

**DEPARTMENT OF FINANCE
COUNTY OF KAUAI
REAL PROPERTY TAX DIVISION**

AGRICULTURAL DEDICATION PROGRAM RULES

**Administrative Rules of the Director of Finance
Relating to Dedication of Lands to Agricultural Use
under Section 5A-9.1 of the Kauai County Code 1987**

SRP-2-1 Purpose. These rules implement the provisions of Sec. 5A-9.1 of the Kauai County Code 1987, as amended relating to dedication of lands to agricultural use. These rules are further intended to ensure that the provisions of K.C.C. Sec. 5A-9.1 are applied in a uniform and equitable manner.

SRP-2-2 Definitions. As used in these rules:

"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 livestock, poultry, or honeybees, 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, and other uses relating to horses shall be governed by SRP-2-3(a)(1);
- (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 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 and loss from farming, filed copies of federal fuel tax exemptions claims made pursuant to Sec. 6427(c) of the U.S. Internal Revenue Code, sales receipts generated from the listed activities, and a valid, current, State general excise tax license, and evidence that the land is not subject to covenants, conditions and restrictions which prohibit or limit agricultural activities. The director may, at his discretion, consider other documentary evidence indicating that an owner intends to obtain a monetary profit from the listed activities.

Physical evidence such as grazing livestock, signs of recent grazing, 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 clearly and evidently occurring on the land, shall also be used as factors to determine whether the land is being used for any of the listed activities.

No one factor shall necessarily, in and of itself, constitute proof that the owner is farming for profit- the director may consider all forms of evidence, including physical evidence of agricultural activity on the dedicated parcel, in determining whether the land is in agricultural use pursuant to K.C.C. Sec. 5A-9.1. As such, the director may consider the totality of the circumstances in determining whether the land is in agricultural use. Documentary evidence which directly relates to agricultural activity on the dedicated parcel (for example, evidence that the dedicated parcel itself enjoys agricultural water rates) shall be considered the most relevant in determining whether the land is in agricultural use pursuant to K.C.C. Sec. 5A-9.1.

The term "agricultural use" shall not mean uses primarily as yard space, setback areas, landscaped open areas associated with residential dwellings, or the raising of livestock or flowers, vegetables, fruit or ornamental trees primarily for home use.

"County" means County of Kauai.

"Crop" includes the actual production of specific agricultural or farm crops such as sugar cane, pineapple, papaya, eggplant, beans, pineapple, truck crops, grain or alfalfa, orchard crops, flowers, nursery or ornamental crops or the like, but excludes hale koa, panicum, pangola, kikuyu, napier grass and similar forage crops used for silage or silage, and which are deemed to be pasture uses within the urban district.

"Cultivation" means to loosen or break up the soil to foster the raising of crops through labor or care.

"Dedicated area" means the area of land approved by the director as dedicated to agricultural use.

"Director" means the Director of Finance or the Director's designee.

"District" means, unless the context clearly indicates otherwise, those land use districts identified in chapter 205, Haw. Rev. Stat.

"Homesite" means 1) any portion of land, on the dedicated parcel intended for existing or future residential use, based on the density allowed for the subject parcel and the dwelling's surrounding related uses, facilities and structures, including garages, sheds, yards, landscaped areas, and driveways, and 2) the land underlying both the dwelling and its surrounding related uses, facilities, and structures.

"H.R.S." means Hawaii Revised Statutes, as amended.

"K.C.C." means the Kauai County Code 1987, as amended.

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

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

"Real property division" means the County of Kauai Real Property Assessment Division.

"SRP" means the Rules of the Director of Finance Relating to Dedication of Lands to Agricultural Use under Section 5A-9.1 of the Kauai County Code 1987

"State" means State of Hawaii.

"Tax year" means the period commencing from July 1 of a calendar year and ending on June 30th of the following calendar year.

"Unusable" for any agricultural use 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.

"Violation" means, with respect to the owner or any successive owner, 1) twelve consecutive months of non agricultural use of the land, or 2) 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 a change in land use classification upon a petition by the owner shall not constitute an overt act of changing the agricultural use of the dedicated land if the land continues to satisfy the requirements of K.C.C. Sec. 5A-9.1 and its implementing administrative rules, 3) the failure to complete an approved change-in-agricultural use within twelve or twenty four consecutive months, 4) the subdivision of the land or submission of the land to a condominium property regime resulting in one or more subdivided parcels of land or "apartments", as defined in Haw. Rev. Stat. Chapter 514A, of less than (5) acres or 5) the failure to observe any of the terms, conditions, or restrictions of either the dedication or the petition to dedicate lands to agricultural use.

SRP-2-3 Additional guidelines for determining acceptable standards of agricultural use on dedicated lands. In addition to all other applicable requirements of K.C.C. Sec. 5A-9.1 and its implementing administrative rules, the following additional guidelines may be relied upon to determine minimally acceptable standards of agricultural use on dedicated lands.

(a) Livestock.

(1) Use of horses.

