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OFFICE OF
COUNTY CLERK
COUNTY OF KAUAI

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, March 23, 2022, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihue, on the following:

Bill No. 2845

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTION 5A-11.26, AND SECTION 5A-9.1(a), KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*Tree Farm Development Exemption*)

This Bill proposes to amend Section 5A-11.26, Kaua'i County Code 1987, as amended (KCC), by repealing the Tree Farm Development Exemption. This program has resulted in tree farm operators receiving a more substantial tax relief measure than agricultural farmers who have been granted an Agricultural Dedication under KCC Section 5A-9.1. Additionally, having both a Tree Farm Exemption program and an Agricultural Dedication program requires further resources to administrate and may be confusing for applicants. The Bill also proposes to amend KCC Section 5A-9.1(a) by deleting a paragraph referencing Section 5A-11.26.

Bill No. 2846

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, BY REPEALING ARTICLE 10, RELATING TO VALUATION OF WASTELAND

This Bill proposes to amend Chapter 5A, by repealing Article 10, relating to valuation of wasteland. The purpose of this Bill is to repeal the valuation of wasteland as the last known "wasteland" designation was granted in 1991 and no such designation exists today.

Bill No. 2847

A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, BY REPEALING SECTION 5A-11.25, RELATING TO ORCHARD DEVELOPMENT EXEMPTION

This Bill proposes to amend Chapter 5A, by repealing Section 5A-11.25, relating to the orchard development exemption. The purpose of this Bill is to repeal the orchard development exemption as there are no active orchard development exemptions and this exemption has not been utilized in many years.

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of these Bills are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend these Bills at their subsequent meetings. Meeting notices are posted at least six (6) days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2845, Bill No. 2846 and Bill No. 2847 were passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on February 23, 2022, by the following vote:

AYES:	Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 6,
NOES:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Carvalho	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
February 23, 2022

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

(One publication – The Garden Island – March 3, 2022)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTION 5A-11.26,
AND SECTION 5A-9.1(a), KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO REAL PROPERTY TAX**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Council of the County of Kauai finds that the Tree Farm Development Exemption under Kauai County Code 1987, as amended (KCC), Section 5A-11.26, results in tree farm operators receiving a more substantial tax relief measure than agricultural farmers who have been granted an Agricultural Dedication under KCC Section 5A-9.1. Additionally, having these two separate programs requires further resources to administrate and may be confusing for applicants. Therefore, the purpose of this Ordinance is to repeal the Tree Farm Development Exemption. This shall not affect any application that has been approved by the Director prior to the effective date of this Ordinance, and future eligible applicants may still apply for an Agricultural Dedication.

SECTION 2. Chapter 5A, Section 5A-11.26, Kauai County Code 1987, as amended, is repealed in its entirety and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed.

“Sec. 5A-11.26 [Tree Farm Development Exemption] Reserved.

[(a) Definitions. When used herein:

“Director” means the Director of Finance or the Director’s duly authorized representative;

“First harvest” means the first harvest from which revenue is generated upon the sale of a merchantable tree farm crop.

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

“Owner” includes a lessee of real property with an unexpired lease term of not less than the period of the agreement provided in Subsection (d) of this Section.

“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 six (6) years nor more than twenty-five (25) years and which contains a total cultivatable area of not less than ten (10) acres.

(b) Eligibility; Application. 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 (6) years nor more than twenty-five (25) years and which contains a total area of not less than ten (10) acres may apply to the Director for classification of the property as tree farm development property. No tree farm development shall be allowed in the urban district. If the tree farm development abuts the urban district then a buffer of one hundred fifty (150) feet shall be required in the tree farm property. This application must include the tree farm management plan for the tree farm, the planting and harvesting schedules, an estimate of value at harvest, and shall specify the tree crop or crops.

The Director shall prescribe the form of the application which shall be filed with the Director by July 1st of any year. The application shall identify the property or properties, shall specify the tree farm crop or crops, shall specify the planting schedule, provided the owner shall have until September 30th of the year of application to complete that year's plantings, according to the tree farm management plan, and shall be accompanied by a map delineating the total tree farm areas.

