

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 25, 2021

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 20KD-085

Kauai

Issuance of Revocable Permit to Frank and Abigail Santos for Agriculture  
Purposes and Set Aside to Department of Agriculture for Agriculture Purposes,  
Portion of Hanapepe, Waimea, Kauai, Hawaii, Tax Map Key: (4) 1-9-007: 046.

APPLICANT:

Revocable Permit: Frank and Abigail Santos  
Executive Order: Department of Agriculture

LEGAL REFERENCE:

Sections 171-11 and -55, Hawaii Revised Statutes (HRS), as amended, and Act 90  
Session Laws of Hawaii 2003, now codified at Chapter 166E, HRS.

LOCATION:

Portion of Government lands Situated at Hanapepe, Waimea, (Kona) Kauai, Hawaii, Tax  
Map Key: (4) 1-9-007:046, as shown on the attached maps labeled Exhibit A.

AREA:

1.00 acre, more or less.

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

REVOCABLE PERMIT:

APPLICANT:

Frank and Abigail Santos.

CHARACTER OF USE:

Agriculture

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$67.58

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

JUSTIFICATION FOR REVOCABLE PERMIT:

While staff prepares the set aside to the DOA, Frank and Abigail Santos respectfully request that a new revocable permit be issued to them as an interim measure in order to use the property. Office staff was also advised by the DOA, that the parcel could not be transferred to their department if it was unencumbered and asked that there be a revocable permit (RP) in place for agriculture prior to transferring the property.

EXECUTIVE ORDER:

APPLICANT:

Department of Agriculture

APPLICANT REQUIREMENTS:

Not Applicable

PURPOSE:

Agriculture purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:REVOCABLE PERMIT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,"

EXECUTIVE ORDER:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended. See attached Exhibit B.

REMARKS:

The Legislature in 2003 found that certain public lands classified for agricultural use by the Department of Land and Natural Resources (DLNR) should be transferred and managed by the Department of Agriculture (DOA) for the development of farms on as widespread a basis as possible which is established by Article XI, Section 10 of the State Constitution. This resulted in the passing and signing of Act 90, Session Laws of Hawaii 2003 (Exhibit C). Later, Act 235, Session Laws of Hawaii 2005 passed establishing a non-agricultural park lands special fund at DOA for the collection of lease rents, fees, penalties, and any other revenue or funds collected from non-agricultural park lands that are transferred, or in the process of being transferred from DLNR to DOA.

The Land Board at its meeting of December 9, 2005, under agenda Item D-1, approved to recommend to the Governor the issuance of an executive order to DOA pursuant to Act 90, SLH 2003, covering certain parcels surrounding the subject parcel.

The subject parcel, identified as TMK: (4) 1-9-007:046 was previously part of TMK: (4) 1-9-005, 007, 008, 009 and 028. These parcels were previously encumbered under RP No. S-5513 and No. S-5446 to Kilauea Agronomics, Inc. for prawn hatchery and related uses. After Kilauea Agronomics, the Board approved a revocable permit to Kekaha Sugar Company, Limited, dba: Amfac Aquatech-Hawaii (KSC) for aquaculture purposes under

RP No. S-5804 . KSC ceased operations in 1983.

In 1984, the Board approved a revocable permit to David Wellington for pasture purposes under RP No. S-6123. As part of the permit, the fish hatchery site was not included and was fenced-off.

In 1986, Mr. Wellington agreed to give-up one (1) acre surrounding the fish hatchery site to Darrell Horner for aquaculture purposes. On August 22, 1986 under item F-13, the Board approved Revocable Permit No. S-6455 to Mr. Horner.

Mr. Horner's permit was cancelled on April 14, 2000 at the request of DLNR – Division of Aquatic Resources, Freshwater and Marine Fisheries Development Program to conduct a consolidation and re-subdivision masterplan for the State property. Due to lack of funding for the proposed project, the development was not conducted. On July 12, 2013 under item D-2, the Board rescinded its prior action of April 14, 2000 and reissued new RP No. S-7840 to Mr. Horner for aquaculture purposes. Mr. Horner cancelled his RP No. S-7840 June 30, 2019. It should be noted that the land still has potential for aquaculture and Act 90 contemplates aquaculture use as it falls under HRS Sections 116E-2 and -8.