(A) Breeding of horses for commercial sale. Where horses are bred for commercial sale, the director shall consider each of the following factors in determining whether the breeding of horses constitutes an agricultural use. Unless otherwise specified, no one factor shall necessarily, in and of itself, determine whether an agricultural use does or does not exist; rather, the director shall consider all of the factors (i.e., the totality of circumstances) in determining whether an agricultural use exists.

(I) Whether and what level of sales from the breeding of horses has occurred, either prior to or no later than five (5) years after the date of the petition to dedicate. Greater sales activity indicates the existence of an agricultural use. However, where there is a lack of or minimal sales activity, no agricultural use should be considered to exist;

(II) Whether breeding, on the dedicated land, is a recurring activity. The regular occurrence of breeding on the dedicated land indicates the existence of an agricultural use. However, where breeding on the dedicated

land occurs minimally or only sporadically, or just once, no agricultural use should be considered to exist;

(III) Whether proper birthing facilities on the dedicated land for delivery of a foal or colt exist. The existence of such facilities on the dedicated land indicates the existence of an agricultural use. However, the lack of such facilities on the dedicated land indicates no agricultural use exists. The director may rely on opinions of persons regarded in the community as having special knowledge of horse breeding in determining whether proper birthing facilities exist;

(IV) Where horses kept for breeding or grazing are pastured on open lands, such pasturing or grazing on the open lands should be considered an agricultural use; provided that the director may rely on opinions of persons regarded in the community as having special knowledge of grazing or pasturing requirements of horses in determining whether the acreage claimed to be necessary for pasturing or grazing is excessive. As such, the pasturing or grazing of such horses on open lands, to the extent that the acreage claimed for pasturing or grazing is not excessive, should be considered an agricultural use for dedication purposes; and

(V) Whether the area in which the horses are kept are fenced. The existence of fences on the dedicated land commonly used to contain horses indicates the existence of an agricultural use. However, the lack of such fencing on the dedicated land indicates that no agricultural use exists.

(B) Boarding of horses for income. Where horses are boarded in order to derive income, the director shall consider each of the following factors in determining whether the boarding of horses on the dedicated land constitutes an agricultural use. Unless otherwise specified, no one factor shall necessarily, in and of itself, determine whether an agricultural use does or does not exist; rather, the director shall consider all of the factors(i.e., the totality of circumstances) in determining whether an agricultural use exists.

(I) Whether the owner of the horses being boarded has continuous, 24 hour-a-day access to his horses. The existence of such continuous, around-the-clock access indicates the existence of an agricultural use. However, the lack of such access indicates that no agricultural use exists;

(II) Whether fees are charged specifically for the care, supervision, and tending of horses or for the use of boarding facilities, as opposed to charging rent for use of the land. The existence of fees charged specifically for the care, supervision, and tending of horses or for the use of boarding facilities indicates the existence of an agricultural use. However, if charges are intended as rent for use of the land, no agricultural use should be considered to exist;

(III) Whether the owner has assumed care and responsibility for the boarded horses on a routine, day-to-day basis. The existence of such care and responsibility indicates the existence of an agricultural use. However, the lack of such care indicates that no agricultural use exists;

(IV) Whether care, tending, and feeding of boarded horses is provided on-site(i.e., on the dedicated parcel) by the owner or his employees, usually during normal business hours. The on-site care, tending, and feeding of boarded horses, usually during normal business hours, indicates an agricultural use. However, the lack of such care, tending,

and feeding during the noted hours indicates that no agricultural use exists;

(V) Whether stables, barns, or other similar facilities exist on the dedicated parcel. The existence of such facilities indicates an agricultural use. However, if the dedicated parcel lacks such facilities, no agricultural use should be considered to exist;

(VI) Whether a dedicated parcel has sufficient capacity to board horses. The more sufficient the capacity of a parcel to board horses, the greater the likelihood that an agricultural use exists. However, the less sufficient the capacity of a parcel to board horses, the less the likelihood that an agricultural use exists. The director may rely on opinions of persons regarded in the community as having special knowledge of boarding of horses in determining whether a dedicated parcel has sufficient capacity;

(VII) Whether the owner is actively seeking, on a regular, continuous basis, to board horses. Where an owner is actively seeking, on a regular and continuous basis, to board horses, the more likely it is that an agricultural use exists. The less that an owner is actively seeking, on a regular and continuous basis, to board horses, the less likely it is that an agricultural use exists;

(VIII) Whether fences commonly used to contain horses exist on the dedicated parcel. The existence of such fences indicates the existence of an agricultural use. However, if the dedicated parcel lacks such fencing, no agricultural use should be considered to exist;

(IX) Whether the boarding of horses is occurring on the dedicated parcel. The boarding of horses on the dedicated parcel indicates an agricultural use. However, where the boarding takes place off or away from the dedicated parcel, no agricultural use should be considered to exist;

(X) Where horses that are boarded graze or are pastured on open lands, such pasturing or grazing on the open lands should be considered an agricultural use; provided that the director may rely on opinions of persons regarded in the community as having special knowledge of grazing or pasturing requirements of horses in determining whether the acreage claimed to be necessary for pasturing or grazing is excessive. As such, the pasturing or grazing of such horses on open lands, to the extent that the acreage claimed for pasturing or grazing is not excessive, should be considered an agricultural use for dedication purposes; and

(XI) The grazing or pasturing of horses on open lands shall not, in and of itself, constitute an agricultural use.

