

# A BILL TO ESTABLISH A PROGRAM TO ACQUIRE AND LEASE AGRICULTURAL LANDS

## SECTION 1. Findings

### The people of the County of Maui find:

(a) After land was privatized upon the Mahele of 1848 and thereafter, concentration of land ownership increased as large-scale, plantation agriculture was introduced to Hawai'i, stimulated by high profits from the export of sugar. As plantation agriculture flourished in Hawai'i, concentration of land ownership and control increased. Plantations purchased considerable quantities of public lands and secured long-term leases on other portions of public lands and crown lands. Plantations also obtained title to many of the small land holdings obtained by native Hawaiians during the Mahele.

In 1890, the last census taken before the overthrow of the Queen Lili'uokalani showed that with a total population of 90,000, fewer than 5,000 people actually owned any land. Of the minority elite population of Europeans and Americans owned over one million acres, or approximately 56 percent of all privately held land in Hawai'i.

Landholding sugar planters, with the assistance of the U.S. minister to Hawai'i and the U.S. military, overthrew the lawful Kingdom of Hawai'i, which it replaced with a provisional government composed of landowning sugar planters and their allies. This provisional government was followed by a short lived Republic under the control of the same individuals and then annexation by the United States as a Territory.

During the Territorial era, Hawai'i's plantation-centered economy, controlled politically by a small portion of the landowning population, continued. The amount of land planted in sugar cane doubled between 1900 and 1930. Plantations acquired this additional land through "exchanges" with the government, additional purchases of public and private lands, and adverse possession.

Further concentration of land ownership and control was fostered by two forces that began during the Great Depression. First, the number of plantations decreased. Some were eliminated because of their marginal economic activity while other plantations combined with to become more efficient and profitable. The other force involved the systematic acquisition of stock by each of the major factors in the plantations for which they had served as agents. Wailuku Sugar Co went from being 50% owned by C. Brewer in 1950 to being 80% owned by C. Brewer in 1960. Pioneer Mill became a wholly owned subsidiary of American Factors (Amfac) in 1960. The Hawaiian Commercial & Sugar Company (HC&S), a subsidiary of Alexander & Baldwin, Inc. (A&B) along with East Maui Irrigation, merged with A&B in 1962. Haleakala Pineapple merged with Maui Pineapple (another A&B subsidiary) in 1962. Hawaiian Pineapple/Dole Corporation merged with Castle & Cooke in 1964.

Developments in Hawai'i and in the continental U.S. were similar. Across the nation, broad consolidations and mergers enormously increased the overall size of large corporations in many industries. The concentration of landownership and the acquisition of majority positions in the stock of Hawai'i's plantations contributed to centralized land management by the "Big Five" companies and their successors. Hawai'i agribusiness thrived, requiring the continued influx of plantation laborers from around the world and the displacement of Native Hawaiian land uses.

Today, these centralized landholdings focus on the commercial development of residential subdivisions, resorts and industrial uses. Such land uses have not maintained or increased community-beneficial agricultural uses and practices. Three of the five biggest private landowners in Hawai'i are Lana'i Resorts LLC, A&B, and Molokai Ranch, which are also the largest private landowner on their respective islands of operation.

As the "Big Five" companies and their successors abandoned agriculture in Maui County over the last thirty years for more profitable ventures, it has become clear that their "land management" practices are not developed for the public good, nor for the long term health, stability and food-security of the community. This clarity is evidenced in the refusal of such landowners to sell their lands to entities working in the public interest. Further evidence consists in their practice of selling to land speculators who then manipulate land use laws to develop luxury "gentlemen estate" farms or highly-priced residential and hotel developments that do not grow food or other sustainable agricultural products. The pervasiveness of such practices has resulted in a serious shortage of agricultural land available for food farming in Maui County. As a consequence of Maui County's lack of food-production, over 90% of food consumed in Maui County is imported from out of state.

The sound and wise conservation, preservation, use and management of agricultural lands cannot be separated from the subject of patterns of land ownership. To accomplish the public purpose of wisely conserving, preserving, using

and managing agricultural lands in Maui County requires changing present patterns of agricultural land ownership. Changing present patterns of such landownership in Maui County by allowing the County to buy or condemn agricultural land at the request of residents or potential farmers will help to satisfy the pressing public necessity for a secure, strong and stable agricultural sector and overall economy.