(c) Classification; Appeal. Upon receipt of the application, the Director shall prepare a finding of fact. If the Director finds that the property is being utilized as set forth in the application, that the planted crop or crops have a normal period of development from the initial time of planting to the first harvest of not less than six (6) nor more than twenty-five (25) years, and that the area in cultivation is at least ten (10) acres in aggregate size, the application shall be approved by the Director and the property shall be classified as tree farm development property. The Director may consult with appropriate government agencies and other agriculture experts in making these determinations. The owner may appeal any disapproved application as in the case of an appeal from an assessment.

The owner shall be notified of an approval or disapproval of an application by October 31st preceding the tax year for which the application was filed.

(d) Agreement. As part of the approval of the application, the owner shall agree in writing 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 (1) 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 farm according to good tree farm management practices;

(3) The agreement shall be canceled and terminated and the property shall thereby be declassified and become subject to the conditions specified in Subsection (g) of this Section if, upon investigation, the Director

determines that the owner of the tree farm development property is not complying with this Chapter or the agreement; and

(4) The agreement may also contain such other terms and conditions as set by the Director.

(e) Exemption from Real Property Tax. Subject to Subsection (f) of this Section, tree farm development property, during the period of such classification, shall be exempt from real property taxes; provided that this exemption shall take effect for the tax year following the execution of the agreement provided in Subsection (d) of this Section and shall in any event terminate at the end of the tax year during which the agreement expires or one (1) year after the first harvest, whichever comes first.

The property or properties which are classified as tree farm development property in part or in entirety shall be assessed according to Section 5A-8.1. The exemption shall apply to the lands identified in the tree farm management plan, provided that the property or properties shall be subject to a minimum real property tax as provided in Section 5A-6.3(g). 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 (20) year agricultural dedication under K.C.C. Section 5A-9.1; or

(2) The tree farm development is declassified under subsection (g) of this Section and all taxes, penalties and interest due to the County of Kaua'i as a result of such declassification have been paid to the County of Kaua'i.

(f) Notwithstanding any provision in this Section 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 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.

(g) Declassification. Upon declassification by the Director, for reason of failure on the part of the owner to comply with the terms and conditions contained in the agreement, of all or any portion of the tree farm development property, the Director shall notify the owner of the declassification. In such event, the Director:

(1) Shall 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 as provided by Subsection (e) of this Section,

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

(2) Shall thereafter assess the declassified property as provided in Section 5A-8.1.

Willful destruction of all or any portion of the tree farm by an owner thereof shall be grounds for declassification but destruction thereof or damage thereto by causes or persons beyond the control of the owner, such as disease, arson, wind storm or the like, shall not be construed as willful action or negligence of the owner. In the event of such unwilled destruction, the Director shall declassify the property according to Paragraph (2) in this Subsection, provided Paragraph (1) of this Subsection shall not apply.

In the event all or any portion of the tree farm has been designated and approved for commercial alternative energy facilities and future land assessments will be valued according to the land's industrial market value, the Director shall declassify the property according to Paragraph (2) of this Subsection, provided Paragraph (1) of this Subsection shall not apply.

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 ten (10) acres, the entire tree farm development property shall be declassified.

(h) Additional Lands. The owner may at any time apply to the Director of Finance to have additional acreage classified as tree farm development property, subject to a new agreement; provided that if the land is planted in the same tree farm crop or crops as the original tree farm development property and is managed using the same tree farm management plan, the area of the additional acreage may be less than ten (10) acres.

(i) The provisions of Section 186-5.5, H.R.S. Right to Harvest, shall be applicable to all tree farm development under this Section, except that the management plan does not require the approval of the State of Hawai'i Department of Land and Natural Resources.]”

SECTION 3. Chapter 5A, Section 9.1(a), Kaua'i County Code 1987, as amended, is amended in part by deleting the portion of the definition of “agricultural use” that references the Section 5A-11.26 tree farm development exemption repealed by this Ordinance, as follows:

“Section 5A-9.1 Dedication of lands.

(a) Definitions. As used in this Section:

“Agricultural use” means the use of land on a continuous and regular basis that demonstrates that the owner intends to obtain a monetary profit from cash income received by:

- (1) Raising, harvesting, and selling crops;
- (2) Feeding, breeding, managing, and selling of livestock, poultry, or honey bees, or any products thereof;
- (3) Ranching of livestock;
- (4) Dairying or selling of dairy products;
- (5) Animal husbandry, provided that the exclusive husbandry of horses for recreational or hobby purposes shall not be considered an agricultural use under this Section;
- (6) Aquaculture;
- (7) Horticulture;
- (8) Participating in a government-funded crop reduction or set-aside program; or
- (9) Cultivating of trees on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising such trees.

