

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
RICHARD SMART TRUST, dba,)
PARKER RANCH)
For a Special Permit to Continue)
and Expand An Existing Rock Quarry)
and Related Uses on Approximately)
91.827 Acres of Land Within the)
Agricultural District at Waikoloa,)
South Kohala, Hawaii, Tax Map Key)
No.: 6-7-01: portion 25)
_____)

DOCKET NO. SP90-374

RICHARD SMART TRUST, dba,
PARKER RANCH

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

MAR 16 1990 by *Robert [Signature]*
Date Executive Officer

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

MAR 16 9 19 AM '90
LAND USE COMMISSION
STATE OF HAWAII

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FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION AND ORDER

Richard Smart Trust, dba, Parker Ranch (hereinafter the "Petitioner") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes, as amended, and Subchapter 12 of the Hawaii Land Use Commission Rules. The Land Use Commission (hereinafter the "Commission") having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Petitioner filed the Special Permit application with the County of Hawaii Planning Department on November 8, 1989.

2. On January 18, 1990, the County Planning Commission conducted a public hearing pursuant to a public hearing notice published on January 7, 1990, in the West Hawaii

Today. The Planning Commission did not receive any public witness testimonies.

3. On January 18, 1990, the Planning Commission recommended approval of the Special Permit subject to 11 conditions.

4. On January 29, 1990, the Commission received the record of the County's proceedings on the Special Permit from the County of Hawaii Planning Department.

BACKGROUND

5. Petitioner proposes to obtain a new special permit to continue and expand quarry site No. 4, one of five non-conforming quarry sites approved by the Commission under Special Permit 77-260/Richard Smart dba Parker Ranch on May 4, 1977.

6. Site No. 4, is a 30-acre area which was established in 1945 and operated by Shield Pacific Ltd. Approximately 50,000 cubic yards of hard rock was to have been removed annually. The operation included dynamiting, crushing, loading and limited stockpiling.

7. The Commission's approval of SP77-260 was subject to the following conditions:

- "1. That the petitioner or his authorized representative(s) shall file with the County Planning Department a map and metes and bounds description of the five (5) quarry sites within six (6) months of the effective date of the Special Permit.

"2. That the following requirements shall be applied to the specified sites:

- a. Site No. 1 (TMK: 4-7-07: Portion of 11 - identified as Exhibit BB on file with the County of Hawaii Planning Department).
 - 1) Maximum of ten (10) acres.
 - 2) Operation limited to dynamiting, portable crusher, loading and stockpiling.
 - 3) Stockpiled material shall be outside of the government right-of-way (Mamalahoa Highway).
 - 4) Any debris left on Mamalahoa Highway as a result of the quarry operation shall be cleared by the quarry operator.
- b. Site No. 2 (TMK: 5-6-01: Portion of 52 - Exhibit CC)
 - 1) Maximum of six (6) acres.
 - 2) Operation limited to dynamiting, portable crusher, loading and stockpiling.
 - 3) Stockpiled material shall be outside of the government right-of-way (Mamalahoa Highway).
 - 4) Any debris left on Mamalahoa Highway as a result of the quarry operation shall be cleared by the quarry operator.
- b. Site No. 2 (TMK: 5-6-01: Portion of 52 - Exhibit CC)
 - 1) Maximum of six (6) acres.
 - 2) Operation limited to scraping, loading and limited stockpiling.
 - 3) Operation shall be confined to the side of the existing cinder cone away from the Kawamoto dwelling.

- c. Site No. 3 (TMK: 6-7-01: Portion of 3 - Exhibit DD)
 - 1) Maximum of sixty (60) acres.
 - 2) Operation limited to scraping, loading, limited stockpiling and installation of scales.
 - 3) Any debris left on Saddle Road as a result of the quarrying operation shall be cleared by the quarry operator.
- d. Site No. 4 (TMK: 6-7-01: Portion of 25 - Exhibit DD)
 - 1) Maximum of thirty (30) acres.
 - 2) Operation limited to dynamiting, portable crusher, loading and limited stockpiling.
- e. Site No. 5 (TMK: 6-7-01: Portion of 25 - Exhibit DD)
 - 1) Maximum of five (5) acres.
 - 2) Operation limited to scraping, loading, and limited stockpiling.
- "3. That the rules and regulations of the State Department of Health shall be complied with.
- "4. That the operations, including the loading and hauling, be limited to between the hours of 7:00 a.m. and 5:00 p.m. on Mondays through Saturdays only.
- "5. That the quarrying operations and its allied uses be terminated ten (10) years after the effective date of the Special Permit or their prior abandonment, whichever occurs first.
- "6. That upon termination of the operations, the lands shall be graded to blend with the surrounding areas and revegetated. Further, the sites shall be left in a nonhazardous condition, subject to the approval of the County of Hawaii Planning Director.

