

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

March 22, 2013

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

13HD-040

Hawaii

Amend Prior Board Action of September 11, 1998, Item D-11, Sale of Four Leases at Public Auction for Intensive Agriculture Purposes on Hawaii. The purpose of this amendment is to remove all reference to the land situated at Ookala, North Hilo, Hawaii, Tax Map Key: 3rd/3-9-01:07 from the prior board action.

Approval in Concept for the Sale of a General Lease at Public Auction for Pasture Purposes with Issuance of an Immediate Right-of-Entry to Conduct an Environmental Assessment of State lands at Ookala, North Hilo, Hawaii, Tax Map Key: 3rd/3-9-01:07

APPLICANT:

Leonard Cardoza, an individual.

REQUEST:

Sale of lease at public auction for pasture purposes.

LEGAL REFERENCE:

Sections 171-14, -14.5, -16, -17, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Ookala, North Hilo, Hawaii, identified by Tax Map Key: (3) 3-9-01:07, as shown on the attached map labeled Exhibit A.

AREA:

107.279 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban and Conservation
County of Hawaii CZO: Agriculture 20-A with an SMA area along coastline

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: **YES**

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Pasture purposes.

LEASE TERM:

Thirty-five (35) years.

COMMENCEMENT DATE:

Sixty (60) days after the date of sale, provided that the Chairperson may amend this date for good cause.

MINIMUM UPSET ANNUAL RENT:

To be determined by staff or independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th and 30th year of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The purpose of this submittal is an approval in concept of a general lease so as to allow the Applicant to fund the cost of an Environmental Assessment in compliance with Chapter 343, HRS. An additional purpose of the approval in concept is for the Board to also approve the imposition of a condition in the final submittal for auction that should the applicant, Leonard Cardoza, not be the winning bidder at the public auction, the successful bidder shall be required to reimburse the Applicant the cost of Chapter 343, HRS compliance.

Regarding the right-of-entry issued to Applicant to conduct an Environmental Assessment, in accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 5. Refer to attached Exhibit B.

APPLICANT REQUIREMENTS:

Applicant at his sole cost and expense shall be required to:

- 1) Publish an environmental assessment with the Office of Environmental Quality Control in compliance with the HRS Chapter 343 and HAR Chapter 11-200, and obtain a Finding of No Significant Impact (FONSI) for the project.

REMARKS:

The subject parcel was part of General Lease No. S-3615 for a total of 1,368 acres sold at public auction on February 1, 1961 to Laupahoehoe Sugar Company, which was purchased by Hamakua Sugar Company in 1983. Hamakua Sugar Company filed for bankruptcy in 1992 and this property was tied up in bankruptcy court until 1999.

At its meeting of September 11, 1998, agenda item D-11 the Board approved the sale of this and

three other leases at public auction for intensive agriculture purposes (see attached exhibit C). Of the four properties, only this property remains unencumbered.

During the plantation era, this area was utilized heavily for sugar production. However, with the demise of the sugar industry, the demand for large parcels of intensive agricultural land in this area has diminished while the demand for pasture land has increased. A majority of the adjacent portions of the previous lease have been converted to pasture or dairy uses (see attached exhibit A).

Staff conducted a site inspection of the property on February 8, 2013 and found that the steep-sloped nature of the parcel poses several challenges for intensive agricultural crop production. The substantial disturbance of soil required to plant and harvest crops will expose the steeper slopes to extreme soil erosion during periods of intense rainfall typical to the area. The same steep slopes create a hazard for ordinary farm equipment accessing a large portion of the property which will impede the efficient transport of seeds/seedlings, fertilizers, herbicides/pesticides and harvesting of crops. The lack of a consistent water supply further hinders the development of the parcel for intensive agriculture production.

Hawaii District Land Office has not received any requests to lease this parcel for intensive agriculture purposes. Therefore, staff is recommending that the Board approve the amendment to remove all reference to this parcel of land from the prior Board action so that staff can start clean with the public auction process for this property.