(C) Use of horses for trail riding. Where persons pay to ride horses in conjunction with guided or unguided tours along marked or unmarked trails, a practice commonly referred to as "trail-riding", the director shall consider each of the following factors in determining whether the use of horses for trail riding constitutes an agricultural use. Unless otherwise specified, no one factor shall necessarily, in and of itself, determine whether an agricultural use does or does not exist; rather, the director shall consider all of the factors (i.e., the totality of circumstances) in determining whether an agricultural use exists.

(I) Whether the owner or owner's agent has been granted or is in the process of applying for a use permit from the County Planning Department or Planning Commission to conduct commercial trail riding on the dedicated parcel. The grant of or application for such a permit to conduct

trail riding on the dedicated parcel indicates the existence of an agricultural use. If the owner or his agent lacks or is not applying for such a permit with respect to the dedicated parcel, no agricultural use should be considered to exist;

(II) Whether stables, barns, or other similar facilities exist on the dedicated parcel. The existence of such facilities indicates an agricultural use. However, if the dedicated parcel lacks such facilities, no agricultural use should be considered to exist;

(III) Whether the owner uses the horses on a continuous and regular basis such that the use demonstrates that he intends to obtain a monetary profit from cash income received by trail riding. The owner's use of the horses on a continuous and regular basis which demonstrates that the owner intends to obtain a monetary profit from cash income received by trail riding indicates an agricultural use. However, where the owner's use of the horses is non-continuous and irregular, and demonstrates that the owner does not intend to obtain a monetary profit from cash income received by trail riding, no agricultural use should be considered to exist;

(IV) Whether trail riding is or will be occurring on the dedicated parcel. Subject to subparagraph (V) immediately below, trail riding that is or will be occurring on the dedicated parcel indicates the existence of an agricultural use. If trail riding is not or will not be occurring on the dedicated parcel, no agricultural use should be considered to exist;

(V) If trail riding crosses beyond the dedicated parcel on which the rides originated, into adjoining parcels of land, only the width and length of the trail on the adjoining parcels actually used for trail riding should be considered an agricultural use;

(VI) Where horses directly used in conjunction with a commercial trail riding venture graze or are pastured on open lands, such pasturing or grazing on the open lands should be considered an agricultural use; provided that the director may rely on opinions of persons regarded in the community as having special knowledge of grazing or pasturing requirements of horses in determining whether the acreage claimed to be necessary for pasturing or grazing is excessive. As such, the pasturing or grazing of such horses on open lands, to the extent that the acreage claimed for pasturing or grazing is not excessive, should be considered an agricultural use for dedication purposes; and

(VIII) Whether fences commonly used to contain horses exist on the dedicated parcel. The existence of such fences indicates the existence of an agricultural use. However, if the dedicated parcel lacks such fencing, no agricultural use should be considered to exist.

(D) Equestrian schools and training facilities for horses. If the use involves equestrian schools or training facilities for horses, the director shall consider each of the following factors in determining whether the equestrian school or training facility constitutes an agricultural use on the dedicated parcel. Unless otherwise specified, no one factor shall necessarily, in and of itself, determine whether an agricultural use does or does not exist; rather, the director shall consider all of the factors (i.e., the totality of circumstances) in determining whether an agricultural use exists.

(I) Whether established corrals, stables, and barns exist or are in the process of being constructed on the

dedicated parcel. Where established corrals, stables, and barns exist or are in the process of being constructed on the dedicated parcel, an agricultural use should be considered to exist. However, if such facilities do not exist or are not in the process of being constructed on the dedicated parcel, no agricultural use should be considered to exist;

(II) Whether equestrian school or training activities occur on a continuous and regular basis such that the use demonstrates that the owner intends to obtain a monetary profit from cash income received from such activities. The occurrence of such activities on a continuous and regular basis which demonstrates that the owner intends to obtain a monetary profit from cash income received from such activities indicates an agricultural use. However, where such activities do not occur on a continuous and regular basis, and demonstrate that the owner does not intend to obtain a monetary profit from cash income received from such activities, no agricultural use should be considered to exist;

(III) Where horses directly used in conjunction with equestrian school or training activities graze or are pastured on open lands, such pasturing or grazing on the open lands should be considered an agricultural use; provided that the director may rely on opinions of persons regarded in the community as having special knowledge of grazing or pasturing requirements of horses in determining whether the acreage claimed to be necessary for pasturing or grazing is excessive. As such, the pasturing or grazing of such horses on open lands, to the extent that the acreage claimed for pasturing or grazing is not excessive, should be considered an agricultural use for dedication purposes;

(IV) Whether the equestrian school or training facilities are open to the public during normal business hours. An equestrian school or training facility which is open to the public during normal business hours indicates the existence of an agricultural use. However, where the equestrian school or training facility is not open to the public during normal business hours, no agricultural use should be considered to exist; and

(V) Whether fences commonly used to contain horses exist on the dedicated parcel. The existence of such fences indicates the existence of an agricultural use. However, if the dedicated parcel lacks such fencing, no agricultural use should be considered to exist.

