

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
CHARLES J. BOERNER AND)
CHARLES H. BOERNER)
To Amend the Conservation Land Use)
District Boundary into the)
Agricultural Land Use District for)
Approximately 53.238 Acres at)
Kipahulu, Hana, Island and County)
of Maui, State of Hawaii, Tax Map)
Keys 1-6-05: portion of 7 and)
1-6-05: 28)

DOCKET NO. A87-619
CHARLES J. BOERNER AND
CHARLES H. BOERNER

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LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER

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FINDINGS OF FACT,
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DECISION AND ORDER

Mr. Charles J. Boerner and Charles H. Boerner, (hereinafter collectively referred to as "Petitioner") filed a Petition on January 19, 1988, pursuant to Chapter 205, Hawaii Revised Statutes, as amended ("HRS"), and Title 15, Subchapter 3, Chapter 15, Hawaii Administrative Rules, as amended (hereinafter "Commission Rules"), to amend the Land Use District Boundary to reclassify approximately 53.328 acres of land situate at Kipahulu, Hana, Island of Maui, State of Hawaii, Maui Tax Map Key Numbers 1-6-05: portion of 7; and 1-6-05: 28 (hereinafter the "Property"), from the Conservation District to the Agricultural District for grazing and orchard use. The Land Use Commission (hereinafter "Commission"), having heard and examined the testimony, evidence and arguments

presented during the hearing, the stipulation for the proposed findings of fact and conclusions of law, and the proposed joint findings of fact, conclusions of law and decision and order hereby makes the following findings of fact.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The Commission conducted a hearing on the Petition on April 8, 1988, pursuant to notice published in the Honolulu Advertiser and Maui News on February 19, 1988.

2. The Commission allowed Nancy Loftin to testify as a public witness.

3. The Commission allowed a letter from the Hana Community Association, to be entered into the record on April 8, 1988.

4. The Commission did not receive any request to intervene in the proceeding.

5. Petitioner's Environmental Assessment was accepted and on February 11, 1988, the Commission filed its Findings of Fact, Conclusions of Law and Decision and Order of a Negative Declaration for a State Land Use District Boundary Amendment pursuant to Chapter 343, HRS.

DESCRIPTION OF THE PROPERTY

6. The Property consists of approximately 53.238 acres of land located on the northwest (mauka) side of Hana Highway and west of the Haleakala National Park. The Property

is designated in the Kipahulu Section of the Hana District and is approximately ten (10) miles away from Hana Town on the east coast of the Island of Maui.

7. The Property consists of open and unimproved land with elevations ranging from 320 feet to 1,000 feet above sea level.

8. The slope of the Property is between 7 percent to 25 percent.

9. The United States Department of Agriculture Soil Conservation Service Soil Survey Report classifies the soils within the Property as silty clay and rough mountainous land. The only soil type found within the reclassification area is identified as Makaalae silty clay (MID). This soil is composed of volcanic ash and generally located on rough, low mountain areas with slopes of 7 to 25 percent. This soil type is usually found in elevations ranging from sea level to 1,500 feet. The substratum is strongly acidic fragmented Aa lava with moderate permeability. Runoff is slow to medium and erosion hazard slight. The capability classification for this soil is IVe which indicated severe limitations if cultivated and not protected. These soils are mostly used for pasture, wildlife habitat, and water recharge.

10. The Land Study Bureau's Detailed Land Classification - Island of Maui identifies the Property as having an Overall Master Productivity rating of "D" on a scale ranging from "A" to "E", "E" being the lowest rating.

11. The Property is classified as "Other Important" agricultural land on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) map.

12. Climate in the general area of the Property is relatively dry with an average temperature of 75 degrees Fahrenheit. Rainfall ranges from 78 inches to 100 inches per year. Wind conditions are considered moderate.

13. The U.S. Federal Insurance Administration's Flood Insurance Rate Map designates the Property as Flood Hazard Zone C which is an area of minimal flood potential.

14. The Property is identified as Second Division Tax Map Key ("TMK") 1-6-05: portion of parcel 7, which is owned by Charles J. Boerner (hereinafter "Lot A"), and TMK 1-6-05: parcel 28, which is owned by Charles H. Boerner (hereinafter "Lot B"). Charles H. Boerner is the father of Charles J. Boerner.

15. The Property was purchased by the Petitioner from the Nature Conservancy in 1984 as part of a seven tract transaction, totalling 339.815 acres. Restrictions were attached to the seven tracts through Declarations of Covenants, Conditions and Restrictions (hereinafter "Declaration") filed at the Bureau of Conveyances, State of Hawaii as Liber 18210, pages 446 to 481.

The Declaration's limitations of development on the Property include:

Lot A

No more than six (6) single family dwellings; One (1) guest dwelling for each single family dwelling; Accessory structures (which are defined as "fences, corrals, barns, sheds, garages, windmills, greenhouses, utility pipelines and wells) located on any Kipahulu Parcel, the use of which is appropriate, subordinate and customarily incidental to that of the main use of the Kipahulu Parcel upon which such Accessory Structure is located; provided, however, that the term "Accessory Structure" shall not include any Dwelling; and Subdivision into no more than six lots.

Lot B

No more than one (1) single family dwelling; One (1) guest dwelling; and Accessory structures.

General Restrictions

The Property shall be only used for the following purposes:

1. Single family residential purposes;
2. Growing of crops, including but not limited to flowers, foliage, fruit, forage and timber; and
3. Raising of livestock, including but not limited to poultry, bees, fish, horses, cattle or other domestic animals but excluding goats, wild game mammals, sheep, pigs or deer or exotic birds.

The Declaration further states in part, "In the event of any conflict between the provisions of this Declaration and

the provisions of any use and zoning restrictions of the State of Hawaii, the County of Maui, or any other governmental entity, the more restrictive provisions shall apply."

16. The Property has been utilized for grazing purposes for the past forty years. Prior to being used for grazing, portions of the Property were utilized for sugarcane and pineapple cultivation.

PROPOSAL FOR DEVELOPMENT

17. Petitioner proposes to expand the existing cattle grazing operation and cultivate orchards which may include papayas, bananas, avocados, coffee, and macadamia nuts.

18. Petitioner represents that it will develop the orchards with minimal expense and without increasing the number of employees. Petitioner represents that no land clearing or road construction are planned nor any irrigation system.

19. Petitioner represents that no housing project is planned and any dwellings constructed will be farm related, such as, homes for the respective farm employees.

20. Petitioner's proposal for the expansion of cattle grazing and orchard cultivation will take place as part of normal farm operations.

PETITIONER'S CAPABILITY TO UNDERTAKE THE PROPOSED DEVELOPMENT

21. Total net worth of Charles J. Boerner is listed as \$1,460,678.00 as of December 15, 1987. Gross monthly income appears to be sufficient for Petitioner to meet current expenses.

STATE AND COUNTY PLANS AND PROGRAMS

22. The Property is located within the State Land Use Conservation District as reflected on the Commission's Official Map M-17, Kipahulu.

23. The State Department of Land and Natural Resources classifies the Property in the Resource (R) Subzone. The establishment and operation of an orchard or cattle grazing is not a permitted use in this subzone.

24. The Hana Community Plan of the county of Maui identifies the Property as Conservation.

25. The Property is not within the County of Maui Special Management Area.

NEED FOR THE PROPOSED PROJECT AND BOUNDARY AMENDMENT

26. The County of Maui General Plan includes objectives that promote the availability of lands well suited for agricultural pursuits, foster growth and diversification of agriculture and aquaculture throughout Maui County, and maximize the use and yield of productive agricultural lands.

27. The Land Evaluation and Site Assessment (LESA) report estimates that a total of 7,766 acres (as compared to 3,864 acres in 1983) will be needed on Maui by 1995, exclusive of grazing and pasture land, to support the future needs of diversified agriculture.

28. Petitioner states that the existing Agricultural and Conservation Districting of their properties and the

districts' respective dual regulatory control imposes a hardship on the operation of the farm. The proposed boundary amendment to unify the properties under one land use district and regulatory control is needed to achieve economy in operation with respect to future land use permits. Presently, the split districting involves dual jurisdiction over the operations of the farm: the County of Maui oversees the Agricultural District operations and the State Department of Land and Natural Resources has responsibility for the farm acreage in the Conservation District.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural

29. The proposed district boundary amendment will add to the agricultural resources of the area and facilitate the operation of Petitioner's farming enterprise.

Flora

30. A recent field reconnaissance plant survey was conducted in May 1987 on the Property. The vegetation found is predominately alien with occasional native species. Trees in the gulches and steep slopes are Christmas berry, mango, guava, java plum and Chinese banyan. The understory generally consists of scattered ti, ginger, lantana, passiflora and grasses. Petitioner indicates long use of the Property and surrounding area for grazing and other agricultural uses makes it improbable that rare or endangered plants exist on the site.

Fauna

31. The conversion of a portion of the Property's pasture lands into orchards may attract exotic species of birds. The upper elevation of the Property is slightly over 900 feet sea level. Petitioner states this is below the normal range of the endangered native forest birds. According to Petitioner, earlier reports indicate the presence, in this general area, of Kentucky cardinals, Chinese doves, Golden plover, Linnets, White-eyes, and the Black Crowned night heron ('kuku'u). Occasional sightings of the Hawaiian goose (Nene) have been reported. Petitioner suspects the Nene are pen-raised birds, or their off-springs, which were released within the Haleakala National park as part of the Federal/State effort to increase the population of this bird which is on the endangered species list. Mynah birds and cattle egret are also seen in the general area. Cattle are grazed on the pasture lands. Wild pigs are known to traverse the area in search of food.

Archaeological Resources

32. Petitioner stated there are no records indicating the presence of any archaeological item or feature of interest. Further, the use of the Property for sugar, pineapple and cattle grazing would have destroyed any archaeological resources that may have existed on the surface of the Property. No adverse impacts on archaeological

resources are foreseen. Should any sub-surface archaeological item be unearthed, established regulatory procedure will be followed.

Water Resources

33. Ground water resources will not be adversely impacted as the Petitioner does not use nor plan to use any commercial fertilizer, pesticide or herbicide. The only fertilizer used by Petitioner is chicken manure from chickens raised on the farm.

Recreational Resources

34. Petitioner believes no increased demand will be made on the recreational and cultural resources of the area.

Scenic Resources

35. Petitioner will comply with the Covenants, Conditions and Restrictions imposed on the Property by the Nature Conservancy in protecting the scenic aspects of the general area, particularly relating to the nearby National Park expansion.

Noise

36. Petitioner believes noise levels of the general area will not change since farming activity is currently carried out on adjacent lands. Noise levels generated by the existing farm are currently within regulatory levels. Petitioner states no nighttime farming activity is proposed.

Air Quality

37. Petitioner does not anticipate significant adverse impacts on air quality since farming is currently carried out in the general area and exhaust emissions from farm machinery are minimal and of temporary nature.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Roadways and Highways

38. Access to the Property is via the Hana Highway, which is proximate to the southern edge of Lot B of the Property.

Petitioner states that no significant changes in traffic will result from the proposed agricultural operation.

Water, Sewer, and Drainage Systems

39. There is no County water service in the area. Petitioner states no County water service is required because a private water system has been developed for the farm.

40. Drainage in the area is via natural topographical depressions and valleys which direct storm water away from the Property. No streams or other defined water courses exist within the Property.

41. To prevent the erosion of exposed soils in newly cultivated areas, Petitioner has indicated that practices prescribed by the Maui County Soil Conservation Service will be followed.

42. In their memorandum of February 3, 1988, the Coastal Zone Management Program indicated that Petitioner's

proposed mitigation program addresses its concerns relative to potential non-point sources of pollution sometimes associated with agricultural activities.

Schools

43. Educational facilities are located at Wakiu's Hana High School and Elementary School. The State Department of Education foresees no impact from the proposed reclassification on the Kipahulu or Hana area schools since no significant population increase from the Petitioner's proposed agricultural program is anticipated.

Recreation

44. Petitioner believes no significant increase or decrease in area-wide recreational demands should result from the proposed farm expansion.

Police and Fire Protection

45. Since no significant population increase from Petitioner's proposed agricultural program is anticipated, Petitioner believes the expansion of existing police and fire services should not be required.

Electrical Service

46. No electrical service exists in the area. Petitioner does not require the service.

COMMITMENT OF STATE FUNDS AND RESOURCES

47. Inasmuch as no additional public services and facilities other than those which presently exist, there is

no requirement or request for the commitment of State funds and resources.

CONFORMANCE TO AGRICULTURAL DISTRICT STANDARDS

48. The Property meets the standards applicable in establishing boundaries of the Agricultural District set forth in Section 15-15-19 of the Commission Rules as follows:

a) According to the Land Study Bureau's Detailed Land Classification report, the Property is well suited for orchard and grazing uses.

b) The Property is a portion of a 348.934-acre farm currently designated within the Agricultural District.

c) The historical use of the Property and of lands in its general vicinity has been agriculture. The Property was placed in the State Land Use Conservation District in anticipation of the expansion of the Haleakala National Park ("Park") at Kipahulu. However, the Park plans have been altered and the Property is not being considered for inclusion within the Park boundaries. The proposed land use boundary amendment will designate the Property in the State Land Use Agricultural District as part of a larger single farm unit.

CONFORMANCE WITH THE HAWAII STATE PLAN

49. Based on the findings previously stated, the proposed farm expansion is consistent with the objectives, policies and priorities of the Hawaii State Plan. The proposed farm expansion:

a) Expands Hawaii's agricultural base by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture, and other potential enterprises. (Section 226-7(b)(8)).

b) Continues growth and development of diversified agriculture throughout the State. (Section 226-7(a)(2)).

c) Facilitates the transition of agricultural lands in economically non-feasible agricultural production to economically viable agricultural uses. (Section 226-7(b)(12)).