Hawaii District Land Office has received a request to lease the subject parcel for pasture purposes. Given the topography previously discussed, utilizing the property as pasture would be a better fit. Grazing cattle on steep slopes is not problematic for the rancher or the land. Well-managed pasture will actually assist in preventing large-scale soil erosion. Acreage of this size (107.279 acres) is in demand by ranchers. A competitive public auction of this lease for pasture purposes will ensure a premium annual rental rate, resulting in an allocation of the land to productive use and generate income for the State.

Since this is a proposed change to the character of use for State land that has sat idle for over 10 years, staff, in an abundance of caution, is requesting that the Applicant have an Environmental Assessment (EA) prepared and published in accordance with the requirements of Hawaii Revised Statutes (HRS) Chapter 343 and Hawaii Administrative Rules (HAR) Chapter 11-200, prior to the sale at public auction.

In the event the Applicant is not the successful bidder at auction, he will be reimbursed the costs for the EA from funds collected from the successful bidder for that purpose. However, if the results of the EA do not produce a FONSI determination, then the Applicant will not be reimbursed the costs for the EA.

A Request for Comments was sent to the following agencies:

Federal Agencies	Response
Natural Resource Conservation Service	No Response
State Agencies	Response
Dept. of Health - Environmental Health	Chemical soil contamination potential*
Dept. of Hawaiian Homes Land	No Response
DLNR - Forestry and Wildlife	Stock-proof fence requirement*
DLNR - Conservation and Coastal Lands	Resource subzone identification*
DOT - Highways Division	No Comments
Dept. of Agriculture	No Response
Hawaii County Agencies	Response
Planning Dept.	Pasture use exempt from SMA permitting*
Dept. of Public Works	No Response
Dept. of Water Supply	No Objections
Police Department	No significant impact on traffic or public safety
Environmental Management	No Comments
Other Agencies	Response
Office of Hawaiian Affairs	No Response

*See discussion below.

All comments received support the change in the character of use requested for this parcel.

DOH-Environmental Health noted, although no direct studies have been conducted on the subject parcel, that lands formerly used for sugarcane production still contain chemicals associated with the sugarcane industry and elevated arsenic levels have been discovered in former sugarcane lands. Prior to development for residential, school and commercial businesses, an environmental assessment should be conducted to identify and address any elevated arsenic levels. This topic is covered by above recommendation regarding the environmental assessment.

DLNR-Forestry and Wildlife had no objections to the change in character of use as long as stock-proof fencing was constructed and maintained to keep livestock out of the Ookala Community Demonstration Forest located on an adjacent parcel. Stock-proof fencing is a standard term of State pasture leases.

OCCL has no objections, but identified a 50 to 70 meter wide corridor along the shore and parts of Kaohaoha Gulch as being in the Resource Zone of the State Land Use Conservation District and potential bidders should be made aware that any use of lands within the Conservation

District would require permitting pursuant to Hawaii Administrative Rules (HAR) 13-5. The limitations of Conservation District Zoning will be included in the public offering with contact information for the potential bidder to investigate zoning issues prior to bidding.

COH-Planning stated that approximately one-half of the property is located in the Special Management Area, however, pasture use is exempt under Planning Commission's Rule No.9(10)(B)(viii).

RECOMMENDATION: That the Board:

1. Amend its prior Board action of September 11, 1998, under agenda item D-11 by removing all reference to the land situated at Ookala, North Hilo, Hawaii, Tax Map Key: 3rd/3-9-01:07 from the approval;
2. Approve in concept the sale of a General Lease at public auction covering the subject area for pasture purposes with the understanding that the approval in concept shall not be deemed to be an approval for the sale of a general lease as staff shall return to the Board at a later date for the approval of the sale at public auction disclosing the EA and its Finding of No Significant Impact (FONSI), subject to the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - a. The direct costs associated with the HRS Chapter 343 compliance shall be a reimbursable cost should the Applicant not be the winning bidder at the public auction of a general lease on the subject area;
 - b. Applicant acknowledges that there is no assurance of a FONSI determination on the proposed lease and no assurance that the Board will approve the sale of lease at public auction after the completion of the Environmental Assessment;
 - c. In the event there is no FONSI and the Board deems not to authorize the sale of lease at public auction, there shall be no obligation for reimbursement for the Applicant's cost; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Issue an immediate right-of-entry permit to Leonard Cardoza for the purposes of conducting an environmental assessment on the subject property under the terms

and conditions cited above, which are by this reference incorporated herein and subject further to the following:

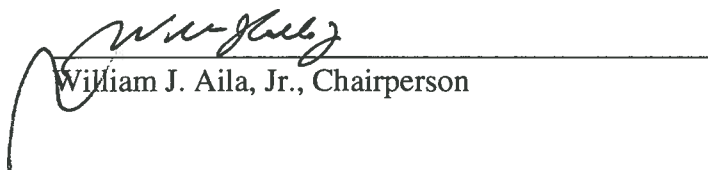
- a. The terms and conditions of the most current right-of-entry permit, as may be amended from time to time; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. With respect to the right-of-entry, declare that, after considering the potential effects of the issuance of an immediate right-of-entry as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Respectfully Submitted,

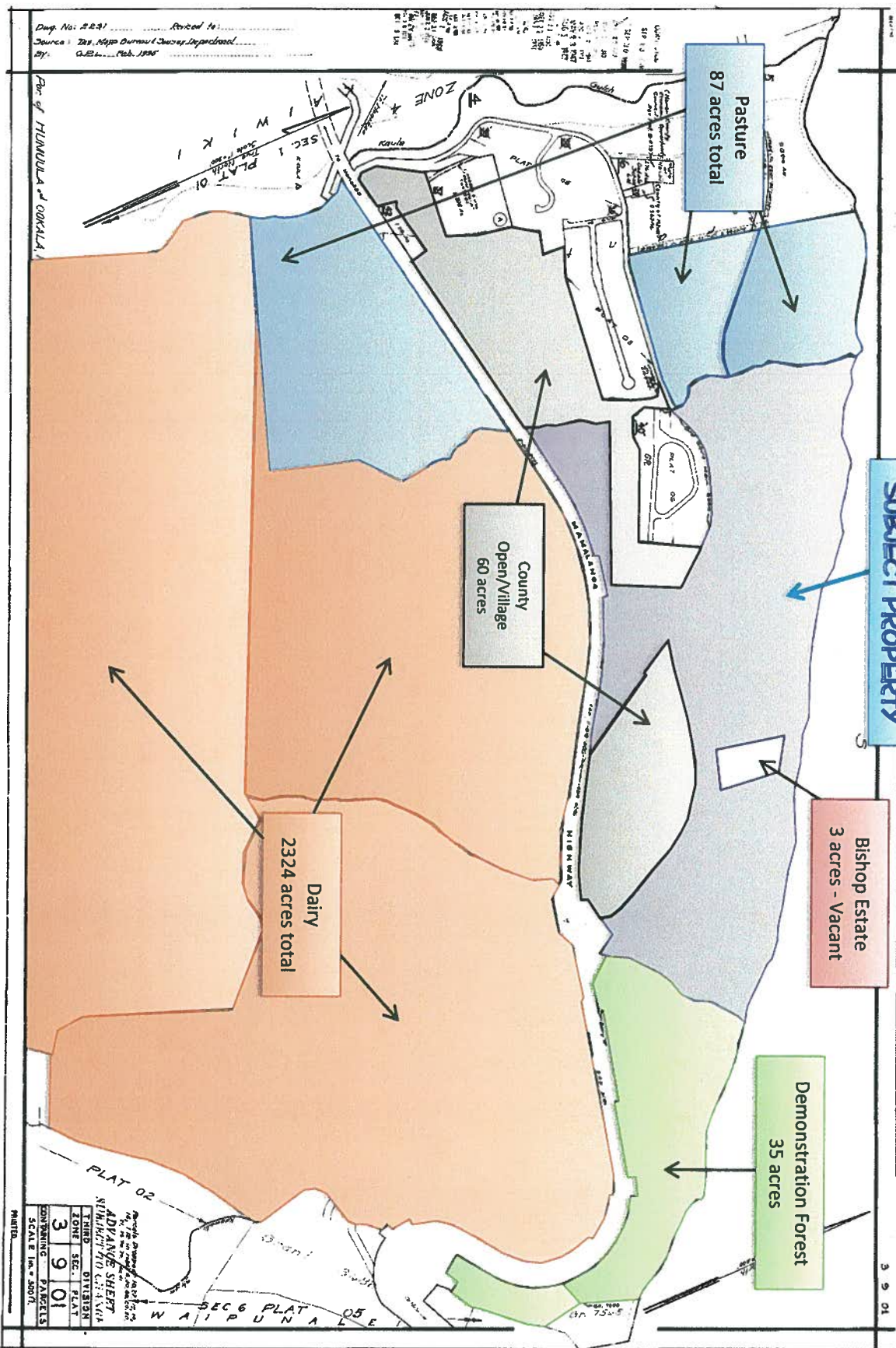


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



NEIL ABERCROMBIE
GOVERNOR OF HAWAII

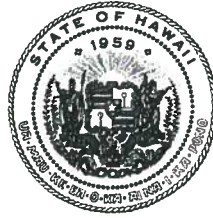


EXHIBIT B

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

PAUL J. CONRY
INTERIM FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 18, 2013

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of an Immediate Right-of-Entry Leonard Cardoza

Project / Reference No.: PSF 13HD-040

Project Location: Portion of Government lands of situated at Ookala, North Hilo, Hawaii, identified by Tax Map Key: 3rd/3-9-01:07

Project Description: Proposed sale of general lease at public auction for unencumbered State land. Land was previously in sugar cane cultivation.

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

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 5, which states "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource."

Consulted Parties:

Federal Agencies:
Natural Resource Conservation Service

State of Hawaii:

DOH – Environmental Health, Department of Hawaiian Home Lands, DLNR – Forestry and Wildlife, DLNR – Office of Conservation and Coastal Lands, DOT – Highways Division and Department of Agriculture.

