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NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, August 3, 2022, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihue, on the following:

Bill No. 2875

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTIONS 5A-6.4, 5A-8.1(g), 5A-9.1, AND 5A-11.23(a), KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX

This Bill proposes to amend Chapter 5A, Kaua'i County Code 1987, as amended (KCC), by repealing the existing Agricultural Dedication program at KCC Section 5A-9.1 and replacing it with an updated Agricultural Dedication program. Corresponding and other technical amendments will be made to Sections 5A-6.4, 5A-8.1(g), and 5A-11.23(a). The Bill is organized as follows: SECTION 1 provides Findings and Purpose details. SECTION 2 repeals the existing Section 5A-9.1 in its entirety. SECTION 3 provides the new Section 5A-9.1. SECTIONS 4, 5, and 6 include necessary cross-references, non-substantive edits, and removal of reference to Hawai'i Revised Statutes (HRS) Chapter 186 (Tree Farms) to clarify that the County no longer provides a separate tree farm exemption (pursuant to Ordinance No. 1113, effective July 1, 2022). SECTIONS 7 and 8 provide severability and codification clauses. SECTION 9 explains that existing dedications shall remain valid until the end of their originally-approved dedication periods unless canceled, but in all other respects existing dedications will be subject to the Ordinance adopted by Bill No. 2875. Details of the proposed new program are set forth in Bill No. 2875, including: removal of the requirement that farmers formally record their dedication with the Bureau of Conveyances; removal of the rollback taxes, penalties, and interest methodology; five-year dedications rather than ten-year and twenty-year dedications; and assessment of dedicated land at five percent (5%) of its fair market value. Additionally, land within the Urban State Land Use District will not be eligible for Agricultural Dedication, unless the County zoning is Agriculture or Open; parcels of less than five (5) acres will no longer require five (5) years of prior farming, but the land must be vacant and 100% in agricultural use; an owner will file petitions for dedication on behalf of any tenant(s); and certain details such as the applicable number of animals per acre will be provided in the KCC rather than the corresponding administrative rules.

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of this Bill are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend this Bill at their subsequent meetings. Meeting notices are posted at least six (6) days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2875 was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on July 6, 2022, by the following vote:

AYES:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
NOES:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
July 7, 2022

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication – The Garden Island – July 14, 2022)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTIONS 5A-6.4,
5A-8.1(g), 5A-9.1, AND 5A-11.23(a), KAUAI COUNTY CODE 1987,
AS AMENDED, RELATING TO REAL PROPERTY TAX**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Council of the County of Kauai finds that the County Agricultural Dedication program should incentivize farming and protect agricultural land and businesses. The prior Agricultural Dedication program is administratively burdensome for both applicants and the County, is overly restrictive for small-scale farmers, contains confusing and outdated assessment valuation methods, and imposes punitive rollback taxes for noncompliance. Rather than incentivize farming, the existing Agricultural Dedication program deters small-scale farmers, incentivizes some recipients with long-term dedications to abuse the law in order to avoid rollback taxes, and serves as a tax haven for owners of high-value properties.

This Ordinance repeals the outdated Agricultural Dedication program and enacts a comprehensive revision that will provide increased benefits to farmers and implementation improvements for County personnel. The prior Agricultural Dedication program, in an effort to deter wrongdoers from falsely obtaining the substantial monetary savings of this tax relief, was strict and harsh, imposing on farmers conditions such as: the requirement that farmers formally record their dedication with the Bureau of Conveyances within thirty (30) days; penalties for willful noncompliance and even for voluntary cessation of farming resulting in a lien against the property for payment of back taxes reverting to the beginning of the dedication period along with penalties and interest; the requirement that the farmer maintain the agricultural use for the entire ten- or twenty-year period, even if they wanted or needed to sell the property; and allowance of dedications on parcels of less than five (5) acres, but only if the farmer had evidence showing continuous cultivation for the prior five (5) years before applying for the dedication.

