

in effect

DEPARTMENT OF FINANCE
COUNTY OF KAUAI~ STATE OF HAWAII
REAL PROPERTY TAXATION

TREE FARM DEVELOPMENT EXEMPTION

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE
RELATING TO EXEMPTIONS FROM REAL PROPERTY TAXES
FOR TREE FARM DEVELOPMENTS
UNDER CHAPTER 5A, KAUAI COUNTY CODE 1987,
AS AMENDED BY ORDINANCE NO.782

- SECTION RP 9.1 Purpose of Rules
- SECTION RP 9.2 Definitions
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- SECTION RP 9.6 Agreement
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SECTION RP-9.1 PURPOSE OF RULES. These rules and regulations are intended to implement the provisions of Chapter 5A, Article II, Section 5A-11.26 of the Kauai County Code 1987, as amended, relating to exemptions from real property taxes for tree farm developments.

SECTION RP-9.2 DEFINITIONS.

(a) When used herein:

- (1) "Commercial tree species" means trees of any species maintained for eventual harvest and for a realization of profit in the business thereof.
- (2) "Director" means the Director of Finance or the Director's duly authorized representative.
- (3) "Forest" means forestland occupied by forest trees and associated wildlife species, and timber thereon.
- (4) "Forest management plan" means a written document for the management of a specified area for the establishment, growth and harvesting of timber. It identifies forest management goals and objectives and forestry prescriptions necessary for the growing and harvesting of a commercial tree species.
- (5) "Forest product" means any saleable item made from wood that is taken and/or harvested from forest trees.
- (6) "Merchantable tree farm crop" means a planted and harvested crop from successive plantings which has as its end product wood fiber products, such as chips for paper, biomass, medium density fiberboard, or oriented strand board, laminated veneer lumber,

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posts, poles, veneer, etc. provided, however, that merchantable tree farm crop shall not include products which results from thinning of the tree farm crop, such as posts or poles.

(7) "Monoculture" means a predominant representation of non-native forest trees that are of the same species.

(8) "Native forest" means a forest containing a range of plant species which are endemic or indigenous to Hawaii, and represents natural plant communities appropriate to the area.

(9) "Owner" includes a lessee of real property with an unexpired lease term of not less than the period specified in Section 5A-11.26 (d).

(10) "Prescription" means prescribed treatments used in forest management.

(11) "Tree Farm" means any public land or privately owned forestland that is capable of sustaining commercial tree species.

(12) "Tree farm development property" means real property suitable for the raising of a merchantable tree farm crop having a normal period of development from the initial time of planting to the first harvest of not less than 6 years nor more than 25 years and which contains a total cultivated area of not less than 10 acres.

(13) "Wood" means woody tissue growth of any tree species living or dead.

(14) "First Harvest" means the first harvest from which revenue is generated upon the sale of a merchantable tree farm crop.

SECTION RP-9.3

ELIGIBILITY.

- (a) The owner of property or properties which are suitable for the raising of a merchantable tree farm crop having a normal period of development from the initial time of planting to the first harvest of not less than six years nor more than 25 years and which contains a total area of not less than 10 acres shall be eligible for a tree farm development exemption, subject to the requirements of these rules and Kauai County Code, Section 5A-11.26.
- (b) No tree farm development shall be allowed in the urban district. If the tree farm development abuts the urban district, then a buffer of 150 feet shall be required. The buffer shall be contained within the tree farm development property.
- (c) Property on which the owner is already growing commercial tree species under approved forest management prescriptions and for which the owner agrees to manage the property according to a management plan approved by the director shall be eligible for classification as tree farm property subject to the requirements of these rules and Kauai County Code, Section 5A-11.26.
- (d) No real property under a lease for less than the term specified in the agreement shall be eligible for classification as tree farm property. Leases shall be recorded at the Bureau of Conveyances by the lessee or owner.

SECTION RP-9.4 APPLICATION.