Factors that shall be considered to determine whether an owner intends to obtain a monetary profit from the listed activities include, but are not be limited to, evidence that the land enjoys County Department of Water agricultural water rates, filed copies from the immediate preceding year of U.S. Internal Revenue Service Schedule F forms showing profit or loss from farming, filed copies of federal fuel tax exemption claims made pursuant to Sec. 6427(c) of the U.S. Internal Revenue Code, sales receipts generated from the listed activities, a valid, current, State general excise tax license, and covenants, conditions and restrictions encumbering or affecting the property which prohibit or limit agricultural activities.

Physical evidence such as grazing livestock, fences, artificial or natural windbreaks, water facilities, irrigation systems, or crops that are actually in cultivation, or indicia that farm management efforts such as weed control, pruning, plowing, fertilizing, fencing, or pest, insect, or disease control are occurring on the land, shall also be used as factors to determine whether the land is being used for any of the listed activities.

Agricultural dedication applications involving petitioned areas that are less than one hundred (100) acres in size must have the petitioned area entirely in cultivation and/or production at the time of filing of the petition to dedicate. For agricultural dedication applications that involve petitioned areas of one hundred (100) acres or more, the larger of one hundred (100) acres or fifty percent (50%) of the petitioned area must be in cultivation and/or production at the time of the filing of the application to dedicate. Any approved petitioned areas that exceed the one hundred (100) acre or fifty percent (50%) requirement (aforementioned), but not yet in

cultivation and/or production at the time of filing, shall be planted at a rate of ten percent (10%) per year, each year thereafter.

For parcels involved in the ranching of livestock, the entire dedicated area shall have established fences and livestock present at the time of filing a petition to dedicate.

[Land areas which are part of a tree farm management plan that was prepared, submitted and is in compliance with K.C.C. Section 5A-11.26 shall be deemed to be in "agricultural use," notwithstanding the fact that said areas are not in cultivation and are yet to be planted. Any area that is not in cultivation or production at the time of the filing of a petition to dedicate shall be planted at a rate of ten percent (10%) per year, each year thereafter, as detailed in a farm management plan to be submitted with the application for agricultural dedication; provided that if the existing tree farm management plan specifies a rate of planting other than ten percent (10%) per year, the rate of planting specified in the tree farm management plan shall prevail and control.]

The term "agricultural use" shall not mean uses primarily as yard space, landscaped open areas, botanical gardens, or the raising of livestock or fruit trees primarily for home use.

"Homesite" means any portion of land, on a dedicated parcel intended for existing or future residential use that is not in a dedicated or unusable area, including garages, sheds, yard space, landscaped open areas, and driveways, and not including non-agricultural use areas such as areas left fallow and/or overgrown with weeds, or portions of driveways used for agricultural use.

Any undedicated or unusable land area on a dedicated parcel will be valued at its proportional share of the fair market value of the total land area of the said parcel. The homesite area for each residential building that is twenty percent (20%) or more complete as of the October 1st assessment date, shall be valued on a building by building basis, at its highest and best use, based on comparable values or similar size lands used as residential use as reflected in the market and shall not include the value of any additional density allowed by the County of Kauai's Comprehensive Zoning Ordinance.

"Owner" means possessors of fee simple estates and lessees and licensees holding leases or licenses whose terms extend for at least ten (10) or twenty (20) years, as the case may be, from the year in which the petition to dedicate is filed.

"Parcel" means a subdivided lot or an "apartment" created by the submission of land to a condominium property regime pursuant to the provisions of Haw. Rev. Stat. Chapter 514A or 514B.

“Petitioned area” means lands within a parcel which are intended to be dedicated to an approved “agricultural use” as described in Sec. 5A-9.1(a).

“Unusable” means land which is physically incapable of being put to any agricultural use such as gulches, mountains, or pali, eroded bedrock, or rocky, hilly, or barren land.”

