

COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

June 3, 2016

**Committee
Report No. _____**

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on March 15, 2016 and May 17, 2016, makes reference to County Communication 16-7, from the Economic Development Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 22.04A, MAUI COUNTY CODE, RELATING TO KULA AGRICULTURAL PARK."

The purpose of the proposed bill is to amend Chapter 22.04A, Maui County Code, to revise policies for the Kula Agricultural Park, which is a County program to support diversified agriculture.

Your Committee notes the Office of Economic Development manages the 445-acre Kula Agricultural Park, which supports more than two dozen farmers.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill incorporating nonsubstantive revisions.

Your Committee received correspondence dated March 7, 2016, from the Economic Development Director, transmitting a copy of correspondence from James Leary, Chair, Kula Agricultural Park Committee, confirming the body's support for the proposed bill.

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The Director informed your Committee the proposed bill would establish the following policies for the Kula Agricultural Park:

1. A farmer who subleases property in the Kula Agricultural Park may not have an interest in two lots.
2. A tenant may not lease more than five individual lots or more than 60 total acres.
3. A farmer may apply for just one lot at a time in the event there are two lots available from the County.
4. The composition of the Kula Agricultural Park Committee will be reduced from eleven to nine members, with a requirement of only one representative from the agricultural lending or banking community instead of the current two and the elimination of designated seat for a representative of the Maui Farmers' Cooperative exchange or other produce-processing cooperative.
5. No more than three Kula Agricultural Park Committee members may hold a financial interest in a lot within the Kula Agricultural Park.

Your Committee noted the proposed bill would improve operations of the Kula Agricultural Park and support the agriculture community in Maui County.

Your Committee voted 5-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Guzman, Vice-Chair Cochran, and members Couch, Hokama, and White voted "aye." Committee members Crivello and Victorino were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

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Your Economic Development, Energy, Agriculture, and Recreation Committee RECOMMENDS the following:

1. That Bill _____ (2016), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 22.04A, MAUI COUNTY CODE, RELATING TO KULA AGRICULTURAL PARK," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 16-7 be FILED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON S. GUZMAN, Chair

ear:cr:16049aa:scb

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 22.04A,
MAUI COUNTY CODE, RELATING TO KULA AGRICULTURAL PARK

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

SECTION 1. Title 22, Maui County Code, is amended by amending
Chapter 22.04A to read as follows:

**“Chapter 22.04A
KULA AGRICULTURAL PARK**

Sections:

[ARTICLE] Article I. [GENERAL PROVISIONS] General Provisions

22.04A.010	Title.
22.04A.020	Scope of chapter.
22.04A.030	Purpose of program.
22.04A.040	Lease and disposition exemption.
22.04A.050	Definitions.

[ARTICLE] Article II. [ADMINISTRATION] Administration

22.04A.060	Administration.
22.04A.070	Kula agricultural park committee.

**[ARTICLE] Article III. [APPLICATION FOR LEASE OF LOT]
Application for Interest in Lot**

22.04A.080	Notice of lot availability.
22.04A.081	<u>Limitations on applicants.</u>
22.04A.082	<u>Application form.</u>
22.04A.083	<u>Application for the lease of a lot.</u>
22.04A.084	<u>Evaluation and scoring of application for the lease of a lot.</u>
22.04A.085	<u>Applicant selection for lease of a lot.</u>
22.04A.086	<u>Application for the sublease of a portion of a lot, the sublease for a portion of the term of a lease, or the assignment of a lease.</u>

22.04A.090 [Application.
22.04A.100 Application and evaluation procedure.
22.04A.110] Right to appeal.

**[ARTICLE] Article IV. [CONDITIONS AND RESTRICTIONS]
Conditions and Restrictions**

[22.04A.120] 22.04A.100 Conditions and restrictions in
leases.

[ARTICLE] Article V. [SEVERABILITY CLAUSE] Severability Clause

[22.04A.130] 22.04A.110 Severability.

Article I. General Provisions

22.04A.010 Title. This chapter shall be known as the
“Kula agricultural park [regulations.] ordinance.”

22.04A.020 Scope of chapter. [The regulations
established herein] This chapter shall govern the procedure for the
County of Maui relative to the administration of the Kula
agricultural park.

22.04A.030 Purpose of program. The purpose of the Kula
agricultural park is to promote the development of diversified
agriculture by providing appropriately-sized agricultural lots at
reasonable rent and long-term tenure.

