

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

September 22, 2023

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

PSF No.: 23KD-029

Kauai

Issuance of Revocable Permit to Bill DeCosta for Intensive Agriculture Purposes,
Hanapepe, Waimea, Kauai, Tax Map Keys: (4) 1-9-012:005 and 037.

APPLICANT:

Bill DeCosta, a married man, Tenant in Severalty.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Hanapepe situated at Hanapepe, Waimea, Kauai,
identified by Tax Map Key: (4) 1-9-012:005 and 037, as shown on the attached map
labeled **Exhibit A**.

AREA:

TMK: (4) 1-9-012:005: 3.08 acres, more or less
TMK: (4) 1-9-012:037: 2.43 acres, more or less

ZONING:

State Land Use District: Rural
County of Kauai CZO: R2

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:

Encumbered by Land Office Deed No. S-26909, Kauai Island Utility Cooperative, Grantee, for a Perpetual, Non-Exclusive Utility Easement.

Encumbered by Land Office Deed No. S-28661, Juan Wilson and Linda Pascatore, husband and wife, Grantees, for a Perpetual, Non-Exclusive Access and Utility Easement.

CHARACTER OF USE:

Intensive Agriculture Purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

\$40.00 per month

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached as **Exhibit B**.

DCCA VERIFICATION:

Applicant is not operating as a business and, as such, is not required to register with DCCA.

JUSTIFICATION FOR REVOCABLE PERMIT:

At this time, staff believes that a month-to-month tenancy for intensive agriculture purposes is an appropriate disposition since no other parties have expressed interest to utilize/lease the subject area. TMK: (4) 1-9-012:005 is used as an illegal dump site in the area, and a Revocable Permit (RP) could help mitigate the continued dumping and costs involved with cleaning and maintaining the parcel. In addition, the potential revenue to be generated by a long-term lease for agricultural uses may not be sufficient to justify the investment of staff time and resources required to conduct a public auction for a sale of lease of the property. Staff will contact the Department of Agriculture to determine

whether it has any interest in a set-aside of the land pursuant to Act 90 Session Laws of Hawaii 2003.

REMARKS:

State Parcel (4) 1-9-012:037 (Parcel 37) is currently vacant and unencumbered and in an overgrown state, being almost entirely blanketed in 4-6 feet of guinea grass.

At its meeting of November 19, 1982, under item F-7, The Board of Land and Natural Resources (Board) consented to sale at public auction of a lease of parcel 37 under General Lease (GL) S-4937 to Tatsuo Nishi for agricultural purposes. The staff submittal notes that the lessee had been utilizing and maintaining the land for 20 years and that it should be viewed as productive acreage.

At its meeting of March 13, 1998, under item D-5, the Board issued Revocable Permit (RP) S-7198 to Tatsuo and Elsie Nishi for intensive agriculture on November 15, 1999. RP S-7198 was cancelled March 28, 2001.

At its meeting of March 13, 1998, under item D-5, the board consented to sale at public auction of a lease under GL S-5616 to Elsie Nishi, for intensive agricultural purposes, which was later cancelled on February 28, 2011.

A request was recently made for an easement across Parcel 37 for access and utility purposes to an abutting landowner. Kauai District Land Office (KDLO) is currently processing this easement request and plans on bringing it to the Board sometime in the near future.

State Parcel (4) 1-9-012:005 (Parcel 5) is currently encumbered by Land Office Deed (LOD) 26909 to Kauai Island Utility Cooperative (KIUC) for utility purposes as well as LOD 28661 to Juan Wilson and Linda Pascatore for access and utility purposes. A lease of Parcel 5 was sold at public auction under GL S-3885 to Manuel Andrade Jr. on March 18, 1965, for a period of twenty (20) years for agriculture purposes.

At its meeting of January 14, 1977, the Board approved the issuance of term, non-exclusive easement to Wayne and Jan Royal for access and utility purposes for a term of sixty-five (65) years under GL S-4576. This easement was cancelled by the Board at its meeting of June 13, 2003.

At its meeting of May 25, 1984, under item F-14, the Board authorized the sale of a lease of Parcel 5 by auction, at which Manuel Andrade Sr. and Manuel Andrade Jr. were the successful bidders. GL S-5120 was thereafter issued to them for intensive agriculture purposes for a term of fifteen (15) years.