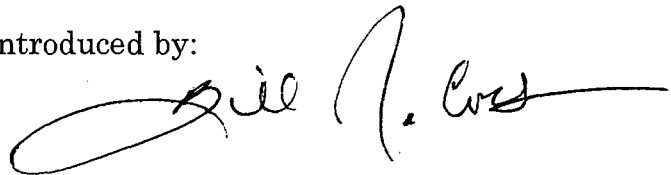
SECTION 4. In place of the repealed Chapter 5A, Section 11.26, Kaua‘i County Code 1987, as amended, Section 11.26 shall be designated as “Reserved.”

SECTION 5. If any provision of this Ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 6. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua‘i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 7. This Ordinance shall take effect upon its approval, provided that the repeal of Chapter 5A, Section 11.26, Kaua‘i County Code 1987, as amended, shall not affect any application that has been approved by the Director prior to the effective date of this Ordinance.

Introduced by:

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

BILL DECOSTA

DATE OF INTRODUCTION:

February 23, 2022

Līhu‘e, Kaua‘i, Hawai‘i


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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2845, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on February 23, 2022, by the following vote:

FOR PASSAGE:	Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 6,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Carvalho	TOTAL - 1,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i
February 23, 2022


Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A,
KAUA'I COUNTY CODE 1987, AS AMENDED, BY REPEALING ARTICLE 10,
RELATING TO VALUATION OF WASTELAND**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and purpose. The Council finds that Kaua'i County Code 1987, as amended (KCC), Chapter 5A, Article 10 was established in 1981 with the intent to establish a "placeholder" or "temporary designation" on large parcels of twenty-five (25) acres or more where development options were less desirable. The owner was required to submit a development plan for the wasteland to be reviewed by the Director of Finance, and upon approval, was subsequently required to commence development within one (1) year and complete the approved development plan within five (5) years. The "wasteland" designation meant that owners would pay no property taxes during the five (5) years of development.

The Council further finds that the last known "wasteland" designation was granted in 1991, and no such designation exists today. Accordingly, this Ordinance will repeal the valuation of wasteland.

SECTION 2. Chapter 5A, Kaua'i County Code 1987, as amended, is hereby amended by repealing Article 10 in its entirety as follows:

"ARTICLE 10. [VALUATION OF WASTELAND] Reserved.

[Sec. 5A-10.1 Definitions.

When used in this Article:

(a) "Wasteland" means land which is classified as such by the Director.

(b) The term "owner" shall include any person leasing the real property of another under a lease having a stated term of not less than thirty (30) years.

Sec. 5A-10.2 Eligibility.

Any property of not less than twenty-five (25) acres in area is eligible for classification as wasteland development property if it meets the classification requirements of wasteland property as established by the Director. No real property under a lease having an unexpired term of less than thirty (30) years shall be eligible for classification as wasteland development property.

Sec. 5A-10.3 Application.

The owner of any property may apply to the Director for classification of his or her land as wasteland development property. The application shall include a description of the property, the manner in which the property will be developed, and such additional information as may be required by the Director. The application shall state that all persons having any interest in or holding any encumbrance upon the property have joined in making the application and that all of them will comply with the laws and regulations relating to the use, building requirements, and development of the real property.

Sec. 5A-10.4 Classification.

(a) Within four (4) months after the filing of the application with the Director, the Director shall make a finding of fact as to the eligibility of such land for classification as wasteland development property, whether it can be developed in the manner specified by the owner, whether the development will add to the development of the economy of the County and whether the development will broaden the tax base of the County. The determination shall be based upon all available information on soils, climate, land use trends, watershed values, present use of surrounding similar lands, and other criteria as may be appropriate.

(b) Upon the finding by the Director that the property is eligible for classification as wasteland development property; that it can be developed in the manner specified by the owner; that the development will add to the economy of the County; and that it will broaden the tax base of the County, the property shall be classified as wasteland development property. If the Director finds it otherwise for any one (1) of the above criteria, the application shall be disapproved.

(c) The applicant may appeal any disapproved application as in the case of an appeal from an assessment.

(d) Land classified as wasteland development property shall be administered by the Director and the Director may, from time to time, make rules and regulations for their administration pursuant to the provisions of Chapter 91, H.R.S.

Sec. 5A-10.5 Development and Maintenance of Wasteland Development Property.