County of Hawaii:

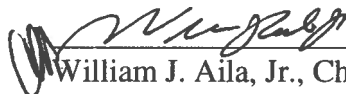
Planning Department, Department of Public Works, Department of Water Supply, Police Department and Environmental Management.

Other agencies:

Office of Hawaiian Affairs.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson

3/7/13

Date

EXHIBIT C

2-11

(Handwritten initials)

STATE OF HAWAII
Department of Land & Natural Resources
Land Division
Hilo, Hawaii

September 11, 1998

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

HAWAII

SUBJECT: Sale of four leases at public auction for intensive agriculture purposes on Hawaii

Statute: Section 171-13, 14, 16, 17 and other applicable sections of Chapter 171, Hawaii Revised Statutes

For: Opihikao, Puna; Ookala, North Hilo; Kalopa Homesteads, Hamakua; Ahualoa Homesteads, Hamakua, Hawaii, identified by tax map keys: (3) 1-3-3-16, 3-9-1-7, 4-4-3-47 and 4-5-11-7. (EXHIBIT A and B)

Land title status: Subsection 5 (b) lands, ceded

Land status: See EXHIBIT B

Land area: See EXHIBIT B

Zoning: State LUC - Agriculture/Conservation
County of Hawaii - Ag 5(a), Ag 10(a), Ag 20(a)

Character of use: Intensive agriculture

Lease term: Thirty years, commencing on the date of sale.

Rental reopenings: At the end of the 10th and 20th year of the lease term, by staff appraisal or independent appraisal, as allowed by law.

Minimum upset annual rent: To be determined by staff appraisal, subject to review and approval by the Chairperson.