Since the cancellation of GL S-5120, Parcel 5 has repeatedly been used as a dumpsite and

location for various illicit activities, at great cost to the state. During a recent site inspection on June 22, 2023, KDLO staff counted approximately 30 cars, 4 boats, 1 RV, 1 backhoe, 1 tractor, 1 forklift, 1 fifteen-yard dumpster, 8-10 trailers, 2 jet skis, 10 quad ATVs, riding mowers, and an indeterminate quantity of garbage and other refuse (see **Exhibit C**). During this site visit KDLO staff and DOCARE officers also found several abandoned caged dogs on the parcel which had to be rescued by the Kauai Humane Society.

KDLO intends to have the parcel cleared prior to the applicant taking possession of the property and submitted a request for bids with the best price accepted of \$45,000 for the total cost of clearing this parcel. Since this bid was accepted, KDLO staff counted an additional 6 abandoned vehicles on the parcel.

Applicant DeCosta has worked for various companies as a farmer and cattleman. He has raised animals and cultivated crops on Kauai Island for over 30 years. He currently has 60 cows and is hoping to expand the herd once he is able to utilize the RP areas. Additionally, applicant DeCosta intends to operate the land as an educational tool to teach local elementary school students the basics of farming and agriculture.

This request was previously submitted to the Board for consideration at its meeting of July 28, 2023, under item D-3. The Board deferred this request and asked that KDLO staff to come back in 30 days to allow others the opportunity to also apply to lease the subject parcels. Juan Wilson and Linda Pascatore, owners of the abutting parcel TMK: (4) 1-9-012:004, submitted both written and verbal testimony against the issuance of the revocable permit to Bill DeCosta, citing a desire to lease the property themselves. Mr. Wilson and Ms. Pascatore also acknowledged that they have been using Parcel 5 for their own agricultural use for some time without Board authorization (See **Exhibit D**). Following the July 28 meeting, KDLO staff reached out to Mr. Wilson and Ms. Pascatore and provided them with an application for the lease of state lands, and to inform them of the potential penalties for unauthorized use of state lands. On August 7, KDLO received a letter from them stating that they have no intention to pursue a lease for either parcel 5 or 37, and further, that they will move their encroachments to alternative land rented on the other side of their property (See **Exhibit E**).

A monthly rental rate of \$40.00 was derived from the 2018 DLNR Revocable Permits Appraisal Report. Average annual rent in 2018 for similar agriculture lands within a close vicinity of the subject was \$3.98 per acre per month. The annual market rent was estimated by employing a bracketing analysis using direct market comparison with other leases to tenant farmers on the islands of Oahu and Kauai. Following the approach used for annual RP renewals in the relevant period, the rent was calculated by the Land Division by starting with \$3.98 per acre and increasing the 2019 rent by 3% over the 2018 rent (\$4.10 per acre per month), and the 2020 rent was increased by 3% over the 2019 rent (\$4.22 per acre per month). DLNR did not increase the rents for 2021 due to Covid 19, and the 2022 rent was increased by 3% over the 2021 rent (\$4.35 per acre per

month) and then the 2023 rent was increased by 10% over the 2023 rent (4.78 per acre per month). Based on the 5.51 acres size of the two parcels, the total rent came out to 26.34 per month. On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the minimum rent for new land dispositions be no less than \$480 per year.

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

Agency:	Comment:
State Agencies:	
Office of Hawaiian Affairs (OHA)	No response by suspense date
State Historic Preservation Division (SHPD)	No objections
Division of Forestry and Wildlife (DOFAW)	No response by suspense date
Department of Agriculture	No objections
County Agencies:	
COK Department of Public Works	No response by suspense date
COK Planning Department	No response by suspense date

Historically, the State parcels have been used for agriculture. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

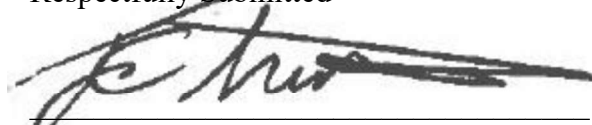
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition 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. Based on the testimony and facts presented, find that approving the revocable permit, under the conditions and rent forth herein, would serve the best interest of the State.
3. Authorize the issuance of a revocable permit to Bill DeCosta covering the subject areas for intensive 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.

