

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

March 9, 2012

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

Kauai

Amend Prior Board Action of October 28, 2011, Item D-7, to provide that Monthly Rental is to be Determined by Independent Appraisal Subject to Review and Approval by the Chairperson. Authorize the Cancellation of Revocable Permit No. S-6842 for Sugar Cultivation and Pasture Purposes to Gay and Robinson, Inc., Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-8-006:002, (4) 1-8-007:003, (4) 1-8-007:010 and (4) 1-8-008:020 and Authorize Issuance of Revocable Permit for Diversified Agriculture and Pasture Purposes to Gay & Robinson, Inc., Hanapepe, Waimea, Kauai, Tax Map Key:(4) 1-8-006:002, (4) 1-8-007: 010 and (4) 1-8-008:020.

BACKGROUND:

On October 28, 2011, under agenda item D-7, the Board approved the cancellation of Revocable Permit No. S-6842 for sugar cultivation and pasture purposes and authorized the issuance of a revocable permit for diversified agriculture and pasture purposes to Gay & Robinson, Inc. Under the October 28, 2011 approval, the monthly rent was to be determined by staff appraiser. A copy of the approved submittal is attached as Exhibit 'A'.

REMARKS:

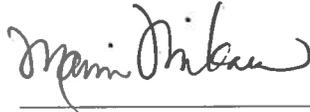
The staff appraiser position has been vacant since July, 2011, and although it was filled in December 2011, an appraisal backlog exists. Staff believes that having this appraisal done by an independent appraiser contracted by the State and paid for by applicant Gay & Robinson, Inc. will help alleviate the backlog in the appraisal section.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 28, 2011, item D-7 by revising MONTHLY RENTAL:
~~To be determined by staff appraiser,~~ To be determined by independent appraisal paid for by Applicant Gay & Robinson, Inc., subject to review and approval by the Chairperson.

2. All other terms and conditions listed in its October 28, 2011 approval to remain the same.

Respectfully Submitted,



Marvin Mikasa
Acting District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

D-7

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

October 28, 2011

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

Kauai

Authorize the Cancellation of Revocable Permit No. S-6842 for Sugar Cultivation and Pasture Purposes to Gay and Robinson, Inc., Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-8-006:002, (4) 1-8-007:003, (4) 1-8-007:010 and (4) 1-8-008:020 and Authorize Issuance of Revocable Permit for Diversified Agriculture and Pasture Purposes to Gay & Robinson, Inc., Hanapepe, Waimea, Kauai, Tax Map Key:(4) 1-8-006:002, (4) 1-8-007: 010 and (4) 1-8-008:020.

APPLICANT:

Gay & Robinson, Inc., a business corporation, whose business and mailing address is P.O. Box 156, Kaumakani, Hawaii, 96747.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Hanapepe, situated at Hanapepe, Kauai, Kauai, identified by Tax Map Keys:(4) 1-8-006:02, (4) 1-8-007:10 and (4) 1-8-008:20, as shown on the attached map, labeled Exhibit A.

SUBJECT AREA:

473.84 acres, more or less - TMK:(4) 1-8-006:002
576.91 acres, more or less - TMK:(4) 1-8-007: 010
379.060 acres, more or less - TMK:(4) 1-8-008: 020

Total Area: 1429.81 acres more or less

ZONING:

State Land Use District: Agriculture
County of Kauai CZO: Agriculture

EXHIBIT " A "

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *DM*
AT ITS MEETING HELD ON

October 28, 2011

D-7

OCT 28 2011

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: Yes

CURRENT USE STATUS:

Tax Map Key: (4) 1-8-006:002

Encumbered by Revocable Permit No. S-6842, Gay & Robinson, Inc., Lessee, for sugar cane cultivation and pasture purposes. Revocable Permit is a month to month lease.

Encumbered by Executive Order No. 973 to the Board of Supervisors of the County of Kauai for pipeline right-of-way and electric transmission line right-of-way for the Hanapepe Water Works System.

Tax Map Key: (4) 1-8-007:10

Encumbered by Revocable Permit No. S-6842, Gay & Robinson, Inc., Lessee, for sugar cane cultivation and pasture purposes. Revocable Permit is a month to month lease.

