



ORIGINAL

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. DR11-43
)	
MĀHĀ`ULEPŪ FARM LLC)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
For A Declaratory Order To Designate)	AND DECISION AND ORDER
Important Agricultural Lands)	
For Approximately 1,533 Acres At Kōloa,)	
Kaua`i, Hawai`i)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
 OF LAW, AND DECISION AND ORDER
 AND
 CERTIFICATE OF SERVICE

2011 MAY 19 P 2:44
 LAND USE COMMISSION
 STATE OF HAWAII



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

MĀHĀ`ULEPŪ FARM LLC ("Petitioner") filed a Petition for Declaratory Order to Designate Important Agricultural Lands ("Petition") on February 23, 2011, pursuant to Hawai`i Revised Statutes ("HRS") §§ 205-44 and 45 and Hawai`i Administrative Rules ("HAR") chapter 15-15 to designate as Important Agricultural Lands ("IAL") approximately 1,533 acres of land situated at Kōloa, Kaua`i, Hawai`i, and identified as Tax Map Keys ("TMK"): 2-9-01: por. 1 and 2-9-03: por. 1, por. 5, and por. 6 (collectively "Petition Area").

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 February 23, 2011, Petitioner filed the Petition, Verification, and Exhibits "A" through "C" of the Petition.
2. On April 8, 2011, the State of Hawai'i Office of Planning ("OP") filed comments on the Petition.
3. On April 12, 2011, the County of Kaua'i Planning Department ("Planning Department") filed comments on the Petition.
4. On April 13, 2011, the State of Hawai'i Department of Agriculture ("DOA") filed comments on the Petition.
5. On April 19, 2011, OP filed the comments of the State of Hawai'i Commission on Water Resource Management ("CWRM") on the Petition.
6. On April 21, 2011, Petitioner filed an Errata to the Petition.
7. On April 25, 2011, Petitioner filed a Second Errata to the Petition.
8. On May 3, 2011, Petitioner filed a response to the comments of OP, the County, and DOA on the Petition.

9. On May 11, 2011, the DOA filed additional comments on the Petition.

10. On May 12, 2011, the Commission held a site visit to view the Petition Area.

11. On May 12, 2011, the Commission held an action meeting on the Petition in Līhu`e, Kaua`i, Hawai`i. Benjamin M. Matsubara, Esq., Curtis T. Tabata, Esq., and Michael Tresler appeared on behalf of Petitioner. Also appearing were Bryan Yee, Esq., and Jesse Souki on behalf of OP and Michael Dahilig on behalf of the Planning Department.¹

12. The Commission entered, without objection, the written comments of OP, the DOA, the Planning Department, and the CWRM, and Petitioner's response thereto as well as the written testimonies of Matilda A. Yoshioka, Steven Kai, and Roy Oyama and Melissa McFerrin into the record in this proceeding. The Commission also heard public testimony from Jerry Ornellas, Karol Haraguchi, Joseph Manini, and Beryl Blaich.

DESCRIPTION OF PETITION AREA

¹ At the meeting, Commission Lezy disclosed that he had provided legal services to Grove Farm Fish & Poi, a subsidiary of Grove Farm Company, Inc. There were no objections by Petitioner, OP, and the Planning Department to Commissioner Lezy's participation in this docket.

13. The Petition Area consists of approximately 1,533 acres of land, situated at Kōloa, Kaua`i, Hawai`i, TMKs: 2-9-01: por. 1 and 2-9-03: por. 1, por. 5, and por. 6.

14. The Petition Area is owned in fee simple interest by Petitioner.

DESCRIPTION OF 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 1,533 acres of land, currently has approximately 1,274 acres in cultivation or ranching and is being leased to eight independent farms and ranchers for the cultivation of taro, seed corn, and forage crops as well as for cattle ranching. Prior agricultural use of the Petition Area includes over 100 years of sugarcane cultivation until 1996 when the Kōloa Mill was closed.

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 88.5 percent of the Petition Area is rated B. The balance of the Petition Area is rated C, D, E, or is unclassified and is either essential elements of the active agricultural operations (reservoirs, drainageways, etc.) or is surrounded by B rated lands.

20. Based on the Sunshine Maps prepared in 1985 by the Department of Business, Economic Development and Tourism, formerly known as the State Department of Planning and Economic Development, Energy Division, over 80.7 percent of the Petition Area receives an annual average 450 calories of solar energy per square centimeter per day, while the balance of the lands receive an annual average of 400 calories of solar energy per square centimeter per day.

