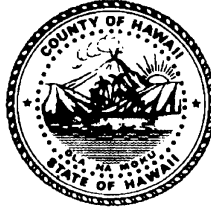


COUNTY OF HAWAI‘I



STATE OF HAWAI‘I

BILL NO. 178

ORDINANCE NO. 20 60

**AN ORDINANCE AMENDING CHAPTER 19, ARTICLE 8, SECTION 19-59, OF THE HAWAI‘I COUNTY CODE 1983 (2016 EDITION, AS AMENDED), RELATING TO NATIVE FOREST DEDICATIONS.**

**BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I:**

**SECTION 1.** Purpose. The purpose of this ordinance is to create three native forest categories: native forests, functional forests, and successional forests. This ordinance will also establish a dedication process for forest preservation and forest restoration.

**SECTION 2.** Chapter 19, article 8, section 19-59, of the Hawai‘i County Code 1983 (2016 Edition, as amended) is amended to read as follows:

**“Section 19-59. Native forest dedications.**

**(a) Native forest categories.**

~~[(a)]~~ (1) “Native forests” means lands which have sixty percent or greater native species forest cover.

~~[(1)]~~(A) Native species are defined as those species that are either endemic or indigenous to the Hawaiian islands. ~~[Indigenous]~~ Native species in this context shall mean plants that became established or evolved in the Hawaiian islands without the aid of human beings.

~~[(2)]~~(B) The forest cover requirement may be met by native species in either the tree layer or the understory layer, or a combination of the two; provided a minimum twenty-five percent of the forest cover shall contain tree cover.

(2) “Functional forests” means lands which have sixty percent or greater native species forest cover combined with non-native/non-invasive species forest cover.

(A) Non-native/non-invasive species are defined as those species that are not native to the Hawaiian islands, having arrived with human help, which do not invade or overtake native species habitat and have a Hawai‘i-Pacific Weed Risk Assessment score of six or less, with seven or more being a designation of high risk. Exceptions to the score must be justified in the forest management plan or forest restoration plan.

(B) The forest cover requirement may be met by native species and non-native/non-invasive species in either the tree layer or the understory layer, or a combination of the two; provided a minimum twenty-five percent of the forest cover shall contain tree cover and a minimum of half of the forest cover shall contain native species.

(3) “Successional forests” means lands which have new lava substrates currently unsuitable for cultivation such that soil depths and/or organic matter are less than 10 cm.

(A) Successional forests are lava flows in the earliest stages of becoming forested land and which would not currently meet the native forest or functional forest requirements.

(B) Successional forest lands must be maintained to promote either a native forest or functional forest development.

(b) ~~[Native forest]~~ Forest dedication process.

(1) Forest preservation.

An owner who desires to dedicate the land for native forest or functional forest preservation ~~[for a period of twenty years]~~ shall petition the director ~~[of finance and demonstrate in the petition that the land qualifies as native forest as provided herein.],~~ following the requirements of the administrative rules and regulations, to dedicate the land for a period of twenty years. The forest preservation plan must demonstrate that the land qualifies as a native forest or functional forest dedication as provided herein at the beginning of the dedication period. The term “owner” includes lessees of real property whose term extends at least twenty years from the effective date of the dedication.

(A) Any property three acres or larger within agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project districts, or open zoned districts, which ~~[is covered with]~~ includes at least 2.75 intact and contiguous acres of native forest or functional forest is eligible for dedication as native forest or functional forest property if it meets the classification requirements ~~[of native forest.]~~ as provided herein.

(B) The petition shall be filed with the director ~~[of finance]~~ by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the dedication shall be effective on July 1 of the following tax year.

(C) The director ~~[of finance]~~ shall determine whether or not land qualifies as native forest or functional forest by using current natural resource or vegetation maps or other acceptable evidence. Other acceptable evidence includes, but is not limited to:

(i) A written affidavit by a recognized professional in the field of natural resources, or

(ii) A finding by a County, State or Federal agency or department with the relevant expertise in the field of natural resources.

(D) If the director’s findings are favorable, the petition shall be approved and the land shall be declared dedicated. Approval of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of the land to a use other than preservation for a minimum period of twenty years. In order to place prospective buyers on notice of the rollback tax liability, the ~~[owner]~~ director shall, within sixty days of notice of approval, record the dedication in accordance with the procedures of the bureau of conveyances.

(2) Forest restoration.

If a property does not qualify as a native forest or functional forest, an owner may petition the director, following the requirements of the administrative rules and regulations, to dedicate the land for a period of twenty years for a native forest or functional forest or fifty years for a successional forest through a forest restoration plan. The forest restoration plan must demonstrate that the land will qualify as a native forest, functional

forest, or continue to qualify as a successional forest as provided herein by the end of the dedication period. The term "owner" includes lessees of real property whose term extends at least twenty years from the effective date of the dedication for native forest and functional forest dedications and fifty years for successional forest dedications.