(E) Horses used for ranching. Where horses are used for ranching, the director shall consider each of the following factors in determining whether the use of the horses constitutes and agricultural use which would allow the land upon which the use occurs to be treated as dedicated land. Unless otherwise specified, no one factor shall necessarily, in and of itself, determine whether an agricultural use does or does not exist; rather, the director shall consider all of the factors (i.e., the totality of circumstances) in determining whether an agricultural use exists.

(I) Horses used for ranching and which are kept on the same parcel as the parcel on which ranching occurs indicates the existence of an agricultural use on that parcel;

(II) Horses kept on a parcel separate from the parcel on which ranching occurs indicates the existence of an agricultural use on the separate parcel if the horses are used for ranching;

(III) When horses being used for ranching are

transported from the parcel on which ranching occurs to a homesite, the keeping of horses on the homesite should not be considered an agricultural use;

(IV) Where horses used for ranching and cattle or other livestock are kept on the same parcel, but separated from each other, both areas upon which the horses and cattle are kept may be considered an agricultural use;

(V) The director may rely on opinions of persons regarded in the community as having special knowledge of grazing or pasturing requirements of horses in determining whether the acreage claimed to be necessary for pasturing or grazing is excessive; and

(VI) If the owner ceases to ranch on the dedicated parcel, the area on which the horses are kept should cease being considered an agricultural use, whether the horses are kept on the same parcel as the dedicated parcel or on a parcel separate from the dedicated parcel.

(F) Grazing or pasturing of horses on open lands.

Notwithstanding any other provision in these rules to the contrary, the grazing or pasturing of horses on open lands, a practice commonly referred to as "open grazing", shall not, in and of itself, constitute an agricultural use. The grazing or pasturing of horses on open lands shall constitute an agricultural use only under the following circumstances:

(I) Where open grazing occurs in conjunction with the breeding of horses under §RP-2-3(a)(1) (A);

(II) Where open grazing occurs in conjunction with the boarding of horses under §RP-2-3(a)(1) (B);

(III) Where open grazing occurs in conjunction with commercial trail riding under §RP-2-3(a)(1) (C);

(IV) Where open grazing occurs in conjunction with the equestrian schools or training facilities under §RP-2-3(a)(1) (D); and

(V) Where open grazing occurs in conjunction with ranching under §RP-2-3(a)(1) (E).

Where open grazing occurs on leased land, a recorded lease agreement or other documentary evidence acceptable to the Department of Finance evidencing the right to use the land for open grazing shall be provided to the department.

(2) Pasturing of cows or goats. The pasturing and open grazing of cows or goats shall constitute an agricultural use under the following conditions:

(A) The area within which the goats or cows are kept must be completely fenced with fencing commonly used to contain such animals;

(B) The cows or goats must be physically present on the dedicated parcel on a continuous basis, except for periods during which the cows or goats are removed for pasture rotation purposes, treatment of illness, or because of the occurrence of other events which normally arise in the course of raising cows and goats. The opinions of persons regarded in the community as having special knowledge of grazing, pasturing, and raising of cows or goats may be relied upon in determining whether the event necessitating the animals' removal is one which normally arises in the course of raising cows or goats;

(C) For pasturing of cows, the maximum amount of acreage that may be dedicated per cow is four (4) acres. (For example, 4 acres may be dedicated if one cow is raised; 8 acres may be dedicated if two cows are raised, etc.);

(D) For pasturing of goats, the maximum amount of acreage that may be dedicated per every three (3) goats is one (1) acre. (For example, 1 acre may be dedicated if three goats are raised, 2 acres may be dedicated if six goats are raised, etc.) A minimum of three goats is required for every acre of land dedicated to agricultural use; and

(E) Other animals, including horses, may be pastured and open graze in the same area in which the cows or goats are pastured.

As used in this subparagraph (2), each of the terms "or" and "and" has the meaning of the other or both.

SRP-2-4 Petitions to dedicate, deadline and place to file, and petitions for change in use.

(a) A person shall initiate a dedication of lands within any state land use district by filing two copies of a petition to dedicate with the director of finance on or before September 1 of any calendar year. The petition, if approved, shall become effective the following tax year.

(1) A petition to dedicate shall be submitted on a form prescribed by the director. Petitions shall be available from the real property division. All parcels shall be described by their designated tax map key number, issued by the Real Property Assessment Division for the purpose of the petition to dedicate.

