3.48.340.”]

SECTION 9. Section 3.48.350, Maui County Code, is repealed.

**["3.48.350 Dedicated lands.** A. A special land reserve is established to enable the owner of any parcel of land within an agricultural district, a rural district, a conservation district, or any urban district to dedicate his land for a specific ranching or other agricultural use and to have his land assessed at its value in such use; provided, that if the land is located within an urban district:

1. A lessee of the land with a term of ten or more years remaining from the date of the petition shall also be deemed an owner of the land within these provisions;

2. 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;

3. 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 for the five-year period immediately preceding the dedication request; provided further, that land situated within an agricultural district may be dedicated for a period of twenty years and shall be taxed at fifty percent of its assessed value in such use.

B. If any other desires to use his land for a specific ranching or other agricultural use and to have his land taxed at its assessed value in this use or fifty percent of its assessed value as the case may be, he shall also petition the director of finance and declare in his petition that his land can best be used for the purpose for which he requests permission to dedicate his land and that if his petition is approved he will use his land for this purpose.

C. If the owner desires to change from one specific ranching or other agricultural use to another ranching or other agricultural use he shall so petition the director of finance and declare in his petition that:

1. His land can best be used for a ranching or other agricultural purpose other than that for which he originally requested permission; and

2. He will use his land for that new purpose if his petition is approved.

D. Upon receipt of a petition as provided above in subsections B and C, the director shall make a finding of fact as to whether the land in the petition 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 operating unit, the present use of surrounding similar lands and other criteria as may be appropriate. The director shall also make a finding of fact as to whether the intended use is in conflict with 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 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 days of notice of approval record the dedication in accordance with the procedures of the bureau of conveyances.

E. 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 land to a use other than agriculture for a minimum period of ten years or twenty years, as the case may be, automatically renewable indefinitely, subject to cancellation as follows:

1. In the case of a ten-year dedication, the owner may after the ninth year and years thereafter, give notice of cancellation by filing with the director, a written notice of cancellation, on or before December 31st, to be effective as of July 1st of the following tax year;

2. In the case of a twenty-year dedication, the owner may during the nineteenth year and years thereafter give notice of cancellation as provided by this subsection;

3. In the case of a change in a 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 dedication may be canceled within sixty days of the change by the owner. Upon any conveyance or any change in ownership during the period of dedication, the land shall continue to be subject to the terms and conditions of the dedication unless a release has been issued by the director.

Any other provision to the contrary notwithstanding, an approved change in use as provided in subsections C and D shall not alter the original dedication period.

F. Failure of the owner to observe the restrictions on the use of his land 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 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 as provided for by this chapter.

1. Failure to observe the restrictions on the use means failure for a period of twelve consecutive months to use the land in that manner requested in the petition or the overt act of changing the use for any period, provided that a change in land use classification upon petition by the owner of such dedicated lands, or the petition by the owner for a change in use as provided in subsection C, and the owner's subsequent change in use of such dedicated lands, shall not be deemed to constitute a failure of the owner to observe the restrictions on the use.

2. If an owner is permitted to change his use as provided in subsections C and D, he shall be allowed thirty-six months from the date of the approval of his petition to convert to the new ranching or agricultural use. If the owner fails to make the conversion within the specified time limit, he 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 the 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 efforts in converting from one 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.

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 the dedicated use and applied to a use other than ranching or other agricultural use shall be taxed as provided by this subsection.

G. The director shall prescribe the form of the petition. The petition shall be filed with the director of finance by September 1st of any calendar year and shall be approved or disapproved by December 15th. If approved, the assessment based upon the use requested in the dedication shall be effective on January 1st of the next calendar year.

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

I. "Owner," as used in this section, includes lessees of real property whose lease term extends at least ten years from the date of the petition, in the case of a ten-year dedication, or lessees of real property whose lease term extends at least twenty years from the date of the petition, in the case of a twenty-year dedication.

J. "Agricultural use," as used in this section, shall include aquaculture.

K. A special land reserve is established to enable the owner of any parcel of land within an urban district to dedicate his 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 land assessed at its value in such use; provided, that:

1. A lessee of the land with a term of ten or more years remaining from the date of the petition shall also be deemed an owner of the land within these provisions;

2. 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;

3. The land dedicated must have been substantially and continuously used in the livestock uses enumerated in subdivision 2 of this subsection; and

4. Such livestock use must be compatible with the surrounding uses." ]

SECTION 10. Chapter 3.48, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

**"3.48.351 Lands dedicated for agricultural use.** A special land reserve is established to enable the owner of any parcel of land to dedicate the land or portion thereof to a specific agricultural use and to have the dedicated area assessed at its value in such use.