Organic agriculture is a holistic production management system, which promotes and enhances agricultural ecosystem health, including biodiversity, biological cycles, soil health and biological activity. It relies on ecosystem management rather than external synthetic inputs. Organic, community farming will benefit all the people of Maui by enhancing the ecosystem, employing citizens, facilitating small businesses, and improving the health of its residents. The nutritional content of the food will be higher. The health and productivity of the soil will be enhanced. Fewer synthetic inputs will be introduced into the food, soil, air, and water. Diverse organic systems are more resistant to fluctuations in weather, pest populations, and invasive weeds.

The power of the County to use eminent domain to effectuate the purposes and objectives of this Bill is granted to the County under Section 46-1.5(6), (13) and (16) and Chapter 101, HRS.

(b) It is therefore declared to be necessary and it is the purpose of this Ordinance to alleviate the conditions found in subsection (a) of this Ordinance by providing for the right of landless farmers or a certain number of registered voters to petition the County to acquire privately held agricultural lands, for long term leasing to farmers, farmers cooperatives, or other agriculturally related public purposes using organic and regenerative agricultural practices, at a fair and reasonable price, by providing for the condemnation of the land and payment of just compensation therefor by the County through the use of its eminent domain power.

**SECTION 2.** The County Code of Maui is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER \_\_\_\_.

## **DIVERSIFIED AGRICULTURAL LAND ACQUISITION AND LEASING PROGRAM**

### **Article I. General Provisions**

**Section 1.1. Purpose.** The purpose of this Chapter is to establish the mechanism by which Maui residents may petition the Council to condemn agricultural lands to establish agricultural parks.

**Section 1.2. Application.** This Chapter applies to all lands, in the County of Maui, owned or held privately or by the County of Maui or by the State, except Hawaiian home lands subject to Article XII of the Constitution of the State of Hawaii, kuleana lands, lands held by the crown on or before January 17, 1893, or lands owned or held by the federal government.

**Section 1.3. Administration of Chapter.** The Community Farmland Committee shall administer this Chapter.

#### **Section 1.4. Composition of the Committee.**

(a) The Community Farmlands Committee shall be composed of nine members who shall serve for five years. The members shall consist of:

- (1)-(3) three farmers with at least 5 years experience in organic or regenerative farming,
- (4) one farmers with at least 5 years experience in large-scale (500+ acres) agriculture,
- (5) one person with a university degree in Hawaiian Studies,
- (6) one person who is generally recognized within the Hawaiian community as an expert in Hawaiian culture,
- (7) one conservation scientist with at least one years experience in soil sciences,
- (8) one person with at least five years experience marketing commercial agricultural products, and
- (9) one member of the public interested in organic farming.

(b) The members of the Committee shall be appointed pursuant to section 13.2 of the revised charter of the county (2015 edition) provided however, not more than two (2) successor members may reside in the same state House

of Representatives district.

**Section 1.5. Committee's powers and duties generally.** In addition to any other duty prescribed by law and in this Chapter, the Committee shall: (a) be responsible for enforcement of this Chapter, (b) facilitate the acquisition of all necessary property interests by the county through eminent domain proceedings as provided in this Chapter, (c) negotiate and establish leases with farmers for lands designated and acquired under this Chapter and (d) do all things necessary and convenient to carry out the powers expressly conferred upon the Committee by this Chapter.

**Section 1.6. Lease Exemptions.** Notwithstanding any other provision in the Code to the contrary, leases for lands designated and acquired under this Chapter shall be exempt from the provisions of chapter 3.40 of the Code, and disposition of lots to lessees acquired under this Chapter shall be exempt from the provisions of chapter 3.44 of the Code.

## **Article II. Designation of Agricultural Land for Acquisition**

**Section 2.1. Applicability.** This Article applies to land which at the time of acquisition by the County are:

- (1) currently used, or historically has been used for agricultural purposes,
- (2) zoned interim, agricultural, rural, conservation or open space, and
- (3) held by a landowner with an ownership of 1000 or more acres within the county of Maui either as of March 1, 2016, or at the time of acquisition by the county.