Method of payment: Semi-annual payments, in advance

Chapter 343-
environmental

review: This action is exempt from the provisions of Chapter 343, Hawaii Revised Statutes. Properties were and is being used for agriculture purposes.

ANALYSIS:

We have interested applicants for these properties. A long term lease will help "bona fide" farmers.

RECOMMENDATION: That the Board:

- A. Find the area to be an economic unit in terms of the intended use.
- B. Authorize the sale of a lease at public auction covering the subject area for intensive agriculture purposes under the terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:
 1. The property is leased in an "as is" condition. The Lessee is aware of all aspects associated with the property.
 2. The use of the land shall be in compliance with all laws, rules and regulations of the Federal, State and County governments.
 3. Intensive agriculture shall mean the cultivation of truck, orchard, flower and foliage crops and any other agricultural use allowed under the county zoning excluding pasture, raising of animals and raising of poultry.
 4. Standard full utilization of the land provision.
 5. Standard good husbandry and conservation program provision.
 6. Standard boundary fence provision.
 7. Standard restriction on residential use provision. Employee dwelling prohibited.
 8. Standard hunting provision.
 9. The cost of utilities, if desired, shall be the responsibility of the Lessee.
 10. The Lessee shall be solely responsible for any survey and boundary stakeout of the demised premises.
 11. Such other terms and conditions contained in a intensive

agricultural lease document.

12. Such other terms and conditions as may be prescribed by the Chairperson to best protect the State's interest.

Respectfully submitted,

Charlene E. Unoki
Charlene E. Unoki

APPROVED FOR SUBMITTAL:

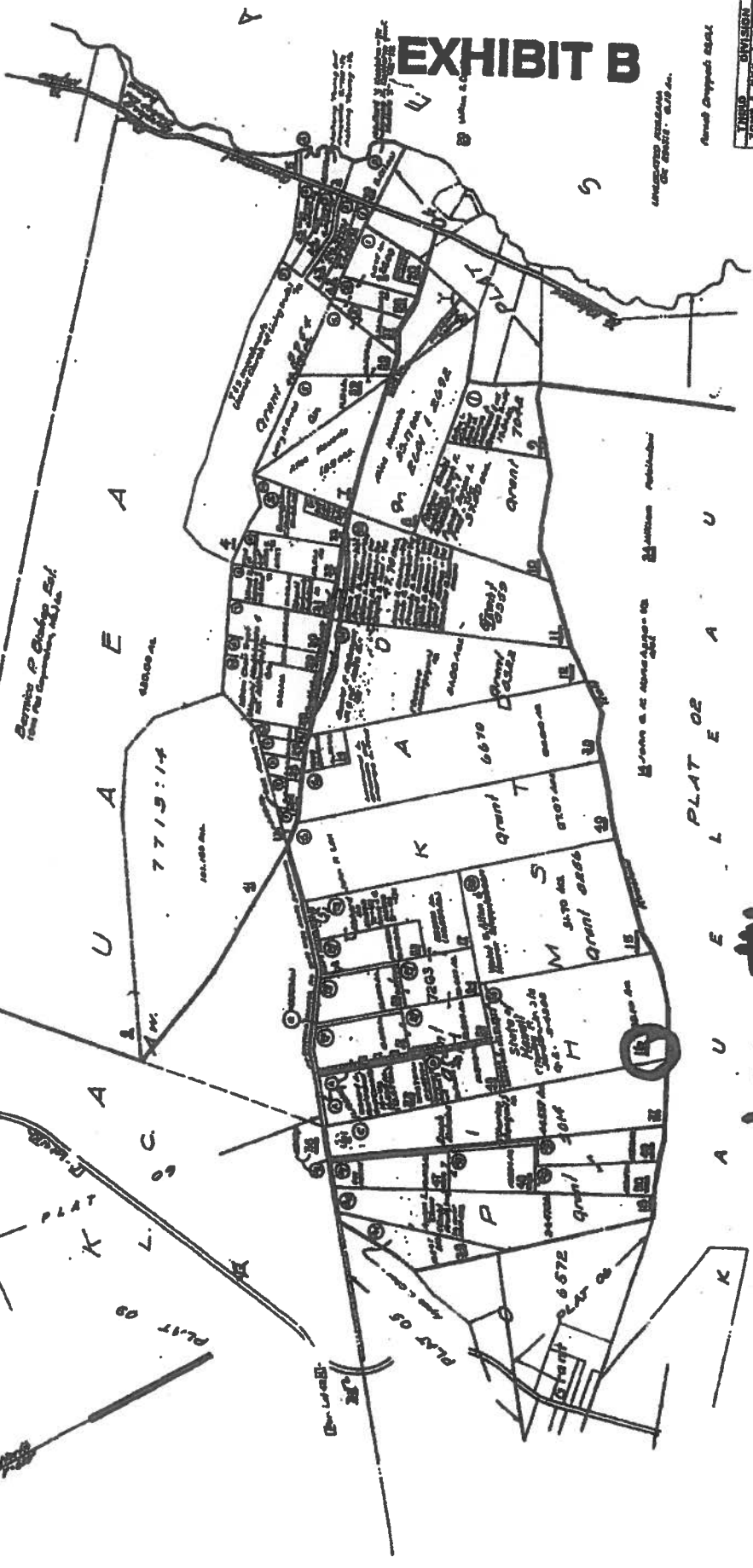
Michael D. Wilson
MICHAEL D. WILSON, Chairperson

