

DEPARTMENT OF FINANCE
COUNTY OF KAUAI
REAL PROPERTY ASSESSMENT

HISTORIC RESIDENTIAL PROPERTY DEDICATION

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE
RELATING TO PROPERTY TAX EXEMPTION AND
DEDICATION OF HISTORIC RESIDENTIAL REAL PROPERTIES
UNDER SECTION 5A-11.22, KAUAI COUNTY CODE 1987

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Sec. RP 7.1 Purpose of rules. These rules and regulations are intended to implement the exemption provisions of Section 5A-11.22, Kauai County Code 1987, relating to the dedication of historic residential properties.

Sec. RP 7.2 Definitions. (a) As used in these rules and regulations:

(1) The term "director" means the Director of the Department of Finance, County of Kauai, or the director's designee.

(2) The term "historic residential property" means a residential real property that has been individually registered or placed on the Hawaii Register of Historic Places after January 1, 1988, and certified by the Historic Preservation Office, Department of Land and Natural Resources, State of Hawaii, (hereinafter referred to as the "Historic Preservation Office") pursuant to Chapter 6E, Hawaii Revised Statutes.

(3) The term "owner" means the owner of the improved residential land as defined in Section 5A-7.1, Kauai County Code 1987.

(4) The term "visually accessible" means the exterior of the building is able to be seen. "Visual access" means permission to approach the building to a point where the building is visually accessible.

(5) The term "residential" means improved with a building designed for or adapted to residential use and currently used solely as a dwelling.

(b) Use of Gender and Number. Words importing the singular

number shall extend to include the plural; words importing the plural shall extend to include the singular; words importing the masculine or feminine gender shall extend to and include the feminine or the masculine, as the case may be.

Sec. RP 7.3 Filing of petition. (a) Any owner of registered historic residential property desiring to dedicate such a property or a portion thereof and to receive an exemption from property taxation shall file a petition for dedication with the director by September 1 of any year. The petition for dedication shall be submitted on a form prescribed by the director.

(b) Each owner shall include the following information as part of the petition for dedication:

(1) A copy of the registration form for the Hawaii Register of Historic Places, certified by the Historic Preservation Office, including all attachments.

(2) A map drawn to scale which shows the location of the historic residential dwelling and the boundaries of the maintained yard area and the boundaries of any historic sites listed on the certified registration form.

(3) Any agreement entered into with the Historic Preservation Office relative to any legal obligations relating to the renovation, rehabilitation or other requirements to the property to be dedicated.

(4) A certification by the owner that, upon approval of the dedication petition, the property shall be visually accessible to the public, or that the public shall be allowed visual access at least twelve days a year if the property is not visually accessible from a public way.

(5) The owner's authorization for members of the assessment staff to visit and inspect the property as needed to conduct findings of fact and to verify that the terms of the dedication are being met.

Sec. RP 7.4 Findings and review of petitions. (a) The director shall review the petition for completeness and accuracy. If any of the requirements are not included, or if the map is not sufficient for the director to make a determination of the area to be exempted, the petition shall be returned to the owner by September 15 following the application. If the owner corrects the deficiencies by the following October 1, the application shall be considered timely.

(b) The director shall make the following findings of fact with respect to the petition filed:

(1) Whether the property or a portion thereof is designated and placed on the Hawaii Register of Historic Places. The director shall verify such status with the Historic Preservation Office.

(2) Whether the total area or only a portion thereof is residential, as defined herein.

- (3) Whether either of the following conditions exist:
(A) the property is visually accessible from a public way; or
(B) the owner has certified that he will permit visual access to the public at least twelve days a year, and that the owner has specified the dates that visual access will be permitted.
(c) The findings shall be deemed favorable, if the director

finds that:

(1) The property is certified by the State's Historic Preservation Office to be on the Hawaii Register of Historic Places;

(2) The property is visually accessible to the public, or that the owner has certified that the public shall be allowed visual access to the property at least twelve days a year;

(3) The area to be dedicated is residential as defined herein.

(c) If the findings are favorable, the petition shall be approved. Upon approval of the petition, the owner shall enter into an agreement with the director to repair or maintain the historic residence so that it will be in structurally sound, weathertight condition, free from decay within five years of the effective date of the dedication, as evidenced by a written statement certifying such condition signed by an architect or general contractor licensed to do business in the State of Hawaii and submitted to the director on or before September 15 of the fifth year and the tenth year after the effective date of dedication, and every tenth year thereafter as long as the property remains dedicated. If this certification is not submitted in a timely manner, the dedication shall be canceled and the terms of Section RP 7.7 applied.

Upon approval of the petition and execution of the agreement, the director shall exempt from taxation the portions of the land which are occupied by the historic residence, are traditionally and currently maintained as the yard area of the historic residence, and such historic sites as are certified by the Historic Preservation Office as being on the Hawaii Register of Historic Places, provided that the exempt area shall not include any lots of record which are not improved with a historic residence meeting the requirements for dedication. The director shall disapprove the petition if any of the findings are not favorable. The director shall annually post and record the assessed value of the property determined as of the January 1 assessment date in the event the retroactive assessment is imposed. Notwithstanding any provisions to the contrary, the dedicated exempt property shall be subject to the minimum tax provisions of Section 5A-6.3(g), Kauai County Code 1987.