Under the new Agricultural Dedication program, farmers will no longer be subject to any of these onerous requirements. All dedications will be for a period of five (5) years and if a dedication needs to be canceled by the farmer or the County, the farmer will not be penalized and may reapply for a new dedication whenever he or she is eligible and interested. Additionally, landowners will file dedication petitions on behalf of their tenants and the new program will clarify that for properties with multiple owners it is not required that all owners join in filing the petition, which has proven burdensome and hindering for properties with absentee landowners or chain of title issues. The updated definition of "owner" allows multiple co-owners of a parcel to join the petition ("the person or persons who file a petition pursuant to this Article")

and expressly authorizes filing by just one (1) owner or co-owner (“at least one (1) of the fee simple owners of the real property”). To ensure that the Agricultural Dedication program is incentivizing farming on land designated for agricultural use, farms within the Urban State Land Use District are not eligible for Agricultural Dedication, unless the County zoning is Agriculture or Open. According to the State Land Use Commission, the Urban District is generally for “city-like” use, and incentivizing housing development in the Residentially-zoned areas of the Urban District is a core tenet of the Kauaʻi General Plan (2018).

To create safeguards and ensure compliance with the law, the existing right-of-entry agreement farmers must grant to the County for inspections has been codified and the five-year dedication period ensures that each parcel of dedicated land will be periodically reviewed. The program’s assessment valuation method has also been changed, as many years have passed without update to the categories known as “soil rates.” In the new program: “Dedicated land shall be assessed at five percent (5%) of its fair market value.” This method will result in increased savings for many farmers compared to the prior program, while ensuring that very high value properties are paying proportionately higher property taxes. If the new program were not enacted and the prior program remained in place, Agricultural Dedication taxes owed would need to be increased because the “soil rates” have not been updated in many years and are therefore artificially low for many properties. These changes are all broadly in line with the Kauaʻi General Plan, which contains a policy action to: “Revise the agricultural property tax regime, including but not limited to the Agricultural Dedication program, to increase incentives to lease land for productive farms.”

As explained in this SECTION 1, the purpose of this Ordinance is to update the County’s Agricultural Dedication program in Section 5A-9.1, Kauaʻi County Code 1987, as amended, and make corresponding and other technical amendments to Sections 5A-6.4, 5A-8.1(g), and 5A-11.23(a), as follows:

- SECTION 2 repeals the existing Section 5A-9.1 in its entirety.
- SECTION 3 provides the new Section 5A-9.1.
- SECTIONS 4, 5, and 6 include necessary cross-references, non-substantive edits, and removal of reference to Hawaiʻi Revised Statutes (HRS) Chapter 186 (Tree Farms) to clarify that the County no longer provides a separate tree farm exemption.
- SECTIONS 7 and 8 provide the usual severability and codification clauses.
- SECTION 9 explains that existing dedications shall remain valid until the end of their originally-approved dedication periods unless canceled, but in all other respects existing dedications will be subject to this Ordinance.

SECTION 2. Chapter 5A, Article 9, Section 5A-9.1, Kaua'i County Code 1987, as amended, is repealed and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

"[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.

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

(l) 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) 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.

(n) Owners of dedicated lands who were adversely affected by the flood events of April 14, 2018 and are unable to keep their land in agricultural use due to loss, may apply for a one-time extension to maintain their agricultural dedication as approved and shall be exempt from fair market value assessment, rollback taxes or penalties. The extension for parcels up to and including fifty (50) acres in size shall expire on July 1, 2020. For parcels over fifty (50) acres in size the extension shall expire on July 1, 2021. In order to qualify for the extension, the owner shall complete an application and provide documentation of assessed flood damage to the Department of Finance, Real Property Tax, Assessment Division, on or before September 30, 2018. Should the owner fail to resume agricultural operations within the specified time period, the owner shall be permitted to cancel the agricultural dedication pursuant to Section 5A-9.1(i). Property owners that had received notice that their properties were not in good-standing with the rules of the Agricultural Dedication program prior to the flooding on April 14, 2018, will be afforded the same extended timelines to reestablish their crops; however failure to reestablish agricultural use(s) within the extended period allowed and for the entire areas that are dedicated, will result in rollback taxes and penalties pursuant to Section 5A-9.1(h).]"

SECTION 3. Chapter 5A, Article 9, Section 5A-9.1, Kaua'i County Code 1987, as amended, is hereby amended to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

"Sec. 5A-9.1 Dedication of Land for Agricultural Use.

(a) Definitions. As used in this Section:

"Agricultural products" means products derived from animals or vegetation, including floricultural, horticultural, viticultural, aquacultural, forestry, tree farm, nut, coffee, dairy, poultry, bee, livestock or animals raised by grazing and pasturing (except horses), and any other farm, agronomic, or plantation products, excluding products (e.g., hay) derived from guinea grass, hale koa, panicum, pangola, kikuyu, napier grass, and similar forage crops.