- (a) The Director shall prescribe the form of the application, which shall be filed with the Director by September 1 of any year (Exhibit I). The owner shall have until December 31 of the year of application to complete that year's planting as specified in the tree farm management plan. The application shall include:
- (1) A description of the property;
 - (2) A tree farm management plan which addresses the establishment, maintenance, and harvest of forest products in a sustained manner while exercising sound conservation prescriptions;
 - (3) The Director may require that the application be signed by all persons having a legal interest in or holding any legal encumbrance upon the property, and shall state that all of them will comply with the management plan upon its approval; and
 - (4) All public hearings, environmental assessments and conservation district use permits required by statute or County ordinance shall be completed before any management plan is approved.
- (b) The minimum management plan format and standards (Exhibit II) shall include:
- (1) Cover Sheet - Lists the forest landowner's name and address; location of the property described in the management plan; the name, address, title and phone number of the person completing the plan; and the date the plan was completed.
 - (2) Signature Page - Signatures of the forest landowner or owners, person who writes the plan and the director are required.
 - (3) Introduction - Describes the landowner's goals and objectives.
 - (4) General Property Description - Covers the description of the property. The description shall include: tax map key, acres designated as tree farm property, location to nearest town, general aspect, slope, elevation, annual rainfall, access roads, forest composition, size and crown class, soil classes, threatened and endangered species information and conservation district use classification.
 - (5) Area map - Outlines the property considered for tree farm classification. It should detail the major highways, access roads, streams, and elevations, including a scale and north arrow. A topographic map is preferred.
 - (6) Brief history of forest management and use - Covers the property's history pertaining to forest age, structure, composition and condition.
 - (7) Definitions and symbols - Technical terms used in the management plan should be

defined. For example: "board foot" is a measure of wood volume having 144 cubic inches of wood i.e. 1" x 12" x 12".

(8) Soils classification and suitability - Each soil type shall be identified along with the acres involved. Information can be obtained from the United States Department of Agriculture, Soil Conservation Service's Soil Survey handbook.

(9) Forest landowner's plan of action - The management plan must identify forest management prescriptions that the forest landowner has agreed to follow. The following items must be considered and addressed in the management plan: site preparation, planting, replanting, weeding, fertilizing, thinning, pruning, fire protection, harvesting, soil erosion, aesthetics, wildlife, watershed, recreation and marketing.

(10) Regulations - Compliance to all federal, state, and county laws, rules and ordinances to include mitigation of threatened and endangered species should be addressed.

(11) Summary of forest management concerns and recommendations - This section lists and summarizes the forest prescriptions necessary to qualify this property as a tree farm. A time table of the forest management prescriptions is required.

SECTION RP-9.5 CLASSIFICATION, APPEAL.

- (a) Upon receipt of the application, the Director shall prepare a finding of fact (Exhibit III). If the Director finds that the property is "...or will be..."in use as set forth in the application, the application shall be approved by the Director and the property shall be classified as tree farm development property:
- (b) The owner shall be notified of an approval (Exhibit IV) or disapproval (Exhibit V) of an application by January 31 preceding the tax year for which the application was filed.
- (c) The owner may at any time apply to the Director to have additional acreage classified as tree farm development property, subject to a new agreement and the land being planted in the same tree crop as the original tree farm development property and being managed using the same management plan. The area of additional acreage may be less than 10 acres.
- (d) The owner may appeal any disapproved application as in the case of an appeal from an assessment.

SECTION RP-9.6 AGREEMENT

- (a) As part of the approval of the application, the owner shall agree in writing (Exhibit VI) to the following terms and conditions relative to the establishment and management of the tree farm development property:
 - (1) The term of the agreement shall be for one year beyond the normal period of development from the initial time of planting to the first harvest, as determined by the Director's finding of fact;

- (2) The owner shall plant and maintain the tree according to the management plan; and
 - (3) The agreement shall be canceled and terminated and the tree farm property shall be declassified if, upon investigation, the Director determines that the owner of the property is not complying with Ordinance No. 782 or the management plan.
 - (4) The agreement may also contain such other terms and conditions as set by the Director.
- (b) Any owner of tree farm property desiring to withdraw all or part of the property from the operation of these rules may at any time make written application to the Director. Any withdrawal prior to the expiration of the agreement shall be subject to the provisions of Section R.P. – 9.8 (Declassification)
 - (c) Any owner of tree farm property with the approval of the director may propose to amend the management plan to adapt the plan to current conditions.
 - (d) The owner shall develop and maintain timber tree species as specified in the management plan.