Sec. RP 7.5 Reserved.

Sec. RP 7.6 Enforceable restrictions on property dedicated.

(a) The approval of the petition by the director shall thereafter

constitute a forfeiture on the part of the owner of any right:

(1) to change the use of the property to other than residential use for a period of ten years from the effective date of dedication except as provided in Section RP 7.8.

(2) to subdivide or to register under the Condominium Property Regime any portion of the dedicated area.

(3) to construct or cause to be constructed any additions or new buildings in the exempt area without approval by the State Historic Preservation Office, provided that no new dwelling units or guest houses may be built in the exempt area. The additions and buildings as approved and constructed and the land they occupy shall be fully taxable.

(b) The approval of the petition shall also constitute a commitment on the part of the owner to maintain the visual accessibility of the historic dwelling from a public right-of-way or to allow visual access by the public on specified days, as set forth in the petition. If the historic dwelling is not visible from a public right-of-way, visual access shall mean that on the specified days, no barriers shall be placed across the driveway and other access to the property and that all gates shall be placed in an open position to a point where the exterior of the historic residence is clearly visible. Further, no "No Trespassing" signs or other signs which could be expected to have the effect of discouraging entrance to the property may be posted on the days of visual access.

(c) The approval of the petition shall also constitute a commitment on the part of the owner to maintain the lawn and landscaping in the exempt land area and to continue to meet the requirements to be listed on the Hawaii Register of Historic Places.

(d) Any person who becomes an owner of the dedicated real property shall be subject to the restrictions and retroactive tax assessment provisions.

(e) The owner may renew the dedication for ten-year increments by applying for such renewal by September 15 of the tenth year of the dedication, provided that the property and the owner has met and continues to meet the requirements of dedication.

Sec. RP 7.7. Revocation of dedication and retroactive assessment.

(a) In the event the owner fails to observe the requirements of the dedication or commits any act nullifying the historical status or the residential use of the property, the director shall cancel the exemption and impose the retroactive tax.

(b) The retroactive tax shall be the difference in the amount of taxes that were paid and those that would have been due but for the exemption for each tax year retroactive to the date of dedication, together with interest at twelve percent per annum from the respective date that each such payment would have been due.

(c) All unpaid taxes, including the retroactive tax and the interest thereon, shall constitute paramount liens upon the property as provided in Chapter 5A, Kauai County Code 1987.

Sec. RP 7.8. Cancellation without retroactive assessment.

(a) In the event that the subject property is destroyed by any natural disaster or by fire, and upon the verification by the Historic Preservation Officer that the restoration or reconstruction of the property is not feasible, the dedication shall be canceled and the retroactive assessment shall not apply.

(b) Where the owner changes the use of the exempt property to a new use which meets the requirements for exemption under Section 5A-11.10 of the Kauai County Code, the dedication shall be canceled and the retroactive assessment shall not apply.

Sec. RP 7.9. Appeal. The owner may appeal any disapproved petition, retroactive assessment, or any determination of the director made pursuant to Section 5A-11.21, Kauai County Code 1987, as in the case of an appeal from an assessment.

Appeals shall be governed by the appropriate sections of Chapter 5A, Kauai County Code 1987, and may be taken to the Board of Review or directly to the Tax Appeal Court.

Sec. RP 7.10. The director's authority. In the enforcement and administration of these rules and regulations, nothing herein is intended to limit the director's authority to apply any of the provisions of Chapter 5A, Kauai County Code 1987 relating to real property taxation, and any and all other laws applicable thereto.

The Procedural Rules for the Implementation of Section 5A-11.22, Kauai County Code 1987, Relating to Real Property Tax Exemption and Dedication of Historic Residential Real Properties, is adopted following a public hearing held after public notice is given.

CERTIFICATION

I, Dorothy R. Bekeart, Deputy Director of Finance, Department of Finance, County of Kauai, do hereby certify:


1. That the foregoing is a true and correct copy of the Rules of the Department of Finance on matters relating to Real Property Tax Exemption and Dedication of a Historic Residential Real Properties under Section 5A-11.22, Kauai County Code 1987.

2. That a public hearing was held at the Conference Room of the County Building Annex II, Building B, located at 4280A Rice Street, Lihue, Kauai Hawaii on Thursday, August 9, 1991.

3. That notice of public hearing on the foregoing Rules, which notice included a statement of the substance of the proposed Rules, was published in the Garden Island Newspaper on

July 5, 1991.

4. That said Rules were adopted by the Department of Finance on August 12, 1991 and shall become effective ten (10) days after filing with the Office of the County Clerk, County of Kauai, State of Hawaii.


DOROTHY R. BEKEART
Deputy Director of Finance


APPROVED AS TO FORM:


GALEN T. NAKAMURA
Deputy County Attorney

DATED: 8-13-91


MICHAEL VEITH
Director of Finance


DATED: 8-14-91


JOANN A. YUKIMURA
MAYOR, County of Kauai

DATED: 8-19-91

CERTIFICATION OF THE COUNTY CLERK:

I certify that on August 20, 1991, I have
accepted for filing from the Department of Finance the rules on
Real Property Tax Exemption and Dedication of Historic Residential
Real Properties adopted on August 12, 1991.



JEROME Y. K. HEW
County Clerk, County of Kauai