Within one (1) year following the approval of the application, the owner shall develop that portion of his or her land as specified in his or her application and as approved by the Director. Additional areas shall be developed each year as prescribed by the Director.

Sec. 5A-10.6 Special Tax Assessment.

Any property classified as wasteland development property by the Director shall be, for a period of five (5) years, assessed for real property tax

purposes at its value as wasteland. The five (5) year period shall commence from October 1st of the year following the approval of the application.

Sec. 5A-10.7 Declassification.

Thirty (30) days after notification to the owner by the Director for noncompliance of any law, ordinance, rule, or regulation, the Director may declassify any land classified as wasteland development property. The Director shall notify the owner of the declassification and in that event, the Director shall cancel the special tax assessment provided in Sec. 5A-10.6 retroactive to the date that the property qualified for special tax assessment and the difference between the real property taxes that would have become due and payable but for such classification for all the years the land was classified as wasteland development property and the real property taxes paid by the owner during such period shall become immediately due and payable together with a five percent (5%) a year penalty from the respective dates that such additional tax would otherwise have been due.

Sec. 5A-10.8 Appeals.

Any person aggrieved by the additional assessment for any year may appeal from such assessment in the manner provided in the case of real property tax appeals.

Sec. 5A-10.9 Nontaxable Property.

For purposes of accountability, the Director shall assess at the nominal sum of one dollar (\$1.00) each parcel of real property which is completely exempt from taxation.]”

SECTION 3. In place of the repealed Chapter 5A, Article 10, Kaua‘i County Code 1987, as amended, Article 10 shall be designated as “Reserved.”

SECTION 4. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua‘i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by:


BILL DECOSTA

DATE OF INTRODUCTION:

February 23, 2022

Līhu‘e, Kaua‘i, Hawai‘i

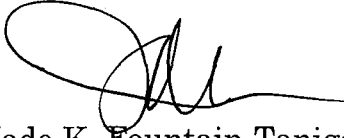
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2846, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on February 23, 2022, by the following vote:

FOR PASSAGE:	Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Carvalho	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
February 23, 2022



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A,
KAUAI COUNTY CODE 1987, AS AMENDED,
BY REPEALING SECTION 5A-11.25,
RELATING TO ORCHARD DEVELOPMENT EXEMPTION**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and purpose. The Council finds that Kauai County Code 1987, as amended (KCC), Section 5A-11.25 was established in the 1990s when Kauai's economy was trying to incentivize alternative agricultural initiatives where a property that qualified for the Orchard Development Exemption would be exempt in totality from real property taxes for the duration of the Orchard Development classification. The purpose of this Ordinance is to repeal the Orchard Development exemption. There are over 1,350 active Agricultural Dedications and zero (0) active Orchard Development Exemptions, this exemption has not been utilized in many years and removal of this exemption is warranted. This Ordinance repeals the Orchard Development Exemption, anyone with an eligible orchard would be directed to apply for the Agricultural Dedication program.

SECTION 2. Chapter 5A, Article 11, Section 5A-11.25, Kauai County Code 1987, as amended, is hereby repealed as follows:

“Sec. 5A-11.25 [Orchard Development Exemption.] Reserved.”

[(a) Definitions. When used herein:

(1) “Director” means the Director of Finance or the Director’s duly authorized representative;

(2) “Orchard development property” means any property (as defined in Sec. 5A-1.1) classified as orchard development property pursuant to this Section;

(3) “Owner” includes a lessee of real property with an unexpired lease term of not less than the period of the agreement provided in Subsection (d) of this Section;

(4) “Orchard crop” means a perennially-harvested crop from one (1) planting which shall endure for at least ten (10) years.

(b) Eligibility; Application. The owner of property which is suitable for the raising of a merchantable orchard crop having a normal period of development from the initial time of planting to the first harvest of not less than two (2) years and which contains an area of not less than fifty (50) acres may apply to the Director for classification of the property as orchard development property.

The Director shall prescribe the form of the application which shall be filed with the Director by July 1st of any year. The application shall identify the property, shall specify the orchard crop, shall specify when the planting was accomplished, provided the owner shall have until September 30th of the year of application to complete planting, and shall be accompanied by a map delineating the orchard area.