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 are "Prime," "Unique," and "Other," 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 agricultural lands include those that

have not been rated as Prime or Unique. Approximately 41.5 percent of the Petition Area is classified as Prime and 36.4 percent is classified as Other. The balance of the lands includes essential elements of the active agricultural operations such as reservoirs and drainageways.

22. The main water source for irrigation of the Petition Area is the Waitā Reservoir, which occupies approximately 429 acres of land and has a 2.3 billion gallon capacity. Pu`uhi Reservoir and Māhā`ulepū Reservoir are both located on the Petition Area and have a combined capacity of approximately 2.5 million gallons. Waitā Reservoir serves as a resource for Pu`uhi Reservoir and Māhā`ulepū Reservoir. The gravity flow system is capable of providing approximately 7.9 million gallons per day ("MGD"), and current water demand on the Petition Area is approximately 2.4 MGD. Water demand for potential agricultural uses on the Petition Area is approximately 6 MGD. Water delivery capacity can be increased by adding pumps.

23. The Petition Area's agricultural classification is consistent with the County 2000 General Plan Update and the Kōloa-Po`ipū-Kalāheo Planning District Land Use Map. Almost all of the Petition Area is designated as Agriculture with a few portions designated as Open.

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 irrigation, roadway, and transport infrastructure necessary to support agricultural production, harvesting, processing, and shipping of product.

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 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 includes traditional Native Hawaiian agricultural uses such as taro cultivation in accordance with HRS § 205-44(c)(4).

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

8. The Petition Area's designation as IAL is consistent with the general, development, and community plans of the County in accordance with HRS § 205-44(c)(6).

9. 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).

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

11. 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 diversified agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands.

12. 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.

13. 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.

14. The designation of the Petition Area as IAL meets the policies of HRS § 205-43(7) by facilitating the access of farmers to IAL for long-term viable agricultural use.

15. 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.

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

17. 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

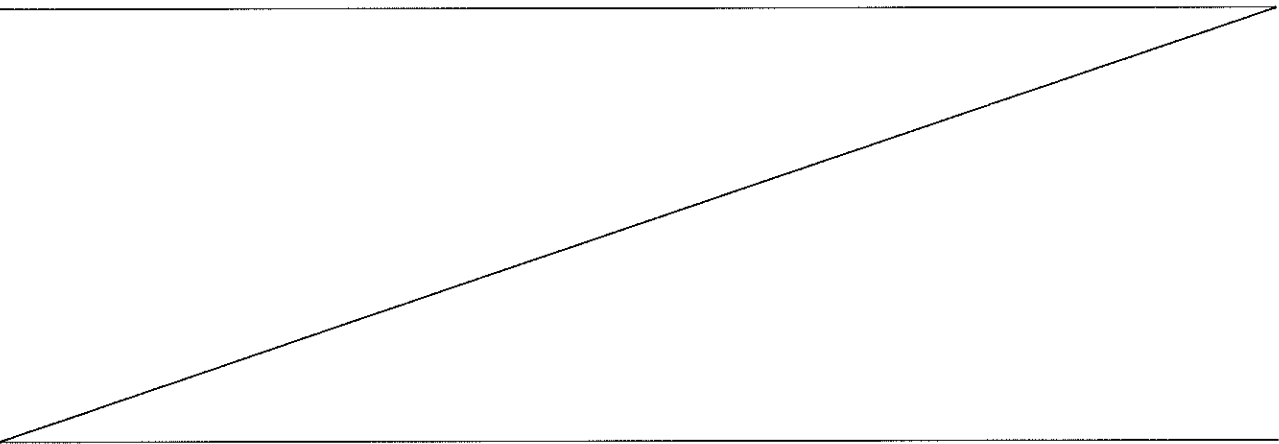
This Commission, having duly considered the Petition, the oral and/or written comments of Petitioner, OP, the DOA, the Planning Department, and the CWRM, and a motion having been made at a meeting on May 12, 2011, in Līhu`e,

Kaua`i, Hawai`i, and the motion having received the affirmative votes required by HAR § 15-15-13 and HRS § 205-45(e), and there being good cause for the motion,

HEREBY ORDERS that the Petition Area, consisting of approximately 1,533 acres of land, situated at Kōloa, Kaua`i, Hawai`i, identified as TMKs: 2-9-01: por. 1 and 2-9-03: por. 1, por. 5, and por. 6, 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 19th day of May, 2011, per motion on May 12, 2011.