22.04A.040 Lease and disposition exemption.
Notwithstanding any other provision in this code to the contrary,
leases for lots within the Kula agricultural park shall be exempt
from the provisions of chapter 3.40 of this code, and disposition of
lots to lessees within the Kula agricultural park shall be exempt
from the provisions of chapter 3.44 of this code.

22.04A.050 Definitions. The following words and phrases
shall have the meaning indicated whenever used in this chapter,
unless a different meaning clearly appears from the context:

“Agricultural park” means the Kula agricultural park
subdivision at Kula, Maui, Hawaii.

“Agriculture” means the production of plant and animal life
for food, [and] fiber, [and for] raw materials for processed
products[.], landscapes, biofuel, and decorative purposes.
Agriculture includes[, but is not limited to]: fruit, vegetable, and
flower growing; plant nurseries; forestry; aquaculture; beekeeping;
grazing and dairying; and their accompanying services and
facilities.

“Applicant” means [any individual, corporation, partnership,
association or organization which] a person or governmental entity

that submits an application for a Kula agricultural park lease to the office [of economic development].

“Application” means a request filed by an applicant for a Kula agricultural park lease pursuant to [the regulations set forth herein.] this chapter.

["Bona fide farmer" means an individual who has at least two years experience as a full-time owner of a farm, was an operator or manager of an established farm for at least two years, or who has for a period of more than five years worked on a farm or depended on farm income for livelihood. The term "bona fide farmer" includes agricultural cooperatives organized under chapter 421, Hawaii Revised Statutes, or other agricultural associations, partnerships, or organizations of which at least fifty-one per cent of the members qualify individually as bona fide farmers. The term "bona fide farmer" also includes corporations incorporated primarily for agricultural production purposes where at least fifty-one per cent of the stock issued by the corporation is owned by persons who qualify individually as bona fide farmers. For purposes of this chapter, "bona fide farmer" also includes "qualified aquaculturist" as defined in Section 219-2, Hawaii Revised Statutes.]

“Chair” means the chair of the Kula agricultural park committee.

“Committee” means the Kula agricultural park committee.

“Council” means the Maui County council.

["Coordinator"] “Director” means the economic development [coordinator] director of the County of Maui or a designated representative.

["Displaced farmer" means an individual engaged on a continuous and full-time basis in agriculture for a minimum of seven years who becomes displaced because of reasons beyond the individual's control. The term "displaced farmer" includes agricultural cooperatives organized under chapter 421, Hawaii Revised Statutes, or other agricultural associations, partnerships, or organizations of which at least fifty-one per cent of the members qualify individually as displaced farmers. The term "displaced farmer" also includes corporations incorporated primarily for agricultural production purposes where at least fifty-one per cent of the stock issued by the corporation is owned by persons who qualify individually as displaced farmers.

“Dwelling” means a room or group of rooms connected together constituting an independent housekeeping unit for family and containing a single kitchen.

“Established farm” means a farm from which the operator derives more than fifty per cent of the operator's total income.]

“Farm” means a lot on which the majority of the land is used for agriculture and the predominant activity is agriculture [and/or] or agricultural land conservation.

["Farmer" means an individual who operates or works on a farm.]

“Financial interest” means an interest held by an individual, or the individual's spouse or dependent children, that is:

1. An ownership interest in a business.
2. A creditor interest in an insolvent business.
3. An employment, or prospective employment for which negotiations have begun.
4. An interest in real or personal property.
5. A loan or other debtor interest.
6. A directorship or officership in a business.

“Lessee” means a qualified individual or entity [who] that is awarded a lease at the Kula agricultural park pursuant to [the regulations set forth herein.] this chapter.

“Lot” means a lot within the Kula agricultural park.

“Managing director” means the managing director of the County of Maui.

“Mayor” means the mayor of the County of Maui.

“New farmer” means an individual who is displaced from employment in agriculture, is a college graduate in agriculture, is a community college graduate in agriculture, or is a Future Farmers of America graduate with a farming project; who has at least two years experience as a part-time farmer; who for two years last preceding the application date obtained more than fifty per cent of income from farming operations; who has not owned or operated a farm on full-time basis for more than two years; and who otherwise meets the eligibility requirements for loans under chapter 155, Hawaii Revised Statutes. The term “new farmer” includes agricultural cooperatives organized under chapter 421, Hawaii Revised Statutes, or other agricultural associations, partnerships, or organizations of which at least fifty-one per cent of the members qualify individually as new farmers. The term “new farmer” also includes corporations incorporated primarily for agricultural production purposes where at least fifty-one per cent of the stock issued by the corporation is owned by persons who qualify individually as new farmers.]