(A) Any property three acres or larger within agricultural, residential and agricultural, family agricultural, intensive agricultural, and agricultural project districts, or open zoned districts, which includes at least 2.75 intact and contiguous acres in the forest restoration plan is eligible for dedication if the forest restoration plan achieves the classification requirements within the dedication period.

(B) The petition shall be filed with the director by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the dedication shall be effective on July 1 of the following tax year.

(C) The director shall determine whether or not the forest restoration plan qualifies as native forest, functional forest, or successional forest by using current natural resource or vegetation maps or other acceptable evidence. Other acceptable evidence includes, but is not limited to:

(i) A written affidavit by a recognized professional in the field of natural resources, or

(ii) A finding by a County, State or Federal agency or department with the relevant expertise in the field of natural resources.

(D) If the director's findings are favorable, the petition shall be approved and the land shall be declared dedicated. Approval of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of the land to a use other than preservation for a minimum period of twenty years to fifty years depending upon the type of dedication. In order to place prospective buyers on notice of the rollback tax liability, the director shall, within sixty days of notice of approval, record the dedication in accordance with the procedures of the bureau of conveyances.

(E) The owner shall provide to the director evidence every five years that the forest restoration plan is being implemented, as well as a signed and notarized affidavit, following the requirements of the administrative rules and regulations, that the restoration plan is likely to succeed within the designated time period. The owner shall continue to fulfill all other requirements of the agricultural assessment, including providing proof at the director's request that any portion of the parcel not being restored to a native forest or functional forest, but still being assessed for an agricultural use, continues to be used and maintained substantially and continuously in the approved agricultural use.

(F) If, at the end of the time period designated in the plan the land does not meet the requirements of the forest restoration plan, the owner may return the land to its previous designated use or it shall be assessed and taxed at market value without penalty, provided that the owner has submitted the required verification that all conditions of the forest restoration plan have been met.

(c) ~~[Native forest]~~ Forest dedication value.

(1) Dedicated native forest land shall be assessed at a preferential per-acre value in its restricted preservation use. In determining the value of lands which are classified native forest, the director shall assign ~~[the value]~~ a native forest assessment value no greater than

fifty percent of the lowest dedicated agricultural use category [~~that the land could qualify for if it were to be put into agricultural use~~]. No preferential value shall be granted to native forest land unless it is dedicated.

- (2) Dedicated functional forest land shall be assessed at a preferential per-acre value in its restricted preservation use. In determining the value of lands which are classified functional forest, the director shall assign a functional forest assessment value as twice the value of the native forest assessment value. No preferential value shall be granted to functional forest land unless it is dedicated.
- (3) Dedicated successional forest land shall be assessed at a preferential per-acre value in its restricted preservation use. In determining the value of lands which are classified successional forest, the director shall assign a nominal value of \$100. No preferential value shall be granted to successional forest land unless it is dedicated.

(d) Breach of dedication.

The dedication shall be deemed breached and the tax assessment privilege cancelled retroactive to the date of the dedication, or the latest renewal period, 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 penalty and the [~~native~~] forest classification shall be rescinded, upon any of the following:

- (1) Failure of the owner to observe the restrictions on the use of the land; or
- (2) The cover of native forest species falls below sixty percent for native forest preservation; or
- (3) The cover of native forest species combined with non-native/non-invasive forest species falls below sixty percent for functional forest preservation; or
- (4) Failure of the owner to undertake specific actions as outlined in the forest restoration plan; or

~~[(3)]~~(5) The property is rezoned to a higher use at the owner's request; or

~~[(4)]~~(6) The property is subdivided into parcels of less than three acres; or

~~[(5)]~~(7) A condominium property regime is declared for the property having condominium units with an area equivalent to less than three acres. Each unit shall be treated as a subdivision into lots of like size; or

~~[(6)]~~(8) The dedicated property or any portion thereof is sold by way of a conveyance which is subject to conveyance tax under the terms of chapter 247, Hawai'i Revised Statutes, unless the director [~~of finance~~] submits a notarized affidavit signed by the owner to the bureau of conveyances stating that the land shall continue to be subject to the full requirements of the dedication, including the full penalties and rollback taxes imposed for violation; or

~~[(7)]~~(9) The dedicated property is not maintained according to sound land management practices such that soil erosion is minimized, foreign species are controlled, and the watershed is protected.