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by any of the parties to this proceeding not adopted by the Commission herein, or rejected by clear contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Hawaii Administrative Rules, the Commission finds upon the preponderance of evidence that the reclassification of the Property consisting of approximately 53.238 acres from the Conservation District into the Agricultural District at Kipahulu, Hana, Island and County of Maui, State of Hawaii, subject to the conditions stated in the Order, conforms to the standards for establishing the

Agricultural District boundaries, is reasonable and is non-violative of Section 205-2, Hawaii Revised Statutes, and the Hawaii State Plan, as set forth in Chapter 226, Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED that the Property, consisting of approximately 53.238 acres, being the subject of Docket Number A87-619 by Mr. Charles J. Boerner & Mr. Charles H. Boerner, situated at Kipahulu, Hana, Maui, identified as Maui Tax Map Key Number: 1-6-05: parcel 28 and portion of parcel 7, and approximately identified in Exhibit A attached hereto and incorporated by reference herein, for reclassification from the Conservation District to the Agricultural District, shall be and hereby is approved subject to the following conditions:

1. The provisions of the Declaration of Covenants, Conditions and Restrictions set forth by The Nature Conservancy and recorded at the Bureau of Conveyances, State of Hawaii, Liber 18210 beginning with page 446 (hereinafter "Declaration" and attached hereto as Exhibit B), which Declaration is for the purpose of protecting, preserving and maintaining the aesthetic, scenic and ecological values of the Nature Conservancy's land and of the National Park Service's land, shall become a part of this Order, and as such, shall be conditions to reclassification, which conditions may be enforced by the State of Hawaii. No removal or changes of any

of the covenants, conditions and restrictions of the Declaration shall be made or take effect without the concurring approval of the Land Use Commission.

2. Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property. As represented, Petitioner shall develop the Property only for farming or farm related uses and there shall be no homes constructed except as directly related to the operation and maintenance of the agricultural development on the Property.

3. Petitioner shall give notice to the Land Use Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property covered by the approved Petition, prior to development of the Property.

4. The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by the Petitioner.

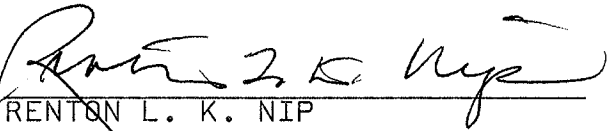
5. Petitioner shall have the right to adjust the boundaries of his separate farm parcels or lots (identified by separate tax map parcel numbers) at any time for the purpose of consolidation and re-subdivision without increasing the number of lots in compliance with applicable County regulations;

subject, however, to the requirement for requesting and obtaining permission from the Land Use Commission prior to applying with the County for the subdivision of the Petitioner's separate farm parcels or lots (identified by separate tax map parcel numbers) whenever additional lots are to be created.

DOCKET NO. A87-619 - CHARLES J. BOERNER AND CHARLES H. BOERNER

Done at Honolulu, Hawaii, this 25th day of July 1988
per motions on June 21, 1988 and July 15, 1988.

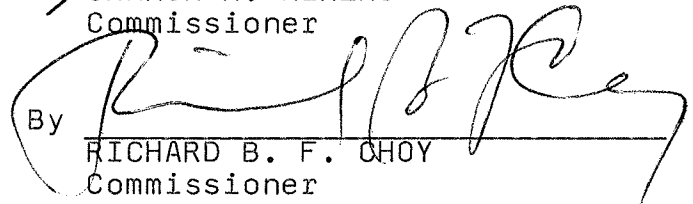
LAND USE COMMISSION
STATE OF HAWAII


By 
RENTON L. K. NIP
Chairman and Commissioner

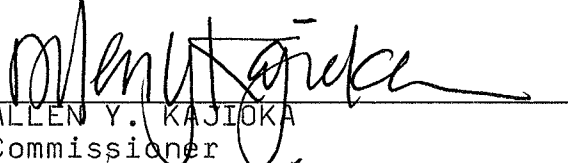
By 
LAWRENCE F. CHUN
Vice Chairman and Commissioner

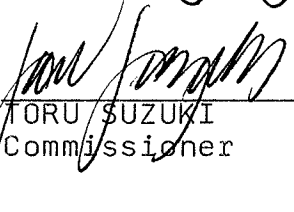
By 
ROBERT S. TAMAYE
Commissioner

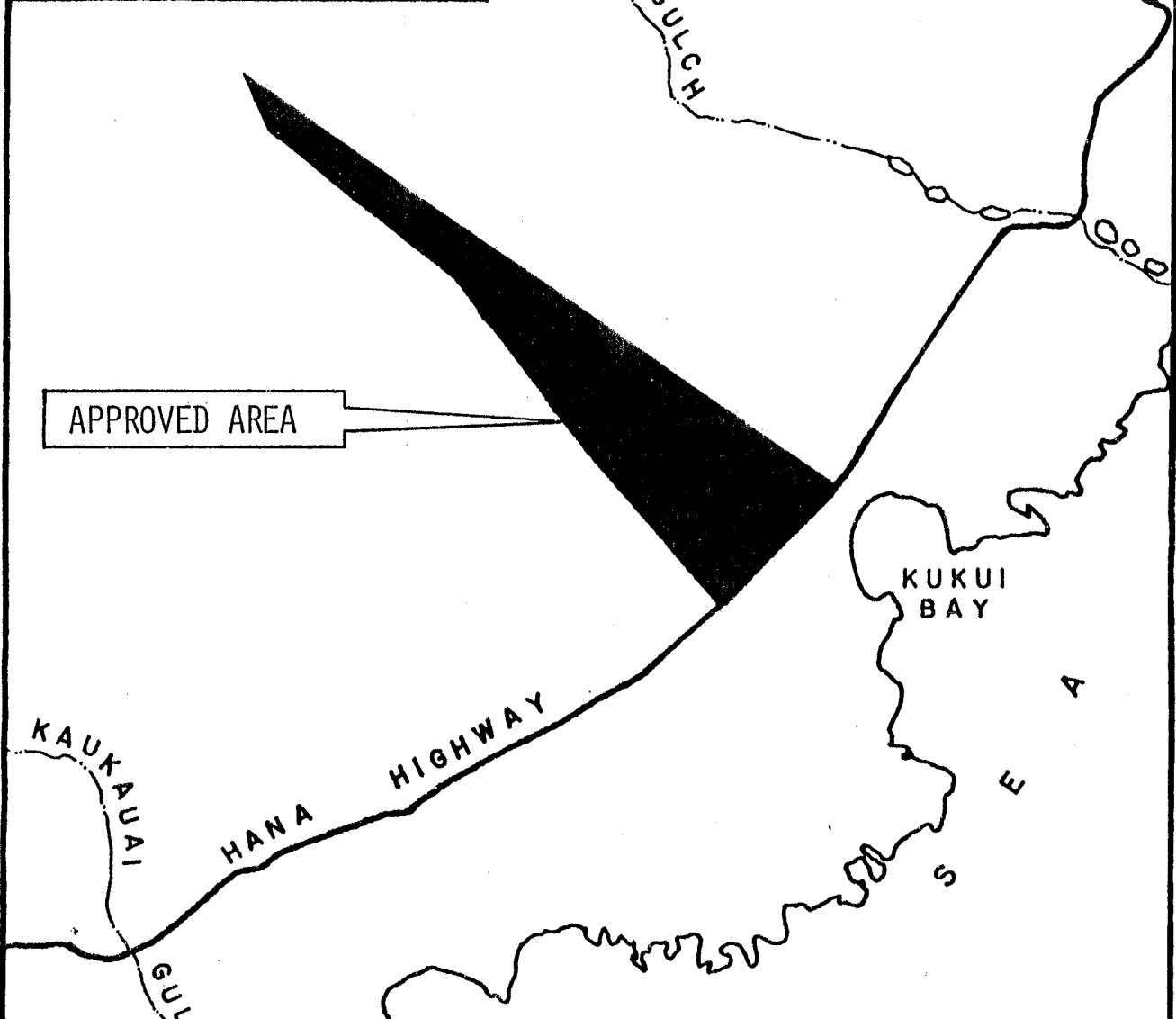
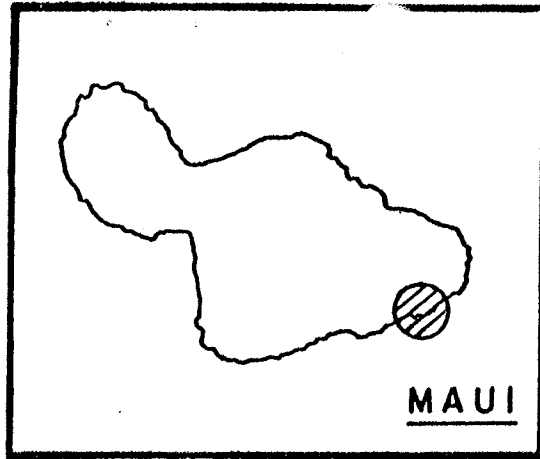
By 
SHARON R. HIMENO
Commissioner

By 
RICHARD B. F. CHOY
Commissioner

By 
FREDERICK P. WHITTEMORE
Commissioner

By 
ALLEN Y. KAJIOKA
Commissioner

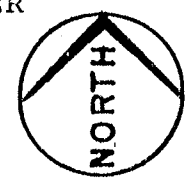
By 
TORU SUZUKI
Commissioner



LOCATION MAP

T.M.K. NO. 1-6-05: 28, POR. 7.
KIPAHULU, HANA, MAUI, HAWAII.
A87-619/CHARLES J. BOERNER
AND CHARLES H. BOERNER

SCALE: 1=1100± FEET



TG-125192

RECORDATION REQUESTED BY:

81-118106

MAR 01

TITLE GUARANTEE ESCROW SERVICES, INC.

18210 445

AFTER RECORDATION, RETURN TO:

TITLE GUARANTEE ESCROW SERVICES, INC.

P. O. Box 1678

Honolulu, HI 96806

RETURN BY: MAIL () PICKUP ()

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

WHEREAS, THE NATURE CONSERVANCY, a District of Columbia non-profit corporation (hereinafter referred to as the "Conservancy"), is the owner of real property situated in Kipahulu, Maui, Hawaii, which parcels are identified and described with particularity in Exhibits A and A-1 attached hereto and by this reference incorporated herein (hereinafter such parcels are collectively referred to as the "Kipahulu Parcels" and each such parcel is individually referred to as a "Kipahulu Parcel"); and

WHEREAS, the Conservancy is also the owner of various interests in certain lands adjacent to and within the general vicinity of the Kipahulu Parcels, which parcels are identified and shown on Exhibit B attached hereto and by this reference incorporated within (hereinafter collectively referred to as the "Conservancy's Land"); and

WHEREAS, the Conservancy's Land has substantial aesthetic, scenic and ecological value in its present state; and

EXHIBIT B

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WHEREAS, the Conservancy's Land also serves as an important buffer to land in the upper and lower Kipahulu Valley, which land is owned in varying interests by the National Park Service and is described with particularity in Exhibits C and C-1 attached hereto and by this reference incorporated herein (hereinafter said land is referenced to as the "Park Service's Land"); and

WHEREAS, the Park Service's Land has substantial aesthetic, scenic and ecological value in its present state; and

WHEREAS, the Conservancy anticipates that in the future the Conservancy may acquire additional land in the Kipahulu area of Maui that will have substantial aesthetic, scenic and ecological value, which land shall be deemed to be included as a part of the Conservancy's Land for the purposes of this Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declaration"); and

WHEREAS, the Conservancy has been organized for the purpose of preserving natural areas and ecologically significant land for aesthetic, scientific, charitable, and educational purposes; and

WHEREAS, the Conservancy has the right to preserve and protect the aesthetic, scenic and ecological values of the Conservancy's Land, and desires to protect the Park Service's Land; and

WHEREAS, the Conservancy desires to restrict the use of the Kipahulu Parcels for the purpose of protecting, preserving and maintaining the aesthetic, scenic and ecological values of the Conservancy's Land and of the Park Service's Land;

NOW, THEREFORE, the Conservancy hereby declares that the Kipahulu Parcels and each and every portion thereof shall be held, transferred, sold, conveyed, occupied and used subject to the following limitations, covenants, conditions and restrictions:

1. Purpose. The purpose of this Declaration shall be to protect, preserve and maintain in perpetuity the aesthetic, scenic and ecological values of the Conservancy's Land and the Park Service's Land by restricting the Kipahulu Parcels in perpetuity, as more particularly set forth hereinbelow.

2. Definitions. For the purposes of this Declaration, the following definitions shall apply:

a. Structure. "Structure" shall mean that which is built or erected which requires location on the ground or is attached to something having location on the ground, including without limiting the generality of the foregoing, any Building, Dwelling, Single-Family Dwelling, Guest Dwelling, or Accessory Structure.

b. Building. "Building" shall mean any Structure built for the support, shelter, housing, occupancy, storage or enclosure of persons, animals, chattels or property of any kind.

c. Dwelling. "Dwelling" shall mean a Building or portion thereof designed or used for residential occupancy.

d. Single-Family Dwelling. "Single-Family Dwelling" shall mean one Dwelling designed for or occupied exclusively by a Single Family.

e. Single Family. "Single Family" shall mean an individual living alone or a group of two or more persons

related by blood or marriage, their legal issue and one unrelated individual living together as a single housekeeping unit.

f. Guest Dwelling. "Guest Dwelling" shall mean a Dwelling located on a Kipahulu Parcel on which a Single-Family Dwelling is also located, which Guest Dwelling shall be for the exclusive use of either guests of the Single Family occupying such Single-Family Dwelling or a person employed by such Single Family as a caretaker or ranch manager. No Guest Dwelling may exceed 750 square feet of enclosed floor space, measured from interior wall to interior wall, excluding decks and carports.

g. Accessory Structure. "Accessory Structure" shall mean fences, corrals, barns, sheds, garages, windmills, greenhouses, utility pipelines and wells located on any Kipahulu Parcel, the use of which is appropriate, subordinate and customarily incidental to that of the main use of the Kipahulu Parcel upon which such Accessory Structure is located; provided, however, that the term "Accessory Structure" shall not include any Dwelling.

h. Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 5, Parcel 6 and Parcel 7. "Parcel 1," "Parcel 2," "Parcel 3," "Parcel 4," "Parcel 5," "Parcel 6," and "Parcel 7," respectively, in Exhibits A and A-1 attached hereto, each of which comprises a part of the Kipahulu Parcels.

i. Party. The term "party" shall mean any person or persons, whether an individual, corporation, partnership, trust or unincorporated association.