“Office” means the office of economic development.

“Proposed base annual rent” means the minimum negotiable rent based on useable acres for a Kula agricultural park lot.

“State” means the State of Hawaii.

“Useable acres” means acres of land within the Kula agricultural park [which] that can be used directly for agriculture, as determined by the economic development [coordinator.] director.

Article II. Administration

22.04A.060 Administration. Unless otherwise specified, the [coordinator] director shall administer the provisions of this chapter.

22.04A.070 Kula agricultural park committee. A. There is established a Kula agricultural park committee, which shall, if reasonably possible, consist of the following [eleven] nine members:

1. [Two representatives:] One representative: agricultural lending or banking community[;].

2. One representative: Maui County farm bureau [board member;].

3. One representative: agricultural trade organization[;].

[4. One representative: Maui farmers exchange or other produce processing co-op;

5.] 4. One representative: [tenants association] tenant of the Kula agricultural park[;].

[6.] 5. One representative: College of Tropical Agriculture and Human Resources, University of Hawaii [extension service;] at Manoa.

[7.] 6. One representative: office of the mayor[;].

[8.] 7. One [representative:] council [; and] member.

[9.] 8. Two representatives: general public.

No more than three committee members may hold a financial interest in a lot within the Kula agricultural park.

B. The [representative from the] council member shall be appointed by the council for a term concurrent with the council member's term of office. The representative from the office of the mayor shall be appointed by the mayor without approval by the council for a term concurrent with the mayor's term of office. The remaining [nine] seven members of the committee shall be nominated by the mayor, approved by the council, and shall serve staggered terms of five years.

C. [Six] Five members shall constitute a quorum of the committee.

D. The affirmative vote of [six] five or more members of the committee shall be necessary in order to take any action.

E. The committee shall be advisory and shall make recommendations to the [coordinator] director on matters pertaining to the agricultural park.

[F. The committee shall form a finance sub-committee of no more than three committee members. At least one finance sub-committee member shall be from the agricultural lending or banking community. The committee may refer financial matters to the finance sub-committee for its review and recommendation.]

[ARTICLE] Article III. [APPLICATION FOR LEASE OF LOT] Application for Interest in a Lot

22.04A.080 Notice of lot availability. A. A notice that applications are available for a [lot(s) and the date(s), place(s), and time(s)] lot and the date, place, and time an application may be obtained shall be published County-wide in accordance with [Section] section 1-28.5, Hawaii Revised Statutes. The publication shall be made once in each of two consecutive weeks. A notice shall also be posted in the County building for a period of two consecutive weeks.

B. The notices shall identify a deadline for submitting an application, which date shall not be less than [ninety] sixty nor more than one hundred eighty calendar days after the date of the last publication [and/or] or posting.

C. The notices shall also include the proposed base annual rent for each lot. Rent greater than the minimum may be assessed based on any fixed improvements on the lot, provided that such rent shall not be greater than the current prevailing market rental rates for comparable properties.

22.04A.081 Limitations on applicants. A person who holds one of the following interests is not eligible to apply for a lease of a lot, sublease of a portion of a lot, sublease for a portion of the term of a lease, or the assignment of a lease: (i) a financial interest in five or more lots within the Kula agricultural park, which shall include any financial interest in an entity or entities that hold a financial interest in five or more lots within the Kula agricultural park; or (ii) a financial interest in sixty or more acres within the Kula agricultural park, which shall include any financial interest in an entity or entities that hold a financial interest in sixty or more acres within the Kula agricultural park.

22.04A.082 Application form. The application for a lease of a lot, sublease of a portion of a lot, sublease for a portion of the term of a lease, or the assignment of a lease shall be made on a

form provided by the office and shall contain the following information:

1. Applicant information.
 - a. Name of applicant.
 - b. Applicant's business address.
 - c. Applicant's email address.
 - d. Applicant's telephone number.
 - e. Business entity applicants shall also provide the

following:

- i. Name and percentage of interest held by each shareholder, partner, or member of the entity.
- ii. Name, mailing address, email address, and telephone number of a contact person.
- iii. If incorporated, a copy of the articles of incorporation, date of incorporation, purpose of the corporation, and names of all directors and officers.
- iv. If a limited liability company, a copy of the articles of organization.
- v. If a limited partnership or limited liability partnership, a copy of the certificate of limited partnership.
- vi. If a general partnership, a copy of the registration statement filed with the state.
- f. Federal and state tax clearance certificates dated within six months of the application date.