EXHIBIT A

	<u>TMK#</u>	<u>ACREAGE</u>	<u>ACCESS?</u>	<u>Former Document</u>	<u>STATUS</u>
Lease #1	1-3-3-16	52.100	Yes	GL #S-4381 Tapley Jordan	Vacant
Lease #2	3-9-1-7	107.264	Yes	GL #S-3615 Hamakua Sugar Co.	Vacant
Lease #3	4-4-3-47	21.880	Yes	RP #S-6093 Hamakua Sugar Co. RP #S-4880 Honokaa Sugar Co.	Pending RP Manuel Rapozo
Lease #4	4-5-11-7	4.583	Yes	GL #S-4005 John/Josephine Andrade GL #S-3334 Norman Brand	Vacant

- 1. All lots shown on this map are subject to the provisions of the Forest Reserve Act, 1907, and the Forest Reserve Regulations, 1908.
- 2. All lots shown on this map are subject to the provisions of the Forest Reserve Act, 1907, and the Forest Reserve Regulations, 1908.
- 3. All lots shown on this map are subject to the provisions of the Forest Reserve Act, 1907, and the Forest Reserve Regulations, 1908.
- 4. All lots shown on this map are subject to the provisions of the Forest Reserve Act, 1907, and the Forest Reserve Regulations, 1908.
- 5. All lots shown on this map are subject to the provisions of the Forest Reserve Act, 1907, and the Forest Reserve Regulations, 1908.
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- 9. All lots shown on this map are subject to the provisions of the Forest Reserve Act, 1907, and the Forest Reserve Regulations, 1908.
- 10. All lots shown on this map are subject to the provisions of the Forest Reserve Act, 1907, and the Forest Reserve Regulations, 1908.

MALAMA-KI FOREST RESERVE
 PLAT 07



UNIT	DIVISION
13103	PLAT
CONTAINING 10 PARCELS	
SCALE 500 FT. = 1 IN.	