Encumbered by Executive Order No. 0973, Board of Water Supply, County of Kauai, for water line and electrical line purposes.

Tax Map Key: (4) 1-8-008:20

Encumbered by Revocable Permit No. S-6842, Gay & Robinson, Inc., Lessee, for sugar cane cultivation and pasture purposes. Revocable Permit is a month to month lease.

CURRENT CHARACTER OF USE:

Sugar cane cultivation and pasture purposes.

NEW CHARACTER OF USE:

Diversified agriculture and pasture purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

To be determined by staff appraiser, subject to review and approval by the Chairperson.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, 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.", and Class 4 that states "Minor alterations in the conditions of land, water or vegetation." Exemption Notice attached as Exhibit B.

DCCA VERIFICATION:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

REMARKS:

At its meeting on April 8th, 1994, under Agenda Item F-6, the Board of Land and Natural Resources approved the issuance of Revocable Permit S-6842 (attached as Exhibit C) to Gay and Robinson, Inc, for sugar cane cultivation and pasture purposes. RP S-6842 encumbers the parcels identified as Tax Map Key Nos. (4) 1-8-006:002, (4) 1-8-007:003 and 010 and (4) 1-8-008:020. These parcels were previously encumbered by RP S-6627 to Olokele Sugar Company Ltd for the same purposes. Olokele Sugar Company Ltd. was subsequently sold to Gay and Robinson, Inc., which necessitated the cancellation of RP S-6627 and the issuance of the new revocable permit to Gay and Robinson, Inc. as Olokele Sugar Company Ltd.'s successor in interest.

Revocable Permit S-6627 erroneously included Tax Map Key No.: (4) 1-8-006:003 under the permit rather than the intended parcel, Tax Map Key No.: (4) 1-8-007:003. This error was again repeated in the drafting of the current RP S-6842. The parcel identified as Tax Map Key No.: (4) 1-8-006:003 is currently encumbered by another revocable permit to a different tenant. However, in practice, both the Department and the permittee have considered Tax Map Key No.: (4) 1-8-007:003 to be included in RP S-6842.

Furthermore, Tax Map Key No.: (4) 1-8-007: 003, was included as part of the 16,518 acres approved for transfer and conveyance in fee simple title to Department of Hawaiian Homelands by the Board of land and Natural Resources on October 28, 1994. Title to the parcel was transferred to DHHL via Land Patent Grant 15951, executed on January 2, 2002. However, this parcel remains currently encumbered under Revocable Permit S-

07 28 2017

6842.

Given the factors referenced above, the Board is requested to authorize the cancellation of RP S-6842 and authorize the issuance of a new revocable permit to Gay and Robinson, Inc. for parcels identified as Tax Map Key Nos.: (4) 1-8-006:002, (4) 1-8-007:010 and (4) 1-8-008:020, for the purposes of diversified agriculture and pasture purposes, and exclude the parcel identified at Tax Map Key No.: (4) 1-8-007:003.

RECOMMENDATION: That the Board:

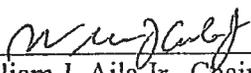
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the cancellation of Revocable Permit No. S-6842 to Gay and Robinson, Inc., for sugar cultivation and pasture purposes.
3. Authorize the issuance of a revocable permit to Gay and Robinson, Inc. covering the subject area for diversified agriculture and pasture 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,