2. Agricultural property.

- a. Lot number and tax map key number of any lot being leased in the agricultural park.
- b. List of any interest held in any lots within the Kula agricultural park or interest in any entity that holds an interest in a lot within the Kula agricultural park.
- c. List of any other property being farmed by applicant.

3. Agricultural experience.

- a. Years as owner and operator of a farm.
- b. Years as operator or manager of a farm.
- c. Years as a farm worker.
- d. Percentage of income derived from farm operations.
- e. Narrative describing role in farm operations.

4. Agricultural education. A description of education received and any supporting documentation.

5. Displacement.

- a. If applicable, reasons for displacement.
 - i. Reasons for displacement may include: non-renewal of a rental agreement; land rendered inadequate for economic operation because of loss attributable to condemnation, withdrawal, or natural disaster; and urban encroachment or change in zoning.
 - ii. All reasons for displacement must be beyond applicant's control. The voluntary sale or surrender of a farm shall not qualify as displacement.
 - b. Period of time that the area was utilized for farm purposes by the applicant.
 - c. Number of acres lost by displacement.
 - d. Percentage of total farmable acres lost.
 - e. Amount or projected amount of total income lost.
 - f. Percentage or projected percentage of total annual income lost.
6. Farm plan.
- a. Crop types.
 - b. Detailed five-year planting plan.
 - c. Soil and water conservation practices to be implemented.
 - d. Weed, pest, and disease control plan.
 - e. Crop waste and farming waste disposition plan.
7. Marketing plan.
- a. Anticipated customers.
 - b. Methods to be employed to market agricultural products.
8. Financial statements.
- a. Sources and anticipated uses of capital.
 - b. Projected income statements.
 - c. Balance sheets.
 - d. Projected cash flow statement on a monthly basis for a minimum of the first two years of the lease, sublease, or assignment.
 - e. Federal and state tax returns for the two years immediately preceding the application date.

22.04A.083 Application for the lease of a lot. A. An applicant for the lease of a lot shall submit an application to the office by the application deadline. Any application submitted after the deadline shall be returned and not evaluated.

B. The office shall review applications submitted by the deadline and shall notify an applicant of any deficiencies in an application by certified mail. Failure by the applicant to resolve, to the director's reasonable satisfaction, any deficiencies within ten calendar days of receipt of the notice of deficiencies, or failure by an applicant to accept the certified mailing within ten calendar days, shall result in the application being deemed incomplete.

C. Within thirty calendar days of the expiration of the application deadline, the director shall forward the completed applications to the committee for evaluation.

22.04A.084 Evaluation and scoring of application for the lease of a lot. Members of the committee shall individually evaluate and score each application. The committee may request that an applicant make a presentation to the committee and be available to answer questions. Each member shall follow the following criteria when scoring the applications:

1. Agricultural property. Each applicant shall receive between zero and ten points depending on the size, number and suitability of agricultural properties being farmed by the applicant. Applicants who hold no financial interest in any agricultural property shall receive ten points.

2. Agricultural experience. Each applicant shall receive between zero and five points, with applicants with greater agricultural experience receiving more points.

3. Agricultural education. Each applicant shall receive between zero and five points, with applicants with greater agricultural education receiving more points.

4. Displacement. Each applicant shall receive between zero and ten points for hardship due to displacement.

5. Farm plan. Each applicant shall receive between zero and twenty points based on the merits of the applicant's farm plan.

6. Marketing plan. Each applicant shall receive between zero and twenty points based on the merits of the applicant's marketing plan.

7. Financial statements. Each applicant shall receive between zero and twenty points based on the merits of the applicant's financial statements.

22.04A.085 Applicant selection for lease of a lot. A. The committee shall determine each applicant's total score by adding

the scores assigned to each applicant by the individual committee members. The applicants with the highest total scores shall be recommended by the committee to the director to receive a lease.