"7. That all other applicable rules and regulations be complied with."

"Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void."

8. The ten year time limit on Special Permit

77-260/Richard Smart dba Parker Ranch expired on May 5, 1987.

DESCRIPTION OF THE PROPERTY

9. The Petition area (hereinafter "Property") consists of approximately 91.827 acres, located at Waikoloa, South Kohala, Hawaii, and is identified as TMK: 6-7-01: portion of 25.

10. The Property is owned by Petitioner and is leased to West Hawaii Concrete.

11. Soils of the area are of the Puu Pa Series. In a representative profile, the surface layer is very dark brown extremely stony very fine sandy loam about six inches thick. The next layer is dark-brown and dark yellowish-brown very stony very fine sandy loam about 34 inches thick. It is underlain by fragmental Aa lava.

12. The mean annual soil temperature is between 69°-71° Fahrenheit.

13. Permeability is moderately rapid, runoff is medium and erosion hazard is moderate.

14. Natural vegetation consists of bermudagrass, swollen finger grass, lantana, ilima and cactus.

15. The Land Study Bureau's Overall Master Productivity system rates the area as Class E or Very Poor for agricultural productivity.

16. The land is not classified by the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) map.

17. The Property is at an elevation of approximately 2,900 feet above mean sea level.

18. The area receives approximately 20-35 inches of rainfall annually.

19. The wind comes from a northeasterly direction.

20. The U.S. Army Corps of Engineers Flood Insurance Rate Map (FIRM) designates the Property to be in Zone X (an area outside of the minimal 500-year flood plain).

21. Access is from Mamalahoa Highway via a paved 30-foot wide private easement.

22. Water is not available to the Property. However, water is hauled to a 10,000 gallon water tank on the quarry site.

23. Sewage is handled by utilizing portable toilets.

SUMMARY OF PROPOSED USE

24. Petitioner proposes to expand the existing 30-acre quarry site to include an additional 61.827 acres for a total of 91.827 acres. The site would essentially be square in shape with dimensions of 2,000 feet by 2,000 feet. The expansion would occur in a southerly direction.

25. On-site activities include excavation of quarry rock, crushing the rock, sorting sand and aggregate, scraping and loading material for removal. An estimated 12,000 cubic yards per month would be quarried.

26. The equipment on-site will include from time to time rock crushers (4 presently in operation and 3 others), bulldozers (2), loaders (4), and a trailer used as a job shack.

27. Thirteen persons are employed at the site and eight truck drivers are employed to haul material from the site.

28. According to Petitioner, the quarry is presently in operation Monday through Friday from 5:00 a.m. to 8:00 p.m. At times of strong demand, the quarry will operate on Saturdays and for longer hours on week days. Employees are regularly on the site on Saturdays for maintenance of the equipment.

29. Petitioner indicates that increased construction activity in West Hawaii has created a larger demand for quarry products. In order to accommodate that demand, it will be necessary to extend the quarry operations into the remainder of the 92-acre site leased to West Hawaii Concrete. Over the last 10 years the quarry has been in operation without a controversy or substantial complaint and Petitioner proposes that a new special permit be issued without a time limit.

STATE AND COUNTY PLANS AND PROGRAMS

30. The Property is designated within the State Land Use Agricultural District as reflected on Land Use Commission Map No. H-26, Nohonaohae.

31. The Property is zoned Agricultural - 40 acres (A-40a) by the Hawaii County Zoning Code.

32. The Property is not within the Special Management Area (SMA) of the County of Hawaii.

SUMMARY OF STATE AND COUNTY AGENCY COMMENTS

33. The State Department of Health indicates that it found no environmental health concerns with regulatory implications of the Permit.

34. The State Departments of Agriculture and Transportation did not have any comments or objections on the Permit.

35. The County Departments of Water Supply, Real Property Tax Office, Public Works, Police and the Hawaii Electric Light Company did not have any comments or objections on the request.

CONFORMANCE WITH SPECIAL PERMIT TESTS

36. The County Planning Department provided, in part, the following:

"The proposed use will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. The intent of the Land Use Law and Regulations is to preserve, protect, and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. The subject

property is situated within the County's Agricultural-40 acre (A-40a) zoned district and the State Land Use Agricultural District.