"Agricultural use" means the active use of the land for the production of agricultural products with the primary purpose of obtaining a monetary profit from income received from the sales of agricultural products. Agricultural use excludes selling, refining, or distributing agricultural products when the vegetation from which such products are derived was not grown on the parcel and when the animals from which such products are derived were not raised on the parcel. Agricultural use includes meat packing or processing operations occurring on the same parcel the animals were raised on, provided that the packing or processing structure will be taxed based on its fair market value. For pasturing of goats and sheep, the maximum amount of acreage that may be dedicated per every five (5) goats or sheep is one (1) acre and a minimum of five (5) goats or sheep is required for every one (1) acre of dedicated land. For pasturing of cows, the maximum amount of acreage that may be dedicated per one (1) cow is four (4) acres, provided that for land within County of Kaua'i Tax Map Zone 1, the maximum amount of acreage that may be dedicated per one (1) cow is five (5) acres.

"Commercial structure" means a structure used for commercial purposes not pertaining to the dedicated use.

"Dedicated land" means a parcel or a portion thereof that is in dedicated use pursuant to a petition approved by the Director. To qualify as dedicated land, a parcel: (a) may not be designated as Urban District by the State Land Use Commission, unless pursuant to the County Comprehensive Zoning Ordinance the Use District of the parcel would allow the specific dedicated use; and (b) shall be five (5) acres or greater, provided that a parcel may be less than five (5) acres if it is unimproved and if one hundred percent (100%) of the parcel is dedicated at the time of petition and throughout the dedication period, and provided further that an improvement directly ancillary to the specific dedicated use is permissible.

“Dedicated use” means a petitioned agricultural use that was approved by the Director.

“Dwelling” means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating and sanitation; dwelling does not include farm worker housing.

“Farm worker housing” means the use of a building or portion thereof designed and used exclusively for the housing of farm workers who actively and currently farm on the land upon which the housing is situated. Farm worker housing may also be used to house the immediate family members of the respective farm worker.

“Land use change” means, for dedicated land: (a) any reclassification of the parcel by the State Land Use Commission, (b) a change in the County zoning district, (c) a subdivision or creation of a condominium property regime (CPR) of the parcel initiated or authorized by any fee simple owner of the real property, or (d) the addition of a dwelling or commercial structure to an unimproved dedicated parcel of less than five (5) acres.

“Owner” means the person or persons who file a petition pursuant to this Article and is at least one (1) of the fee simple owners of the real property, provided that the owner may file a petition on behalf of a tenant.

“Petition” means a petition to dedicate a parcel or a portion thereof for a specific agricultural use.

“Petitioned use” means the specific agricultural use proposed by a petition.

“Residential homesite area” means the portion of a parcel used for residential purposes, including land upon which a dwelling is located and land designated to be the yard space. A residential homesite area may not be dedicated for agricultural use.

“Substantial and continuous dedicated use” means no less than seventy-five percent (75%) of the area of the dedicated land is in active, continuous, and revenue-generating dedicated use at the time of petition and throughout the five-year dedication period, provided that for dedicated parcels of less than five (5) acres one hundred percent (100%) of the dedicated land shall be in active, continuous, and revenue-generating dedicated use at the time of petition and throughout the five-year dedication period. Substantial and continuous dedicated use includes necessary and customary growth or falling periods.

(b) Petition and Agricultural Plan. An owner may petition to dedicate a parcel or a portion thereof for a specific agricultural use. Petitions shall be filed with the Director and supported by an accompanying agricultural plan. The Director shall prescribe the form of the petition and agricultural plan. The agricultural plan shall include the following, provided that evidence that an active certification for the same petitioned use and proposed dedicated area has been granted by the United States Department of Agriculture (USDA) Good Agricultural Practices (GAP) individual or GroupGAP Audit Verification Program may serve to fulfill the requirements of (b)(3) and (b)(6):

(1) The tax map key number.

(2) A description and map showing the total acreage of the parcel, the acreage and location of each specific petitioned use, and the acreage and location of the residential homesite area, if any.

(3) A marketing or management plan and a timetable for implementation.

(4) A declaration that the land shall be used for the petitioned use stated in the petition for the duration of the dedication period.

(5) A declaration that the owner grants the Director a right-of-entry to the parcel to physically inspect the land for evidence of the:

(A) Petitioned use, upon petition filing and prior to approval or disapproval of a dedication; and

(B) Dedicated use, upon approval of a dedication and for the duration of the dedication period.