~~[(e)]~~ ~~Other provisions to the contrary notwithstanding, a portion or portions of a parcel that is being assessed and dedicated as pasture may be taken out of production as part of an approved forest restoration plan set forth in this chapter for the duration of the approved restoration period without breaching the terms of the agricultural use dedication.~~

~~(1) Such a plan indicating the acres and area, as well as the specific forest restoration work to be done, shall be filed with and approved by the director of finance. If the plan is approved, the land shall continue to be given the same pasture assessment.~~

~~(2) The owner shall provide to the director of finance yearly evidence that the forest restoration plan is being implemented, as well as a signed and notarized affidavit by a~~

~~recognized forestry professional that the restoration plan is likely to succeed within the designated time period. The owner shall continue to fulfill all other requirements of the agricultural assessment, including providing yearly proof that any portion of the parcel not being restored to a native forest, but still being assessed for an agricultural use, continues to be used and maintained substantially and continuously in the approved agricultural use.~~

~~(3) If at the end of the time period designated by the native forest restoration plan, the land meets the requirements of the native forest class described in this chapter, then it shall be classified and rededicated as a native forest. If, at the end of the time period designated in the plan, the land does not meet the requirements of the native forest class, the owner may return the land to its designated use as pasture or it shall be assessed and taxed at market value.]~~

(e) Exemption to breach of dedication.

The director may cancel a dedication without rollback taxes or penalties in the event of any of the following:

(1) A recognized natural disaster beyond the owner's control; or

(2) The death or severe disability of the principal owner such that the native forest, functional forest, or successional forest maintenance and/or restoration cannot continue.

Corporations and partnerships are not eligible for this death or severe disability exemption.

(f) Changing between native forest categories.

If the owner desires to change from one forest category to another, the owner shall petition the director and provide evidence that the land meets the requirements for the new category. The petition shall be filed with the director by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the dedication shall be effective on July 1 of the following tax year.

~~[(f)](g)~~ At least one hundred eighty days prior to the cancellation, the department of finance shall notify the owner by mail of such cancellation. The owner may reapply for renewal of the dedication by filing an application with the director on or before September 1 of the ~~[twentieth year.]~~ last year of the dedication period. The renewal petition shall, in all respects, be processed in the same manner as an original petition. Upon approval of succeeding dedications by the director ~~[of finance]~~, the property shall continue to be assessed in accordance with the provisions of this section.

~~[(g) If forest dedicated for native forest preservation is destroyed in whole or in part by fire, hurricane or other disasters, the director may continue the dedication upon submittal and approval of a forest restoration plan as provided in this section.]~~

(h) The owner may appeal a petition that has been disapproved as in the case of an appeal from an assessment.

(i) The director shall establish rules and regulations necessary to administer this section, pursuant to chapter 91, Hawai'i Revised Statutes."

**SECTION 3.** Material to be repealed is bracketed and stricken. New material is underscored. In printing this ordinance, the brackets, bracketed and stricken material, and underscoring need not be included.

**SECTION 4.** Severability. If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

**SECTION 5.** This ordinance shall take effect on January 1, 2021.

INTRODUCED BY:

  
COUNCIL MEMBER, COUNTY OF HAWAI'I

Hilo, Hawai'i  
Date of Introduction: July 22, 2020  
Date of 1st Reading: July 22, 2020  
Date of 2nd Reading: August 5, 2020  
Effective Date: January 1, 2021

REFERENCE Comm. 988

OFFICE OF THE COUNTY CLERK  
County of Hawai'i  
Hilo, Hawai'i

COUNTY CLERK  
COUNTY OF HAWAII

2020 AUG 17 PM 2: 18

Introduced By: Valerie T. Poindexter  
Date Introduced: July 22, 2020  
First Reading: July 22, 2020  
Published: July 31, 2020

REMARKS: \_\_\_\_\_  
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Second Reading: August 5, 2020  
To Mayor: August 13, 2020  
Returned: August 17, 2020  
Effective: January 1, 2021  
Published: August 28, 2020

REMARKS: \_\_\_\_\_  
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ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kaneali'i-Kleinfelder	X			
Kierkiewicz	X			
Lee Loy	X			
Poindexter	X			
Richards	X			
Villegas	X			
	9	0	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Chung	X			
David	X			
Eoff	X			
Kaneali'i-Kleinfelder	X			
Kierkiewicz	X			
Lee Loy	X			
Poindexter	X			
Richards	X			
Villegas	X			
	9	0	0	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

  
COUNCIL CHAIRPERSON

  
COUNTY CLERK

Approved/Disapproved this 17<sup>th</sup> day  
of August, 2020.

  
MAYOR, COUNTY OF HAWAII

Bill No.: 178  
Reference: C-988/FC-126  
Ord No.: 20 60