B. In the event of a tie of points, an applicant shall be selected by the committee for recommendation as follows:

1. The director shall place each of the applicant names receiving identical scores in a separate sealed envelope.

2. The sealed envelopes shall be placed in a container that shall be brought to the next available committee meeting.

3. The chair shall designate a committee member to draw an envelope from the container.

4. The envelope shall be opened by the chair and the applicant selected shall be read into the public record.

C. The committee shall make a recommendation to the director on its selections. The committee shall provide all documents, written findings, conclusions and recommendations, and any proposed conditions or qualifications to the director.

D. The director shall review the recommended application as well as those documents, written findings, conclusions and recommendations, and any proposed conditions or qualifications provided by the committee.

E. The director shall deny, approve, or approve with conditions the recommended application within thirty calendar days after the recommendation by the committee is made.

F. The director shall notify the applicant of the director's decision by certified mail within fourteen calendar days after making a decision on the application.

G. If more than one lot becomes available at the same time, the applicant with the highest score pursuant to section 22.04A.084 shall select a lot first, followed by the next highest scorer, and so on. In the event of a tie, lots shall be selected in the order applicants were drawn pursuant to subsection B. Except as otherwise specified in this chapter, lot selection shall take place at a place, date, and time determined by the director. Applicants must be present in person for lot selection. An authorized agent may represent the applicant with prior approval by the director. An applicant shall waive the right to select a lot if the applicant or the applicant's authorized representative is not present when the drawing for lot selection begins. The director shall assign a lot to any absent applicants after the lot selection ends. The director may reserve lots during any lot selection procedure for matters

such as pending administrative appeals, litigation, or other matters beyond the County's control. The director shall assign a reserved lot to an applicant who prevails in an administrative appeal or legal proceeding.

H. Upon fulfillment of all prospective lessee's duties and completion of lot selection, if any, the director shall tender a lease for execution to prospective lessees by certified mail. In the event a prospective lessee fails to execute the lease within thirty calendar days after receipt thereof, the director's tender of the lease shall be deemed withdrawn.

I. If a prospective lessee fails to execute the lease within the time permitted, a new qualified applicant shall be selected in accordance with this section from those qualified applicants who received a score pursuant to section 22.04A.084, but did not receive a lot award. If there are no such qualified applicants, the office shall provide notice of lot availability and proceed with the application and evaluation process again in accordance with this chapter.

22.04A.086 Application for the sublease of a portion of a lot, the sublease for a portion of the term of a lease, or the assignment of a lease. A. An applicant for the sublease of a portion of a lot, the sublease for a portion of the term of a lease, or the assignment of a lease shall submit an application to the office. The office shall review applications submitted and notify the applicant of any deficiencies. The application shall not be forwarded to the committee for its evaluation until the application has been completed to the director's reasonable satisfaction.

B. The committee shall review the application and may request that the applicants appear before the committee to make a presentation and answer any of the committee's questions.

C. Upon completion of its review, the committee shall make a recommendation to the director to approve or deny the request.

22.04A.090 [Application.] A. The application to lease a lot shall be made on forms provided by the office.

B. The application for individuals shall include, but is not limited to, the following information:

1. The name and address of the applicant;
2. A detailed resume of the applicant's agricultural experience;

3. A financial statement of the applicant prepared by a certified public accountant or the applicant's federal and state tax returns for the two years immediately preceding the application date;

4. An original federal and state tax clearance dated within six months of the application date;

5. A detailed business plan for the proposed agricultural use of the lot including the type of product(s) to be raised, projected income statements, balance sheets, and projected cash flow statements on a monthly basis for a minimum of the first two years of the lease or a term determined by the coordinator, provided that such plan must include the utilization of not less than fifty percent of useable agricultural land within the first two years of the lease term and the remainder within the first five years of the lease term;

6. An identification of the source and anticipated use of capital to finance the proposed agricultural use of the lot including a letter of commitment for funding from a financial institution;

7. An indication of marketing areas; and

8. New farmer information pursuant to Section 22.04A.100.F.2, if applicable.

C. The application for a corporation, partnership, association or organization shall include, but is not limited to, the following information:

1. The name and address of the applicant;

2. A detailed resume of the stockholders', partners', or members' agricultural experience;

3. A financial statement of the applicant prepared by a certified public accountant or the applicant's federal and state tax returns for the two years immediately preceding the application date;

4. An original federal and state tax clearance dated within six months of the application date;

5. A detailed business plan for the proposed agricultural use of the lot including the type of product(s) to be raised, projected income statements, balance sheets, and projected cash flow statements on a monthly basis for a minimum of the first two years of the lease or a term determined by the coordinator, provided that such plan must include the utilization of not less than fifty percent of useable agricultural land within the first two years of the

lease term and the remainder within the first five years of the lease term;

6. An identification of the source and anticipated use of capital to finance the proposed agricultural use of the lot including a letter of commitment for funding from a financial institution;

7. An indication of marketing areas; and

8. For corporations, a copy of the articles of incorporation reflecting the date of filing, purpose of the corporation, and disclosure of all directors and officers.