The subject parcel is currently vacant and unencumbered. Although the subject parcel was not specifically listed along with those approved for transfer to the DOA under Act 90, it is landlocked by several other parcels already under RPS-7259 to Frank and Abigail Santos which are in the process for transfer to DOA pursuant to Act 90. As such, the DOA and the RP applicant have both requested that this parcel be included in the transfer to the DOA.

A monthly rental rate of \$67.58 was derived from the 2018 DLNR Revocable Permits Appraisal Report done on the adjacent parcels that are already under RP 7259 to the RP applicants. Annual rent in 2018 for adjacent agriculture lands was \$764.40 per acre per year (\$63.70 per acre per month). Following the approach used for annual RP renewals in the relevant period, the rent was calculated by the Land Division by starting with \$63.70 per acre and increasing the 2019 rent by 3% over the 2018 rent, and the 2020 rent was increased by 3% over the 2019 rent. DLNR did not increase the rents for 2021 due to Covid19.

The existing use of diversified agriculture will not change. Based on the State land use classification and zoning of respective counties, the highest and best use for those parcels will be for agriculture purposes. Even though the lands are classed urban, the county zoning is restrictive and prohibits significant development. The county does allow agricultural use, however, so we recommend transfer of the subject parcel to DOA consistent with the Board's approval of the surrounding parcels to DOA. DOA is charged with maintaining agricultural land and water resources for Hawaii's diversified agriculture industry and for making land available to small farmers at reasonable cost with long-term tenure.

The following State and County of Kauai (COK) agencies were consulted on this action with the results indicated:

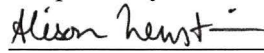
Agency:	Comment:
Historic Preservation	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date
Department of Aquatic Resources	No objections
COK Planning Department	No response by suspense date
COK Public Works	No objections
COK Department of Water	No response by suspense date

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to Frank and Abigail Santos covering the subject area for agriculture purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Agriculture under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - a. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - b. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - c. Review and approval by the Department of the Attorney General; and

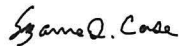
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Alison Neustein  
Land Agent

APPROVED FOR SUBMITTAL:

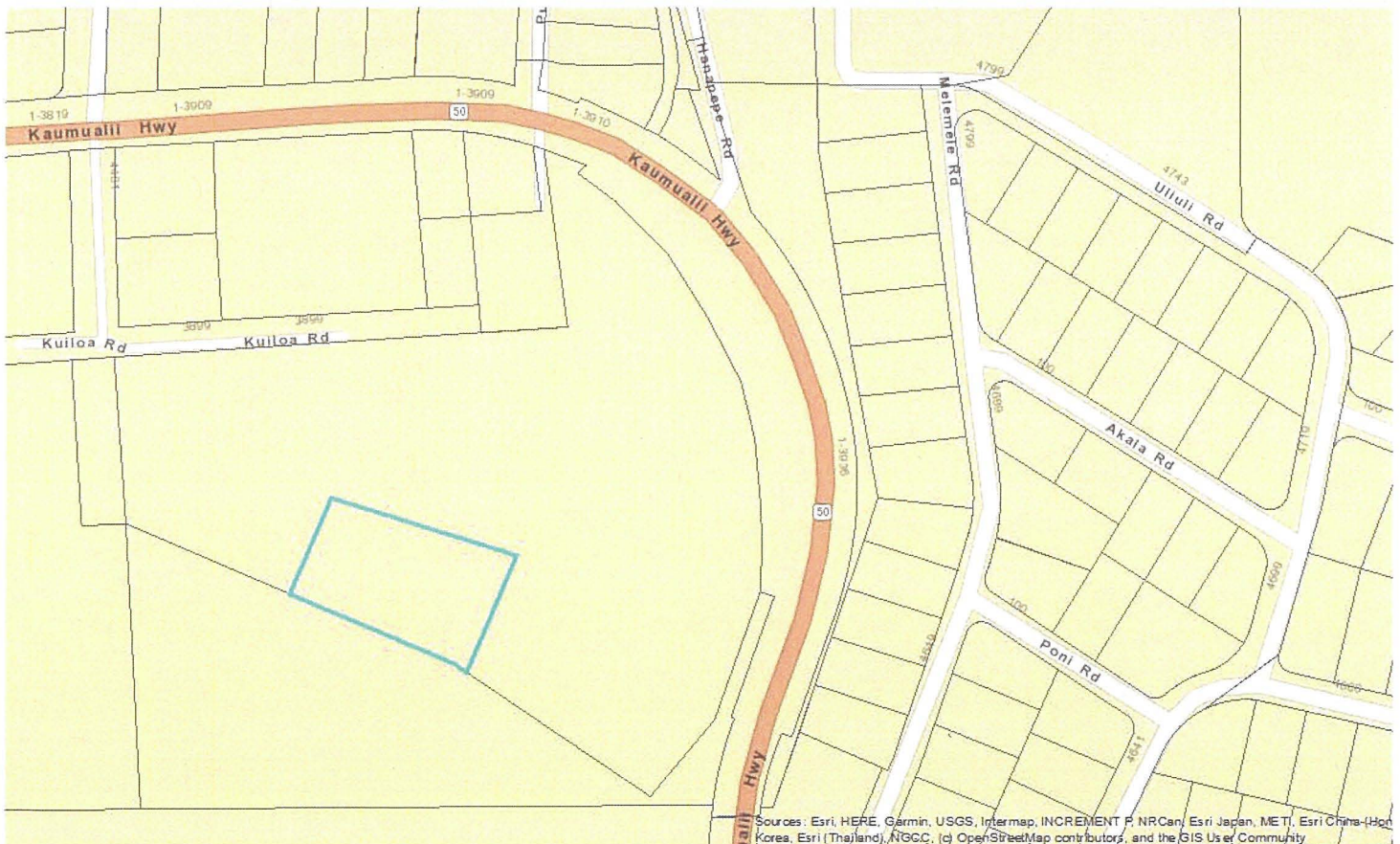


---

Suzanne D. Case, Chairperson

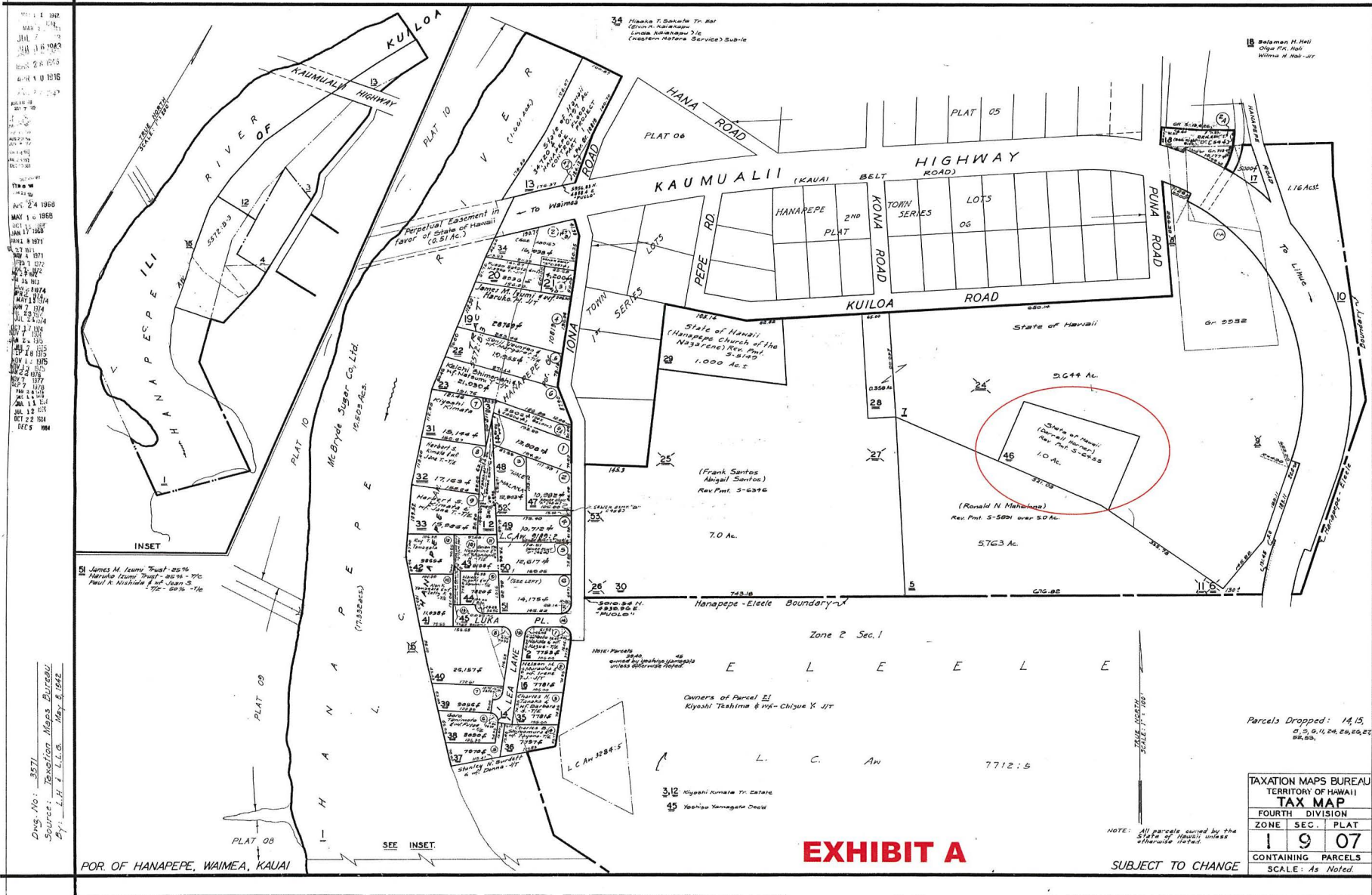
RT





**EXHIBIT A**





Dwg. No. 3571  
 Source: Revision Maps Bureau  
 City: L.H. & L.C. May 8, 1944

Parcels Dropped: 14, 15,  
 1, 2, 3, 4, 24, 25, 26, 27,  
 28, 29,

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH DIVISION		
ZONE	SEC.	PLAT
1	9	07
CONTAINING PARCELS		
SCALE: As Noted		

**EXHIBIT A**

SUBJECT TO CHANGE



DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 25, 2021

**EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR.

<b>Project Title:</b>	Issuance of Revocable Permit to Frank and Abigail Santos for Agriculture Purposes and Set Aside to Department of Agriculture for Agriculture Purposes, Portion of Hanapepe, Waimea, Kauai, Hawaii TMK: (4) 1-9-007:046.
<b>Project / Reference No.:</b>	20KD-085
<b>Project Location:</b>	Portion of Government lands Situated at Hanapepe, Waimea, (Kona) Kauai, Hawaii, Tax Map Key: (4) 1-9-007:046, as shown on the attached maps labeled Exhibit A.
<b>Project Description:</b>	Issuance of Revocable Permit to Frank and Abigail Santos for Agriculture Purposes and Set Aside to Department of Agriculture for Agriculture Purposes.
<b>Chap. 343 Trigger(s):</b>	Use of State Land.
<b>Exemption Class No. and Description:</b>	In accordance with HAR § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features,

**EXHIBIT B**

involving negligible or no expansion or change of use beyond that previously existing," and item 47, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existed."

**Cumulative Impact of  
Planned Successive Actions  
in Same Place  
Significant?**

No. The temporary use of the land for agriculture purposes is compliant with county zoning requirements. Staff believes there are no cumulative impacts involved.

**Action May Have  
Significant Impact on  
Particularly Sensitive  
Environment?**

No. There are no sensitive environmental issues involved with the proposed use of the property.

**Analysis:**

The proposed exemption is appropriate because the applicant is requesting a revocable permit for agriculture purposes. The property has been used for agriculture since 1977 and the applicant is not proposing expansion or changing the current use. According to the Applicant, the proposed project maintains the existing topography and is a minor alteration of the condition of the land and vegetation and should result in no material change or significant impact to the environment.

**Consulted Parties:**

Comments from The State Historic Preservation Division, Office of Hawaiian Affairs, County of Kauai (COK) Public Works, COK Department of Water and COK Planning were solicited.

**Recommendation:**

We recommend that the Land Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.