A. For the purposes of this section, unless the context clearly requires otherwise, the following definitions shall apply:

1. "Agricultural use" means the active, commercial, and primary use of land for any of the following: aquaculture; crop production; livestock production; horses; grazing of animals used in livestock production; production of livestock byproducts and plants for food, fiber, or energy; flowers and foliage; tree farms; bees and related natural byproducts; biomass; nuts; and seeds. Agricultural use does not include the use of areas primarily as yard space, setbacks, landscaping, or for the planting of fruit or ornamental trees, flowers, and vegetables primarily for home use. For land in

the urban state land use district, agricultural use does not include pasturing or grazing.

2. “Aquaculture” means the propagation, cultivation, or farming of aquatic plants and animals in controlled or selected environments.

3. “Dedicated area” means those portions of a parcel of real property approved under this section for a specific dedicated use by the director.

4. “Family subdivision” means a subdivision that has been granted a deferral of subdivision requirements in accordance with section 18.20.280 of this code.

5. “Land use change” means, for land dedicated for a specific agricultural use, a change or subdivision initiated or authorized by the owner, as follows: (a) a change in the State land use classification from agricultural to urban or rural district, (b) a change in the County zoning from agricultural district, or (c) final subdivision approval of the dedicated area, provided that a family subdivision shall not constitute a land use change.

6. “Livestock production” means the raising of cattle, sheep, swine, goats, elk, deer, rabbits, or poultry for food or for the production of food.

7. “Owner” or “property owner” means the fee simple owner of the real property, provided that for government-owned real property, “owner” or “property owner” means a lessee of the land where the lease allows the specific agricultural use, further provided that for kuleana lands “owner” or “property owner” means any individual or entity holding an interest in the property.

8. “Revenue-generating” means producing income from the agricultural use of the property.

9. “Substantial and continuous agricultural use” means the dedicated land shall be in active, continuous, and revenue-generating agricultural use throughout the period of the dedication. The term includes necessary and customary fallowing periods.

10. “Tree farm property” and “tree farm” mean land classified as tree farm property under chapter 186, Hawaii Revised Statutes.

B. Period of dedication. All dedications shall be for a minimum period of ten years.

C. Existing leases. Notwithstanding the provisions of subsection B, those owners that are able to produce evidence of an existing agricultural use lease properly recorded with the State of Hawaii Bureau of Conveyances or Land Court prior to January 1, 2019, that expires prior to July 1, 2030, inclusive of any options to

extend the term, may be eligible to dedicate the lease property, said dedication shall be subject to all requirements of this section, for the remainder of the lease term, provided that the owner can produce the evidence that the lease area was actively in substantial and continuous agricultural use since the commencement of the lease.

D. Petition for dedication. Any owner of land that desires to dedicate land or a portion thereof to a specific agricultural use, including those whose lands have been dedicated prior to January 1, 2019, shall submit a petition, on a form prescribed by the director, by September 1, if approved, the dedication shall become effective during the subsequent assessment year. Provided that, for the assessment year beginning January 1, 2019 with discounts effective in Fiscal Year 2020, petitions shall be due by July 1, 2017. In addition to the petition, the owner shall submit the following:

1. Agricultural use plan, the form for which shall be provided by the director.

2. Where the owner is leasing the land to a party that is conducting the agriculture use, a copy a properly recorded lease agreement, in the bureau of conveyances or land court, between the owner and the lessee. The term of the lease shall be greater than or equal to the term of the dedication.

3. A declaration signed by the owner stating that if the petition is approved by the director, the dedicated area shall be used only for the specific agricultural use set forth in the petition for the duration of the dedication period.

4. A copy of a valid State of Hawaii general excise tax license obtained for the agricultural purpose.

5. A transcript of the applicable Federal tax return, including Schedule F, where applicable, documenting a gross farm income greater than or equal to \$2,500, filed in the calendar year immediately preceding the submission of the petition. An entity or individual may use a single tax return for multiple parcels, provided that evidence of agricultural use by that entity or individual for that parcel is provided.

6. Evidence that the proposed dedicated area is currently in agricultural use as specified in the petition.

7. Evidence that the dedicated area will produce farm income prior to the expiration of the dedication period.

8. For land in the urban state land use district, owner shall present evidence that the proposed dedicated area has been in agricultural use for five years immediately preceding the date of the filing of the petition and that the annual gross income derived from the agricultural use is greater than or equal to \$5,000 per acre during that period,

as evidenced by transcripts of the appropriate Federal tax returns.