(2) Neither homesites nor lands unusable or unsuitable for any agricultural use may be dedicated to agricultural use; however, if homesites or unusable or unsuitable lands exist on the dedicated parcel, they shall be described in the petition to dedicate.

(b) Each petition shall describe the specific agricultural use that will occur on the land to be dedicated, and shall include the following additional requirements:

(1) If the petitioner is a lessee or licensee, one legible, readable copy of the executed lease or license for the land being dedicated indicating the consideration being paid by the lessee or licensee and the term of the lease or license;

(2) If the petitioner is a lessee or licensee, notarized signatures of all lessors and licensors, as the case may be, evidencing that they have consented to the application to dedicate under the terms and conditions of K.C.C. Sec. 5A-9.1;

(3) Details regarding the petitioner's pasture rotation or crop-cycle planting, the petitioner's planting schedule, and the harvesting or marketing schedule for products, livestock, or other animals;

(4) If the land is in the urban district, proof satisfactory to the director that the land has been substantially and continuously used in the manner specified in §RP-2-5. Such proof may consist of the owner's business records or affidavits from owners of at least two abutting parcels who have continuously owned and occupied their land for at least five consecutive years immediately before the date of the petition. The affidavits must indicate that the land has been substantially and continuously used in the manner described in §RP-2-5;

(5) A tax map, plot plan or reasonable facsimile thereof delineating the area to be dedicated and the homesite to be excluded from the dedication area; and

(6) The owner shall grant the real property division a right-of-entry to the dedicated land for the sole purpose of verifying that the dedicated land is in agricultural use.

(c) A separate petition shall be required for each individual parcel, or apartment or unit of a condominium property regime.

(1) Where a state land use boundary divides a contiguous parcel of land so that a portion of the parcel is in the urban district and the remaining portion is in another district, each such portion shall be treated as a separate parcel to be dedicated, with separate petition filings. Where an owner dedicates a contiguous parcel, a separate petition shall be filed for the portion situated in the urban district and a separate petition shall be filed for the portion in the other district, according to the provisions of this paragraph (c) of these rules.

(d) Petitions for ten or twenty year dedications.

(1) If the land to be dedicated is in an agricultural district, the petition shall indicate whether the dedication is for a ten or twenty year period and shall designate, when applicable, 1) any portion of the land that is unusable or unsuitable for agricultural use, and 2) any existing homesites or future homesites planned during the term of the dedication.

(2) If the land to be dedicated is not in an agricultural district, the land may be dedicated only for a period of ten years, and the petition shall so indicate that the petitioner is dedicating for a ten year period.

(e) Changes in agricultural use on the dedicated parcel. If an owner wishes to change from one permitted agricultural use to another permitted agricultural use, the owner shall first file a petition with the director according to §RP-2-8.

(f) Each petition filed shall be reviewed by the director in accordance with K.C.C. Sec. 5A-9.1(e) within a reasonable time period. Any errors or deficiencies shall be noted in writing and the petitioner shall be given two weeks from the mailing of the notification to correct such deficiencies. No petition shall be deemed filed unless 1) the petition is complete in form and content, and 2) the petitioner has corrected all errors and deficiencies.

(1) The director shall assign a number to each petition.

SRP-2-5 Special requirements for dedications in the various districts.

(a) Lands dedicated in the urban district for the cultivation of crops shall satisfy the following requirements:

(1) The land to be dedicated must have been substantially and continuously used for the cultivation of crops for the five year period immediately preceding the date of the petition. Proof of substantial and continuous use shall be furnished by the owner in the manner described in §RP-2-4(b).

(2) The director must determine that the intended cultivation of crops is economically feasible pursuant to §RP-2-5(c).

(3) The petitioner must be an owner and satisfy all additional requirements applicable to those who wish to dedicate lands to agricultural use.

(b) Lands dedicated in the urban district for the ranching of specific livestock shall satisfy the following requirements:

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

(2) The land to be dedicated must have been substantially and continuously used for specific livestock uses for the five year period immediately preceding the date of the petition.

(3) The specific livestock use must occur in an area where such a use or uses are both permissible under County zoning ordinances and compatible with surrounding uses, as may be determined by the director.

(4) The director must determine that the specific livestock use is

economically feasible pursuant to §RP-2-5(c).

(5) The petitioner must be an owner and satisfy all additional requirements applicable to those who wish to dedicate lands to agricultural use.

(c) The director's determination of whether the intended cultivation of crops or specific livestock use is economically feasible shall be based on the following findings:

(1) The owner must have obtained a state general excise tax license for the purpose of engaging in the business of production of crops or ranching of specific livestock.

(2) The annual gross income derived from the production of crops or ranching of specific livestock shall not be less than \$500 for parcels one acre or less in size, and \$500 per acre for parcels more than one acre in size.

(3) The director must determine, to his satisfaction, that the land has been substantially and continuously used to produce crops or for the ranching of specific livestock. For this purpose, the petitioner shall furnish proof of such substantial and continuous use according to §RP-2-4(b).