22.04A.100 Application and evaluation procedure.

A. The applicant or the applicant's authorized representative shall attend a prerequisite workshop to obtain application information, including application procedures.

B. Each applicant is limited to applying for a lease of one lot at any one time, provided that the applicant's total acreage within the agricultural park shall not exceed seventy-five useable acres.

C. The applicant shall submit a complete application and other required information to the office. The office must receive the application by the deadline.

D. The coordinator shall notify the applicant of any deficiencies in the application by certified mail. The applicant shall resolve any application deficiencies and submit any requested information to the office within ten calendar days from the date of receipt of the notification.

E. The coordinator shall submit the application to the committee within forty-five calendar days after the coordinator deems the application complete.

F. The committee shall evaluate the application to determine if the applicant meets the minimum qualifications. Determination of qualifications shall be as of the date of application. Qualifying indices must also be factual through date of lease execution. To meet minimum qualifications, an applicant must satisfy paragraphs 1, 2 or 3 and paragraphs 4 and 5:

1. Bona fide farmer; or

2. New farmer. The applicant must have in liquid assets at least ten percent of the proposed development cost. A new farmer applicant must also include the following additional information in the application:

a. Present or past agricultural project;

b. Current financial statement;

c. Plan of development and utilization of the lot including the estimated cost of development; and

d. Statement of willingness, readiness, and ability to undertake agriculture on the lot on a full-time basis immediately or shortly after commencement of the lease; or

3. Displaced farmer. Circumstances under which a displaced farmer may qualify is loss of farm because of actual or documented and verified threat of:

a. Non-renewal of rental agreement;

b. Land rendered inadequate for economic operation because of loss attributable to condemnation, withdrawal, or natural disaster; or

c. Farm relocation necessitated by forces such as urban encroachment or change in land use zoning, provided that voluntary sale or surrender of farm shall disqualify applicant as a displaced farmer; and

4. The applicant shall not be delinquent in the payment of taxes or other obligations to the United States, the State of Hawaii or to any of its political subdivisions, including the County; and

5. Financial resources. The applicant must have proof of adequate financing as determined by the coordinator.

G. If an applicant meets the minimum qualifications, the committee shall evaluate the application by assigning points as follows:

1. Resident of Maui County for at least five years preceding the application date (for a corporation, partnership, association or organization, at least fifty-one percent of its stockholders, partners, or members must qualify): ten points.

2. Agricultural farming skills (for a corporation, partnership, association or organization, at least fifty-one percent of its stockholders, partners, or members must qualify).

a. Agricultural college, two years minimum: five points.

b. Farming for a minimum of two years: five points.

c. Farming for more than ten years: ten points.

3. Unemployed farmer who has no farm (for a corporation, partnership, association or organization, at least fifty-one percent of its stockholders, partners, or members must qualify): ten points.

4. An applicant with financial backing to start operations immediately: ten points.

5. Quality business plan, as determined by the coordinator: five points.

6. Documented and verified threat to the applicant's current farm by (for a corporation, partnership, association or organization, at least fifty-one percent of its stockholders, partners, or members must qualify):

a. Loss of lease or imminent loss of lease: twenty points.

b. Cost of water reducing income: five points.

c. Regulations making farming too costly to continue: five points.

H. The applicant(s) with the highest score(s) shall be recommended by the committee to the coordinator to receive a lease.

I. In the event of a tie of points, the applicant shall be selected by the committee for recommendation as follows:

1. The coordinator shall place each of the applicant names receiving identical scores in a separate sealed envelope.

2. The sealed envelopes will be placed into a selection container which shall be brought to the next available committee meeting.

3. The chair shall select a committee member to draw an envelope from the selection container.

4. The envelope shall be opened by the chair and the applicant selected shall be read into the public record.

J. The committee shall make a recommendation to the coordinator on the application within thirty calendar days of the application first appearing on the committee's agenda. The committee shall provide all documents, written findings, conclusions and recommendations, and any proposed conditions or qualifications to the coordinator.