for Tommy Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson

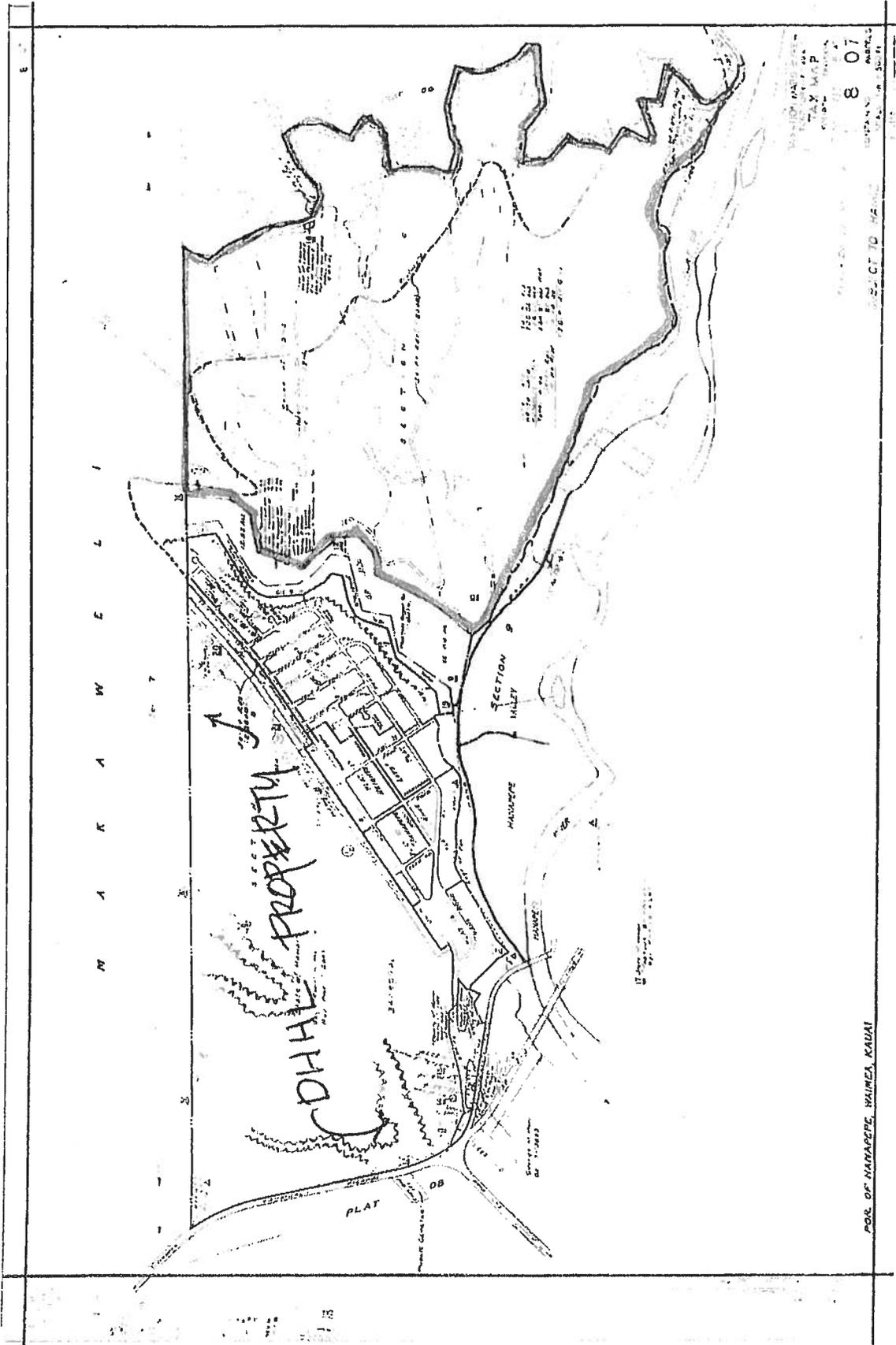


EXHIBIT "A2"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. ATLA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER, NATURAL RESOURCES MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE: BOX 621
HONOLULU, HAWAII 96809

October 19, 2011

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of Revocable Permit to Gay and Robinson, Inc.

Project Location: Hanapepe, Waimea, Kauai Tax Map Key Nos. (4) 1-8-006:002, 1-8-007:010 and 1-8-008:020

Project Description: Issuance of revocable permit to Gay & Robinson, Inc. for diversified agriculture and pasture purposes.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(4), 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The land has been in used for sugar cane and pasture purposes for more than twenty years, under revocable permit since 1989. The proposed new use for diversified agriculture is a similar use and is unlikely to result in any significant impacts or changes beyond present conditions.

Consulted Parties: Department of Agriculture

EXHIBIT "B"

Recommendation:

It is recommended that the 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.