(6) Evidence to verify that the land is in agricultural use, provided that if any of the following is not available the owner shall submit a written explanation:

(A) A valid, current, State of Hawai'i general excise tax license issued for agricultural purposes.

(B) Documentation showing that the land receives County Department of Water agricultural water rates.

(C) A copy of the Schedule F form filed with the U.S. Internal Revenue Service in the immediately preceding year.

(D) A copy of any claim for exemption from federal income taxation filed under U.S. Internal Revenue Code Section 6427(c).

(E) Sales receipts generated from the activities listed under the definition of the term "agricultural use."

(c) Petition Process. Petitions shall be filed by July 1 of any calendar year. The Director's review shall proceed as follows:

(1) Following a petition filing, the Director shall consider the following factors to determine whether the land is reasonably well suited for the petitioned use: land size, use of surrounding similar land, economic feasibility, State and County land use restrictions, and conformity with the County General Plan and applicable Community Plan.

(2) The Director shall approve the portion of the petition that has met all requirements and sufficiently demonstrated potential success for the specific agricultural use.

(3) The notice of assessment shall serve as notice of full or partial approval or disapproval of the petition. If approved, the reduced assessment pursuant to Section 5A-9.1(d) shall be reflected on the real property tax bill due on August 20 of the following calendar year.

(d) Dedication Period and Assessment. All approved petitions shall be for a dedication period of five (5) years. Dedicated land shall be assessed at five percent (5%) of its fair market value. For government-owned land, if the Director receives a lease, license, or permit agreement restricted to a specific agricultural use, the applicable land shall be assessed at five percent (5%) of its fair market value during the term of the tenancy, provided that this assessment shall cease if the lessee, licensee, or permittee experiences any of the occurrences set forth in Section 5A-9.1(f)(1)-(6).

(e) Right-of-Entry and Evidence of Agricultural Use on Request. In addition to the right-of-entry granted by the owner at the time of petition submission pursuant to Section 5A-9.1(b), at any time during the dedication period the Director may require an owner to submit evidence to verify that the land is in substantial and continuous dedicated use, including but not limited to the materials listed in Section 5A-9.1(b)(6).

(f) Dedication Cancellation. Whenever a dedication is canceled, the Director shall mail to the owner a notice of cancellation that includes the reason for the cancellation and the effective date of the cancellation, which shall be on the following September 30. Notwithstanding any provision to the contrary in this Section 5A-9.1, the Director shall cancel a dedication if any of the following occur:

(1) The Director finds that the dedicated land is not in substantial and continuous dedicated use.

(2) The death of the owner.

(3) The owner requests that the dedication be canceled.

(4) 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 cancelation shall be effective only as to the portion taken.

(5) Any conveyance or change in ownership subject to state conveyance tax pursuant to Hawai'i Revised Statutes Chapter 247 during the dedication period.

(6) The property undergoes a land use change.

(g) Appeal. An owner may appeal any petition that has been fully or partially disapproved, or any dedication cancelation, to the Board of Review as provided in Article 12. A petition that has been fully or partially disapproved as stated in the annual notice of assessment or the corrected notice of assessment may be appealed pursuant to Section 5A-12.1. A dedication cancelation reflected in the annual notice of assessment or the corrected notice of assessment may be appealed pursuant to Section 5A-12.1.

(h) General Provisions. The following apply to this Section:

(1) Provisions of this Section and any corresponding rules adopted by the Director pursuant to HRS Chapter 91 are subject to change and may be disallowed or modified.

(2) When submitting materials to the Director, an owner shall clearly identify any confidential commercial or financial information, including income statements or tax statements, that the owner believes are not subject to disclosure as a government record.

SECTION 4. Chapter 5A, Section 5A-8.1(g) (Valuation; Considerations in Fixing), Kaua'i County Code 1987, as amended, is amended in part to provide consistency with other amendments made by this Ordinance and make other "housekeeping" amendments, as follows:

"(g) Land Leased or Held Under a Revocable Permit From the State of Hawai'i. Any person who either leases land or holds land under a revocable permit from the State of Hawai'i may have his or her land valued according to this Subsection if the requirements of this Subsection have been satisfied.

(1) The lessee or permit holder shall file a completed application with the Director of Finance by July [1st] 1 of any year. The Director shall prescribe the form of the application. As part of the application, the lessee or permit holder shall provide:

(A) A legible plot plan or site plan that specifically describes the land area which is in agricultural use;

(B) A legible copy of the executed lease or revocable permit which includes information concerning the term or period of the lease or permit, and the consideration being paid to the State; and

(C) A description of the agricultural use that is occurring on the leased or permitted land.

