



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Petition Of	)	DOCKET NO. DR11-45
	)	
PARKER RANCH, INC.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
For A Declaratory Order To Designate	)	DECISION AND ORDER;
Important Agricultural Lands	)	EXHIBIT "1"; CERTIFICATE
For Approximately 56,771.8 Acres Of Land	)	OF SERVICE
At Hāmākua And South Kohala, Hawai`i,	)	
Tax Map Keys: 4-4-14: 5, 4-4-15: Por. 3,	)	
And 6-7-01: Por. 25	)	
_____	)	

ORIGINAL

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND DECISION AND ORDER**

**EXHIBIT "1" (Consisting of 4 pages)**

**CERTIFICATE OF SERVICE**

LAND USE COMMISSION  
STATE OF HAWAII  
2011 SEP 20 A 10: 03



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Important Agricultural Lands	)	
For Approximately 56,771.8 Acres Of Land	)	
At Hāmākua And South Kohala, Hawai`i,	)	
Tax Map Keys: 4-4-14: 5, 4-4-15: Por. 3,	)	
And 6-7-01: Por. 25	)	
_____	)	

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND DECISION AND ORDER**

PARKER RANCH, INC. ("Petitioner"), filed a Petition for Declaratory Order to Designate Important Agricultural Lands ("Petition") on June 30, 2011, pursuant to Hawai`i Revised Statutes ("HRS") §§ 205-44 and 45 and Hawai`i Administrative Rules ("HAR") chapter 15-15 to designate approximately 56,771.8 acres of land at Hāmākua and South Kohala, Hawai`i, identified as Tax Map Keys ("TMK"): 4-4-14: 5,<sup>1</sup> 4-4-15: por. 3, and 6-7-01: por. 25 (collectively "Petition Area"), as Important Agricultural Lands ("IAL").

<sup>1</sup> The original caption in the Petition erroneously referred to a portion of parcel 5 rather than to its entirety.

The State of Hawai'i Land Use Commission ("Commission"), having heard and examined the testimony, evidence, and argument of counsel presented during the hearing, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On June 30, 2011, Petitioner filed the Petition and Exhibits "A" through "D" of the Petition.
2. On August 1, 2011, the State of Hawai'i Office of Planning ("OP") filed its comments on the Petition.
3. On August 2, 2011, the State of Hawai'i Department of Agriculture ("DOA") filed its comments on the Petition.
4. On August 3, 2011, the County of Hawai'i Planning Department ("Planning Department") filed its comments on the Petition.
5. On August 11, 2011, OP filed the comments of the State of Hawai'i Commission on Water Resource Management ("CWRM") and the U. S. Department of Agriculture, Natural Resources Conservation Service ("NRCS"), on the Petition.
6. On August 29, 2011, Petitioner filed its response to the comments of OP, the DOA, and the Planning Department on the Petition.

7. On September 6, 2011, Petitioner filed a supplemental response to the comments of OP, the DOA, and the Planning Department on the Petition.

8. On September 8, 2011, the Commission held a site visit to view the Petition Area in Hāmākua and South Kohala, Hawai`i.

9. On September 8, 2011, the Commission held an action meeting on the Petition in Waikoloa, Hawai`i. Benjamin M. Matsubara, Esq.; Curtis T. Tabata, Esq.; and Dutch Kuyper appeared on behalf of Petitioner. Bryan C. Yee, Esq., and Jesse Souki appeared on behalf of OP. William Brillhante, Esq., and BJ Leithead-Todd appeared on behalf of the Planning Department. Russell Kokubun was also present on behalf of the DOA.<sup>2</sup>

10. The Commission entered, without objection, the written comments of OP, the DOA, the Planning Department, the CWRM, and the NRCS, as well as Petitioner's responses thereto into the record of this proceeding. The Commission also heard public testimony from Bob Momsen and Herbert M. Richards, III.