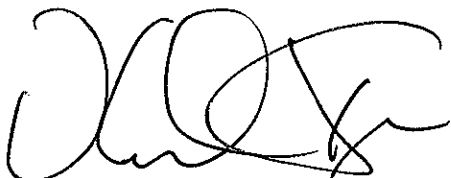
LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General


By 

VLADIMIR DEVENS
Chairperson and Commissioner

Filed and effective on:

5/19/11

Certified by:



ORLANDO DAVIDSON
Executive Officer

EXHIBIT "1"

(Consisting of 3 pages)

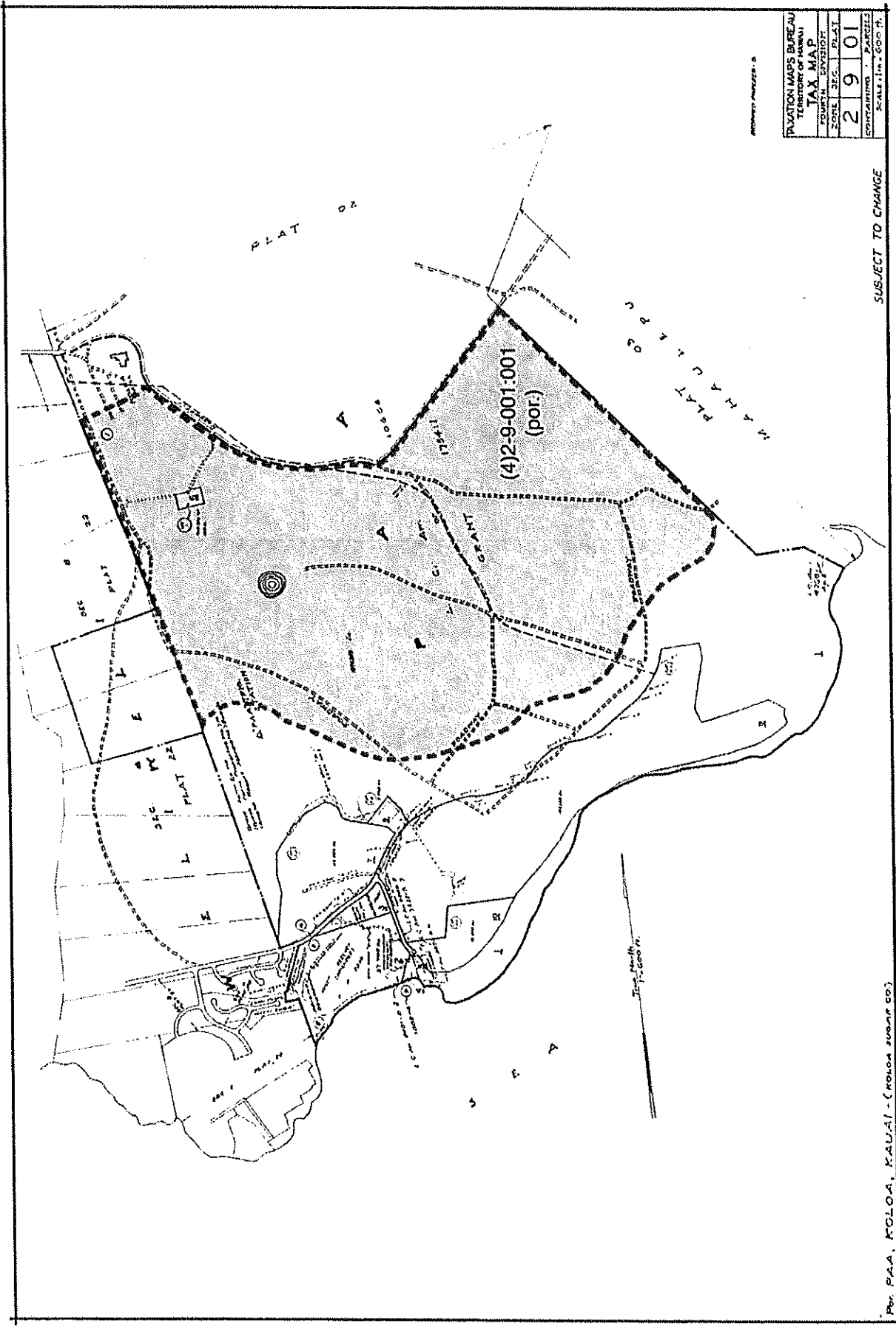
DR11-43

Approximately 1,533 acres of land owned by Petitioner are designated as Important Agricultural Land ("IAL"). The parcels are specifically described as Tax Map Keys ("TMK"): 2-9-01: por. 1 and 2-9-03: por. 1, por. 5, and por. 6.

The following table shows a summary of the TMK parcels and approximate acreages for the IAL lands:

TMK	Approximate Acreage
2-9-01: por. 1	710
2-9-03: por. 1	632
2-9-03: por. 5	6
2-9-03: por. 6	185
Total	1,533

The tax maps that follow further identify the portions of the individual TMK parcels that are designated IAL.