(2) After receiving the application, the Director shall prepare [a] findings of fact. If the Director finds: (A) that the applicant has satisfied the requirements of Paragraph (1) of this Subsection[;], and (B) that agricultural use is occurring on the land [which] that is the subject of the application, the Director shall approve the application. If the Director's [finding is] findings are adverse to the applicant, the Director shall disapprove the application.

(3) [Lands] Land described in applications [which] that have been approved by the Director shall be [given the same agricultural use values as lands] assessed at the same percentage of fair market value as land dedicated [for ten (10) years] under Sec. 5A-9.1.

(4) Reporting Requirements. Persons whose [lands are] land is being valued under this Subsection shall immediately file a report in a form prescribed by the Director any time they wish to discontinue or have discontinued the agricultural use on any portion of the subject land.

(A) Further, the Director may at any time during the term or period of the lease or revocable permit require such persons to submit 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 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.] to verify that the land is in substantial and continuous dedicated use, including but not limited to the following, provided that if any of the following are not available the owner shall submit a written explanation:

(1) A valid, current, State of Hawai'i general excise tax license issued for agricultural purposes.

(2) Documentation showing that the land receives County Department of Water agricultural water rates.

(3) A copy of the Schedule F form filed with the U.S. Internal Revenue Service in the immediately preceding year.

(4) A copy of any claim for exemption from federal income taxation filed under U.S. Internal Revenue Code Section 6427(c).

(5) Sales receipts generated from the activities listed under the definition of the term "agricultural use."

(B) The Director may also, by administrative rule, require lessees or permit holders to submit such other additional information and documents as the Director deems necessary to verify that the subject land is in agricultural use.

(C) When submitting materials to the Director, persons shall clearly identify any confidential commercial or financial information, including income statements or tax statements, that the person believes are not subject to disclosure as a government record.

(5) As used in this Subsection, the term "agricultural use" shall have the meaning ascribed to it in Sec. 5A-9.1."

SECTION 5. Chapter 5A, Section 5A-6.4 (Real Property Tax Rate Classifications), Kaua'i County Code 1987, as amended, is amended to provide consistency with other amendments made by this Ordinance and make other "housekeeping" amendments, as follows:

"(a) For purposes of tax rates, real property shall be classified into one (1) of the following general classes according to the property's actual use unless otherwise provided in this Chapter:

- (1) Residential.
- (2) Vacation Rental.
- (3) Commercial.
- (4) Industrial.
- (5) Agricultural.
- (6) Conservation.
- (7) Hotel and Resort.
- (8) Homestead.

- (9) Residential Investor.
- (10) Commercialized Home Use.

Vacant property shall be classified as zoned until actual use is established. [For the tax year 2014, any owner shall be allowed to submit a new "Use Survey Form" to the Department of Finance, Real Property Tax Assessment Division by December 31, 2014. Should the Director determine that a property was designated an incorrect tax rate classification for tax year 2014, a tax credit of the difference shall be applied to the owner's 2015 tax year bill and all penalties and interest for delinquent payment shall be waived.]

(b) When property is divided into condominium units, each unit shall be:
(1) classified [upon consideration of] based on its actual use into one (1) of the general classes in the same manner as other property, and (2) deemed a parcel and assessed separately.

(c) Parcels [which] that are used for no other purpose than as the owner's principal residence shall be classified as ["homestead"] Homestead provided that the owner has applied for and has been granted a home exemption according to Sec. 5A-11.4. The [homestead] Homestead class shall also include parcels used as the owner's principal residence [which] that are being assessed according to their agricultural use as provided in Sec. 5A-9.1; provided that the owner has been granted a [home exemption and that] Home Exemption and no portion of the parcel be used for a purpose other than the owner's principal residence and agriculture. [The agricultural use shall be limited to the cultivation of crops, pasturing of animals, and cultivation of aquaculture products, and uses which directly support the agricultural activity such as windbreaks, access roads, irrigation ditches and sheltering of farm machinery. Uses which are primarily commercial or industrial in nature, such as importing, selling, refining or distributing agricultural products, shall not qualify for the homestead class. The residentially-used portions of agricultural land shall be assessed according to their value in residential use.] Dedicated land, as defined in Section 5A-9.1, on which refining or industrial use occurs shall not qualify for the Homestead class. The [homestead] Homestead class shall also include parcels used as day care centers by licensed day care providers; provided that the owner has been granted a [home exemption] Home Exemption or is renting a Long-Term Affordable Rental to a tenant in accordance with Section 5A-11A.1, no portion of the parcel is used for any other commercial activity, and that owner has provided a current copy of their day care provider license or their tenant's day care provider license to the Director on or before September [30th] 30 prior to the applicable tax year. The [homestead] Homestead class shall also include parcels that have applied for and have been deemed a [long term affordable rental] Long-Term Affordable Rental pursuant to Sec. 5A-11A.1. ["Homestead" shall mean properties which are used exclusively as the owner's principal residence, except as otherwise provided in this Section. Uses which shall not qualify as "homestead" include, but are not limited to, the following: (1) real property which is used for commercial, income producing