#### DESCRIPTION OF THE PETITION AREA

11. The Petition Area consists of approximately 56,771.8 acres of land at Hāmākua and South Kohala, Hawai`i, identified as TMKs: 4-4-14: 5, 4-4-15: por. 3, and 6-7-01: por. 25.

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<sup>2</sup> At the meeting, Commissioner McDonald disclosed that Petitioner's counsel has represented his firm in legal matters, but that he was not personally involved in those matters and could remain impartial in the proceedings. There were no objections by Petitioner, OP, the Planning Department, and the DOA to Commissioner McDonald's participation in this docket.

12. The Petition Area is owned in fee simple interest by the Parker Land Trust.

13. The Parker Land Trust has given its written consent to the filing of the Petition and the designation of the Petition Area as IAL.

14. Petitioner is a trust beneficiary with management powers over the Petition Area.

#### DESCRIPTION OF THE REQUEST

15. Petitioner seeks a determination from the Commission that the lands identified by Petitioner in this Petition should be designated as IAL pursuant to HRS §§ 205-44 and 45.

16. Petitioner is not seeking to reclassify any agricultural lands to the State Land Use Urban, Rural or Conservation Districts.

17. Petitioner has represented that it is not claiming and will not claim any credits described in HRS § 205-45(h).

#### CONFORMANCE WITH THE STANDARDS AND CRITERIA FOR THE IDENTIFICATION OF IAL

18. The Petition Area, consisting of approximately 56,771.8 acres of land, is in active cattle ranching. Approximately 5,594 acres of lands on the northern end of the Petition Area also are currently leased to Cambium Pinnacle Inc. for a eucalyptus plantation for timber production. Petitioner's cattle ranching operations have been ongoing for approximately the past 140 years.

19. The University of Hawai`i, Land Study Bureau ("LSB"), developed the Overall Productivity Rating, which classified soils according to five levels, with "A" representing the class of highest productivity soils and "E" representing the lowest. Approximately 1 percent of the Petition Area is rated B, approximately 32.6 percent is rated C, approximately 64.2 percent is rated D, and the remaining approximately 2.2 percent is rated E.

20. Based on the Sunshine Maps prepared in 1985 by the State of Hawai`i Department of Business, Economic Development, and Tourism, formerly known as the State of Hawai`i Department of Planning and Economic Development, Energy Division, approximately 26 percent of the Petition Area receives an annual average of 450 calories of solar energy per square centimeter per day, 70 percent receives 400 calories, and the balance receives 350 calories.

21. In 1977, the DOA developed a classification system to identify Agricultural Lands of Importance to the State of Hawai`i ("ALISH"). The classification system is based primarily, though not exclusively, upon the soil characteristics of the lands. The three classes of ALISH lands consist of the following: "Prime," "Unique," and "Other Important Agricultural Lands," with all remaining lands termed "Unclassified." When utilized with modern farming methods, Prime agricultural lands have a soil quality, growing season, and moisture supply necessary to produce sustained crop yields economically. Unique agricultural lands possess a combination of

soil quality, growing season, and moisture supply to produce sustained high yields of a specific crop. Other Important Agricultural Lands include those agricultural lands that have not been rated as Prime or Unique. Under the ALISH system, Prime agricultural lands constitute approximately 2.4 percent of the Petition Area, while lands within the Other Important Agricultural Lands class represent approximately 68.2 percent. The remaining acreage is Unclassified.

22. Kohākōhau Stream, Alakahi Stream, and Waikoloa Stream provide water for agricultural use on the Petition Area. The total capacity for the diversion structure servicing all three streams is 312.5 gallons per minute (450,000 gallons per day), which is sufficient for current and near-term ranching needs. Water is diverted to the Upper Kohākōhau Diversion Dam and the ranch is served by irrigation water lines and tanks that provide water to the cattle.