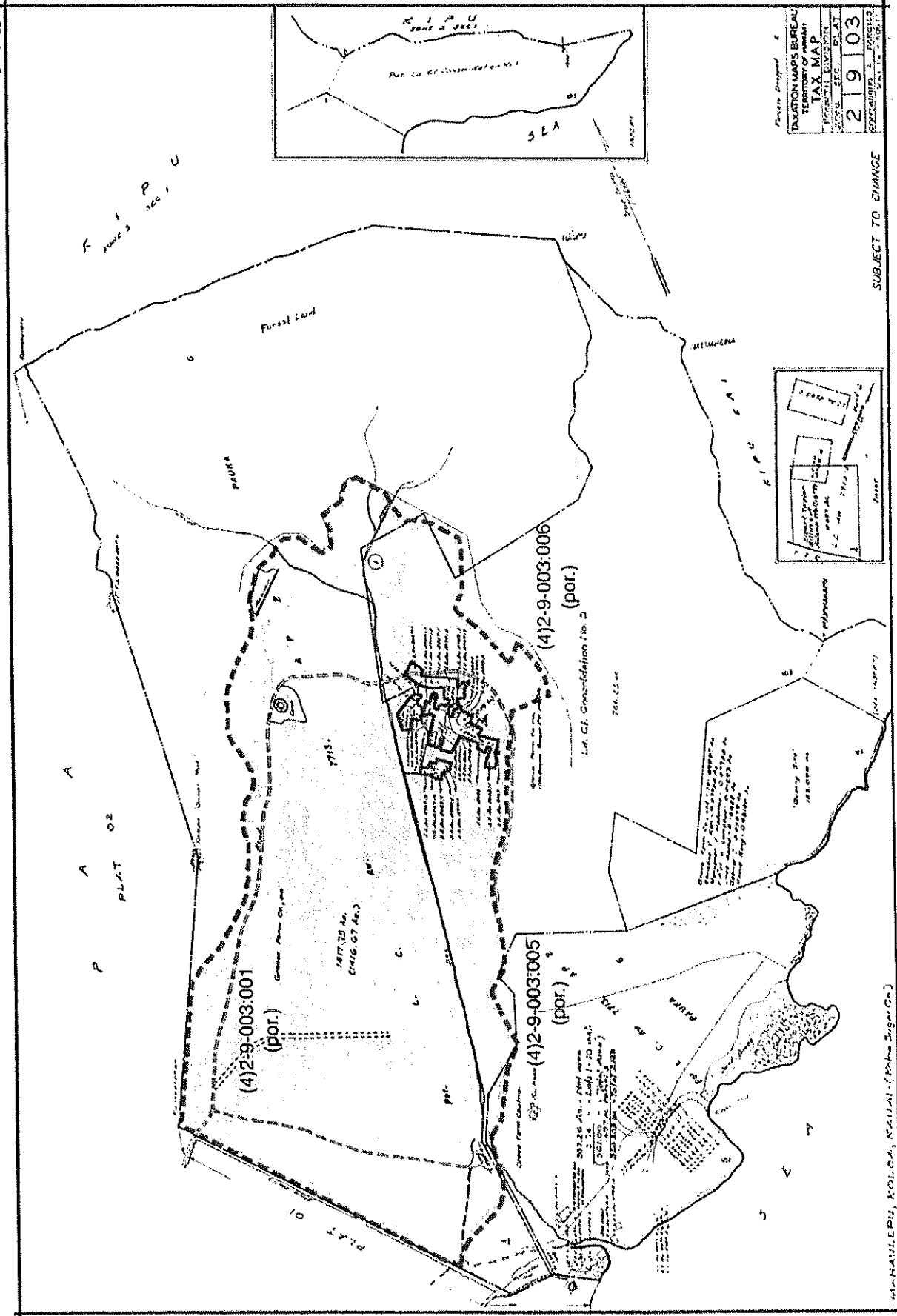


ARCHITECT: HANAUER & A

TAXATION MAPS BUREAU	
TERRITORY OF HAWAII	
TAX MAP	
SOUTH DIVISION	
ZONE	PLAT
2	9 01
CONTAINING PARCELS	
SCALE: 1" = 500 FT.	

SUBJECT TO CHANGE

FOR PAA, KOLOA, KAUAI - (KOLA SUBD 007)



Division of Land Management
 TERRITORY OF ARABIA
 TAX MAP
 2 9 0 3
 2003 SEC. PLAT

SUBJECT TO CHANGE

MAHALEBU, KULO, KULU DISTRICT, KULO DISTRICT, KULO DISTRICT, KULO DISTRICT



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BEFORE THE LAND USE COMMISSION

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In The Matter Of The Petition Of) DOCKET NO. DR11-43
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 MĀHĀ`ULEPŪ FARM LLC) CERTIFICATE OF SERVICE
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 For A Declaratory Order To Designate)
 Important Agricultural Lands)
 For Approximately 1,533 Acres At Kōloa,)
 Kaua`i, Hawai`i)
 _____)

LAND USE COMMISSION
 STATE OF HAWAII
 2011 MAY 19 P 2:44

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 regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	X		

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
BRYAN YEE, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	
BENJAMIN M. MATSUBARA, ESQ. Matsubara-Kotake 888 Mililani Street, 8 th Floor Honolulu, Hawaii 96813			X
ALFRED CASTILLO, ESQ. Office of the County Attorney, County of Kauai 4444 Rice Street, Suite 220 Lihue, Hawaii, 96766			X
Michael A. Dahilig Director of Planning 4444 Rice St. Suite 453 Lihue, HI, 96766		X	

Dated: Honolulu, Hawaii, 5/19/11.



ORLANDO DAVIDSON
Executive Officer