3. Restrictions on Use.

a. General Restrictions. The Kipahulu Parcels shall be used only for the following purposes and for no other purposes except:

- (i) Single Family residential purposes;
- (ii) Growing of crops, including but not limited to flowers, foliage, fruits, forage and timber;
- (iii) Raising of livestock, including but not limited to poultry, bees, fish, horses, cattle or other domestic animals but excluding goats, wild game mammals, sheep, pigs or deer or exotic birds.

b. Restriction on Subdivision. The Kipahulu Parcels shall not be divided or subdivided, either with or without consent of governmental authorities, defacto or dejure, in any manner whatsoever, except that (i) Parcel 1 may be subdivided into not more than six lots; (ii) easements for roadway or utility purposes may be created on any of the Kipahulu Parcels; and (iii) Parcels 2, 6 and 7 may be subdivided at any time only to effect a partition of those parcels with other undivided owners (if any) and for no other reason, whether the partition is by agreement, court process or otherwise. All physically connected Kipahulu Parcels may be consolidated and resubdivided with the written consent of the Conservancy, which may be withheld in its sole discretion.

c. Restrictions on Structures.

(i) Parcel 1. Not more than six (6) Single-Family Dwellings, one (1) Guest Dwelling for each Single-Family Dwelling, and Accessory Structures may be constructed on Parcel 1. No other Structure shall be placed, built, erected or allowed on Parcel 1.

(ii) Parcels 2, 3, 4, 5, 6 and 7. Not more than one (1) Single-Family Dwelling, one Guest Dwelling and Accessory Structures may be constructed on Parcel 2, Parcel 3,

Parcel 4, Parcel 5, Parcel 6 and Parcel 7. No other Structure shall be placed, built, erected or allowed on Parcel 2, Parcel 3, Parcel 4, Parcel 5, Parcel 6 or Parcel 7.

(iii) Height Restrictions Applicable to All Kipahulu Parcels. The height of any Dwelling permitted by this Declaration shall not exceed thirty (30) feet. The height of all green houses, barns and garages permitted by this Declaration shall not exceed twenty (20) feet. The height of all fences, corrals and sheds permitted by this Declaration shall not exceed ten (10) feet. The height of all windmills permitted by this Declaration shall not exceed fifty (50) feet. The height of all Structures shall be measured from the natural and undisturbed highest grade line of the surface area of the Kipahulu Parcel on which such Structure is located to the highest point of such Structure.

(iv) Visibility Restrictions Applicable to All Kipahulu Parcels. All Single-Family Dwellings, Guest Dwellings and Accessory Structures shall be screened from view from that portion of the Hana Highway shown in red on Exhibit D attached hereto (hereinafter referred to as the "Hana Highway"), commencing at ground level of the Hana Highway and extending to eight (8) feet above ground level. Each Single-Family Dwelling, Guest Dwelling and Accessory Structure located on Parcels 1, 2, 3, 4, 6 and 7 shall be screened from view at all times from the Hana Highway solely by use of vegetation and/or the natural and undisturbed topographical features of the Kipahulu Parcels or surrounding property. Each Single-Family Dwelling, Guest Dwelling and Accessory Structure located on Parcel 5 shall be screened from view at all times from that

portion of the Hana Highway shown in blue on Exhibit E hereto solely by use of the natural and undisturbed topographical features of the Kipahulu Parcels or surrounding property and from the Hana Highway solely by use of vegetation and/or the natural and undisturbed topographical features of the Kipahulu Parcels or surrounding property.

(v) The roofs of all Buildings erected on the Kipahulu Parcels shall be surfaced with woodshakes, wood shingles, clay, corrugated steel or aluminum, provided that all roofing materials shall have an earthen tone and shall be of minimum reflectivity. The use of any roofing materials which are highly reflective, such as unpainted corrugated iron, unpainted aluminum, tiles with smooth, shiny finish, and the like, is prohibited.

(vi) All Structures erected on the Kipahulu Parcels shall not use mirrored glass, reflective sun screens or other highly reflective materials for any exterior windows.

(vii) All Structures erected on the Kipahulu Parcels shall have an earthen tone exterior color or have a finish of earthen tone color.

(viii) No "quonset" or "geodesic dome" type of structure shall be erected, placed or maintained on any of said Kipahulu Parcels.

(ix) Any bare areas resulting from excavation or fill on the Kipahulu Parcels shall be revegetated immediately to avoid erosion and visual impact. Cut or fill earth banks and slopes shall not exceed a thirty-five percent (35%) grade.

(x) Each Dwelling on a Kipahulu Parcel shall be occupied and used only as a Single-Family Residential Dwelling by the respective owner of the Dwelling, his tenants, family, employees and guests and for no other purpose.

d. No house-trailer, mobile-home, permanent tent or similar facility or Structure shall be kept, placed or maintained upon any Kipahulu Parcel at any time.

e. No trailer, vehicle, boat or equipment shall be parked, stored, dismantled, reconstructed, repaired or serviced upon any Kipahulu Parcel in such a manner that such construction, reconstruction or repairs is visible from the Hana Highway, nor shall any vehicle not in good operating condition be maintained upon any Kipahulu Parcel so as to be visible from the Hana Highway.

f. No noxious, offensive, or illegal activities shall be carried on upon any of the Kipahulu Parcels, nor shall anything be done on it which may or may become an annoyance or nuisance to the neighborhood.

g. No exploration for or extraction of any geothermal resources, minerals, rocks, gravel or natural building materials will be permitted on the Kipahulu Parcels except for excavation required for the construction of the Structures permitted hereunder. Provided, however, that any above-surface rocks or sub-surface rocks which are uncovered as a result of excavation as provided in this paragraph may be used for the construction of Structures on the Kipahulu Parcels.

h. Wells may be drilled on any Kipahulu Parcel, provided that water obtained from any such well shall be used exclusively in connection with the permitted uses of the Kipahulu Parcels. No such well shall otherwise violate the restrictions on Structures set forth in Paragraph 3(c) above.

4. Covenants Run with Kipahulu Parcels. The terms, covenants, conditions and restrictions contained in this Declaration shall be encumbrances running with each and all of the Kipahulu Parcels, and shall be binding on all parties and persons claiming any interest in the Kipahulu Parcels in perpetuity and upon their heirs, devisees, personal representatives, successors and assigns.

5. Incorporation Into Conveyances. The terms, covenants, conditions and restrictions contained in this Declaration shall be expressly incorporated into any deed, lease, assignment, agreement of sale, mortgage or other instrument, conveying, selling, leasing, assigning, encumbering or covering any or all of the Kipahulu Parcels.

6. Assignment. The Conservancy shall have the right to assign its rights under this Declaration to the National Park Service without the consent of any other party having an interest in any of the Kipahulu Parcels. The Conservancy shall have the right to assign its rights under this Declaration to a non-profit organization or governmental entity with the unanimous consent of the owners of Parcels 1,3,4 and 5.

7. Enforceability. The terms, covenants, conditions and restrictions of this Declaration shall be specifically enforceable by the Conservancy in accordance with the provisions hereof.

8. Remedy of Injunction. No party shall use the Kipahulu Parcels or any part thereof for any purpose or in any manner other than as described in this Declaration, and any use which is inconsistent therewith is prohibited and may be enjoined and removed at the cost and expense of the party suffering such use.

9. Right of Cure. The Conservancy shall have the right to inspect the Kipahulu Parcels upon three (3) days' written notice to any party having an interest in any Kipahulu Parcel to be inspected. In the event the Conservancy determines that there has been a violation of this Declaration, the Conservancy may give any party having an interest in any affected Kipahulu Parcel written notice requiring such party to remedy such violation. In the event such party fails to cure such violation within thirty (30) days from the date such notice is given by the Conservancy, or such additional reasonable period of time as may be required by such party to effectuate such cure in good faith and due diligence, the Conservancy may take such corrective measures as it deems necessary, in its sole discretion, to effectuate such cure, the cost and expense of which shall be borne by the party suffering the use of any such Kipahulu Parcel as aforesaid and which shall be paid, together with interest at the maximum rate allowed by law, to the Conservancy upon demand. Without limiting the generality of the foregoing, the Conservancy may enter any Kipahulu Parcel or part thereof and undertake such actions as it deems necessary, in its sole discretion, to effectuate such cure and otherwise enforce the rights herein granted.

10. Attorney's fees and costs. Any party against whom an action is brought hereunder shall be liable for all costs and the reasonable attorneys' fees of the party bringing the action, if it shall be determined by such action that such party has violated the provisions of this Declaration.

11. Release; Waiver. This Declaration may be released, in whole or in part, only by the Conservancy, in its

sole discretion. The Conservancy may waive any of the provisions as requirements of this Declaration from time to time, without the consent of any person, if the Conservancy shall determine that such waiver is in the best interests of the Kipahulu Parcels, the Conservancy's Land or the Park Service's Land. Failure by the Conservancy to enforce any provision of this declaration shall in no event be deemed a waiver of the right to do so thereafter.

12. Notices. Any notice that may be given by the Conservancy under this Declaration shall be delivered in person or transmitted by certified mail, return receipt requested, to the address most recently supplied to the Conservancy by the party or parties to be notified. Every party having an interest in the Kipahulu Parcels shall be required to transmit its address and any changes thereof to the Conservancy within fifteen (15) days after such address or change becomes effective. Any notice transmitted pursuant to this Declaration shall be effective when received.

13. Severability. The provisions of this Declaration shall be deemed independent and severable, and in the event that any provisions hereof shall be found or declared to be invalid, unlawful, or unenforceable, in whole or in part, the validity and legality of the balance of this Declaration and each and every term and provision hereof shall be unaffected thereby and shall remain in full force and effect.

14. Successors and Assigns. All of the terms and provisions of this Declaration shall be binding upon every party and person having an interest in the Kipahulu Parcels in perpetuity and upon their heirs, devisees, personal representatives, successors and assigns and shall inure to the benefit

of the Conservancy and its successors and assigns.

15. No Third Party Beneficiaries. This Declaration is not intended, and shall not be deemed or construed, to confer any rights, powers, or privileges on any party other than the Conservancy, including, without limiting the generality of the foregoing, any party having an interest in the Kipahulu Parcels.

16. Interpretation. The provisions hereof shall be liberally construed to effectuate their purpose for preserving and protecting the Conservancy's Land and Park Service's Land. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provisions or any other provisions hereof at any time.

17. Conflict. In the event of any conflict between the provisions of this Declaration and the provisions of any use and zoning restrictions of the State of Hawaii, the County of Maui, or any other governmental entity, the more restrictive provisions shall apply.

IN WITNESS WHEREOF, the Conservancy has caused these presents to be executed as of this 16th day of October, 1984.

THE NATURE CONSERVANCY

BY [Signature]
Its Executive Vice President

BY [Signature]
Its Assistant Secretary

STATE OF VIRGINIA)
) SS:
COUNTY OF ARLINGTON)

On this 3rd day of July, 1984,
before me appeared L. Gregory Low and
Michael Dennis, to me personally
known, who, being by me duly sworn, did say that they are
the Executive Vice President and Assistant Secretary,
respectively, of THE NATURE CONSERVANCY, and that the seal
affixed to the foregoing instrument is the corporate seal
of said corporation, and that said instrument was signed and
sealed in behalf of said corporation by authority of its
Board of Directors, and said officers severally acknowledged
said instrument to be the free act and deed of said
corporation.