23. The Petition Area's agricultural classification is consistent with the General Plan of the County of Hawai'i.

24. The Petition Area is situated within the State Land Use Agricultural District.

25. The Petition Area contributes to maintaining a critical land mass important to agricultural operating productivity.

26. The Petition Area is fully integrated with the infrastructure necessary to support agricultural production, including water tanks, water lines, fences, grazing management areas, and roadways.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Petition pursuant to HRS §§ 91-8, 205-44, and 205-45 and HAR § 15-15-98.

2. Pursuant to HRS § 205-44(a), the Commission has the authority to designate lands as IAL so long as any of the standards and criteria in HRS § 205-44(c) are met.

3. The Petition Area is currently used for agricultural production in accordance with HRS § 205-44(c)(1).

4. The Petition Area has soil qualities and growing conditions that support agricultural production in accordance with HRS § 205-44(c)(2).

5. The Petition Area constitutes lands identified under agricultural productivity rating systems, such as the ALISH system adopted by the Board of Agriculture on January 28, 1977, in accordance with HRS § 205-44(c)(3).

6. The Petition Area has sufficient quantities of water to support viable agricultural production in accordance with HRS § 205-44(c)(5).

7. The Petition Area's designation as IAL is consistent with the General Plan of the County of Hawai'i in accordance with HRS § 205-44(c)(6).



8. The Petition Area contributes to maintaining a critical land mass that is important to agricultural operating productivity in accordance with HRS § 205-44(c)(7).

9. The Petition Area has or is near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power in accordance with HRS § 205-44(c)(8).

10. The designation of the Petition Area as IAL meets the purposes of Article XI, Section 3, of the Hawai'i State Constitution by conserving and protecting agricultural lands, promoting agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands.

11. The designation of the Petition Area as IAL meets the objectives of HRS § 205-42(b) by contributing to the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations.

12. The designation of the Petition Area as IAL meets the policies of HRS § 205-43(1) by promoting the retention of IAL in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management.

13. The designation of the Petition Area as IAL meets the policies of HRS § 205-43(2) by discouraging the fragmentation of IAL and the conversion of these lands to nonagricultural uses.

14. The designation of the Petition Area as IAL meets the policies of HRS § 205-43(8) by promoting the maintenance of essential agricultural infrastructure systems, including irrigation systems.

15. The Petition Area meets the requirements of HRS § 205-45 for designation as IAL.

16. Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

### **DECISION AND ORDER**

This Commission, having duly considered the Petition, the oral and/or written comments of Petitioner, OP, the DOA, the Planning Department, the CWRM, and the NRCS, and a motion having been made and subsequently amended at a meeting on September 8, 2011, in Waikoloa, Hawai`i, and the amended motion having received the affirmative votes required by HAR § 15-15-13 and HRS § 205-45(e), and there being good cause for the amended motion,

HEREBY ORDERS that the Petition Area, consisting of approximately 56,771.8 acres of land at Hāmākua and South Kohala, Hawai`i, identified as TMKs: 4-4-14: 5, 4-4-15: por. 3, and 6-7-01: por. 25, and shown approximately on Exhibit "1," attached hereto and incorporated by reference herein, shall be and is hereby designated as IAL as governed by HRS chapter 205.

IT IS FURTHER ORDERED that the designation of the Petition Area as IAL shall be subject to the following conditions:

1. Petitioner shall comply with representations made to the Commission with respect to not claiming any credits described in HRS § 205-45(h) with respect to the Petition Area.
2. Within seven days of the issuance of the Commission's Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 20<sup>th</sup> day of September, 2011, per motion on September 8, 2011.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I

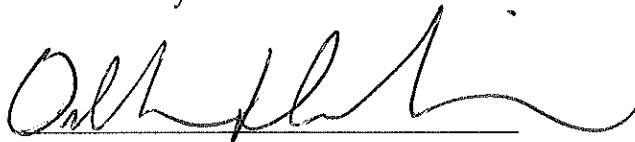
  
\_\_\_\_\_  
Deputy Attorney General

By   
\_\_\_\_\_  
NORMAND LEZY  
Chairperson and Commissioner

Filed and effective on:

9/20/11

Certified by:

  
\_\_\_\_\_  
ORLANDO DAVIDSON  
Executive Officer

**EXHIBIT "1"**

(Consisting of 4 pages)

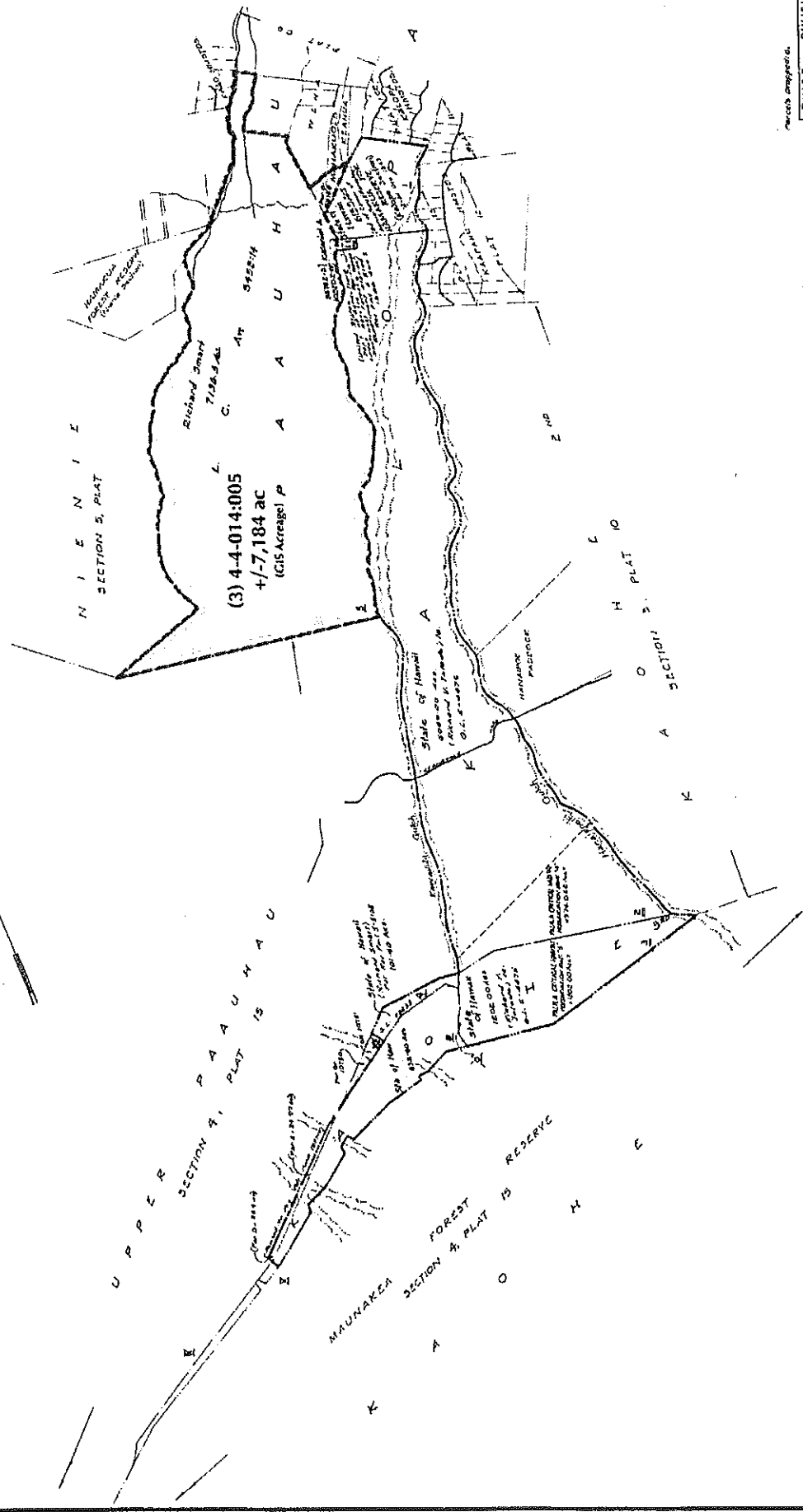
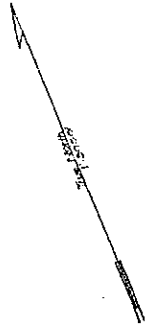
**DR11-45**