"The Agricultural District not only includes lands with a high capacity or potential for agricultural uses, but also includes lands which are surrounded by or contiguous to agricultural lands that are not suited for agricultural or ancillary activities by reasons of topography, soils, and other related characteristics. The affected area is rated "E" or very poor for agricultural productivity by the Land Study Bureau's Overall Productivity rating system. The project site is unclassified by the State's Agricultural Lands of Importance to the State of Hawaii (ALISH) system map. Aside from grazing activities in the area, no other agricultural resources would be affected. Surrounding pasturage will be minimally affected by the expansion of an existing quarry site. Therefore, it is determined that the subject request would not be detrimental to the agricultural resources of the county or state. It should be noted that the Department of Agriculture had no objections to the application.

"The continued operations and expansion of a quarry site will not adversely affect the surrounding properties. The requested use is such a significant distance from any established businesses or residences it can be concluded that the site will not affect surrounding properties. The closest business affected by the request is another quarry along the

same private roadway easement about one mile makai of the project site. While the quarry site was in operation over the past 45 years, no complaints were received by either the Department of Health or the Planning Department. Dust and air-borne particulates have and will be mitigated through the application of existing quarry operating procedures and compliance with the regulations of the Department of Health. From a visual and public safety standpoint, a condition of this approval requires the applicant to restore the area to a state which would blend with surrounding topography of the area. Based upon submittal of appropriate documentation, such as pictures, landscaping plans, and contours, the Planning Department would review and, if acceptable, approve the restoration.

"The proposed use will not unreasonably burden public agencies to provide additional facilities and services. Water is hauled to the project site and stored in a tank. The Department of Water Supply had no objections to the request. Traffic generated by the proposed expansion would maintain its present volume. The existing quarry site has not generated concerns for additional services as reflected in the affected agencies' response. The area is not affected by drainageways or flood plains as designated on the Flood Insurance Rate Map (FIRM), which is administered by the Department of Public Works.

"Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were

established. The rapid growth experienced especially in West Hawaii has created a demand for natural resources by the construction industry. To meet this demand, the applicant is seeking to expand his existing operations to include a total of 91± acres of land.

"The proposed use will alter the character of the land. However, it is felt that with the review and approval of restoration efforts by the Planning Department, visual and public safety concerns can be mitigated to the best extent practicable.

"The subject request is not contrary to the General Plan LUPAG Map, which designates the property for Extensive Agricultural uses. It would also support the following goal and policy in the Natural Resources Element of the General Plan which says "Ensure that alterations to existing land forms and vegetation, except crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake" and "The County of Hawaii should require users of natural resources to conduct their activities in a manner that avoids or minimizes adverse effects on the environment."

"Based on the foregoing, it is determined that the proposed quarrying activity within a 91±-acre area is an unusual and reasonable use of the land within the State Land

Use Agricultural District and that approval of the subject request would promote the effectiveness and objectives of Chapter 205, HRS, as amended."

RECOMMENDATIONS OF THE PLANNING COMMISSION

37. On January 18, 1990, the Hawaii Planning Commission recommended approval of the subject special permit to allow the continued operation and expansion of a quarry and related uses on approximately 91.827 acres of land subject to the following conditions:

1. The applicant, successors, or assigns shall comply with all of the stated conditions of approval.
2. A map and metes and bounds description of the quarry site shall be filed with the Planning Department within one year from the effective date of this permit.
3. A grading permit for the affected site shall be secured within one year from the date of approval of this permit. Prior to issuance of a grading permit a visual impact analysis of the affected site from Mamalahoa Highway shall be conducted and landscaping required, if appropriate.
4. The quarry operation shall be limited to dynamiting, portable crusher, loading, and limited stockpiling.
5. The quarrying activity, including the loading and hauling, shall be limited to between the hours of 5:00 a.m. and 8:00 p.m. on Mondays through Saturdays only.
6. An archaeological reconnaissance survey shall be conducted of the affected area and a report submitted to the Planning Department for review and approval, in consultation with the Department of Land and Natural Resources - Historic Sites Section, prior to obtaining a grading permit and/or land alterations. Further, approved

mitigative measures shall be implemented, as applicable, prior to any land alterations.

7. The quarrying operations and its allied uses shall be terminated within ten years from the date of approval of the Special Permit or its prior abandonment, whichever occurs first.
8. Upon termination of the operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding areas and revegetated. Further, the site shall be left in a nonhazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Director for review and approval within ninety (90) days from the termination or abandonment date.
9. That all other applicable laws, requirements, rules, and regulations be complied with.
10. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of the amendment request. The report shall include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems, and their disposition.

Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the introduced use will have an adverse impact on surrounding properties.

11. An extension of time for the performance of conditions within the permit, with the exception of Condition No. 8, may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the General Plan or Zoning Code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted

shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

CONCLUSIONS OF LAW

The Special Permit request to allow the continued operation and expansion of an existing quarry and related uses is an "unusual and reasonable" use as defined in Section 205-6, Hawaii Revised Statutes, and the proposed use, subject to conditions in the Order, is not contrary to the objectives sought to be accomplished by the State Land Use Law to preserve, protect and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that Special Permit Docket No. 90-374/Richard Smart Trust dba Parker Ranch to allow the continued operation and expansion of an existing quarry and related uses, on approximately 91.827 acres of land, designated within the State Land Use Agricultural District, Hawaii Tax Map Key No.: 6-7-01: portion of parcel 25, and approximately identified on Exhibit "A" attached hereto and incorporated by reference herein, is hereby approved, subject to the following conditions:

1. The applicant, successors, or assigns shall comply with all of the stated conditions of approval.

2. A map and metes and bounds description of the quarry site shall be filed with the Planning Department within one year from the effective date of this permit.

3. A grading permit for the affected site shall be secured within one year from the date of approval of this permit. Prior to issuance of a grading permit a visual impact analysis of the affected site from Mamalahoa Highway shall be conducted and landscaping required, if appropriate.

4. The quarry operation shall be limited to dynamiting, portable crusher, loading, and limited stockpiling.

5. The quarrying activity, including the loading and hauling, shall be limited to between the hours of 5:00 a.m. and 8:00 p.m. on Mondays through Saturdays only.

6. An archaeological reconnaissance survey shall be conducted of the affected area and a report submitted to the Planning Department for review and approval, in consultation with the Department of Land and Natural Resources - Historic Sites Section, prior to obtaining a grading permit and/or land alterations. Further, approved mitigative measures shall be implemented, as applicable, prior to any land alterations.

7. The quarrying operations and its allied uses shall be terminated within ten years from the date of approval of the Special Permit or its prior abandonment, whichever occurs first.

8. Upon termination of the operations or abandonment of any portion of the affected site, the land shall be graded to blend with the surrounding areas and revegetated. Further, the site shall be left in a nonhazardous condition. Appropriate documentation which demonstrates compliance with this condition shall be submitted to the Planning Director for review and approval within ninety (90) days from the termination or abandonment date.

9. That all other applicable laws, requirements, rules, and regulations be complied with.

10. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of the amendment request. The report shall include, but not be limited to, the amount of material quarried, a detailed listing of public complaints or problems, and their disposition.

Should a conflict arise, which cannot be mitigated or mediated, the quarry operations shall cease upon appropriate findings by the Planning Commission that the introduced use will have an adverse impact on surrounding properties.

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Done at Honolulu, Hawaii, this 16th day of March 1990,
per motions on February 22, 1990 and March 14, 1990.

LAND USE COMMISSION
STATE OF HAWAII

By (absent)
RENTON L. K. NIP
Chairman and Commissioner

By *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Vice Chairman and Commissioner