Notary Public June S. Goode

My commission expires: 1/13/85

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PARCEL ONE:

Tax Map Key 1-6-05 parcel 7, containing an area of 167.408 acres, more or less, being a portion of that certain parcel of land (being all of the lands described in and covered by Royal Patent Grant Number 2795 to Kaleimakalii, Royal Patent Number _____, Land Commission Award Number 4510-B to Kalanimakalii, Royal Patent Number 4036, Land Commission Award Number 4790, Apana 1 to Nuhikama, Royal Patent Number 7545, Land Commission Award Number 4510 to Kuaiei, Royal Patent Grant Number 2796 to Kaialamanu, Royal Patent Grant Number 2803 to Kanoonoo, Royal Patent Grant Number 1398 to Kuala, and Royal Patent Grant Number 1822 to Ihuole, and portions of the lands described in and covered by Royal Patent Number 7384, Land Commission Award Number 7789 to Iwinui, Royal Patent Number _____, Land Commission Award Number 11,216, Apana 24 to M. Kekauonohi, and Royal Patent Number _____, Land Commission Award Number 11,216, Apana 26 to M. Kekauonohi) situate, lying and being at Kalena, Halemano, Wailamo, Kakalahale and Alaenui, Kipahulu, Island and County of Maui, State of Hawaii, being PARCEL 17-D, and thus bounded and described as per survey of Austin, Smith & Associates, Inc., dated November 6, 1971, to-wit:

Beginning at a forest reserve monument at the North corner of this parcel of land, on the Westerly boundary of the land of Alaenui, the coordinates of which referred to Government Survey Triangulation Station "KIPAHULU CATHOLIC CHURCH" being S, 156.52 feet North and S, 196.95 feet West, and running by azimuths measured clockwise from true South:

- | | | | | |
|----|------|-----|--------|---|
| 1. | 300° | 30' | 415.11 | feet along L.C. Av. 11216, Apana 26 to M. Kekauonohi; |
| 2. | 272° | 00' | 316.75 | feet along L.C. Av. 11216, Apana 26, to M. Kekauonohi; |
| 3. | 307° | 38' | 703.06 | feet along L.C. Av. 11216, Apana 26, to M. Kekauonohi, to the middle of stream; |

Thence following down the middle of stream, along Government land (Exclusion D) for the next five (5) courses, the direct azimuths and distances between points in middle of said stream being:

- | | | | | |
|----|------|-----|--------|-------|
| 4. | 312° | 00' | 570.00 | feet; |
| 5. | 311° | 00' | 330.00 | feet; |
| 6. | 330° | 30' | 430.00 | feet; |
| 7. | 351° | 17' | 298.05 | feet; |
| 8. | 326° | 30' | 700.00 | feet; |

Exhibit A

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9.	227°	01'	30"	189.67	feet along Government land (Exclusion D);
10.	156°	30'		330.00	feet along Government land (Exclusion D);
11.	263°	00'		215.00	feet along Government land (Exclusion D);
12.	129°	13'		735.00	feet along Government land (Exclusion D);
13.	154°	00'		423.00	feet along Government land (Exclusion D);
14.	305°	01'	10"	3,460.59	feet along remainder of L.C. Aw. 11216, Apana 26 to M. Kekauonohi;
15.	46°	00'		783.81	feet along remainder of L.C. Aw. 11216, Apana 26 to M. Kekauonohi (Parcel 17-E);
16.	54°	49'		225.51	feet along Grant 1252 to Aukaa (Parcel 21-B);
17.	75°	25'		230.92	feet along Grant 1402 to Kahula;
18.	336°	53	30"	954.79	feet along Grant 1402 to Kahula;
19.	52°	35'		46.89	feet along Grant 1402 to Kahula;
20.	319°	22'		355.18	feet along Grant 1402 to Kahula;
21.	59°	40'	30"	379.40	feet along remainder of L.C. Aw. 11216, Apana 24 to M. Kekauonohi (along Parcel 17-H for Government Road purposes);
22.	156°	24'	20"	1,453.99	feet along remainder of L.C. Aw. 11216, Apana 24 to M. Kekauonohi;
23.	145°	57'	30"	246.02	feet along remainder of L.C. Aw. 11216, Apana 24 to M. Kekauonohi;
24.	72°	01'		268.08	feet along remainders of L.C. Aw. 11216, Apana 24 to M. Kekauonohi and L.C. Aw. 7789 to Iwinui;

25.	145°	16'	35"	1,113.08	feet along remainder of L.C. Aw. 7789 to Iwinui, to the middle of stream;
26.	79°	00'		537.99	feet along Government land (Exclusion C) and L.C. Aw. 4668-D, Apana 1 to Kahaalelehonua;
27.	73°	30'		277.00	feet along Government land;
28.	161°	00'		2,402.00	feet along Grant 1825 to Paamaiula (Parcel 16-B);
29.	98°	26'	30"	235.42	feet along Grant 1825 to Paamaiula;
30.	340°	15'		690.51	feet along Grant 1825 to Paamaiula;
31.	57°	30'		158.06	feet along Government land;
32.	351°	30'		367.98	feet along Government land;
33.	262°	15'		231.00	feet along Government land;
34.	347°	45'		885.00	feet along Government land;
35.	85°	45'		458.00	feet along Government land;
36.	161°	15'		870.30	feet along Government land;
37.	82°	15'		578.54	feet along Government land, to the middle of stream;
Thence following up the middle of stream, along Grant 1529 to Makaliku and Ihu for the next four (4) courses, the direct azimuths and distances between points in middle of said stream being:					
38.	160°	40'		565.00	feet;
39.	155°	05'		590.00	feet;
40.	134°	35'		510.00	feet;
41.	144°	01'		123.67	feet to the Southerly boundary of Kipahulu Forest Reserve; thence
42.	255°	19'	15"	25.00	feet along the Southerly boundary of Kipahulu Forest Reserve to a forest reserve monument;

43.	242°	28'	40"	463.56	feet along the Southerly boundary of Kipahulu Forest Reserve, to a forest reserve monument;
44.	249°	58'		286.24	feet along the Southerly boundary of Kipahulu Forest Reserve, to a forest reserve monument;
45.	231°	01'	40"	266.13	feet along the Southerly boundary of Kipahulu Forest Reserve, to the point of beginning and containing an area of 186.668 acres, more or less.

Being part of the same premises conveyed to the Grantor by Deed dated October 26, 1971, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7953, Page 167.

PARCEL TWO:

Tax Map Key 1-6-05 parcel 6, containing an area of 19.26 acres, more or less, further designated as Royal Patent Number 7545, Land Commission Award Number 4510 to Kuaiei, being a portion of that certain parcel of land described above containing 186.668 acres, more or less.

Being part of the same premises conveyed to the Grantor by Deed dated October 26, 1971, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7953, Page 167.

PARCEL THREE:

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Grant Number 1404, Apana 1 to Mahina) situate, lying and being at Kalena, Kipahulu, Hana, Island and County of Maui, State of Hawaii, being PARCEL 10-B, and thus bounded and described as per survey of R.M. Towill Corporation, dated April 27, 1970, to-wit:

Beginning at the Northwest corner of this parcel of land, in the middle of stream, the coordinates of which referred to Government Survey Trig. Station "KIPAHULU CATHOLIC CHURCH" being 2,299.43 feet North and 4,172.15 feet West, and running by azimuths measured clockwise from true South:

1.	259°	00'	350.05	feet along Government Land;
2.	348°	00'	356.52	feet along Government Land;
3.	81°	20'	420.00	feet along remainder of Grant 1404, Ap. 1 to Mahina (Parcel 10-A) to the middle of stream;

Thence following up the middle of stream, along

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Government Land, the direct azimuth and distance being:

4. 179° 34' 45" 345.23 feet to the point of beginning and containing an area of 3.08 acres, more or less.

Being part of the same premises conveyed to the Grantor by Deed dated October 26, 1971, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7953, Page 167.

PARCEL FOUR:

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Number 3597, Land Commission Award Number 6230 to J.A. Kuakini (Certificate of Boundaries No. 2) situate, lying and being at Maulili, Kipahulu, Hana, Island and County of Maui, State of Hawaii, being PARCEL 8-E, and thus bounded and described as per survey of R.M. Towill Corporation, dated April 27, 1970. to-wit:

Beginning at the Northeast corner of this parcel of land, on the Southerly boundary of Kipahulu Forest Reserve, being also the Northwest corner of Parcel 9-B, the coordinates of which referred to Government Survey Trig. Station "KIPAHULU CATHOLIC CHURCH" being 4,390.73 feet North and 7,176.19 feet West, and running by azimuths measured clockwise from true South:

1.	342°	00'	1,631.59	feet along Grant 1529 to Makaliku and Ihu, to the middle of stream;
				Thence following upon the middle of stream, along remainder of L.C. Aw. 6230 to J.A. Kuakini and along Government Land for the next five (5) courses, the direct azimuths and distances between points in middle of said stream being:
2.	112°	31' 40"	863.93	feet;
3.	156°	36'	254.57	feet;
4.	162°	15'	550.00	feet;
5.	112°	25'	210.00	feet;
6.	159°	05'	180.00	feet; thence

7. 255° 19' 15" 848.69 feet along the Southerly boundary of Kipahulu Forest Reserve to the point of beginning and containing an area of 21.72 acres, more or less.

Being part of the same premises conveyed to Grantor by Deed dated October 26, 1971, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 7953, Page 167.

PARCEL FIVE:

All of that certain parcel of land (portion of the land described in and covered by Royal Patent Number _____, Land Commission Award Number 11216, Apana 26 to M. Kekauonohi) situate, lying and being at Alaenui, Kipahulu, Island and County of Maui, State of Hawaii, being PARCEL 17-E, and thus bounded and described as per survey of Austin, Smith & Associates, Inc., dated November 6, 1971, to-wit:

Beginning at the Southwest corner of this parcel of land, being also the Northwest corner of Parcel 17-G (for Government Road purposes), the coordinates of which referred to Government Survey Triangulation Station "KIPAHULU CATHOLIC CHURCH" being 558.18 feet North and 153.25 feet West and running by azimuths measured clockwise from true South:

1.	138°	48'	50"	1,155.38	feet along Grant 1252 to Aukaa (Parcel 21-B);
2.	226°	00'		783.81	feet along remainder of L.C. Av. 11216, Apana 26 to M. Kekauonohi (Parcel 17-D);
3.	305°	01'	10"	1,157.71	feet along remainder of L.C. Av. 11216, Apana 26 to M. Kekauonohi;
4.	43°	07'	30"	125.00	feet along remainder of L.C. Av. 11216, Apana 26 to M. Kekauonohi (Parcel 17-G for Government Road purposes);
5.	45°	30'		538.00	feet along remainder of L.C. Av. 11216, Apana 26 to M. Kekauonohi (Parcel 17-G for Government Road purposes);
6.	44°	15'	45"	318.31	feet along remainder of L.C. Av. 11216, Apana 26

7. 48° 15' 80.00 feet along remainder of L.C. Av. 11216, Apana 26 to M. Kekauonohi (Parcel 17-G for Government Road purposes) to the point of beginning and containing an area of 24.318 acres, more or less.

Being the same premises conveyed to the Grantor by Deed dated October 2, 1972, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 8650, Page 170.

PARCEL SIX:

AN UNDIVIDED INTEREST in land situate at Kikoo, Kipahulu, Hana, Maui, Hawaii, being a portion of Grant 1529 to Makaliku and Ihu (designated as Parcel 9-B on survey description prepared by R.M. Towill Corporation dated April 27, 1970), and thus bounded and described:

Beginning at the northwest corner of this parcel of land, on the southerly boundary of Kipahulu Forest Reserve, being also the northeast corner of Parcel 8-E, the coordinates of which referred to Government Survey Trig. Station "Kipahulu Catholic Church" being 4,390.73 feet north and 7,176.19 feet west, and running by azimuths measured clockwise from true south:

- | | | | | | |
|----|------|-----|-----|----------|--|
| 1. | 255° | 19' | 15" | 1,104.19 | feet along the southerly boundary of Kipahulu Forest Reserve, to the middle of stream; thence following down the middle of stream, along Grant 2795 to Kaleimakalii and Government Land for the next seven (7) courses, the direct azimuths and distances between points in middle of said stream being: |
| 2. | 324° | 01' | | 123.67 | feet; |
| 3. | 314° | 35' | | 510.00 | fee; |
| 4. | 335° | 05' | | 590.00 | feet; |
| 5. | 340° | 40' | | 565.00 | feet; |
| 6. | 335° | 35' | | 680.00 | feet; |

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7.	323°	35'		595.00	feet;
8.	346°	17'	30"	156.80	feet; thence
9.	81°	10'	30"	1,065.42	feet along remainder of Grant 1529 to Makaliku and Ihu, to the middle of stream; thence following up the middle of stream, along L.C. Aw. 6230 to J.A. Kuakini, for the next three (3) courses, the direct azimuths and distances between points in middle of said stream being:
10.	110°	55'		305.00	feet;
11.	139°	45'		645.00	feet;
12.	145°	05'		615.00	feet; thence
13.	162°	00'		1,631.59	feet along L.C. Aw. 6230 to J.A. Kuakini (Parcel 8-E), to the point of beginning and containing an area of 93.26 acres.

PARCEL SEVEN:

AN UNDIVIDED INTEREST in land situate at Kalena Kipahulu, Hana, Maui, Hawaii, being a portion of Grant 1825 to Paamaiula (designated as Parcel 16-B on survey description prepared by R.M. Towill Corporation dated April 27, 1970), and thus bounded and described:

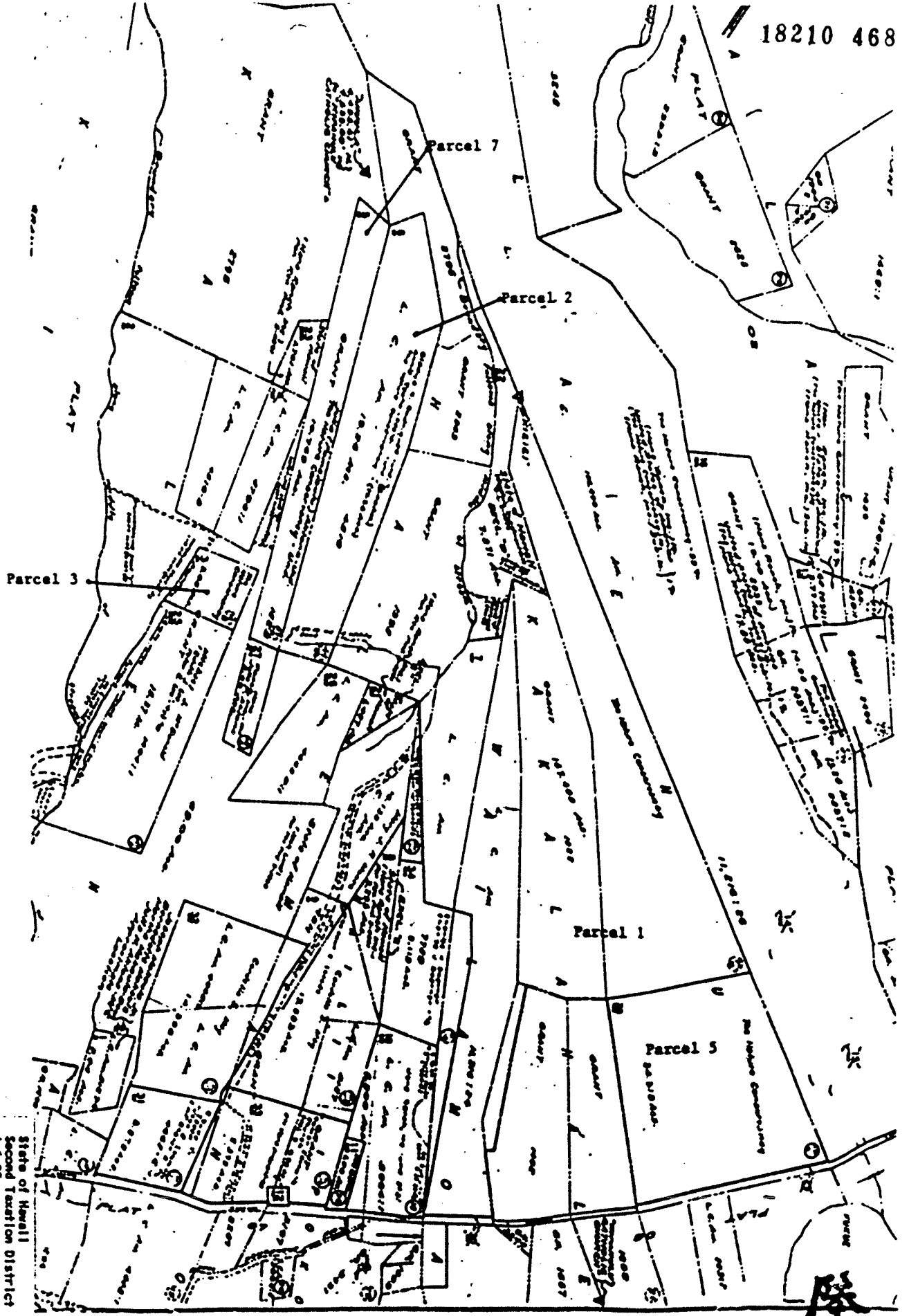
Beginning at the southeast corner of this parcel of land, being also the southwest corner of Parcel 17-E and the northeast corner of Parcel 16-A, the coordinates of which referred to Government Survey Trig. Station "Kipahulu Catholic Church" being 2,058.86 feet north and 3,482.97 feet west, and running by azimuths measured clockwise from true south:

1.	81°	20'		179.39	feet along remainder of Grant 1825 to Paamaiula (Parcel 16-A);
2.	160°	15'		2,478.54	feet along Government Land and Grant 2795 to Kaleimakalii (Parcel 17-D);
3.	278°	26'	30"	235.42	feet along Grant 2795 to Kaleimakalii ((Parcel 17-D);

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4. 341° 00' 2,402.00 feet along L.C. Aw. 4510
to Kualei (Parcel 17-E),
to the point of beginning
and containing an area of
10.769 acres.

Being the same land conveyed to the Grantor by Deed
dated October 13, 1971, recorded in the Bureau of Conveyances
of the State of Hawaii in Liber 7953, Page 174.



Parcel 3

Parcel 7

Parcel 2

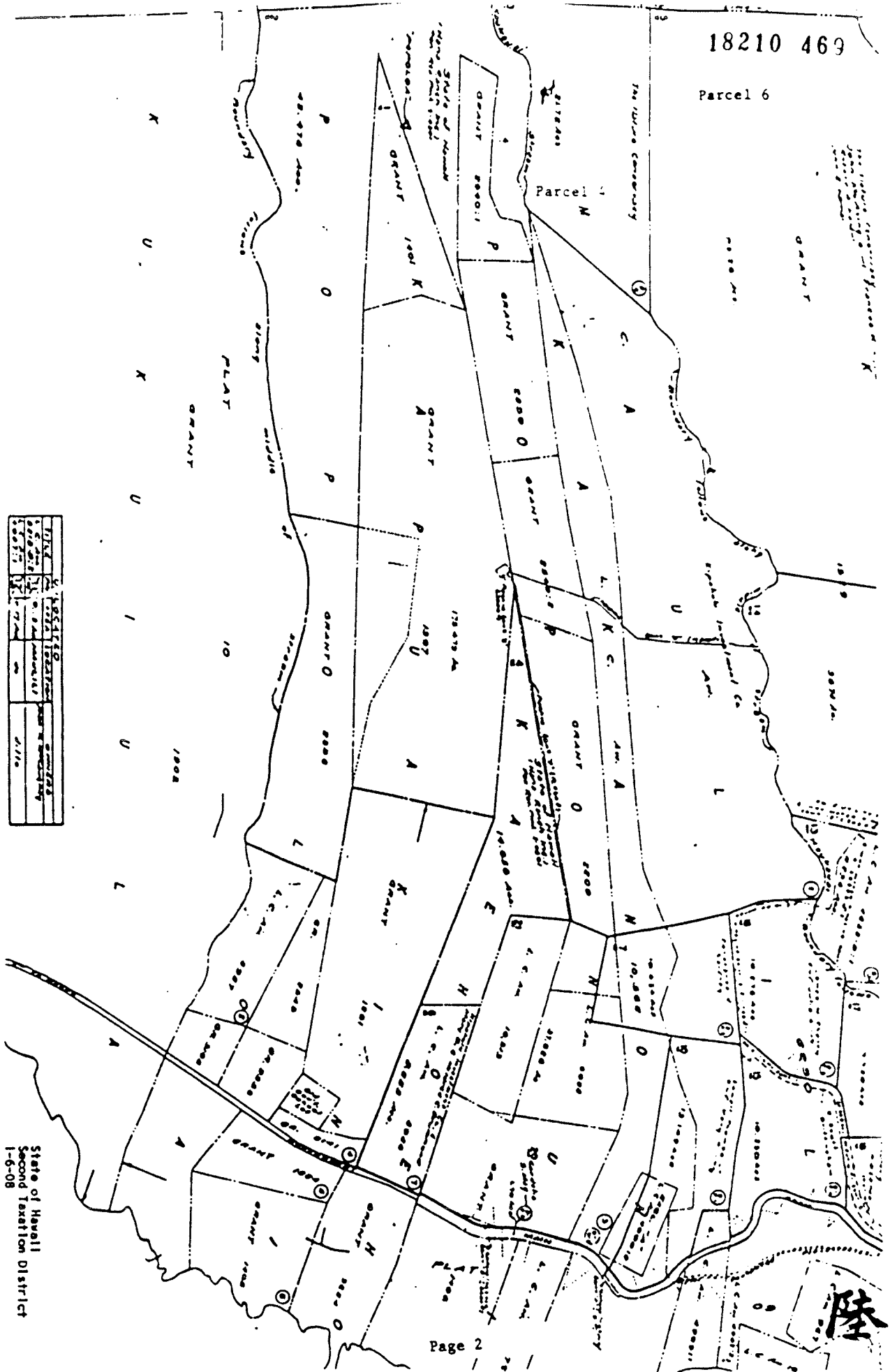
Parcel 1

Parcel 5

State of Hawaii
Second Taxation District

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Parcel 6

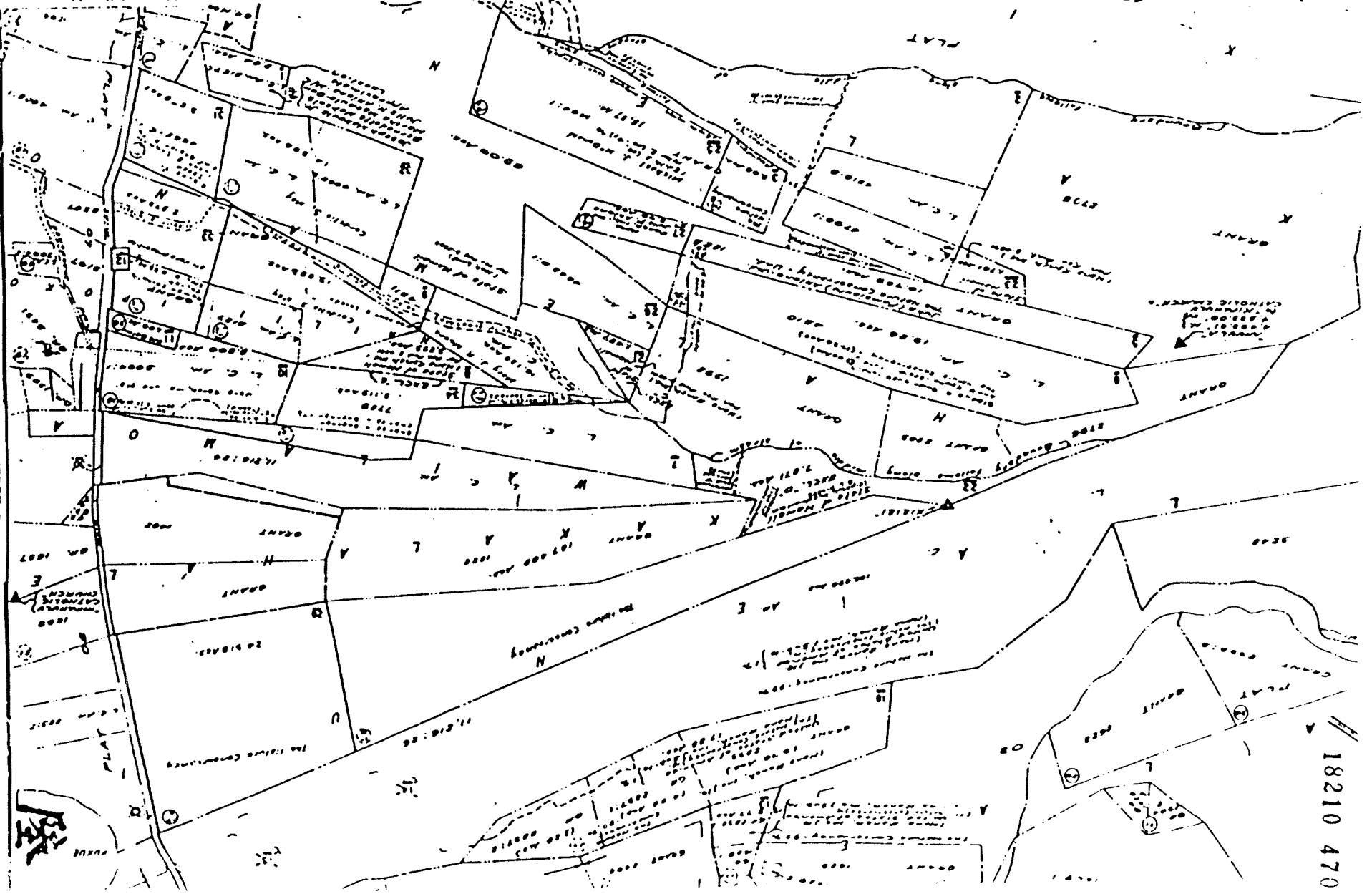


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1901	K	Grant
1907	U	Grant
1908	A	Grant
1909	L	Grant
1910	A	Grant
1911	K	Grant
1912	A	Grant
1913	K	Grant
1914	A	Grant
1915	K	Grant
1916	A	Grant
1917	K	Grant
1918	A	Grant
1919	K	Grant
1920	A	Grant
1921	K	Grant
1922	A	Grant
1923	K	Grant
1924	A	Grant
1925	K	Grant
1926	A	Grant
1927	K	Grant
1928	A	Grant
1929	K	Grant
1930	A	Grant

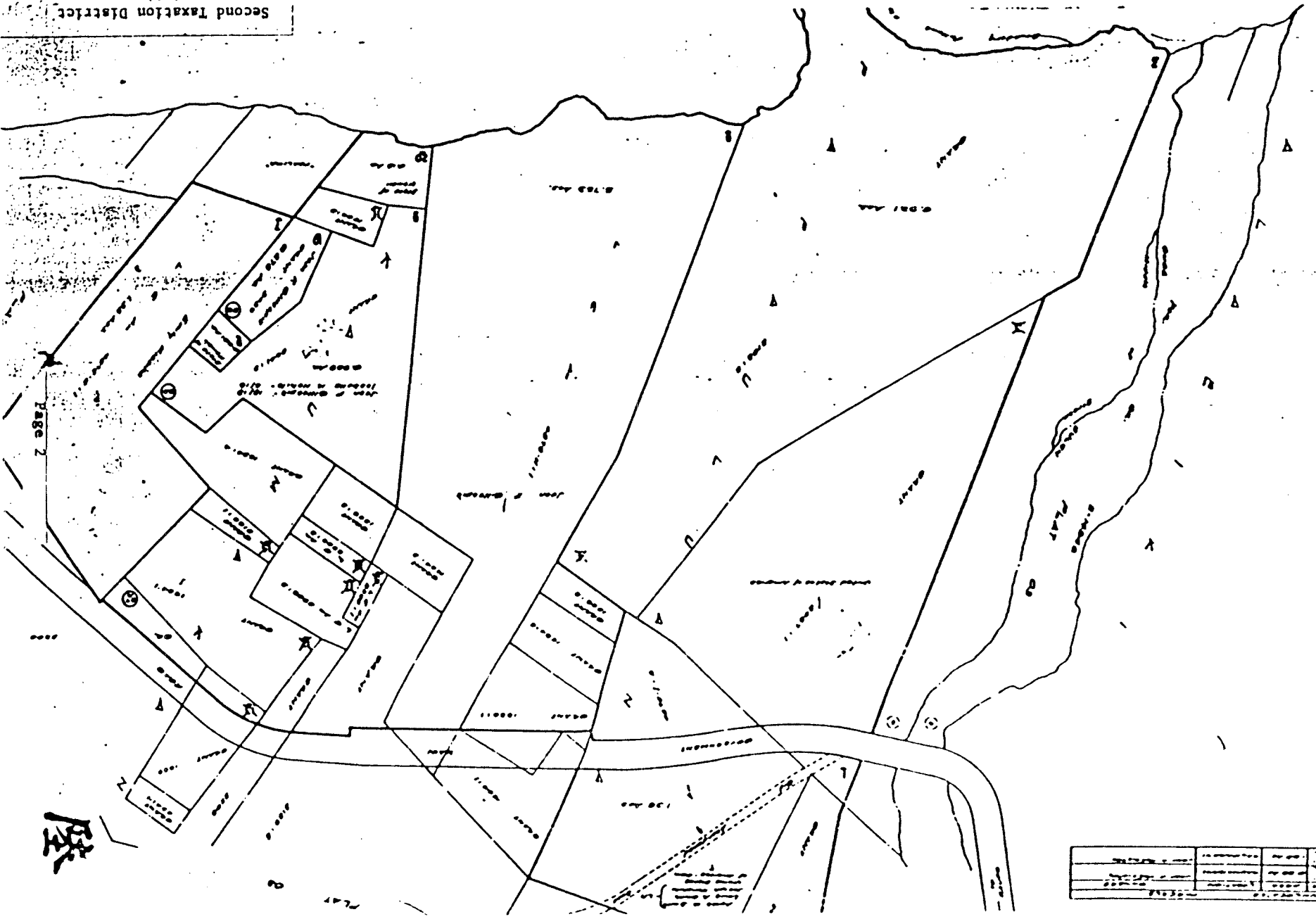
State of Hawaii
 Second Taxation District
 1-6-08