The Petition Area, consisting of approximately 56,771.8 acres of land and identified as TMKs: 4-4-14: 5, 4-4-15: por. 3, and 6-7-01: por. 25, and further shown on the accompanying tax maps, is designated as IAL.

The following table identifies the TMK parcels and their approximate acreages:

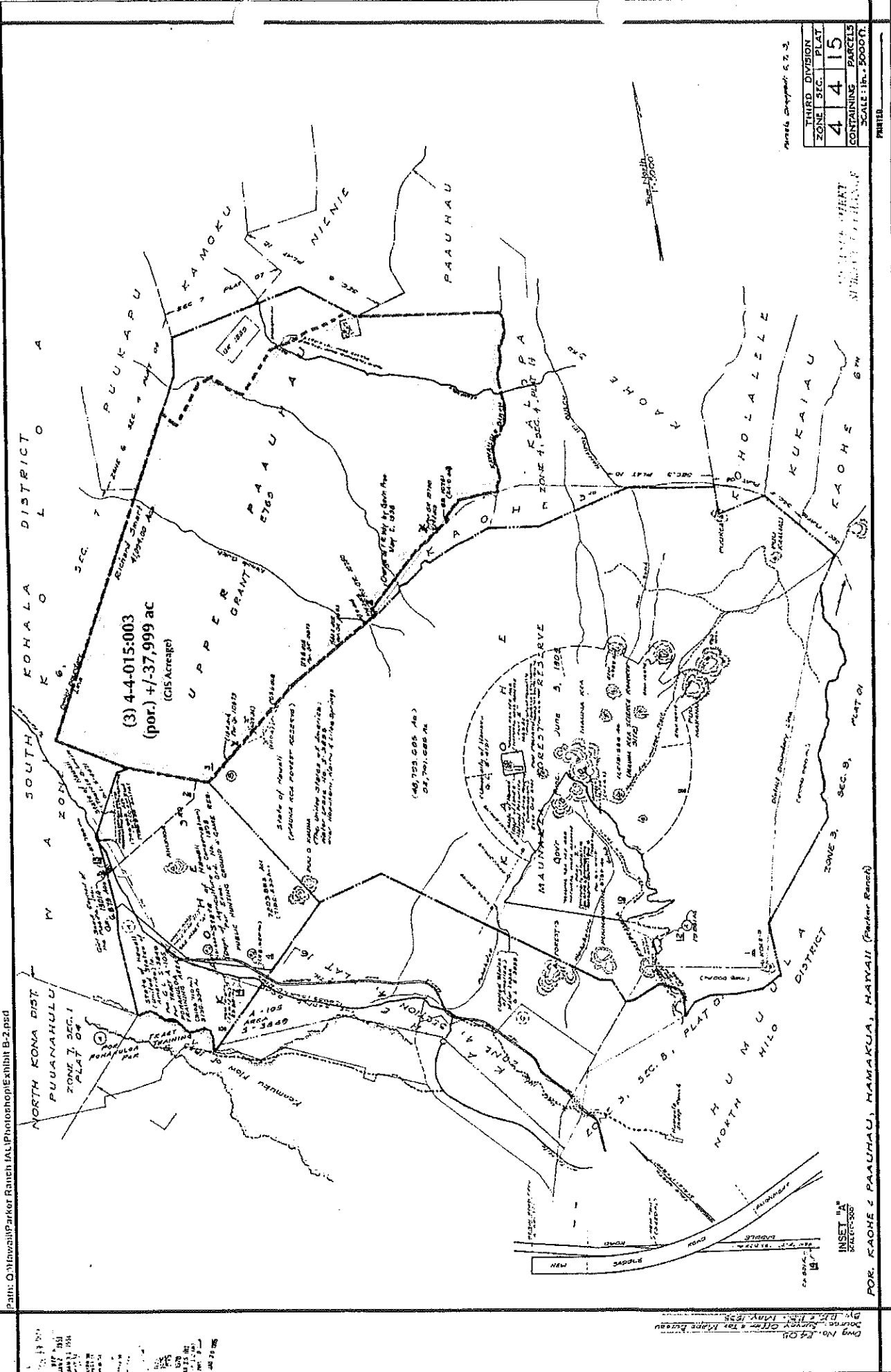
<b>TMK</b>	<b>Approximate Acreage</b>
4-4-14: 5	±7,184
4-4-15: por. 3	±37,999
6-7-01: por. 25	±11,589
<b>Total</b>	±56,772