APPROVED BY THE
 SURVEYOR GENERAL

Lease #

OPHIRO MOTOZUKAWA, PUNA, HAWAII

LEASE #2

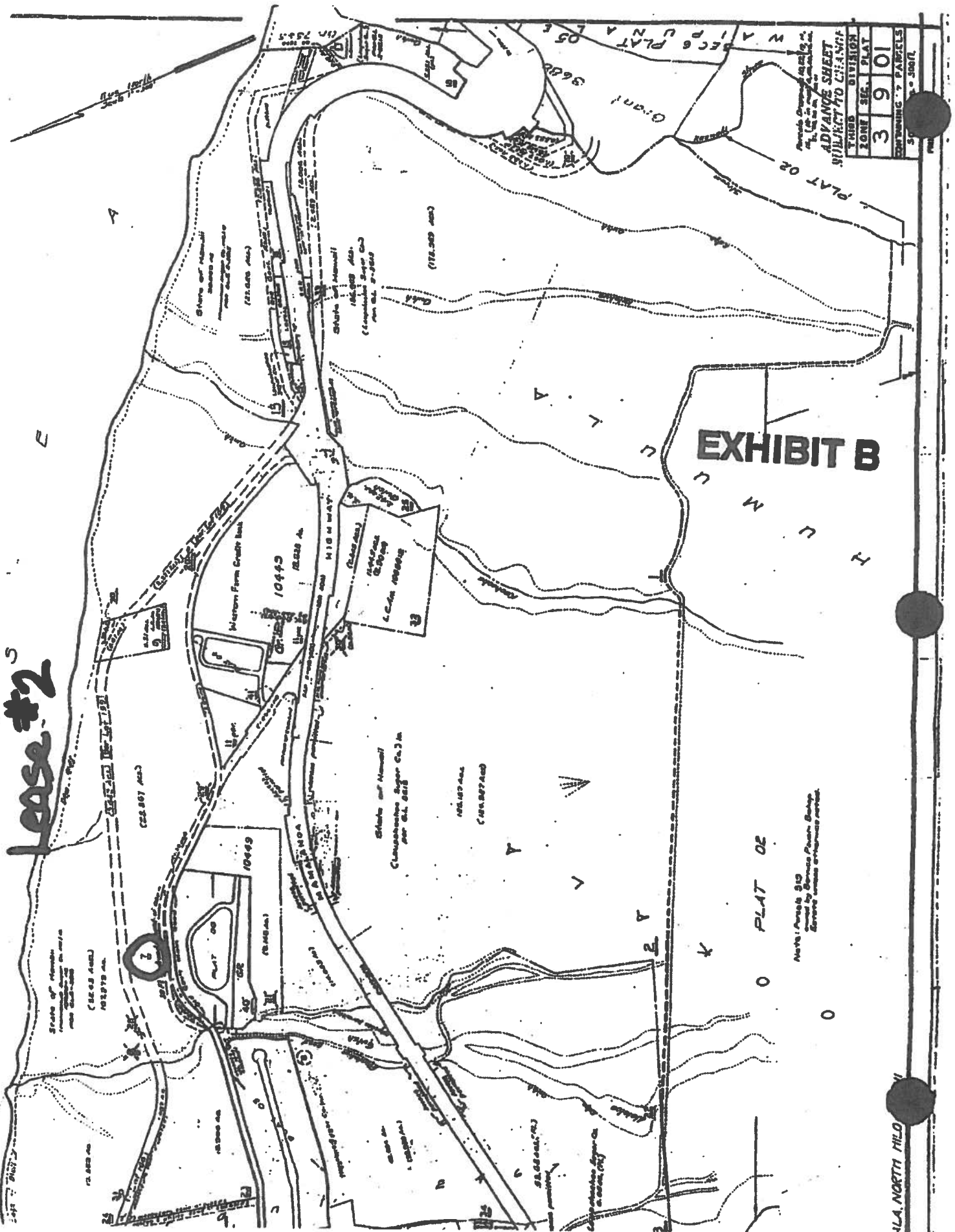


EXHIBIT B

Advance Sheet
SUBJECT TO CHANGE

TOWN	DIVISION
ZONE	SEC. PLAT
3 9 01	
CONTAINING 77 PARCELS	
SHEET NO. 3807	

Note: Parcel 310
owned by Dennis Power Bishop
Control unless otherwise noted.