William J. Aila Jr., Chairperson

9/19/11

Date

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

REVOCABLE PERMIT NO. S- 6842

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective the 16th day of April , 1994 , hereafter

GAY & ROBINSON, INC.

called the "PERMITTEE", whose business and mailing address is
P. O. BOX 88, MAKAWELI, HI 96769

is permitted to enter and occupy, on a month-to-month basis only,
that certain parcel of Government land (and any improvements
located thereupon) situate at Sections A, B (por.) C & D of Hanapepe Gov't
lands being portions of TMK: 1-8-06:2, 1-8-06:3, 1-8-07:10 & 1-8-08:20

as indicated on the map attached hereto, if any, and made a part
hereof, containing an approximate area of 1,788.55± acres , which
parcel is hereinafter referred to as the "PREMISES".

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

- 1. Occupy and use the Premises for the following specified purposes only:

SUGAR CANE CULTIVATION & PASTURE USE

- 2. Pay, at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, or at the office of its Land Agent on the Island where the Premises are located, the sum of SIX THOUSAND AND NO/100 DOLLARS --
-----(\$6,000.00) ON THE FIRST OF EACH AND EVERY MONTH
COMMENCING MAY 1, 1994

The interest rate on any and all unpaid or delinquent rentals shall be at one per cent (1%) per month plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

- 3. Upon execution of this Permit, deposit with the Board of Land and Natural Resources, hereinafter called the "Board", the sum of \$12,000.00 as security for the faithful performance of all of these terms and conditions. The whole or portion

EXHIBIT "C"

of the deposit will be returned to the Permittee upon termination of this Permit, but only after all of the terms and conditions of the Permit have been observed and performed to the satisfaction of the representatives of the Department of Land and Natural Resources.

4. At the Permittee's own cost and expense, keep the government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) days notice, in writing, before vacating the Premises.
6. If a holdover lessee or licensee, pays all real property taxes, which shall be assessed against the Premises from the date of this Permit. In addition, a Permittee, not a holdover lessee or licensee, who has occupied the Premises for commercial purposes for a continued period of one year or more, shall pay the real property taxes assessed against the Premises after the first year of the Permit as provided in Section 246-36(1) (D), Hawaii Revised Statutes.
7. Observe and comply with all laws, ordinances, rules and regulations of the federal, state, municipal, or county governments affecting the Premises or improvements.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay, when due, all payments for water and other

utilities, and whatever charges for the collection of garbage that may be levied.

12. Not make, permit, or suffers, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the Premises.
13. At all times with respect to the Premises use due care for public safety and agrees to indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all claims or demands for damage, including claims for property damage, personal injury or death, arising on or about the Premises, or by any fire or explosion thereon, or growing out of, or caused by any failure on the part of the Permittee to maintain the Premises in accordance with the terms and conditions of this Permit.
14. Procure, at its own cost and expense, and maintain during the entire period of this Permit, a policy or policies of commercial general liability insurance, in an amount acceptable to the Chairperson, insuring the State of Hawaii and the Permittee against all claims for personal injury, death and property damage. The policy or policies shall cover the entire Premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the premises in the control or use of the Permittee. The Permittee shall furnish the State with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy; each certificate to contain or be accompanied by an assurance of the insurer to notify the State of any intention to cancel any policy sixty (60) days prior to actual cancellation. The procuring of this policy shall not release or relieve the Permittee of its responsibility under this Permit as set forth herein or limit the amount of its liability under this Permit.