By (absent)
LAWRENCE F. CHUN
Commissioner

By (absent)
SHARON R. HIMENO
Commissioner

By (absent)
ALLEN K. HOE
Commissioner

By *Allen Y. Kajioka*
ALLEN Y. KAJIOKA
Commissioner

By *Eusebio Lapenia, Jr.*
EUSEBIO LAPENIA, JR.
Commissioner

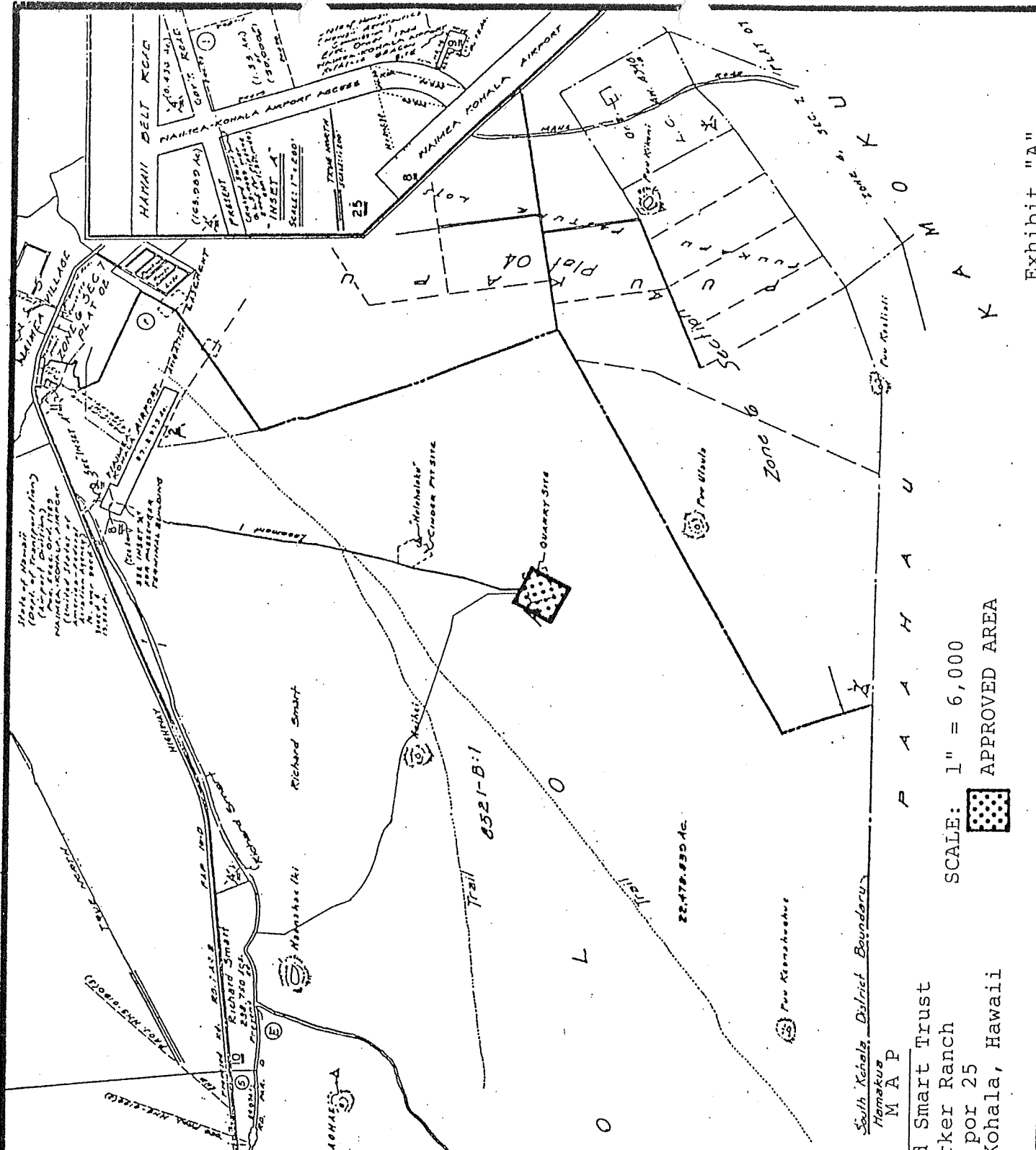
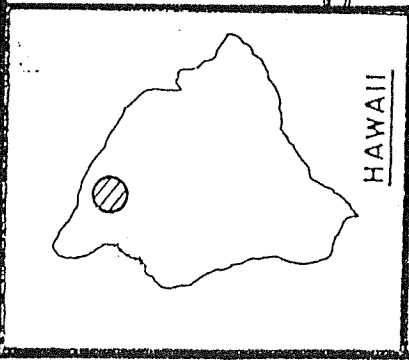
By *James M. Shinno*
JAMES M. SHINNO
Commissioner

By *Elton Wada*
ELTON WADA
Commissioner

Filed and effective on
March 16, 1990

Certified by:

Elton Wada
Executive Officer



LOCATION MAP

SP90-374 Richard Smart Trust
 dba Parker Ranch
 T.M.K.: 6-7-01: por 25
 Waikoloa, South Kohala, Hawaii

SCALE: 1" = 6,000



APPROVED AREA

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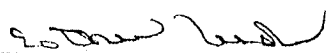
CERTIFICATE OF SERVICE

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:

CERT. DUANE KANUHA, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT ROBERT W. CARLSMITH, ESQ., Attorney for Petitioner
Carlsmith, Wichman, Case, Mukai & Ichiki
P. O. Box 1720
Kailua-Kona, Hawaii 96754-1720

DATED: Honolulu, Hawaii, this 16th day of March 1990.



ESTHER UEDA
Executive Officer