Respectfully Submitted



James C. Turner
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson



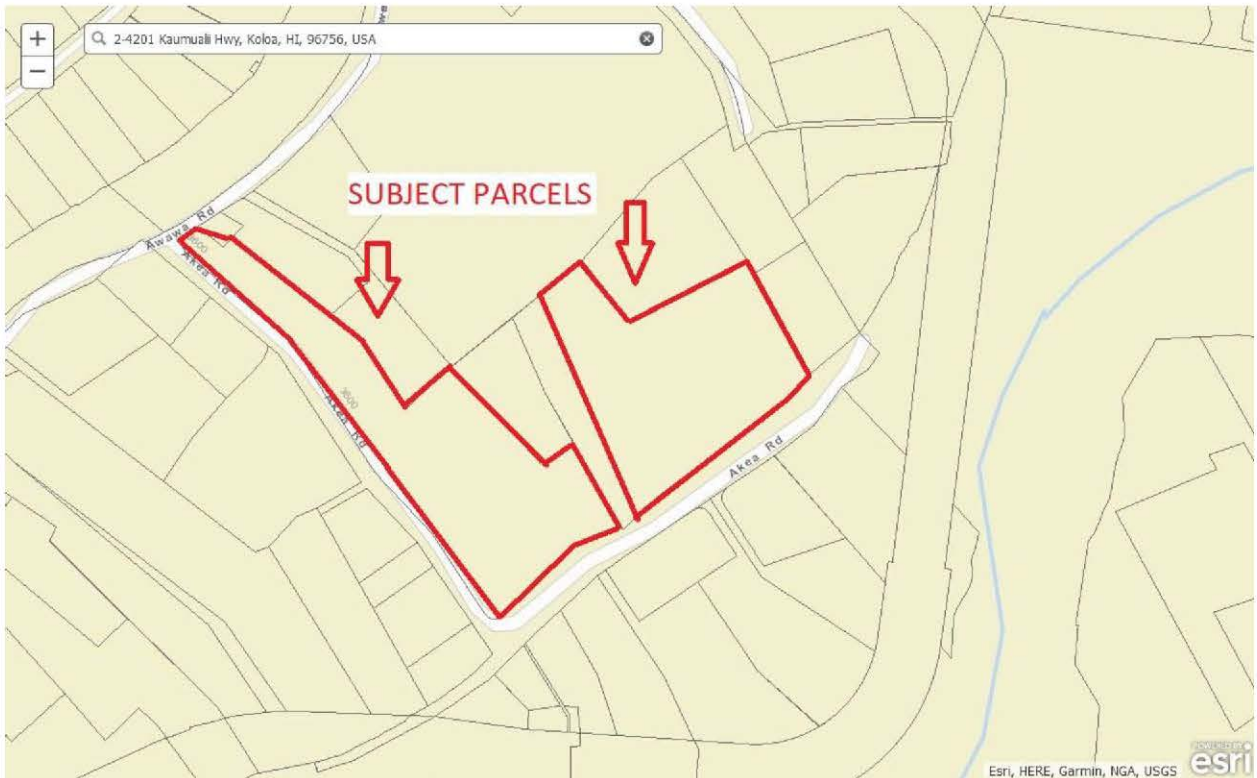
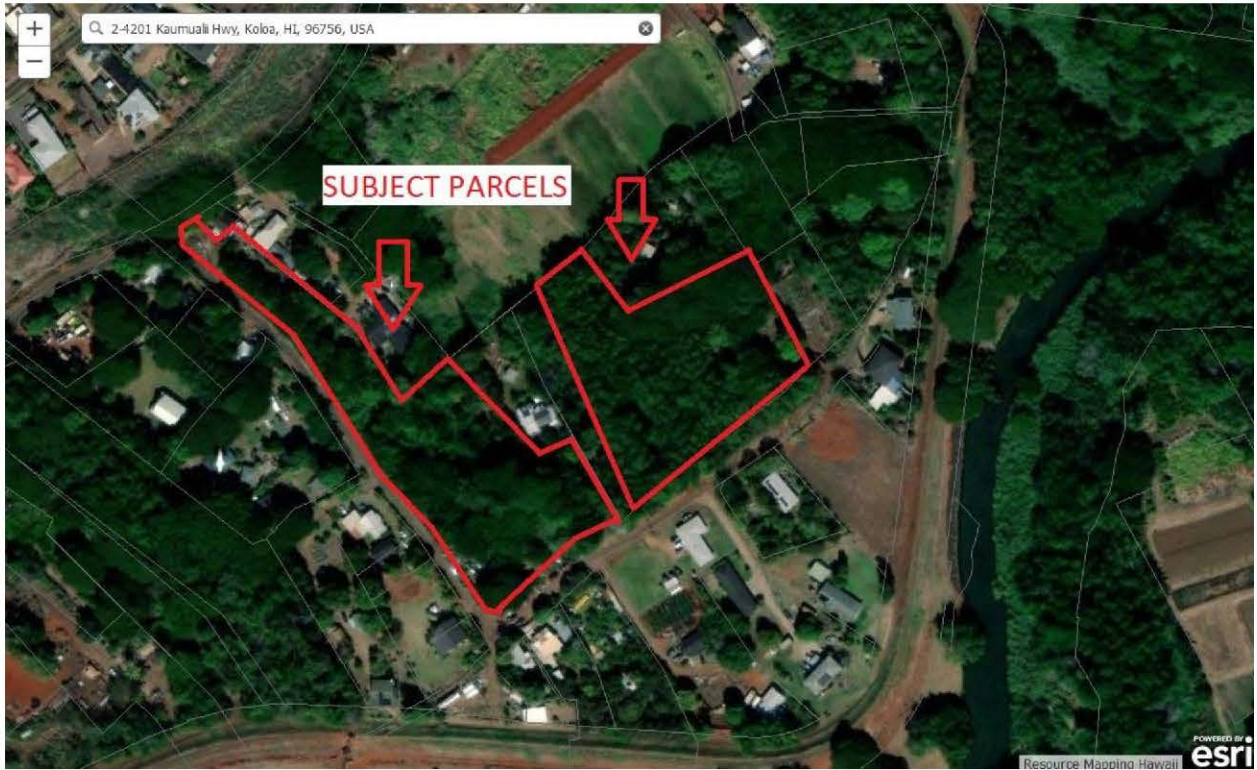
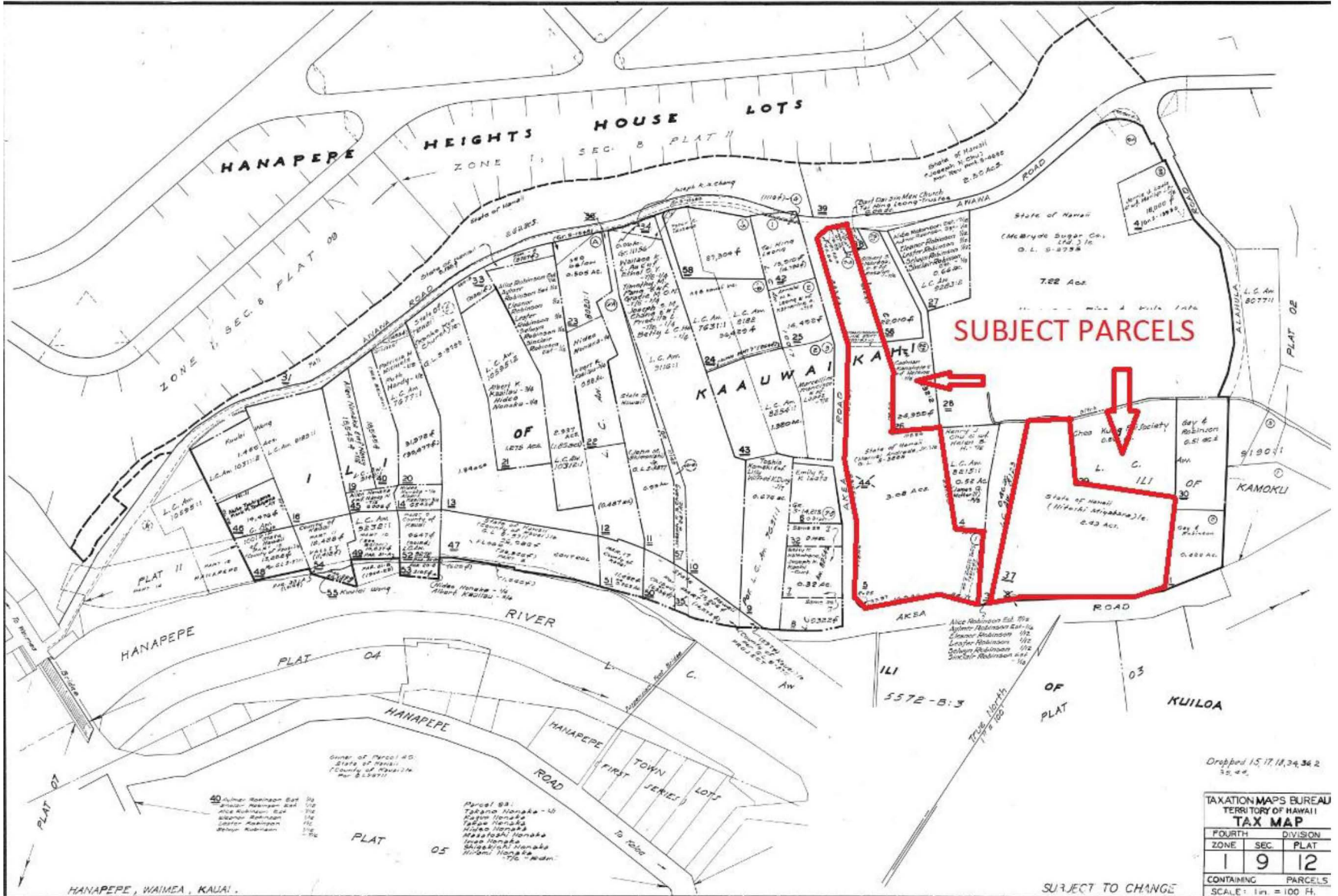