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THIRD DIVISION		
ZONE	SEC.	PLAT
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CONTAINING PARCELS		
SCALE - 1 in. = 3000 FT.		

MICHELE SHEET  
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Path: Q:\Hawaii\Parker Ranch\IAL\Photoshop\Exhibit B-2.psd

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THIRD DIVISION	PLAT
ZONE 4	4 15
CONTAINING PARCELS	
SCALE 1 in. = 5000 ft.	

INSET "A"  
 SCALE 1:500  
 DATE: 10/15/00

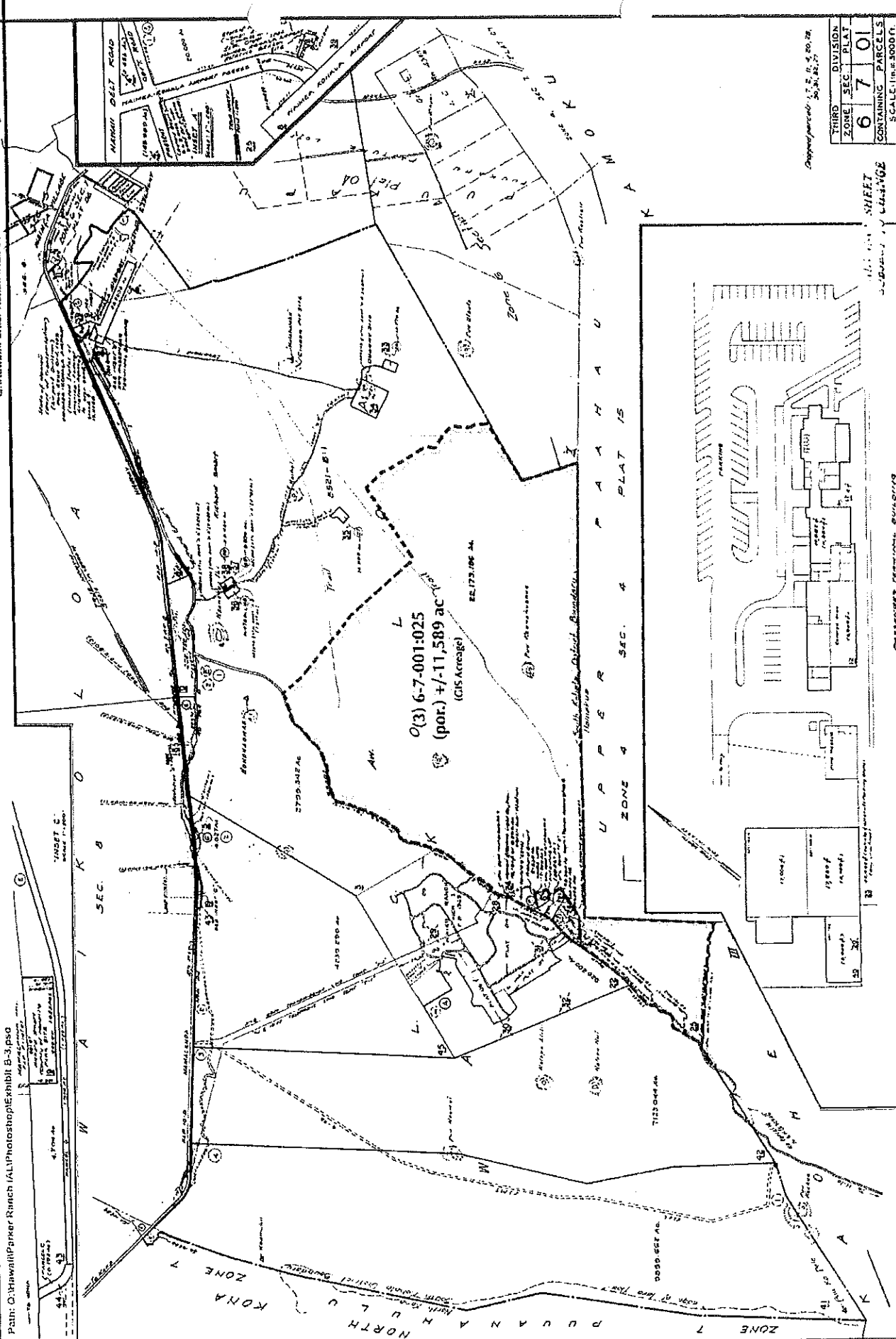
FOR: KAHOE & PAAUHAU, HAMAUKUA, MAUI (Parker Ranch)