9. Any other information required by the director.

E. Review of the petition. Upon receipt of a petition filed under this section, the director shall transmit the petition to the agricultural dedication advisory committee for its review. After the committee completes its review of the petition, it shall transmit its recommendation to approve or deny the petition to the director. Upon receipt of the committee's recommendation, the director shall make a determination as to whether the proposed dedicated area is reasonably well suited for the proposed agricultural use. The determination shall include, and be based upon, the productivity ratings of the proposed dedicated area in those uses for which it is best suited, a study of the land's ownership, the revenue-generating capability, and other criteria as may be appropriate in the director's discretion. The director shall also make a determination as to whether the proposed agricultural use is in conflict with the overall development plan of the State. If both the determinations are favorable to the owner, the director may approve the petition and declare the proposed dedicated area as dedicated land. Provided, that for lands in urban districts, the director shall also make a determination with respect to the economic feasibility of the intended use of the dedicated area, and in the event that all three determinations are favorable to the owner, the director may approve the petition and declare the proposed dedicated area as dedicated land. In order to place prospective buyers on notice of any potential retroactive application of tax and penalty, the owner shall, within thirty days of notice of approval, record the dedication in accordance with the procedures of the bureau of conveyances or land court, and shall submit to the director a copy of the recorded document within thirty days of recordation.

F. Waiver of gross farm income requirements. The director may, for new farms, farms where the initial crop harvest is more than one year after establishment of the crop, or for reasons of hardship, upon recommendation by the agricultural dedication advisory committee, waive the requirement of the submission of the transcript of the applicable Federal tax return set forth in section D and the requirement of the production of gross farm income greater than or equal to \$2,500 set forth in section N.

G. Transmittal of agricultural use plan to the department of planning. Upon approval of the petition or authorization of a change in agricultural use, the director shall transmit a copy of the agricultural use plan to the department of planning.

H. Classification and assessment of dedicated area. The dedicated area shall be classified as agricultural and shall be assessed for real property tax purposes with consideration given to

rent, productivity, nature of actual agricultural use, the advantage or disadvantage of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, and to the opinions of person who may be considered to have special knowledge of land values.

I. Homesite. For those parcels of real property which contain a dedicated area that have a dwelling unit or dwelling units on the parcel, there shall be a homesite identified on the agricultural plan. The area of the homesite shall be subject to director approval. The homesite shall be a minimum of six thousand square feet in area and shall include those portions of the parcel exclusive of: (a) the dedicated area, and (b) the portion that is unusable or unsuitable land for agricultural use. Notwithstanding the foregoing, the homesite shall be classified in accordance with section 3.48.305 of this chapter and shall be valued and assessed independently from the dedicated area. The fair market value of the homesite shall be determined and annually assessed by the market data and cost approaches to value using appropriate systematic methods suitable for mass valuation of properties for taxation purposes, so selected and applied to obtain, as far as possible, uniform and equalized assessments throughout the County.

J. Change of agricultural use. If the owner, or the owner's lessee, permittee, or licensee with the owner's written authorization, desires to change from one specific agricultural use to another agricultural use, the party desiring the change may request that the director authorize the substitution of agricultural uses. The request shall be made in writing and shall provide the following information:

1. An agricultural use plan showing the substitute agricultural use.

2. An explanation of why the dedicated area is better suited for the proposed substitute agriculture use as opposed to the agricultural use initially approved by the director.

3. A transition plan showing that the transition to the substitute agricultural use will be implemented in a reasonable time.

In deciding whether to grant the request, the director shall follow the process set forth in section B. In the event that the request is granted by the director, the conversion to the substitute agricultural use shall be completed within thirty-six months of approval of the request by the director and the dedicated area shall be utilized for the substitute agricultural use for the remainder of the dedicated period. Upon approval by the director, the approval shall be appropriately recorded with a recorded copy transmitted to the director within thirty days of recordation.

K. Expiration. Dedication shall automatically terminate upon the expiration of the dedication period, unless renewed as set forth in section L.

L. Renewal. An owner of dedicated land that desires to renew the dedication shall apply for renewal in the year immediately preceding expiration.

M. Right to inspect. The director or the director's authorized representative shall have the right to conduct inspections of the dedicated area and the surrounding land at reasonable hours during the dedication period, when the director or the director's authorized representative desires to enter onto the dedicated area, forty-eight hour advance notice of the inspection shall be given to the owner and, where applicable, the lessee. The owner shall ensure that any documents requested by the director or the director's authorized representative are provided within ten business days of the request; this period may be extended by the director.