SECTION RP-9.7 EXEMPTION FROM REAL PROPERTY TAX

- (a) Tree farm development property, during the period of such classification, shall be exempt from real property taxes.
- (b) The exemption shall take effect for the tax year following the execution of the agreement and shall terminate at the end of the tax year during which the agreement expires or one year after first harvest, whichever comes first.
- (c) Tree farm development property in part or in entirety shall be assessed according to Section 5A-8.1, Kauai County Code 1987.
- (d) The exemption shall apply to lands identified in the tree farm management plan, provided that the property shall be subject to a minimum real property tax as provided in Section 5A-6.3(c). Properties classified as tree farm development property shall not be eligible for classification as tree farm development property again unless:
 - (1) The tree farm development is completed and followed by a twenty-year agricultural dedication under K.C.C. Section 5A-9.1; or
 - (2) The tree farm development is declassified under Section RP-9.8 herein and all taxes, penalties and interest due to the County of Kauai as a result of such declassification have been paid to the County of Kauai.
- (e) Notwithstanding any provision in these rules or Section 5A-11.26 of the Kauai County Code to the contrary, during the period that property has been classified as tree farm development

property, the following rules shall apply if the property has other agricultural uses occurring on it in addition to the tree farming contemplated under the tree farm management plan.

(1) The provisions of this Subsection RP-9.7 (e) shall apply to all areas of the tree farm development property, including areas planted and not yet planted with the type of trees contemplated under the tree farm management plan.

(2) All areas of the tree farm development property which have other agricultural uses occurring on it, in addition to the tree farming contemplated under the tree farm management plan, shall be assessed and taxed according to its value in such other agricultural use.

Eg. For parcels not fully planted to trees, an interim agricultural use such as grazing may occur on the fallow land. At that time, the portion utilized in grazing shall be assessed and taxed at a pasture rate.

SECTION RP-9.8

DECLASSIFICATION

(a) For reason of failure on the part of the owner to comply with the terms and conditions contained in the agreement, the Director shall declassify the tree farm development property and notify the owner of the declassification. Upon declassification, the Director shall:

(1) Cancel the exemption from property taxes on the property, which has been declassified retroactive to the date that the property became exempt from real property taxes. The owner shall be notified of the cancellation. Notice shall be provided by mailing a notice of cancellation by first class, U.S. mail to the owner's last known address on file with the Director. The owner shall be afforded the opportunity to discuss the cancellation with Director. Upon review, if the director finds that the owner has not violated the terms and conditions of the exemption, the exemption shall be reinstated.

(2) Property taxes that would have become due and payable for all the years that the exemption was in effect on the declassified property shall become immediately due and payable together with a 10 percent per annum penalty from the respective dates that those tax payments would otherwise have been due.

(3) The declassified property shall be thereafter assessed as provided in Section 5A-8.1.

(b) Willful destruction of all or any part of the tree farm by any owner shall be grounds for declassification.

(c) If upon declassification of any portion of the tree farm development property, the remaining property or properties of the owner, classified as tree farm development property, shall be less than 10 acres, the entire tree farm development property shall be declassified.

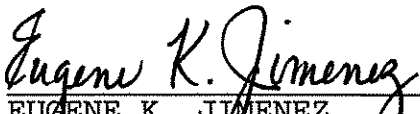
CERTIFICATION

I, Eugene K. Jimenez, Deputy Director of the Department of Finance, County of Kauai, do hereby certify as follows:


1. That the foregoing is a true and correct copy of the amended rules ("Amended Rules") of the Department of Finance relating to Tree Farm Development Exemption under Section 5A-11.26, K.C.C.; and

2. That the notice of public hearing regarding these Amended Rules, which notice included a statement of the substance of the proposed changes, was published in the Garden Island on July 22 & 24, 2002; and


3. That these Amended Rules were adopted by the Department of Finance on August 28, 2002, pursuant to the provisions of the Hawaii Administrative Procedure Act, Chapter 91, Hawaii Revised Statutes, as amended, and shall become effective ten (10) days after filing with the Office of the County Clerk, County of Kauai, State of Hawaii.


EUGENE K. JIMENEZ
Deputy Finance Director

APPROVED AS TO FORM ON THIS 5th DAY OF September, 2002:

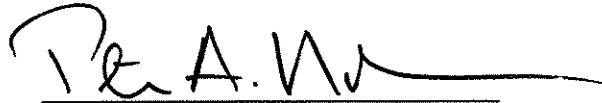

CURTIS H. SHIRAMIZU
Deputy County Attorney, County of Kauai

APPROVED ON THIS 5th DAY OF September, 2002:


MARYANNE W. KUSAKA
MAYOR, County of Kauai

CERTIFICATION OF COUNTY CLERK:

I hereby certify that on September, 2002,
I accepted for filing from the Department of Finance the
amended rules of the Department of Finance relating to Tree
Farm Development Exemption under Section 5A-11.26, K.C.C.,
which were adopted on August 28, 2002.

A handwritten signature in black ink, appearing to read "Peter A. Nakamura", with a long horizontal flourish extending to the right.

Peter A. Nakamura
County Clerk, County of Kauai