B. Additional Conditions:

1. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written

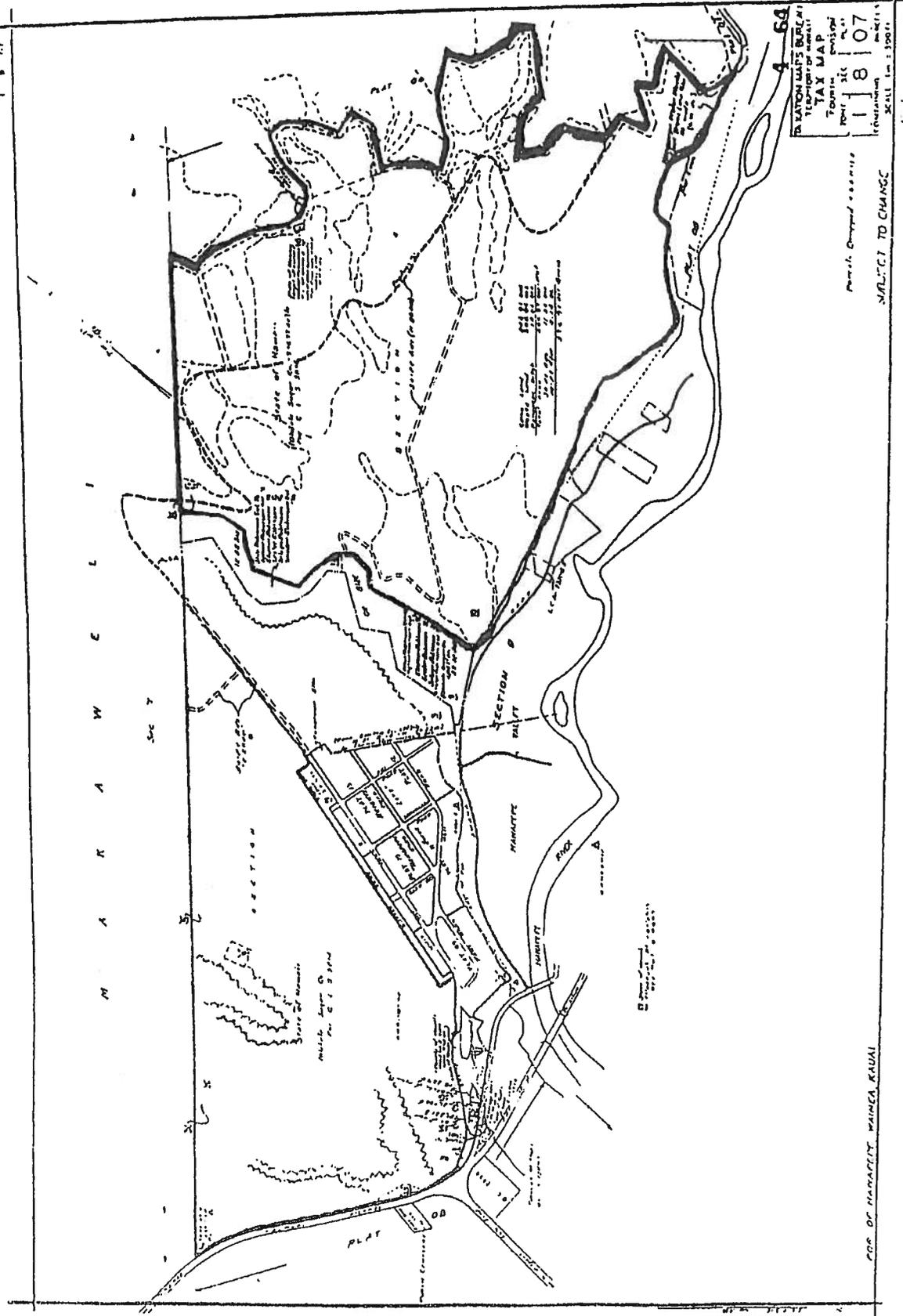
notice to the Permittee at least five (5) business days prior to the revocation.

2. If the Permittee does not vacate the Premises upon the revocation of the Permit by the Board, the Permittee shall pay to the State liquidated damages at the daily rate of \$5.00 for each day, or portion thereof, the Permittee remains on the Premises over the date of revocation. The payment is in addition to any other rights or remedies the Board may be entitled to pursue for breach of contract, or for illegal occupancy, including the right to evict the Permittee without court action, and the cost thereof to be paid by the Permittee.
3. If the Permittee fails to vacate the Premises upon the revocation of the Permit, the Board, its agents and/or representatives may enter upon the Premises and remove and dispose of all vehicles, equipment, materials, and/or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal and disposition.
4. the Board may at any time increase or decrease the monthly rental by written notice at least 30 days prior to the date of change of rent.
5. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements within 30 days after written notice to remove has been sent, the Board may elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
6. The Board reserves the right for itself, its agents, and/or representatives to enter or cross any portion of the premises at any time in the performance of its duties.
7. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.

1 8 0 7

M A K A W E L I

Sec 7



64

HAWAIIAN TERRITORY
 DEPARTMENT OF LANDS
 TAX MAP
 Town of Hanalei
 Sheet 11807
 (Continued from Sheet 11806)

Part of Original Section 9

SUBJECT TO CHANGE

FOR THE HANALEI, WAIEKA, KAUAI