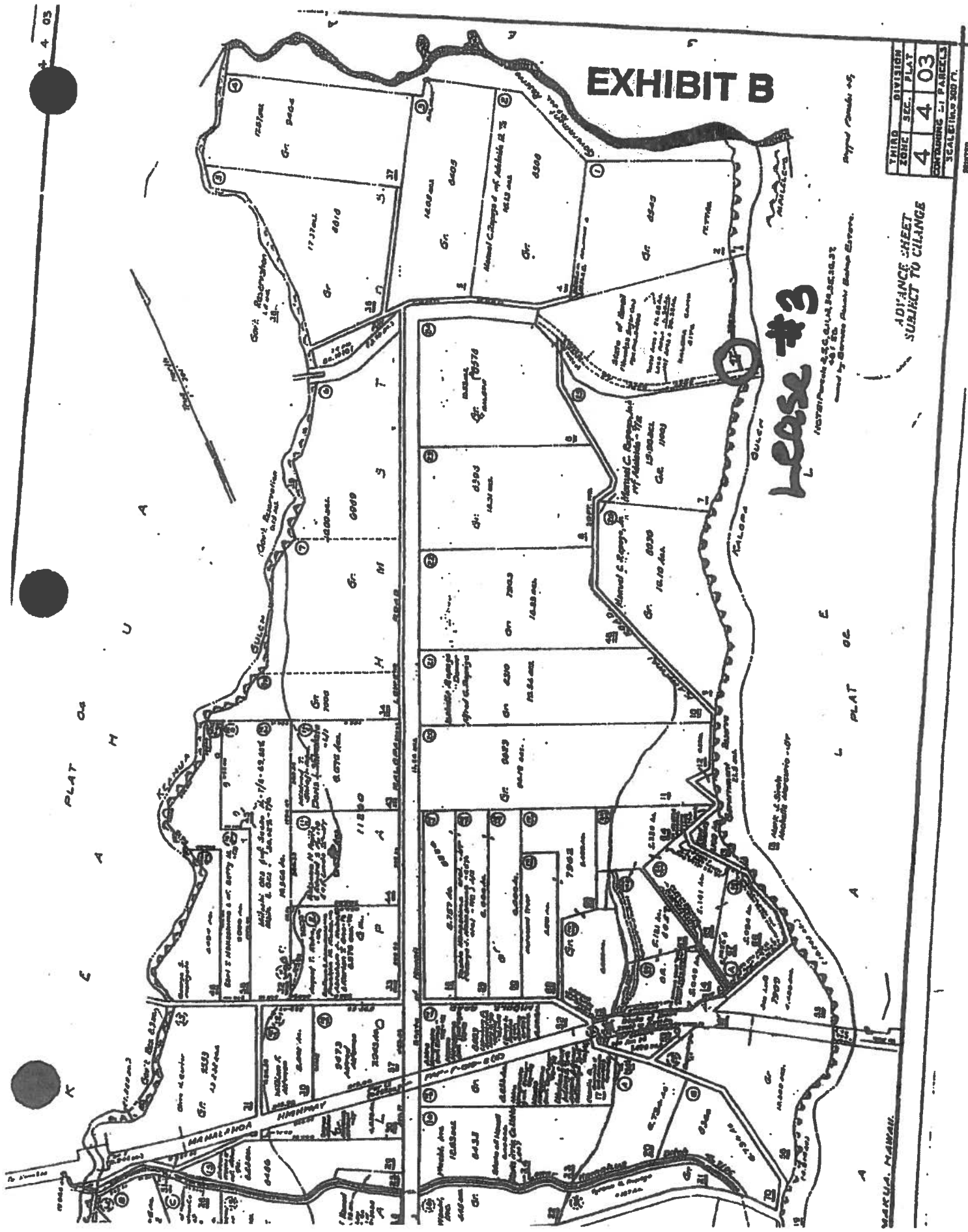


EXHIBIT B

Lease #3

TERRITORY	DIVISION
4	4
SECTION	PLAT
4	03

ADVANCE SHEET
SUBJECT TO CILLAGE

PLAT

PLAT 04

PLAT 02

WALULA, HAWAII.