State of Hawaii
Second Taxation District

EXHIBIT B



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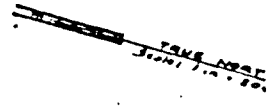
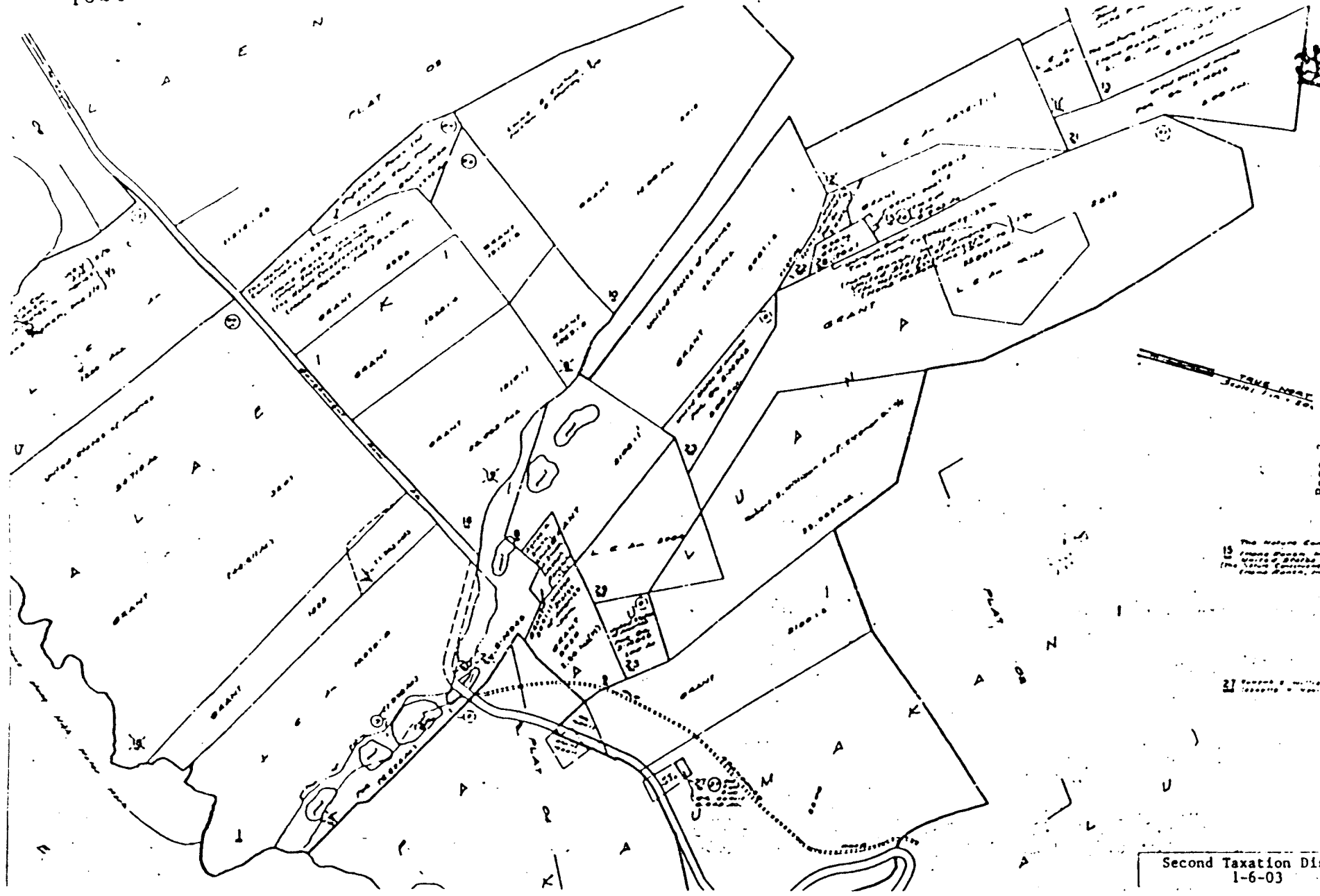
Page 2

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Page 3

15 The Nature Conservancy
 16 Frank D. Brown, Inc.
 17 The Nature Conservancy
 18 The Nature Conservancy

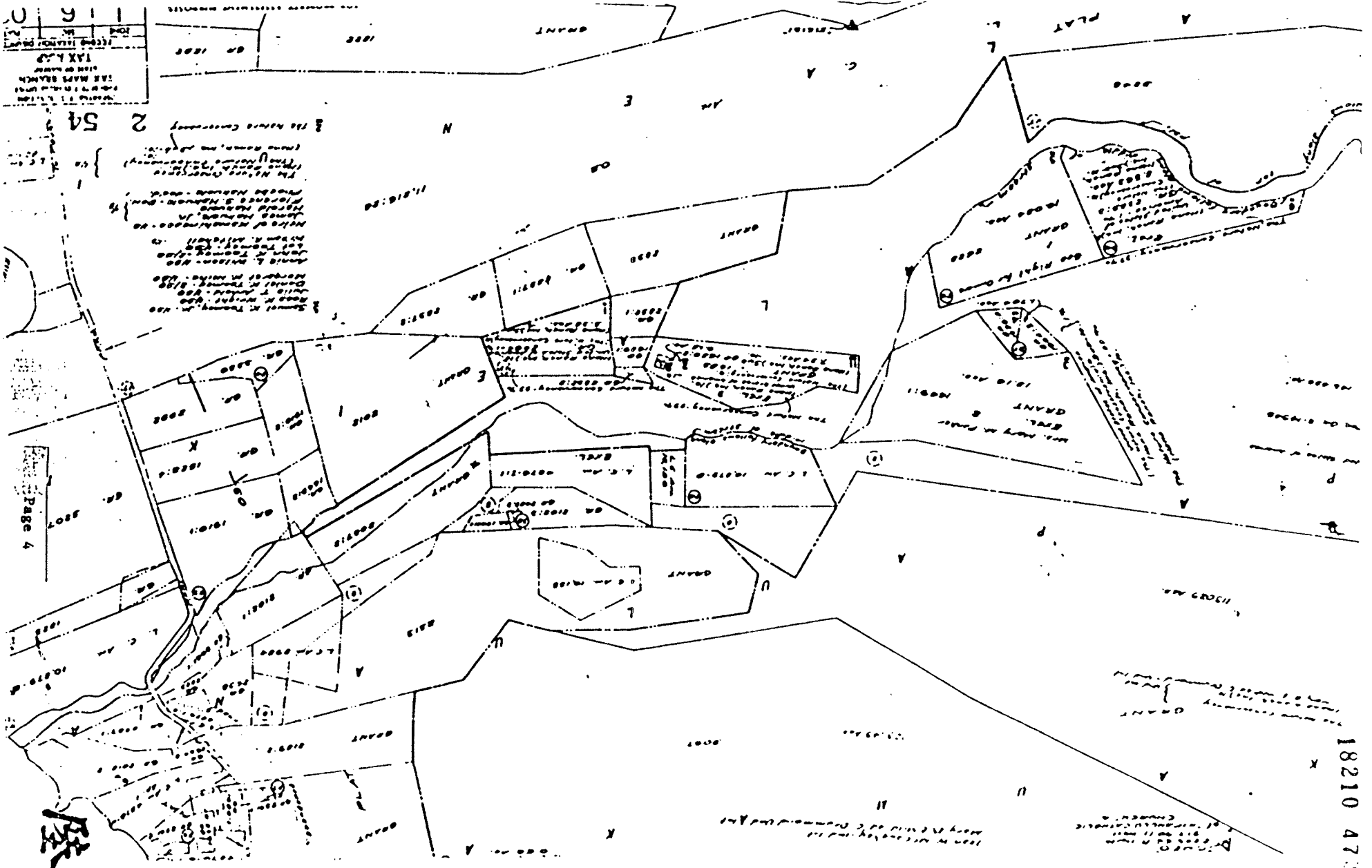
21 Forest & Wildlife
 22 Forest & Wildlife

Second Taxation District
 1-6-03

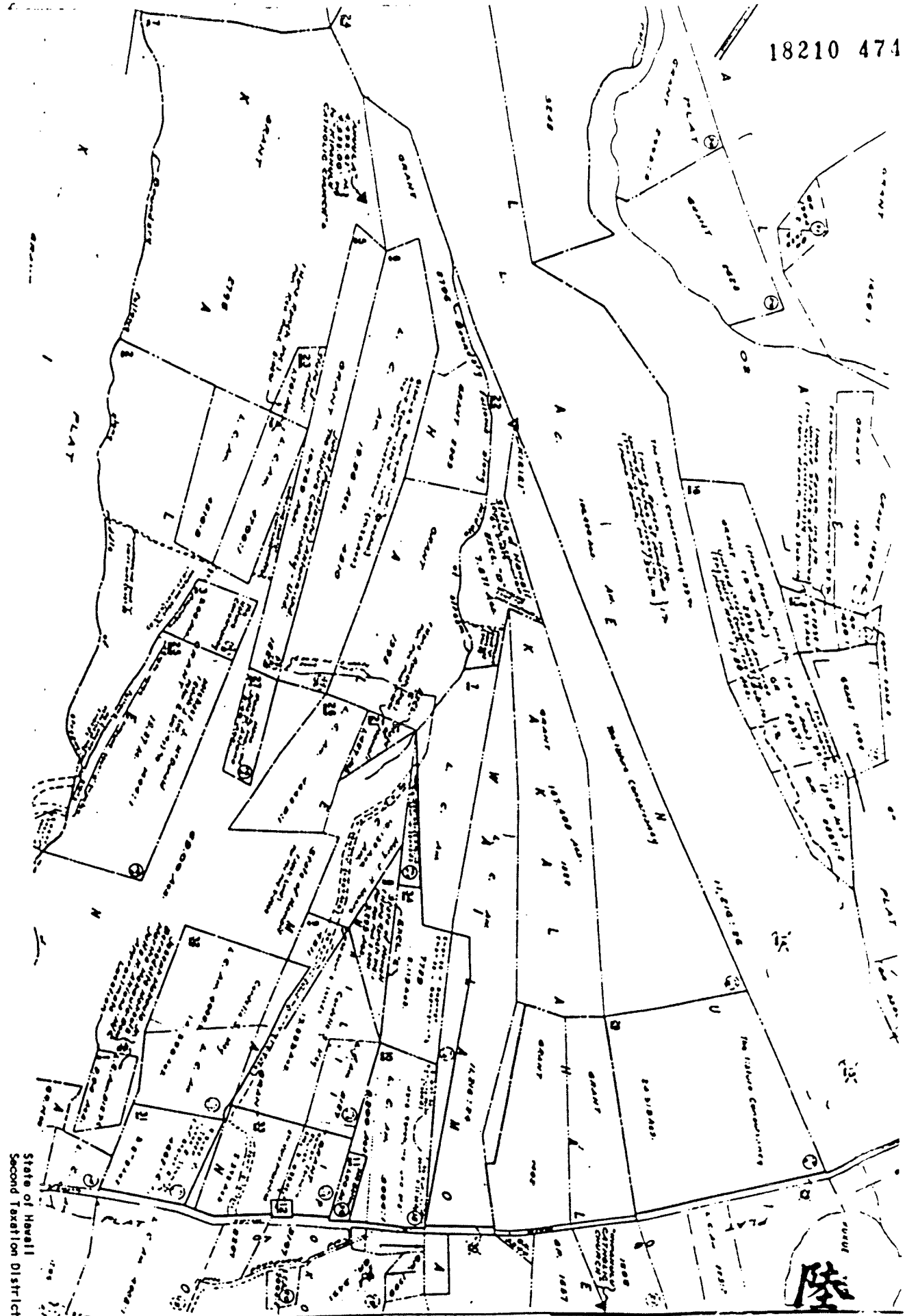
STATE OF TEXAS
TAX MAPS
COUNTY OF ...