### **Section 2.2. Designation of development for acquisition.**

(A) Subject to subsection (b), the Committee may designate all or that portion of land for acquisition, and facilitate the acquisition of the applicable fee interests in that land by the County through the exercise of the power of eminent domain or by purchase under the threat of eminent domain, after:

(1) A petition of farmers or proposed farmers, who (a) are at least eighteen years of age, (b) are bona fide residents of the County of Maui, (c) do not own property in fee simple lands suitable for agricultural use within the County of Maui, (d) provide suitable documentation demonstrating that the petitioning farmers will be able to pay the County for any lease of said lands, (e) submit an plan demonstrating a viable farm plan; or

(2) A petition of registered voters, bearing the signatures in a number not less than 10% of the number of votes cast in the last regular second special election held in conjunction with the general election, requesting the condemnation of certain agricultural lands shall be filed with the County Clerk and shall identify by tax map key number the parcel or parcels to be condemned and shall identify a representative committee of three to five signatories, who may act on the petitioners behalf pursuant to this chapter.

(B) Due notice shall be given and a public hearing held, the time and place of which have been duly advertised in a newspaper of general circulation in the County of Maui, on at least three different days, the last publication being not less than five days before the date of hearing. The petitioner shall be approved and the land designated for acquisition if the Committee finds that the acquisition of the land or a portion thereof, through exercise of the power of eminent domain or by purchase under threat of eminent domain and the disposition thereof as provided in this part, will effectuate the public purposes of this Chapter.

(C) The land designated and acquired by the County may consist of a portion of or the entirety of the land area identified in the petition.

(D) The Committee may require additional testimony or evidence under oath in connection with any application. For purposes of petitions submitted under (a)(1), the determination by the Committee of any petitioner's eligibility under this part shall be conclusive; provided that the making of any false statement knowingly by petitioners or other persons in connection with any application shall constitute perjury and shall be punishable as such.

(E) The Committee shall adopted rules pursuant to Chapter 91, HRS, to effectuate the purposes of this section.

## **Article III. Condemnation of Designated Land**

**Section 3.1. Negotiations for acquiring designated lands.** The Committee shall negotiate with the landowner for acquisition of the designated lands through voluntary action of the parties for not more than six months. The Director of Finance shall assist the Committee in its negotiation.

**Section 3.2. Exercise of power of eminent domain.** Within twelve months after the designation of lands or portion thereof for acquisition, the Committee shall facilitate the acquisition of the lands through voluntary action or the institution of eminent domain proceedings to acquire the lands or portion thereof so designated. If the lands are not acquired or a request for authorization to institute eminent domain proceedings has not been lodged to the Council within the twelve-month period, the county shall reimburse the landowner so designated for actual out-of-pocket expenses they incurred as appraisal, survey and attorney fees as a result of the designation and the designation shall be terminated.

**Section 3.3. Compensation.** The compensation to be paid for the lands shall be the current fair market value of lands. The compensation shall be determined as of the date of the summons of the complaint in eminent domain.

**Section 3.4. It is the intent of the County,** within the meaning of section 1033 or section 1231 of the Internal Revenue Code or the applicable provisions of Chapter 235, HRS, as well as all other statutes, rules, regulations, administrative orders and legal interpretations within the federal and state governments related to taxation, that any conveyance of title to property by a fee owner to the County under this Chapter shall constitute a compulsory or involuntary taking, as a result of the exercise of the power of condemnation or the threat of imminence thereof, and that the fee owner shall not, by reason in whole or in part of any provision of this Chapter or by reason of the execution by the fee owner of the lands and other properties subsequent to the date of approval of this Chapter, be deemed to hold the property primarily for sale to customers in the ordinary course of trade or business.

**Section 3.5. Agricultural progress revolving fund.** An agricultural progress revolving fund is hereby created. The funds appropriated for the purposes of this Chapter and all monies received or collected by the Committee under this Chapter shall be deposited in the revolving fund. The proceedings in the fund shall be used for the necessary expenses of the Committee, including administration, under this Chapter.