N. Cancellation. An owner of dedicated land may cancel the dedication for the dedicated area or any portion thereof, at any time, subject to the retroactive application of tax and penalty as set forth in section O, by sending the director a notice of cancellation in writing. A dedication, in its entirety, shall automatically cancel upon a determination by the director that any of the following has occurred:

1. The dedicated area has not been utilized in accordance with the agricultural plan or is not in substantial and continuous agricultural use for a period of twelve consecutive months. This provision shall not apply to a dedicated area being converted to a substitute agricultural use.

2. Any land use change, as defined in this section.

3. The land has become a condominium or a part of a condominium property regime under sections 514A or 514B of the Hawaii Revised Statutes.

4. Real property taxes for the land are delinquent.

5. Failure to convert to the substitute agricultural use within thirty-six months of approval of the request by the director.

6. An overt act which makes agricultural use of any portion of the dedicated area improbable or an impossibility.

7. Failure of the dedicated area to produce gross farm income greater than or equal to \$2,500 as evidenced by a transcript of a federal tax return.

8. Failure to respond in a timely manner to requests for information by the Director.

O. Retroactive application of tax and penalty. Upon cancellation of a dedication prior to the expiration of the dedication period, there shall be a retroactive application of real property tax to the date of the dedication, all differences between the amount of taxes that were paid and those that would have been due without the discount from dedication as provided for in section H, shall be payable along with a ten percent per 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 the cancellation shall be a paramount lien upon the property as provided for by this chapter.

P. Waiver of retroactive tax and penalty. The director may make a determination that the retroactive application of tax and penalty shall not apply to a cancellation due to any of the following:

1. A change of the state land use classification of the land to urban, not as a result of a petition by the owner, owner shall have sixty days from the date of the change to cancel the dedication to be eligible for this waiver.

2. Death or serious, debilitating, long-term illness or injury, suffered by the owner, in those situations where the owner is the individual actively engaged in the agricultural use of the dedicated area.

3. The taking of the dedicated area or a portion thereof by a government entity, provided that for those instances where only a portion of the dedicated area is subject to a taking, the cancellation without retroactive application of tax and penalty shall only be allowed for those portions of the dedicated area subject to the taking and for the entire dedicated area in the event that said taking makes it infeasible to continue agricultural use of the remaining dedicated area.

4. A natural disaster such as a windstorm, flood, disease, or infestation that destroys the crop or livestock on the dedication area.

5. The loss of adequate water to continue the approved agricultural use.

Q. Grace period. Notwithstanding any other provision to the contrary, the director may grant a grace period with regard to the cancellation of a dedication, not to exceed two years, to an owner of land dedicated for a specific agricultural use if a bank or other lending institution acquires possession of the dedicated land as a result of a default of a mortgage on the property; if the agricultural use of the dedicated land is terminated because a lessee, licensee, or permittee has abandoned or terminated the agreement prior to the end of the term and the owner has not found another lessee, licensee, or permittee; or if taxes on the parcel are delinquent. The grace period is subject to the following conditions:

1. During the grace period, the owner shall not be required to use the dedicated land for the specified agricultural use. The dedicated land shall be assessed at one hundred percent of market value.

2. At the end of the grace period, the owner shall use the dedicated land in substantial and continuous agricultural use for the entire remaining period of the dedication. The grace period shall not be counted in determining the owner's compliance with the dedication.

3. No grace period shall be granted for a parcel within five years following the expiration of a prior grace period.

R. Agricultural dedication advisory committee. There is established the agricultural dedication advisory committee which shall consist of three members and two alternate members. All members shall be individuals actively engaged, on a full-time basis, in agricultural activities. When there is a vacancy on the committee, the Maui County Farm Bureau shall submit a list of nine names to the mayor for nomination to the committee. Each nominee must be approved by the council in order to serve as a member. Members shall serve staggered terms of five years. The committee shall be advisory and shall make recommendations to the director on matters pertaining to agricultural dedications. The committee may adopt administrative rules necessary to carry out its purpose. The committee shall receive staffing and technical support from the department of finance, real property tax assessment division.

S. Appeal. Any party aggrieved by a determination of the director may appeal the director's determination to the board of review as provided for by this chapter."

SECTION 11. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 12. This ordinance shall take effect for the assessment year beginning January 1, 2019.

APPROVED AS TO FORM  
AND LEGALITY:



---

JEFFREY ULOKA  
Department of the Corporation Counsel  
County of Maui  
BF-70 2016-03-03 Ordinance Chapter 3.48  
2014-3082