State of Hawaii
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359

91 7106 2133 3935 6692 0653

Benjamin M. Matsubara, Esq.
Curtis Tabata, Esq.
Wyeth Matsubara, Esq.
888 Millilani Street, 8th Floor
Honolulu, HI 96813

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1 Article Addressed to:

Benjamin M. Matsubara, Esq.
Curtis Tabata, Esq.
Wyeth Matsubara, Esq.
888 Millilani Street, 8th Floor
Honolulu, HI 96813

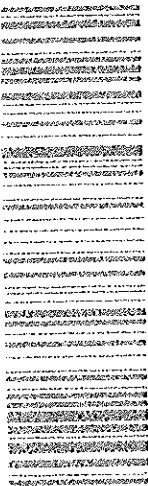
COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
 Addressee
- B. Received by: (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

2 Article Number
(Transfer from service label)

91 7106 2133 3935 6692 0653



91 7108 2133 3935 6892 0846

State of Hawaii
LAW OFFICE OF THE ATTORNEY GENERAL
P.O. Box 20559
Honolulu, HI 96804-2059

Kauai County Attorney
Office of the County Attorney, County
of Kauai
4444 Rice Street, Suite 220
Lihue, Hawaii, 96766 **ATTN: ALFRED CASTILLO**

SENDER - COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article addressed to

Kauai County Attorney
Office of the County Attorney, County
of Kauai
4444 Rice Street, Suite 220
Lihue, Hawaii, 96766
ATTN: ALFRED CASTILLO

2. Article number
Article must be registered

91 7108 2133 3935 6892 0846

PS Form 3811, August 2001

Domestic Return Receipt

DP-4-43

PSN 9634-01-1540

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
X
- Agent Addressee
- B. Received by: Printed Name C. Date of Delivery
- D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.
- 4. Restricted Delivery: Extra Fee Yes No

91 7108 2133 3935 6892 0846