## **Article IV. Leases on Acquired Agricultural Lands**

**Section 4.1 In addition to the standard County lease provisions,** each agricultural park lease shall contain the following:

- (a) A lease term of five years, or ten years under extenuating circumstances, with automatic renews upon fulfillment of set conditions.
- (b) The lease rental rate to be paid quarterly by the first of January, April, July, and October, provided that the lessee may pre-pay rent without penalty.
- (c) The general agricultural use or uses to which the land is to be employed.
- (d) A provision that the lessee shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County.
- (e) A provision that the lessee shall pay or cause to be paid, when due, the amount of all taxes, rate assessments and other outgoings of every description as to which said demised premises or any part thereof, or any improvements thereon or the County or lessee in respect thereof, may be assessed or become liable by authority of law during the term of the lease; provided, however, that with respect to any government assessment which may be payable in installments lessee shall be required to pay only such installments, together with interest, as shall become due and payable during the term.
- (f) A provision that the lessee may sublease, with Committee's approval, one time only for a period not to exceed five consecutive years, the whole or any portion of the demised premises to a sub lessee who meets the minimum qualifications to lease property in acquired lands, provided that the sublease agreement shall be year to year and approved by the Committee, and provided further that the sub lessee cannot lease or sublease more than seventy-five usable acres of land.
- (g) A provision that a lessee may assign the lease for the remainder of the lease term to any individual, corporation, partnership, association or organization, provided that such assignee meets the minimum qualifications established by the

Committee to lease property on acquired lands, and provided further that such assignee cannot lease or sublease more than seventy-five useable acres of acquired lands.

(h) A provision that the lessee may mortgage or create a security interest in the demised premises or any portion thereof with coordinator's approval, provided that in the case of default the leasehold interest may only be foreclosed via judicial action pursuant to chapter 667, HRS, and the purchaser of the leasehold interest at any foreclosure and sale meets the minimum qualifications established by the Committee to lease acquired land, and provided further that in the event of default any financial lending institution mortgage holder may purchase the leasehold interest at any foreclosure and sale to temporarily hold title to such leasehold interest for a reasonable time so long as such mortgage holder uses its best efforts to convey such leasehold interest to a person or entity who meets the minimum qualifications established by the Committee to lease acquired lands, and provided further that such leasehold interest shall be transferred via assignment of lease for the remainder of the lease term only.

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

(j) The lessee must utilize the land for agricultural and related purposes in accordance with the following schedule: (1) Not less than fifty percent of useable agricultural land within the first two years of the lease term and the remainder within the first five years; and (2) The above utilization schedules shall be made a part of the plan of development and utilization which must be submitted to the Committee.

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

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

(m) A provision that the lessee shall not engage in any activity which may result in soil erosion, except in accordance with Chapter 20.08, of this code.

(n) A provision that the lessee shall utilize best management practices as all times.

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

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

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

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

(s) A provision that failure to comply with all provisions of the lease shall be cause for termination of the lease.”

## **Section 4.2. Guidelines for Leasing**

(A) The goal is to lease lands that are used exclusively for farming that feeds Maui and the Hawaiian Islands on as many small, diverse farms as possible using organic and regenerative agricultural practices. It is recognized that it may be appropriate to initially grant large acreage leases that utilize mono-crops and non-food crops in order to transition toward the ultimate goal in as short a time as is practical.

(B) In considering lease proposals, the County shall give preference to proposed lessees that:

- (1) demonstrate a long-term public benefit,
- (2) facilitate synergistic cooperation with other farmers, within an individual project that includes multiple small farmers, or farmer-run cooperatives,
- (3) avoid negative impacts to neighboring farmers,
- (4) encourage long-term sustainability,
- (5) utilize regenerative farming practices that builds soil health or regenerate unhealthy soil by maintaining a high percentage of organic matter in soils, minimum tillage, biodiversity, composting, mulching, crop rotation, cover crops, and green manures and other regenerative practices,
- (6) contribute to food security for the Hawaiian Islands,

- (7) create living-wage employment for the citizens of Maui, and
- (8) reduce off-site harm and increase off-site benefits to the environment.

(C) Leases shall be granted to the most qualified available lessee pursuant to the Committee leasing guidelines regardless of which particular farmer lease applicant initiated the land acquisition process.

**SECTION 3. Severability Clause.** If any article, section, sentence, clause or phrase of this Chapter, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining articles, sections, sentences, clauses, and phrases of this Chapter, or the applicable of this Chapter to other persons or transactions or circumstances, shall not be affected. The people of Maui hereby declare that it would have passed this Chapter and each article, section, clause, or phrase thereof, irrespective of the fact that any one or more articles, sections, sentences, clauses or phrases of this Chapter, or its application to any person or transaction or other circumstance, be declared unconstitutional or invalid.