(d) Lands dedicated in the agricultural district, a rural district, or a conservation district with an area of less than (5) five acres in size shall satisfy each of the following requirements:

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

(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 for the five-year period immediately preceding the dedication application.

§RP-2-6 Findings of fact.

(a) The director shall, by November 15th of each year, make findings of fact regarding each completed, filed petition; provided that for the 1999 calendar year only, the director shall make the findings of fact no later than January 15, 2000. The findings shall take into consideration each of the following factors:

(1) Whether the owner has begun efforts to place the land to be dedicated into agricultural use. Such efforts may include 1) physical evidence of agricultural activity on the land (such as clearing, tilling, planting, fencing), or 2) the existence of planting, harvesting, or marketing schedules or plans, or documents detailing crop or pasture rotations;

(2) Whether the land is reasonably well-suited for the proposed agricultural use;

(2) The productivity rating of the land for those uses to which it is best suited;

(3) The adequacy or sufficiency of the size or area of the land to be dedicated for the petitioned use and the present use of the surrounding lands;

(4) Whether the petitioned use is permissible under the county zoning district or ordinance;

(5) Whether the petitioned use is in conflict with the general plan of the County and the overall development plan of the State; and

(6) Whether the proposed use constitutes an agricultural use.

§RP-2-7 Approval or disapproval of petition to dedicate.

(a) For lands in the urban district, the director shall approve the petition if the requirements of §RP-2-5 have been satisfied and each of the findings of fact in §RP-2-6, including the finding relating to the economic feasibility of the petitioned use, are favorable to the owner.

(b) For lands which are not in the urban district, the director shall approve the petition if each of the findings of fact in §RP-2-6 are favorable to the owner.

(c) For lands in all districts, the director shall disapprove a petition if any of the findings under §RP-2-6 are unfavorable to the owner, if good cause exists to disapprove a petition, or if, with respect to lands in the urban district, the requirements of §RP-2-5 have not been satisfied.

(d) Petitioners shall be notified by first class U.S. mail that their petitions have been approved or disapproved. If the petition is approved, a notice of approval will be sent to the petitioner, delineating which portions of the parcel are approved for specific agricultural use and which portions are approved as homesites, unusable, or non-dedicated uses. If the petition is disapproved, the notification shall contain a short explanation of why the petition was disapproved.

(e) The director shall notify the petitioner of his approval or disapproval no later than December 15.

(f) Upon approval of a dedication, the dedication shall become effective January 1 of the following year. The petition number and effective date of the dedication shall be noted in the appropriate records.

(g) Upon approval, the director shall prepare and deliver to the owner a notice of approval and an original and a copy of the notice of dedication. The owner shall review the notice of approval, and, upon confirmation and acceptance, shall record the notice of dedication with the state Bureau of Conveyances or the State Land Court before January 15th of year following the year in which the dedication was filed; provided that the director may, in his discretion, extend the recordation deadline beyond the required deadlines for good cause shown. The recordation of the notice of dedication confirms that the owner accepts the specific areas and uses as noted on the notice of approval.

§RP-2-8 Effect of dedication and enforceable restrictions upon use.

(a) Each approved dedication shall constitute a forfeiture by the owner of any right to change the use of the land to a use other than an agricultural use for a minimum period of ten or twenty years, as the case may be. Dedicated lands which are in their initial ten or twenty year dedication period as of September 24, 1999 shall be subject to the versions of K.C.C. Sec. 5A-9.1 and its implementing administrative rules which were in existence on September 23, 1999. Notwithstanding anything contained herein to the contrary, each approved dedication shall be subject to the version of K.C.C. Sec. 5A-9.1 and its implementing administrative rules that were in existence on the date of its approval.

(1) At the end of its initial ten or twenty-year period, each dedication shall terminate. After the ninth or nineteenth years of a ten-year or twenty year dedication, as the case may be, the owner may apply to dedicate his 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) The dedication shall bind and enure to each successor owner unless properly canceled by the owner or released by the owner according to these rules.

(3) When dedicated land is subdivided or subject to the creation of condominium units under H.R.S. Chapter 514A, of five acres or more each parcel or unit shall be independently subject to the requirements and restrictions of the initial, original dedication. The owner shall notify the director of any subdivision of his land and shall submit a copy of the approved subdivision map or the registered File Plan, if applicable. Likewise, the owner shall notify the director of the creation of condominium units on his land and shall submit a copy of the

final declaration of condominium property regime.

(A) The director shall note the dedication on appropriate records of each subdivided parcel.

(B) The owner shall inform each purchaser of a subdivided parcel or condominium unit that the purchaser's land is dedicated to agricultural use, the period of the dedication, and the requirements and restrictions applicable to the dedicated land. The dedication shall be cancelled, unless the new owner shall, in writing to the director, assume the dedication for the remainder of the dedication period.