K. The coordinator shall review the recommended application as well as those documents, written findings, conclusions and recommendations, and any proposed conditions or qualifications provided by the committee.

L. The coordinator shall deny, approve, or approve with conditions the recommended application within thirty calendar days after the recommendation by the committee is made.

M. The coordinator shall notify the applicant of the coordinator's decision by certified mail within fourteen calendar days after making a decision on the application.

N. Lot selection. If more than one lot becomes available at the same time, the applicant with the highest score pursuant to subsection G of this section shall select a lot first, followed by the next highest scorer, and so on. In the event of a tie, lots shall be selected in the order applicants were drawn pursuant to subsection I of this section. Except as otherwise specified in this chapter, lot selection shall take place at a place, date, and time determined by the coordinator. Applicants must be present in person for lot selection. An authorized agent may represent the applicant with prior approval by the coordinator. An applicant shall waive the right to select a lot if the applicant or the applicant's authorized representative is not present when the drawing for lot selection begins. The coordinator shall assign a lot to any absent applicant(s) after the lot selection ends. The coordinator may reserve lots during any lot selection procedure for matters such as pending administrative appeals, litigation, or other matters beyond the County's control. The coordinator shall assign a reserved lot to an applicant who prevails in an administrative appeal or legal proceeding.

O. Upon fulfillment of all prospective lessee's duties and completion of lot selection, if any, the coordinator shall tender a lease for execution to prospective lessee(s) by certified mail. In the event a prospective lessee fails to execute the lease within thirty calendar days after receipt thereof, the coordinator shall deem such failure to terminate any and all rights which such defaulting prospective lessee may have been entitled to.

P. If a prospective lessee fails to execute the lease within the time permitted, a new qualified applicant shall be selected in accordance with this section from those qualified applicants who received a score pursuant to subsection G of this section but did not receive a lot award. If there are no such qualified applicants, the office shall provide notice of lot availability and go through the application and evaluation process again in accordance with this chapter.

22.04A.110] Right to appeal. A. Any applicant aggrieved by a decision or determination of the [coordinator,] director may

appeal the [coordinator's] director's decision or determination to the managing director within ten calendar days after notice of such decision or determination.

B. The appeal shall clearly state with particularity the [coordinator's] director's decision or determination being appealed [from] and the applicant's position on the matter. The applicant may request, at the same time the appeal is filed, a hearing on the matter. Any such hearing shall be held within [ten] thirty calendar days after filing the appeal and request for hearing. If no hearing is requested, the managing director shall render a decision within [fourteen] thirty calendar days after receipt of the appeal [is filed]. If there is a hearing, the managing director shall render a decision within [fourteen] thirty calendar days after the hearing is concluded. The managing director shall examine the application, written findings, conclusions and recommendations, and any other relevant information before rendering a decision. The managing director may reverse, affirm or modify, wholly or partly, the decision of the [coordinator.] director. If the managing director does not render a decision within the applicable [fourteen] thirty calendar day limit specified above, the decision of the [coordinator] director shall be deemed reversed or modified in accordance with the applicant's stated appeal position. The decision of the managing director shall be deemed a final decision.

[ARTICLE] Article IV. [CONDITIONS AND RESTRICTIONS] Conditions and Restrictions

[22.04A.120]22.04A.100 Conditions and restrictions in leases. In addition to the standard County lease provisions, each agricultural park lease shall contain the following:

- A. A lease term of fifty years.
- B. The lease rental rate to be paid quarterly by the first of January, April, July, and October, provided that the lessee may pre-pay rent without penalty.
- C. The general agricultural use or uses to which the land is to be employed.
- D. A provision that the lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State [of Hawaii], or any of its political subdivisions, including the County.
- E. A provision that the lessee shall pay or cause to be paid, when due, the amount of all taxes, rate assessments, and other outgoings of every description as to which said demised

premises or any part thereof, or any improvements thereon, or the County or lessee in respect thereof, may be assessed or become liable by authority of law during the term of the lease; provided, however, that with respect to any government assessment [which] that may be payable in installments, lessee shall be required to pay only such installments, together with interest, as shall become due and payable during the term.