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Page 4



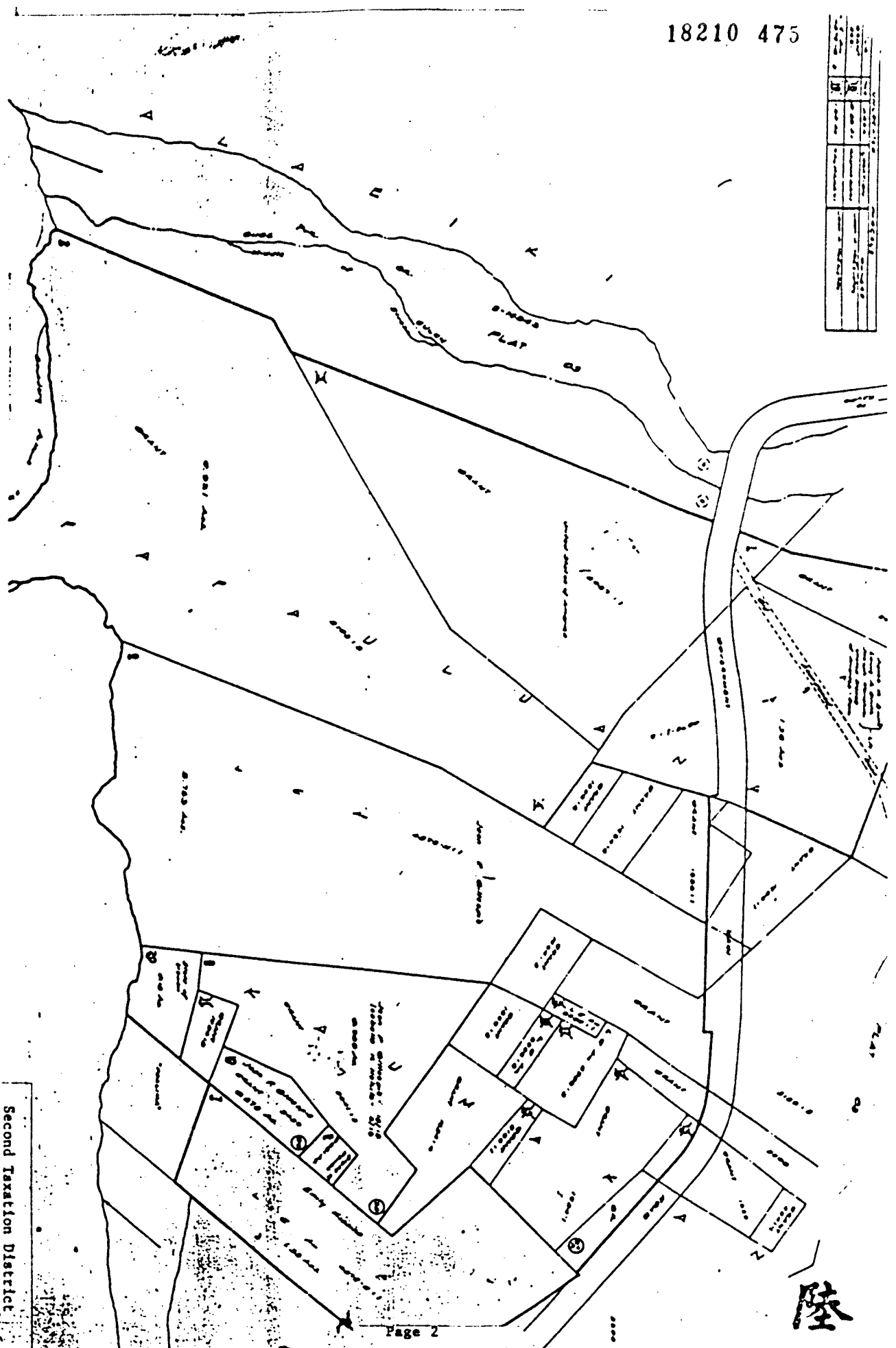
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State of Hawaii
 Second Taxation District

EXHIBIT C

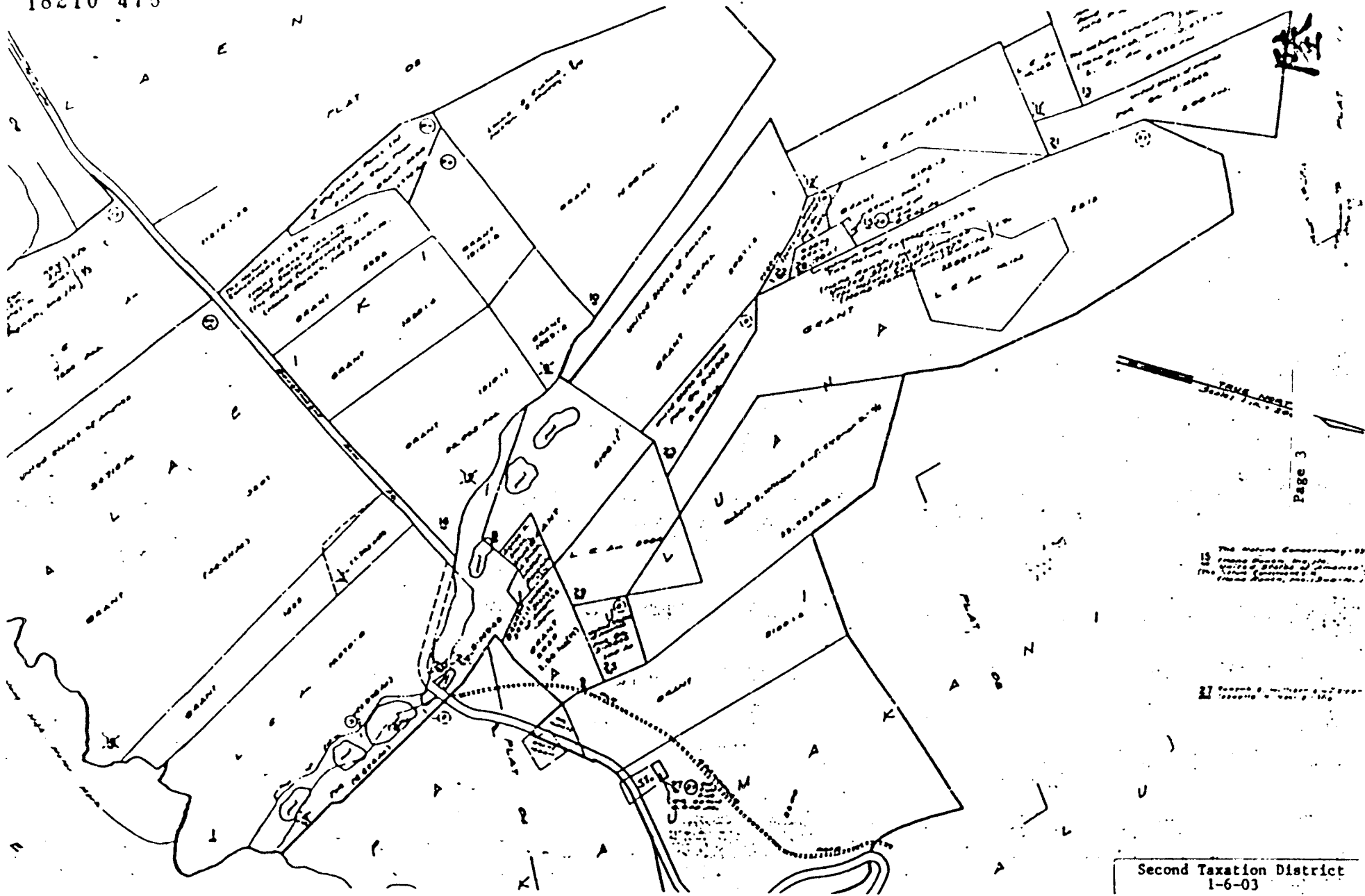
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Second Taxation District

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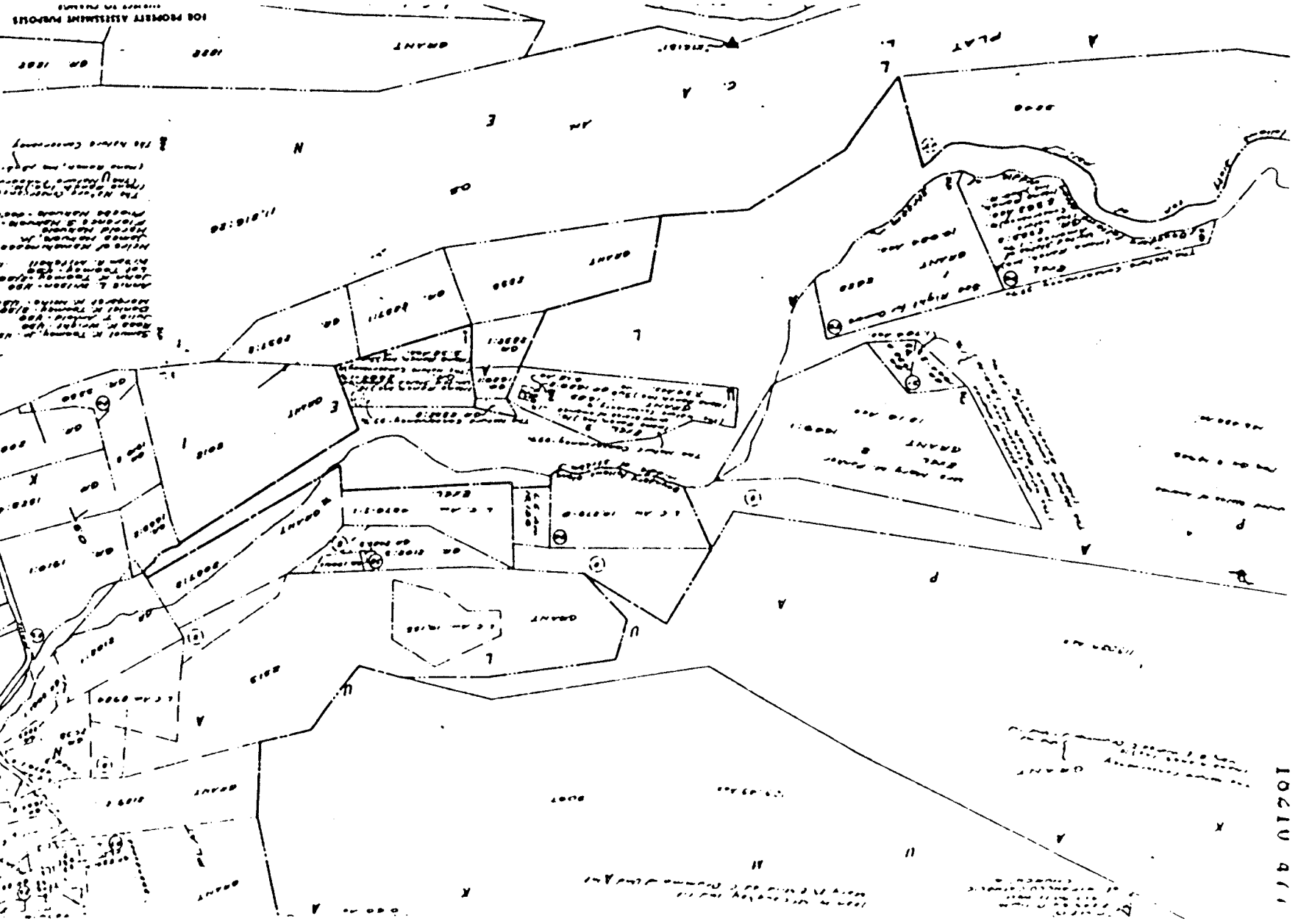
SCALE
 1 inch = 100 feet

Page 3

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Second Taxation District
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TAX MAP		
FOR THE YEAR 1954		