(C) Each owner of a subdivided parcel or condominium unit may, independently of any other owner, petition for a change in use according to §RP-2-4(e) and §RP-2-8(b) or cancel the dedication as to the subdivided parcel or condominium unit according to §RP-2-11.

(D) Any action taken by the owner of a subdivided parcel or condominium unit shall have no effect on the owners of the other parcels or condominium units.

(b) An owner shall file a petition with the director if he wishes to change an agricultural use on the dedicated land to another agricultural use. The petition shall be filed before the change in use is implemented. Each petition for a change in use shall be reviewed by the director. The director shall make findings of fact and approve or disapprove the petition according to §RP-2-6 and §RP-2-7. Further, the owner shall declare that:

(1) The land can best be used for an agricultural use other than its current agricultural use;

(2) The land shall actually be used for the new agricultural use if the petition for a change in use is approved;

(3) He shall complete the change in use no later than twelve (12) months for parcels up to and including fifty (50) acres in size and twenty-four months (24) for parcels over fifty acres in size from the date of the director's approval of the change in use, except that for dedicated land held under a lease or license, the conversion period shall be limited to the remaining term of the lease or license where the remaining term is less than 24 months from the date of the director's approval;

(4) He understands that his failure to complete the change in use (i.e., conversion) within the permitted time period shall constitute a violation of his dedication and that, in the case of such a violation, the entire change in use period shall be added to the minimum period that is used to determine the penalties and retroactive tax assessment which are levied against the property; and

(5) He shall submit a progress report to the director on or before each annual anniversary date of the director's approval of the change in use, until the conversion is completed.

(c) The director shall use best efforts to annually inspect all dedicated lands, shall note all violations, and shall take appropriate action under §RP-2-10.

(d) 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 "agricultural use" in §RP-2-2, a valid, current, State general excise tax license, evidence that the land is not subject to covenants, conditions and restrictions which prohibit or limit agricultural activities, planting, harvesting, or marketing schedules or plans detailing site preparation, species grown, fertilizing schedule, weed control, stand densities, thinning, and documents detailing crop or pasture rotations, in order to verify that the

land is in agricultural use. The director may also physically conduct on-site inspections of the dedicated parcel for the sole purpose of verifying that the dedicated land is in agricultural use.

(e) Land areas which are part of a tree farm management plan that was prepared, submitted and is in compliance with K.C.C. Section 5A-11.26 shall be deemed to be in "agricultural use", notwithstanding the fact that said acres are not in cultivation and are yet to be planted. With respect to crops, parcels under 100 acres must be in cultivation or production at the time of the filing of a petition for agricultural dedication. For parcels of (100) acres or more, a minimum of one hundred acres or at least fifty percent (50%) of the dedicated area, whichever is larger, must be in cultivation or production at the time of filing of the petition to dedicate. Any area that is not in cultivation or production at the time of the filing of a petition to dedicate shall be planted at a rate of (10%) of the total dedicated area per year, each year thereafter, as detailed in a farm management plan to be submitted with the application for agricultural dedication; provided that if the existing tree farm management plan specifies a rate of planting other than 10% per year, the rate of planting specified in the tree farm management plan shall prevail and control.

SRP-2-9 Special tax assessment of dedicated lands.

(a) In determining the value of dedicated lands, consideration shall be given to rent, productivity, the nature of the actual agricultural use, the advantage or disadvantage of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, and to the opinions of persons who may be considered to have special knowledge of land values, particularly agricultural land values.

(1) For dedicated lands within an agricultural use district which have been dedicated for twenty (20) years, the assessment shall be set at fifty percent (50%) of its assessed value in agricultural use.

(2) Portions of dedicated lands which are within an agricultural district and described in the petition to dedicate as unusable or unsuitable for any agricultural use shall be subject to K.C.C. 5A-8.1(a); provided that if such unusable or unsuitable lands are put to a use other than an agricultural use, such lands shall be designated as non-dedicated land and assessed according to its highest and best use.

(b) Dedicated lands shall be assessed at their highest and best use, as though the lands were not dedicated to agricultural use, for purposes of determining and computing the retroactive taxes applicable to any violation or cancellation of the dedication.

(c) Lands other than agricultural lands which are described in the petition to dedicate (such as homesites or lands unusable or unsuitable for agricultural use) shall be valued and assessed at their highest and best use, based on the market data and cost approaches to value.

SRP-2-10 Violation, retroactive assessment, and penalty.

(a) . Whenever a violation of the dedication occurs, the owner shall be notified of the violation. Notice shall be provided by mailing a notice of violation by first class, U.S. mail to the owner's last known address on file with the director. The owner shall be afforded the opportunity to discuss the violation with the director and shall be allowed, if he so requests, a conference with the director prior to the cancellation of the dedication for violation thereof. If the director finds that the owner has violated the terms and conditions of the dedication, he shall cancel the dedication and the land shall be assessed penalties and retroactive taxes.

(1) The retroactive assessment and penalty provisions of K.C.C. Sec. 5A-9.1(d) shall apply when a dedication has been violated.