EXHIBIT A



Dropped 15, 17, 18, 34, 36 & 37

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH	DIVISION	
ZONE	SEC	PLAT
1	9	12
CONTAINING PARCELS		
SCALE: 1 in. = 100 Ft.		

SUBJECT TO CHANGE

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766
PHONE: (808) 274-3491
FAX: (808) 241-3535

September 22, 2023

EXEMPTION NOTIFICATION

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

Project Title:	Issuance of Revocable Permit to Bill DeCosta, for Intensive Agriculture Purposes,
Project / Reference No.:	23KD-029
Project Location:	Hanapepe, Waimea, Kauai, Tax Map Keys: (4) 1-9-012:005 & 037
Project Description:	Issuance of Revocable Permit for Intensive Agriculture Purposes
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	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 General Exemption Type 1, that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Part 1, Item 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

EXHIBIT B

Cumulative Impact of Planned Successive Actions in Same Place Significant?: No. Staff believes there are no cumulative impacts involved with the proposed intensive agricultural use of the land under a revocable permit.

Action May Have Significant Impact on Particularly Sensitive Environment?: No. There are no sensitive environmental issues involved with the proposed intensive agricultural use of the land under a revocable permit.

Analysis: The proposed action is an issuance of a revocable permit for intensive agricultural purposes. Such dispositions have not resulted in known significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed disposition would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Division of Forestry and Wildlife, Office of Hawaiian Affairs, County of Kauai Planning Department, County of Kauai Public Works, State Historic Preservation Division, Department of Agriculture.

Recommendation: That the Board find 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.



EXHIBIT C



EXHIBIT C



EXHIBIT C

From: [REDACTED]
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Revocable Permit to Bill DeCosta, on the agenda for 7/28/23
Date: Monday, July 24, 2023 3:45:25 PM

Date: 7/24/23

From:
Juan Wilson and Linda Pascatore

[REDACTED]

To: Board of Land and Natural Resources
State of Hawaii

Regarding: Issuance of Revocable Permit to Bill DeCosta for Intensive Agriculture Purposes, Hanapepe, Waimea, Kauai, Tax Map Keys (4) 1-9-012:005 and 037

Note: Our home, tax map parcel 1-9-012:004, is in between the two parcels in question. We directly abut parcel 1-9-012:005, and on the other side there is a strip of Robinson land we lease which is between us and parcel 1-9-012:037

We ask the BLNR for an environmental assessment of the impact agricultural development will have on the bird species here:

Both DLNR lots under consideration are some of the only forested areas of Hanapepe Valley. There are a great variety of bird species living in these forests. If the lots are cleared for agriculture, all of this bird habitat will be lost.

We ask that the property be put up for bid.

You state that no one has expressed interest in the parcel. Over 20 years ago we wrote to the DLNR requesting information about parcel 1-9-012:005, which was not being used at the time. We asked the status of the property and to be notified when it was put up for bid. There was no response from DNLN. We have recently again expressed an interest in leasing parcel 19012005, and our neighbor Mitchell Kali has also expressed an interest in the lease. We were told that Billy DeCosta already had a temporary lease, but if it was to become long term it would go up for bid. We would like a chance to bid on that property, and we would definitely be interested in the lease. We already pay significantly more than the rent proposed for the much smaller Robinson property on the other side of our lot (1-9-012:003), which abuts the other parcel (1-9-012:037).