KAHOE PLANTATION  
 SCALE 1 in. = 5000 ft.

PRINTED

Eng No. 1420  
 Source: Survey Office of the State of Hawaii  
 Date: 12/1/1915  
 By: B.S. & L.H. MANN, E.S.





Path: Q:\Hawaii\Parker Ranch (AL)\Photos\p\Exhibit B-3.pso

Date: 11/11/2009  
 Time: 10:00 AM  
 User: j...  
 Project: Parker Ranch  
 Drawing: 6-7-01

Dwg No. 6-7-01  
 Source: PL Maps, Bureau  
 By: H.N. Mills 1975

THIRD DIVISION	6	7	01
ZONE SEC PLAT	6	7	01
CONTAINING PARCELS			
SCALE: 1" = 3000' U.			

SHEET  
 6-7-01  
 CONTAINING PARCELS  
 SCALE: 1" = 3000' U.

INSET 7-23

FOR OF WAIKOLA, SOUTH KOHOLA, HAWAII.

PRINTED



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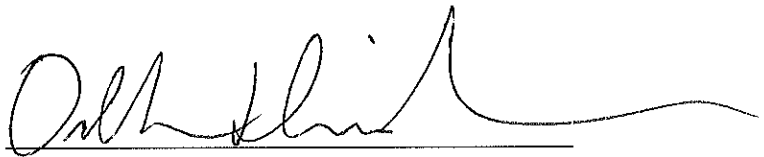
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the within document was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	<b>HAND DELIVERED</b>	<b>REGULAR MAIL</b>	<b>CERTIFIED MAIL</b>
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	<b>X</b>		
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813		<b>X</b>	

	<b>HAND DELIVERED</b>	<b>REGULAR MAIL</b>	<b>CERTIFIED MAIL</b>
BOBBY JEAN LEITHEAD-TODD Hawai'i County Planning Department 101 Pauahi Street Hilo, Hawai'i 96720		<b>X</b>	
LINCOLN ASHIDA, ESQ. WILLIAM BRILHANTE, ESQ. Corporation Counsel County of Hawai'i 101 Aupuni Street, Suite 325 Hilo, Hawai'i 96720-4262		<b>X</b>	

Honolulu, Hawai'i, September 20, 2011.



ORLANDO DAVIDSON

Executive Officer



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_____	)	

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**EXHIBIT "1" (Consisting of 4 pages)**

**CERTIFICATE OF SERVICE**

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

September 20 2011 by

Executive Officer