purposes, except for the agricultural, licensed day care, and long term affordable rental uses provided above; and (2) real property which is used for residential rental purposes, whether for long term or short term, except as provided above and otherwise in this Chapter.]

(d) For the purposes of this Article, the Residential Investor tax rate classification [for Residential Investor] shall be applied to properties that do not qualify for the [home exemption,] Home Exemption, are improved with a dwelling unit(s), [and] are not vacant land, and have an assessed value of one million three hundred thousand dollars (\$1,300,000.00) or more.

(e) If a property has multiple actual uses, it shall be classified as the use with the highest tax rate, unless it satisfies the criteria for classification as ["commercialized home use"] Commercialized Home Use set forth in subsection (f).

(f) Parcels [which] that are [utilized] used for multiple purposes, one of which is use as the taxpayer's principal residence as of the date of assessment, shall be classified as ["commercialized home use"] Commercialized Home Use provided that the taxpayer has received a [home use exemption] Home Exemption on the property pursuant to Sec. 5A-11.4.

(g) The owner may appeal the property's tax rate classification as in the case of an appeal from an assessment."

SECTION 6. Chapter 5A, Section 5A-11.23(a) (Other Exemptions), Kaua'i County Code 1987, as amended, is amended in part, as follows:

"(a) Exemptions from real property taxes as set forth in Chapter 53, Chapter 183, [Chapter 186,] and Chapter 234, Hawai'i Revised Statutes, and in Section 208 of the Hawaiian Homes Commission Act, 1920, and which were enacted prior to November 7, 1978, shall remain in effect and be recognized by the County in its administration of the real property tax system; provided, that real property leased under homestead and not general leases pursuant to the authority granted the Department of Hawaiian Home Lands by Section 207 of the Hawaiian Homes Commission Act, 1920, shall be exempt from real property taxes, the seven (7) year limitation on the exemption afforded by Section 208 of the Hawaiian Homes Commission Act, 1920, notwithstanding. Any exemption from real property taxation granted by [H.R.S.] HRS Chapter 239 shall be of no force and effect."

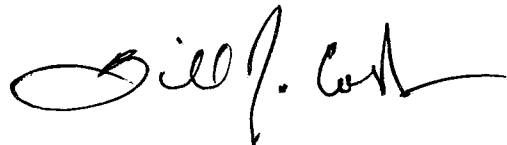
SECTION 7. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 8. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. All of SECTION 3 is new. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 9. Notwithstanding any law, rule, or provision to the contrary, dedications approved prior to the effective date of this Ordinance shall be subject to this Ordinance and any rules adopted pursuant to this Ordinance, with the sole exception being that the time period of these dedications shall remain valid until the end of their originally-approved dedication period unless canceled pursuant to the new Section 5A-9.1(f) effectuated by this Ordinance. The "Administrative Rules of the Director of Finance Relating to Dedication of Lands to Agricultural Use Under Section 5A-9.1 of the Kaua'i County Code 1987" (adopted on April 7, 1993) remain effective until repealed, provided that if any rule conflicts with this Ordinance, this Ordinance shall control.

SECTION 10. This Ordinance shall take effect upon its approval.

Introduced by:



BILL DECOSTA



LUKE A. EVSLIN

DATE OF INTRODUCTION:

July 6, 2022

Līhu'e, Kaua'i, Hawai'i

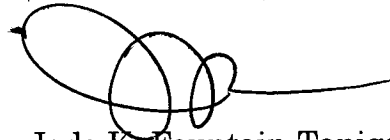
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2875, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on July 6, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
July 7, 2022



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i