If you are considering approving the lease, we ask that the DLNR grant us a buffer zone of 30 feet from our property line and driveway easement.

Our property at [REDACTED] (Tax Map 1-9-012:004) and our driveway which is a non-exclusive easement through DLNR land both abut the parcel 1-9-012:005 which is being considered for a Revocable Permit to Bill DeCosta. The back of the property is bordered by Helen Kanahale's lot, 1-9-012:026. Both of our properties are residential. We fear that if this lot is cleared and used for cattle or crops, we will be subjected to beef cattle or herbicide sprayed on crops just a few feet from our homes. We also have some productive fruit trees - breadfruit, mango and bananas as well as a bee hive on a lawn we keep mowed along a 30 foot

EXHIBIT D

parallel along the western edge of property line. We ask to keep that land use and will be glad to pay a proportional amount of the price that the DLNR asks of Billy Decosta.

Our understanding of the history of the Akea Road area is that when the present Hanapepe River Levy system was completed in 1966, it had a broad impact on the residential and agricultural use of the land in the valley. Prior to the levy much of the Akea road area was farmland that grew rice and taro in flooded fields. A central valley ditch took water from upstream Hanapepe River to feed those fields before it was returned to the river. That "returned" water used a now abandoned culvert that went under Akea Road. One culvert went under Akea Road near the lot next to our driveway on the land owned by Gay & Robinson (that we now lease). The other culvert is near the intersection of Akea Road and Awawa Road. It carried agricultural flood water from the approximately 8 acres of taro fields operated by Richard Corr & family. The culvert there it is now blocked. As a result when the taro fields are used the water has no place to go but to flood the area which Billy Decosta proposes to lease. If the land is cleared for cattle or crops, flooding will increase. The property near ours has already flooded several times this last winter, since the taro fields and ditch have been restored. Another issue is the specification of the fencing required to secure beef cattle. There is currently broken down barbed wire or no fence at all surrounding the property.

We respectfully request that the board take these requests and concerns into consideration.

Sincerely Yours,

Juan Wilson
Architect, Planner

Linda Pascatore
Retired DOE Speech Pathologist

To Alison Neustein: District Land Agent
Department of Land & Natural Resources Land Division
3060 Eiwa Street Room 208
Lihue Hi 96766

SUBJECT: Regarding your letter to me concerning Tax Map Keys (4) 1-9-012:005.

Aloha Alison,

Linda and I will take our beehives as far as the Gay & Robinson property we rent to the north of our property. Over the past decades they seem to be good people to do business with.

Linda and I do not have the resources to lease the adjoining parcel. The taxes alone on the property are beyond our resources. My bet is that Billy Decosta will find that true as well, since he says it will not be a commercial operation...unless he finds "another way".

I think the following is especially important in your case, since you will be held responsible for the results:

There is no capability to keep the property (4) 1-9-012:005 and 037 from being flooded with Hanapepe Ditch Water because the 8 acres of taro fields to the north are flooded by the Hanapepe Central Ditch feeding the fields. That ditch water has no where to go but lot 4) 1-9-012:005 and 037... Billy's target lot.

As I have detailed repeatedly, it was only before the Hanapepe Levy was built that water in the rice and taro fields had a way to return to the Hanapepe River. The Hanapepe Levy was not designed with "escape" tunnels if the fields were flooded.

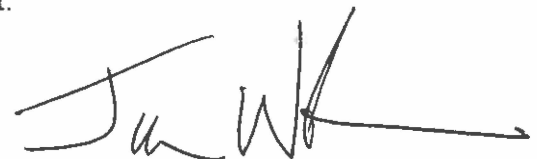
The two culverts under Akea Road are unused and have collapsed. Even if they were usable, the lack of a means of channeling the ditch water back to the Hanapepe River means the culverts will only send water flooding into 1-9-012:005 and 037.

I would hope for Billy DeCosta's sake, you take the responsibility to inform him on this issue. He may have a solid legal footing if you knew the land cannot be used for "intensive agriculture" due to flooding because the state abandoned Hanapepe farming inside the protection of the levy. He should also be informed of the old growth trees crisscrossing the property that the DLNR had dropped but not cut up or removed some years ago.