(2) If a violation occurs on only a portion of the dedicated land, such as when a non-agricultural use is applied to a portion of dedicated land or when a portion of the dedicated land is not kept in agricultural

use, the director shall cancel only that portion of the dedicated land on which the violation occurred. For such violations, the director shall cancel the dedication and assess penalties and retroactive taxes only against the portion affected by the violation.

(b) The retroactive assessment shall equal the difference between the amount of taxes that would have been paid based on the land's highest and best use and the taxes paid based on the land's assessed value in agricultural use, for each year that the land was dedicated to agricultural use, retroactive to the date that the dedication was declared effective. The sum of the retroactive years, however, shall not exceed the term of the original dedication, except that when the owner fails to complete any change in agricultural use, the period of the change in use shall be added to the dedication period. Further, when a dedication has been violated any time after its ninth or nineteenth year, as the case may be, the retroactive period shall not exceed one year; provided that when the owner fails to complete any change in agricultural use after the ninth or nineteen years of the dedication, as the case may be, the period of the change in use shall be added to described one-year retroactive period. A penalty of ten percent (10%) per annum shall be added to the retroactive assessment.

(c) All unpaid taxes arising from retroactive assessments and penalties levied for violation of a dedication shall constitute a paramount lien on the property in accordance with chapter 5A, K.C.C.

SRP-2-11 Cancellation (withdrawal) without penalty.

(a) If dedicated land is reclassified and placed within an urban district by the State Land Use Commission, and the reclassification was not initiated by a petition of the owner, the owner may cancel the dedication within sixty (60) days after the reclassification. In such cases, the owner shall not be subject to the retroactive assessment and penalty provisions of K.C.C. Sec. 5A-9.1(e).

(1) If the owner wishes to cancel his dedication under the circumstances described in §RP-2-11(a), he shall notify the director in writing of his desire to cancel the dedication. The owner shall be responsible for ensuring that the director receives the notice of cancellation. With his notice of cancellation, the owner shall include a copy of the notice of land use change issued by the State Land Use Commission.

(2) All cancellations under §RP-2-11(a) shall be effective January 1 of the following tax year.

(b) The occurrence of any of the following events shall cause the dedication to be canceled without the imposition of any retroactive assessments or penalties:

(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 a significant portion of 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.

SRP-2-12 Cancellation and release of dedication. Upon cancellation or release of the dedication, the director shall prepare and deliver to the owner an original and a copy of the release of dedication. The owner shall record the release of dedication document with the State of Hawaii, Bureau of Conveyances releasing the land from its dedicated status. A copy of the

recorded release shall be mailed via first-class mail to the director.

SRP-2-13 Appeals. The owner may appeal any disapproved petition, or any determination that a dedication has been violated, just as an appeal from an assessment. Appeals shall be governed by applicable sections of chapter 5A, K.C.C., and may be made directly with the tax appeal court, without having to appeal to the County Board of Review.

SRP-2-14 Rules of construction. The following rules of construction shall apply to these rules:

(a) 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.

(b) "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.

(c) Words to have their usual meaning. Except as defined in K.C.C. Sec. 5A-9.5, the words of these rules 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.

(d) Construction of ambiguous context. Where words in these rules are ambiguous:

(1) 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;

(2) 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

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

SRP-2-15 Severability. If any provision of these rules, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable.


CERTIFICATION

I, Eugene K. Jimenez, Deputy Director of the Department of Finance, County of Kauai, do hereby certify as follows:


1. That the foregoing is a true and correct copy of the amended rules ("Amended Rules") of the Department of Finance relating to Dedication of Lands for Agricultural Use under Section 5A-9.1 of the Kauai County Code, as amended ("K.C.C."); and

2. That the notice of public hearing regarding these Amended Rules, which notice included a statement of the substance of the proposed changes, was published in the Garden Island on July 22 & 24, 2002; and


3. That these Amended Rules were adopted by the Department of Finance on August 28, 2002, pursuant to the provisions of the Hawaii Administrative Procedure Act, Chapter 91, Hawaii Revised Statutes, as amended, and shall become effective ten (10) days after filing with the Office of the County Clerk, County of Kauai, State of Hawaii.


EUGENE K. JIMENEZ
Deputy Finance Director

APPROVED AS TO FORM ON THIS 5th DAY OF September, 2002:



CURTIS H. SHIRAMIZU
Deputy County Attorney, County of Kauai

APPROVED ON THIS 5th DAY OF September, 2002:


MARYANNE W. KUSAKA
MAYOR, County of Kauai

CERTIFICATION OF COUNTY CLERK:

I hereby certify that on September 6, 2002,
I accepted for filing from the Department of Finance the
amended rules of the Department of Finance relating to
Dedication of Lands for Agricultural Use under Section 5A-
9.1 of the Kauai County Code, as amended, which were adopted
on August 28, 2002.

A handwritten signature in black ink, appearing to read "P.A. Nakamura", written over a horizontal line.

Peter A. Nakamura
County Clerk, County of Kauai