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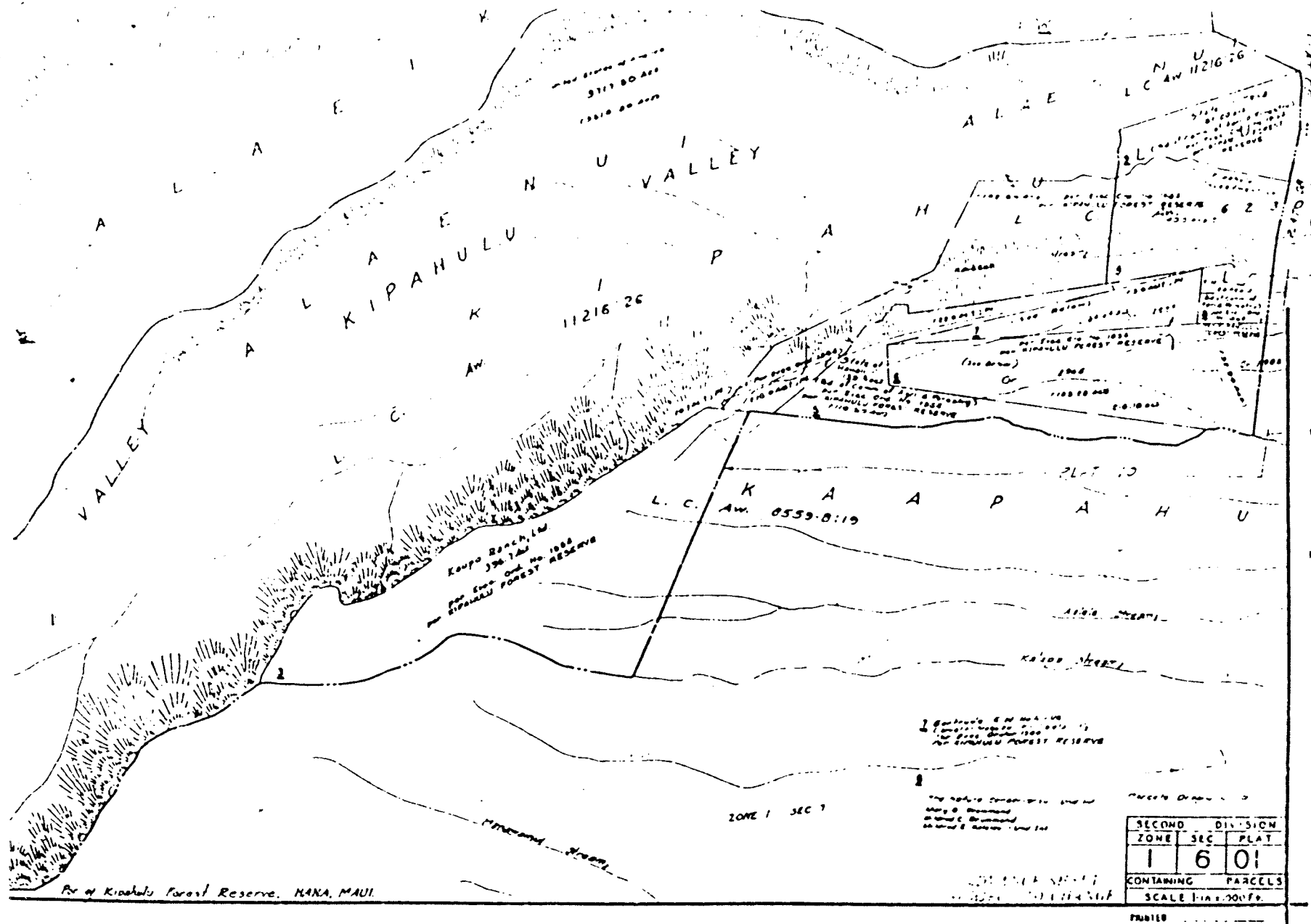
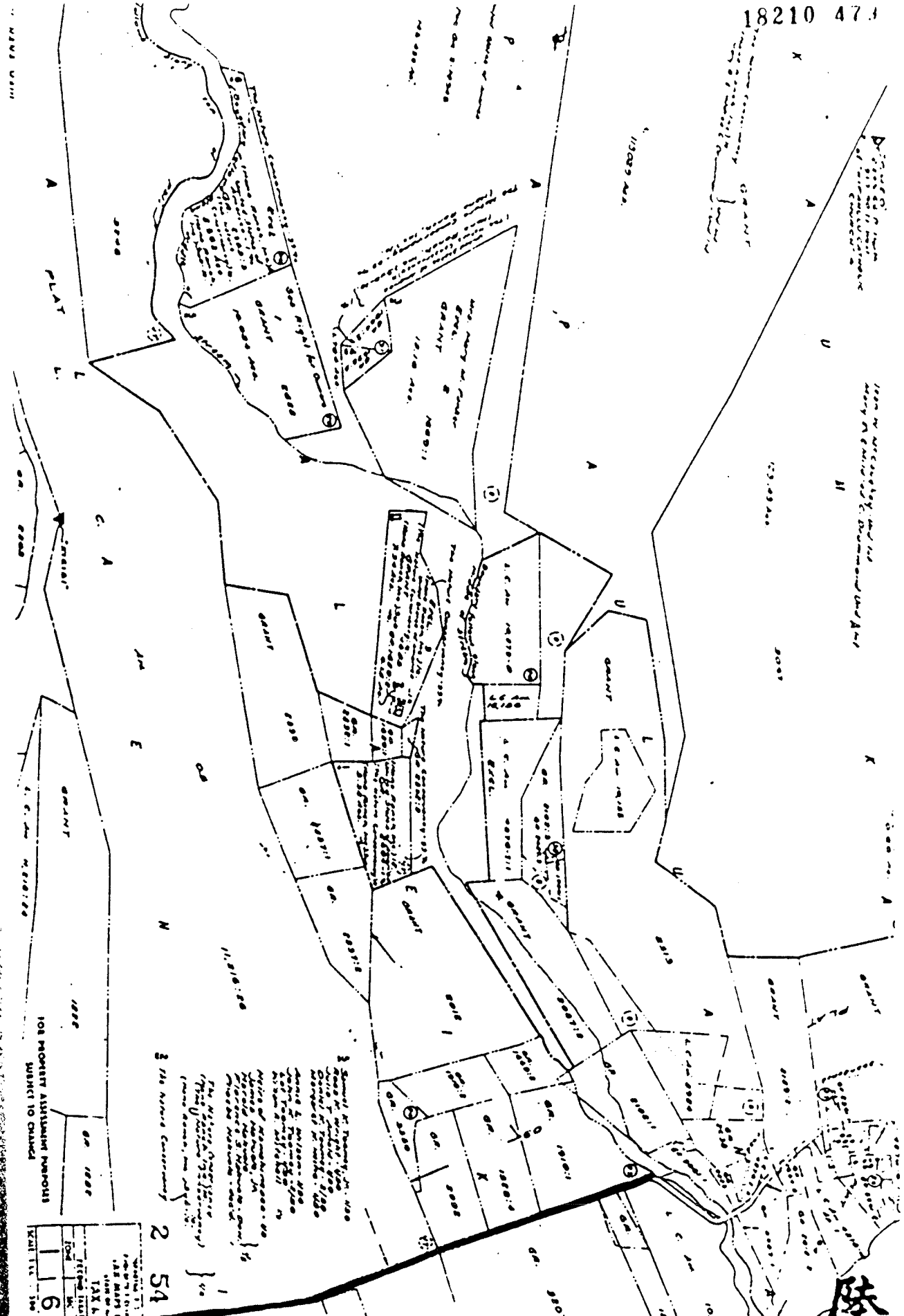


EXHIBIT C-1

Part of Kipahulu Forest Reserve, MAUI, MAUI



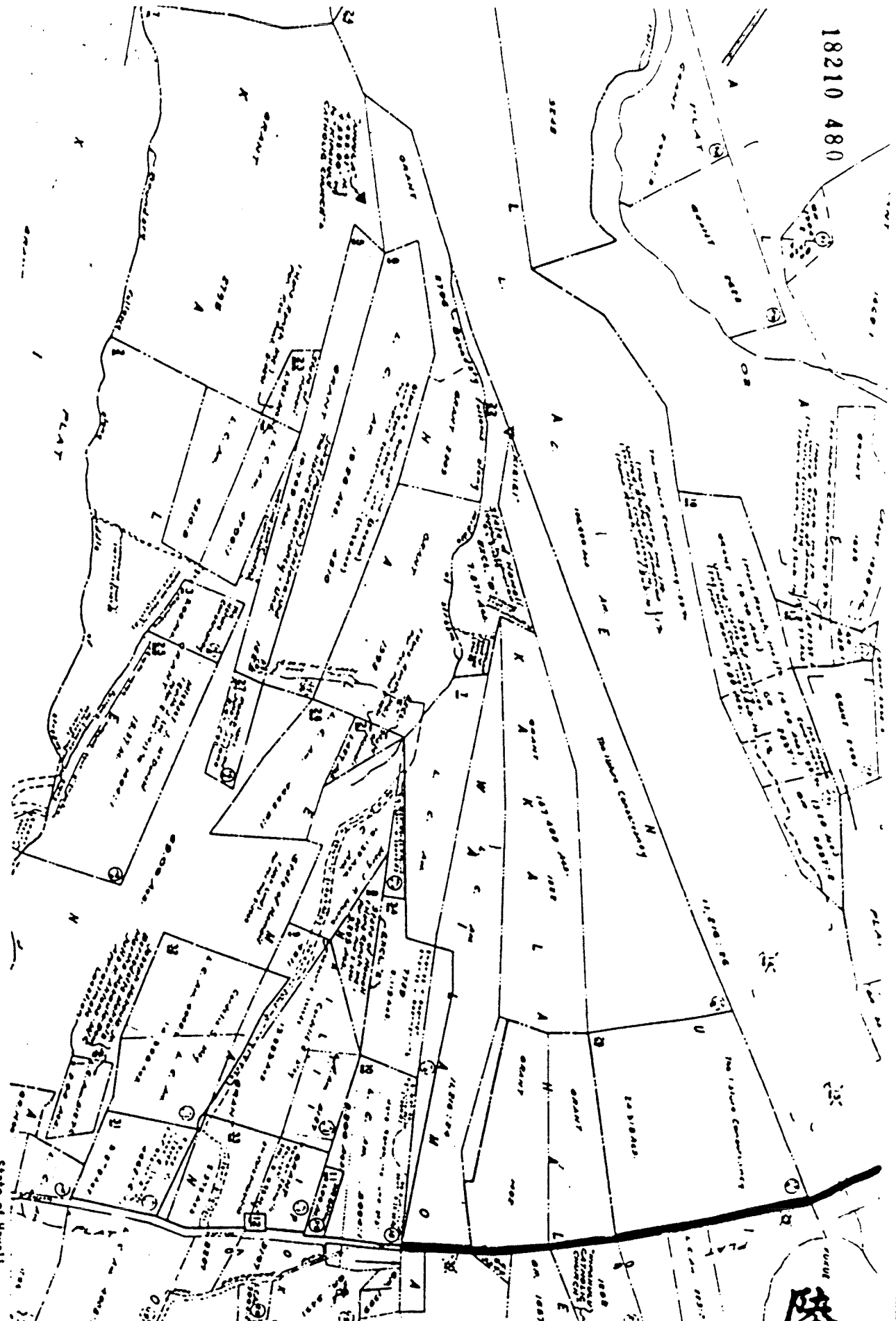
FOR PROMPT ATTENDING PERSONS
SUBJECT TO ORDER

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EXHIBIT D

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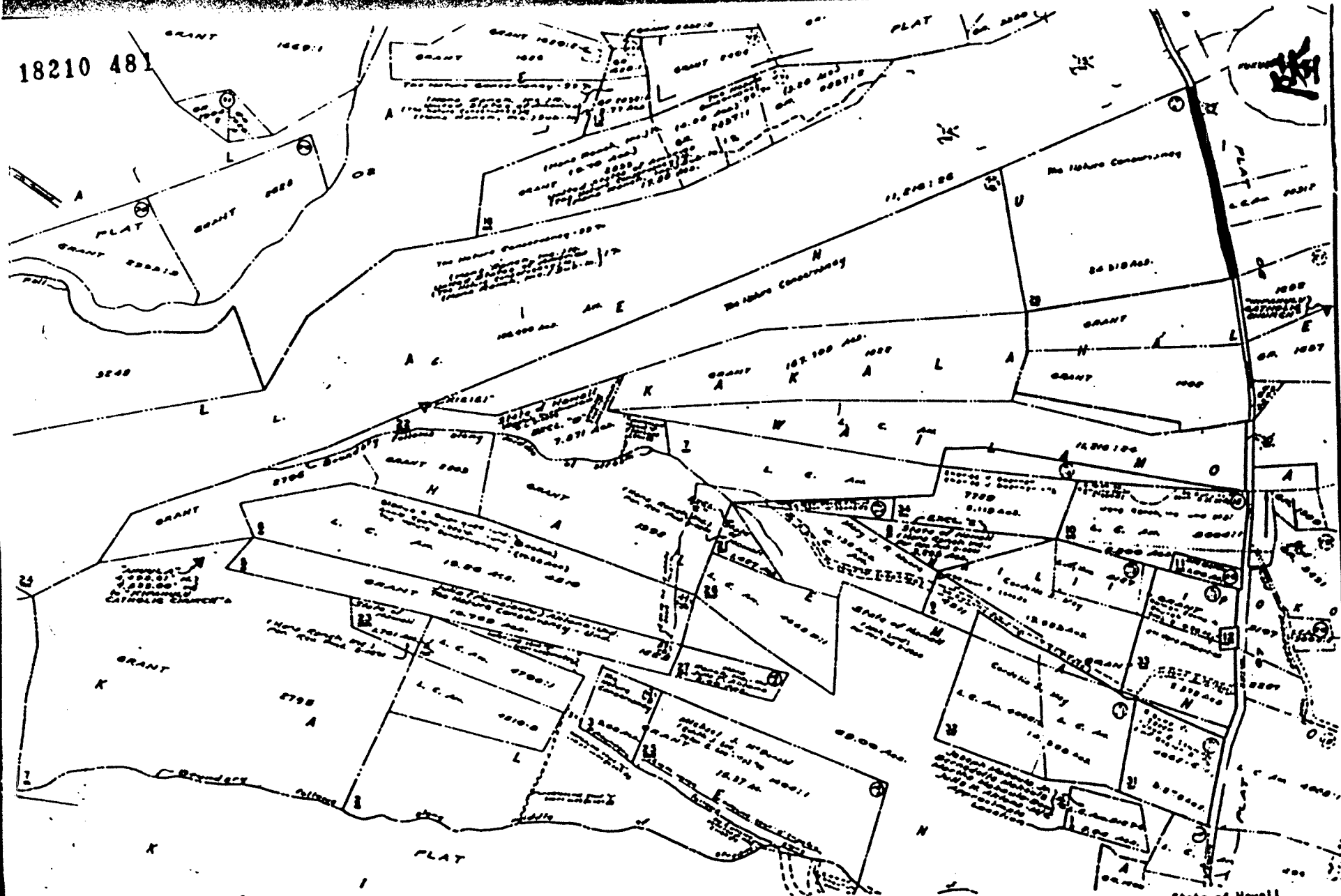
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State of Hawaii
 Second Taxation District

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State of Hawaii
Second Taxation District

EXHIBIT E

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A87-619
)
CHARLES J. BOERNER AND) CHARLES J. BOERNER AND
CHARLES H. BOERNER) CHARLES H. BOERNER
)
To Amend the Conservation Land Use)
District Boundary into the)
Agricultural Land Use District for)
Approximately 53.238 Acres at)
Kipahulu, Hana, Island and County)
of Maui, State of Hawaii, Tax Map)
Keys 1-6-05: portion of 7 and)
1-6-05: 28)
_____)

CERTIFICATE OF SERVICE

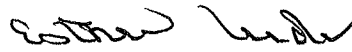
I hereby certify that a copy of the Findings of Fact, Conclusions of Law and Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

HAROLD S. MASUMOTO, Director
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

Cert. CHRISTOPHER L. HART, Planning Director
Planning Department, County of Maui
200 South High Street
Wailuku, Hawaii 96793

Cert. W.Y. THOMPSON, Consultant for Petitioner
98-1051 Kahapili Street
Aiea, Hawaii 96701

DATED: Honolulu, Hawaii, this 25th day of July 1988.



ESTHER UEDA
Executive Officer

DOCKET NO. A87-619 - CHARLES J. BOERNER AND CHARLES H. BOERNER

A copy of the Land Use Commission's Findings of Fact, Conclusions of Law, and Decision and Order was served upon the following by regular mail on July 25, 1988.

CHARLES J. BOERNER
CHARLES H. BOERNER
Star Route, Box 149
Hana, Maui, HI 96713

MRS. BILL DANA
Hana Community Association
Star Route 96
Hana, Maui, HI 96713

MS. NANCY LOFTIN
Kipahulu Community Association
Star Route 177
Hana, Maui, HI 96713