Linda and I are getting on in age. Much of the work we have done with the land around has been to encourage the most intense natural growth trees and bushes on and around our property.

P.S.

Alison... you are not a real estate agent anymore. You are supposed to be protecting Kauai's NATURAL RESOURCES... namely, the land and water and its flora and fauna. In your role protecting land is more important than leasing it.



Juan Wilson
Architect/Planner - Retired

EXHIBIT E

Location of Hanapepe Land in Question

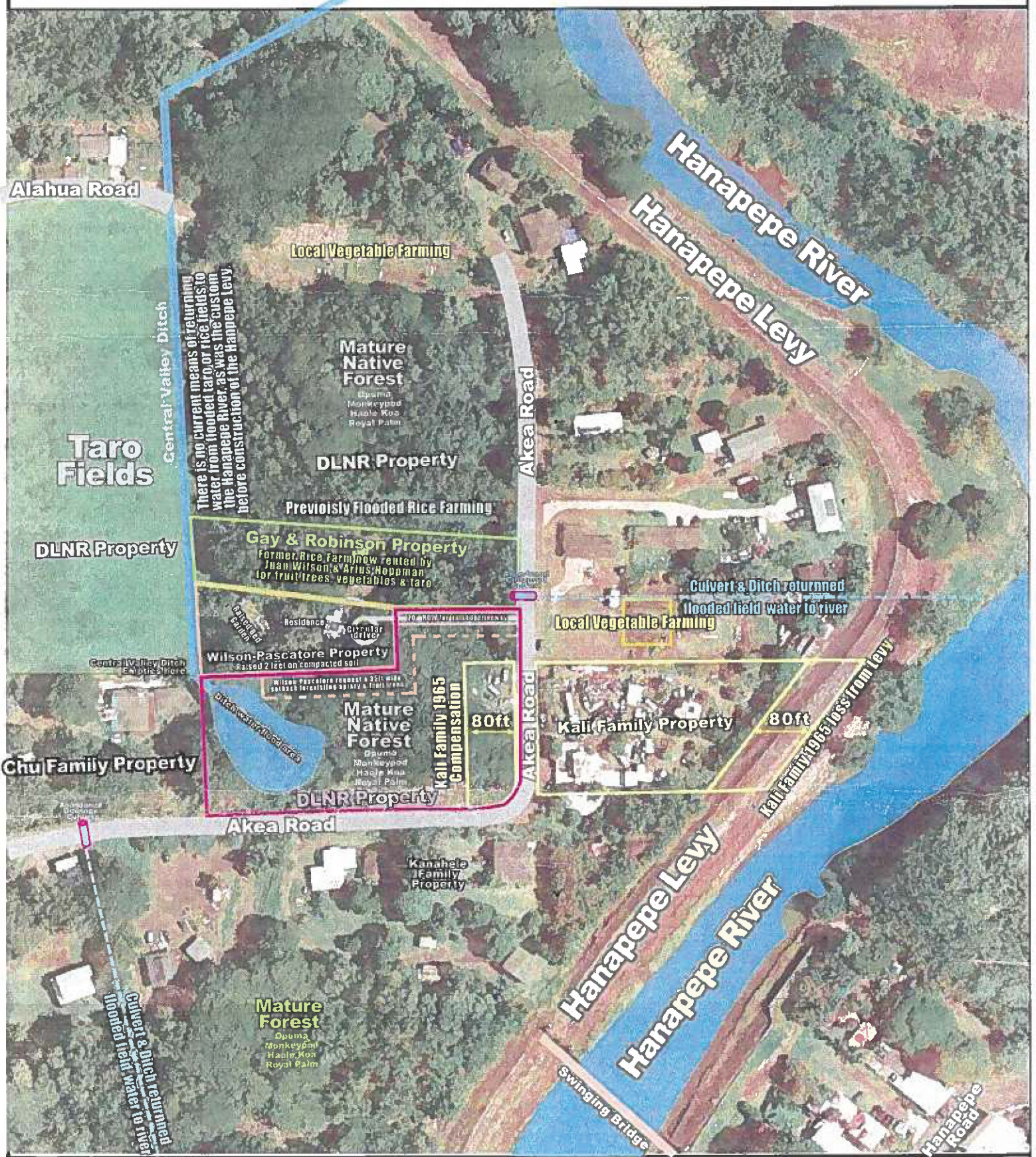


EXHIBIT E