(c) Classification; Appeal. Upon receipt of the application, the Director shall prepare a finding of fact. If the Director finds that the property is in use as set forth in the application, that the planted crop has a normal period of development from the initial time of planting to the first harvest of not less than two (2) years, and that the area in cultivation is at least fifty (50) acres in size, the application shall be approved by the Director and the property shall be classified as orchard development property. The Director may consult with appropriate government agencies and other agriculture experts in making these determinations. The owner may appeal any disapproved application as in the case of an appeal from an assessment.

The owner shall be notified of an approval or disapproval of an application by October 31st preceding the tax year for which the application was filed.

(d) Agreement. Upon the approval of the application, the owner shall agree to the following terms and conditions relative to the establishment and management of the orchard development property:

(1) The term of the agreement shall be for two (2) years 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 maintain the orchard according to good orchard management practices;

(3) The agreement shall be cancelled and terminated and the property shall thereby be declassified and become subject to the conditions specified in Subsection (f) of this Section if, upon investigation, the Director determines that the owner of the orchard development property is not complying with this Chapter or the agreement; and

(4) The agreement may also contain such other terms and conditions as set by the Director.

(e) Exemption from Real Property Tax. Orchard development property, during the period of such classification, shall be exempt from real property taxes; provided that this exemption shall take effect for the tax year following the execution of the agreement provided in Subsection (d) of this Section and shall in any event terminate at the end of the tax year during which the agreement expires.

The property or properties which are classified as orchard development property in part or in entirety shall be assessed according to Section 5A-8.1. The exemption shall apply to the lands actually in cultivation, provided that the property or properties shall be subject to a minimum real property tax as provided in Section 5A-6.3(g).

(f) Declassification. Upon declassification by the Director, for reason of failure on the part of the owner to comply with the terms and conditions contained in the agreement, of all or any portion of the orchard development property, the Director shall notify the owner of the declassification. In such event, the Director:

(1) Shall 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 as provided by Section 5A-11.25(e) and the property taxes that would have become due and payable (but for the exemption) for all the years that the exemption was in effect on the declassified property shall become immediately due and payable together with a ten percent (10%) per annum penalty from the respective dates that those tax payments would otherwise have been due; and

(2) Shall thereafter assess the declassified property as provided in Section 5A-8.1.

Willful destruction of all or any portion of the orchard by an owner thereof shall be grounds for declassification but destruction thereof or damage thereto by causes or persons beyond the control of the owner, such as disease, arson, wind storm or the like, shall not be construed as willful action or negligence of the owner. In the event of such unwilled destruction, the Director shall declassify the property according to Paragraph (2) in this Subsection, provided Paragraph (1) of this Subsection shall not apply.

If, upon declassification of any portion of the orchard development property, the property of the owner in the same vicinity remaining classified as orchard development property shall be less than fifty (50) acres, the entire orchard development property shall be declassified.

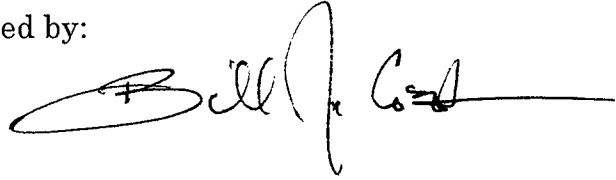
(g) Additional Lands. The owner may at any time apply to the Director of Finance to have additional acreage classified as orchard development property, subject to a new agreement; provided that if the land is in the same vicinity and of the same orchard crop as the original orchard development property, the area of the additional acreage may be less than fifty (50) acres.]”

SECTION 3. In place of the repealed Chapter 5A, Section 5A-11.25, Kaua'i County Code 1987, as amended, Section 5A-11.25 shall be designated as “Reserved.”

SECTION 4. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by:

A handwritten signature in black ink, appearing to read "Bill Decosta", with a long horizontal line extending to the right.

BILL DECOSTA

DATE OF INTRODUCTION:

February 23, 2022

Līhu'e, Kaua'i, Hawai'i

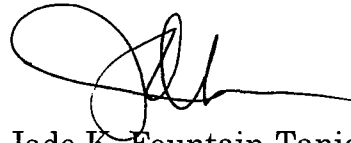
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2847, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on February 23, 2022, by the following vote:

FOR PASSAGE:	Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Carvalho	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i
February 23, 2022



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i