F. A provision that the lessee may sublease, with [coordinator's] director's approval, one time only for a period not to exceed five consecutive years, the whole or any portion of the demised premises to a sublessee [who meets the minimum qualifications pursuant to Section 22.04A.100.F to lease property in the agricultural park], provided that the sublease agreement shall be year to year and approved by the [coordinator,] director, and provided further that the sublessee cannot [lease or sublease more than seventy-five usable acres within] hold any financial interest in five or more lots; or sixty or more acres; in the agricultural park[.] at any time.

G. A provision that a lessee may assign the lease for the remainder of the lease term to [any individual, corporation, partnership, association or organization, provided that such assignee meets the minimum qualifications pursuant to Section 22.04A.100.F to lease property in the agricultural park, and provided further that] a person, provided that such assignee cannot [lease or sublease more than seventy-five useable acres within] hold any financial interest in five or more lots or sixty or more acres in the agricultural park[;] at any time.

H. A provision that the lessee may mortgage or create a security interest in the demised premises or any portion thereof with [coordinator's] the director's approval, provided that in the case of default the leasehold interest may only be foreclosed via judicial action pursuant to chapter 667, [HRS,] Hawaii Revised Statutes, [and the purchaser of the leasehold interest at any foreclosure and sale meets the minimum qualifications pursuant to Section 22.04A.100.F to lease property in the agricultural park, and provided further that in the event of default any financial lending institution mortgage holder may purchase the leasehold interest at any foreclosure and sale to temporarily hold title to such leasehold interest for a reasonable time so long as such mortgage holder uses its best efforts to convey such leasehold interest to a person or entity who meets the minimum qualifications pursuant to Section 22.04A.100.F, of this code to lease property in the agricultural park,] and provided further that

such leasehold interest shall be transferred via assignment of lease for the remainder of the lease term only.

I. A provision that the lessee may sell capital improvements at anytime with [coordinator] director approval during the lease term and within a ninety day period after expiration or termination of the lease.

J. The lessee must utilize the land for agricultural and related purposes in accordance with the following schedule:

1. Not less than fifty percent of useable agricultural land within the first two years of the lease term and the remainder within the first five years[; and].

2. The above utilization schedules shall be made a part of the plan of development and utilization [which] that must be submitted to the County.

K. A provision that the lessee shall keep the demised premises and improvements thereon in a strictly clean, sanitary, and orderly condition.

L. A provision that the lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the demised premises or any part thereof.

M. A provision that the lessee shall not engage in any activity [which] that may result in soil erosion, except in accordance with [Chapter] chapter 20.08[,] of this code.

N. A provision that the lessee shall utilize best management practices [as] at all times.

O. A provision that the lessee shall comply with all requirements of County, state, and federal authorities, and observe all County rules, regulations, and ordinances and state and federal statutes pertaining to the premises, now in force or [which] that may hereinafter be in force.

P. A provision that the lessee shall permit the County and its agents to enter the demised premises and examine the state of and condition thereof at all reasonable times during the term of the lease.

Q. A provision that, to the extent permitted by law, the lessee shall indemnify, release, defend, and hold the County harmless from and against any claim or demand for loss, liability, or damage [which] that arises from the lessee's action, omission, or use of the property and that such provision shall remain valid and binding against lessee notwithstanding expiration or termination of the lease.

R. A provision that the lessee fully understands that any water made available to the demised premises shall be for agricultural purposes only and not for human consumption, and provided further that the lessee shall post signs adequate to provide notice to anyone entering upon the lot that the water is not for human consumption.

S. A provision that failure to comply with all provisions of the lease shall be cause for termination of the lease.

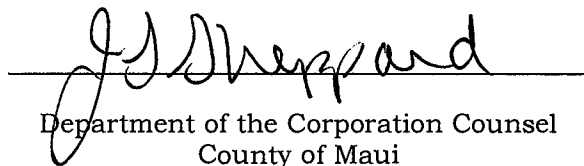
[ARTICLE] Article V. [SEVERABILITY CLAUSE] Severability Clause

[22.04A.130] 22.04A.110 Severability. Should any section, clause, or phrase of [these regulations] this chapter be for any reason held invalid by a court of competent jurisdiction, such [decision(s)] decision shall not affect the validity of the remaining portion of these regulations.”

SECTION 2. 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 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



Department of the Corporation Counsel
County of Maui
2014-3080
EAR-49 2016-05-25 Chapter 22.04A Kula
Agricultural Park