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Attorneys for JAMES SPENCER  
and PAMELA V. SPENCER

LAND USE COMMISSION  
STATE OF HAWAII  
2012 MAR 21 A 11:43

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of

JAMES SPENCER and PAMELA V.  
SPENCER

For a Declaratory Order Providing that the  
Operation of a Pet Boarding Kennel is a  
Permissible Use On Certain Land in the  
Agricultural District

DOCKET NO. DR 12-46

PETITION FOR DECLARATORY ORDER;  
VERIFICATION; EXHIBITS "A" – "H"

**PETITION FOR DECLARATORY ORDER**

TO THE HONORABLE LAND USE COMMISSION OF THE STATE OF HAWAII:

Come now, James Spencer and Pamela V. Spencer ("**Petitioners**"), by and through their attorneys CADES SCHUTTE, LLP, for a declaratory order determining that the operation of a pet boarding kennel is a permissible use on certain land in the agricultural district. This Petition is brought pursuant to Hawaii Revised Statutes ("**HRS**") § 91-8 and Hawaii Administrative Rules ("**HAR**") § 15-15-98.

**I. Names, Address and Telephone Number of Petitioners.**

Pamela V. Spencer and James Spencer  
92-9146 Tree Fern Lane,  
Ka`u, Hawaii 96772  
Telephone Number: (808) 329-5811

**II. Statement of the Petitioners' Interest in the Subject Matter.**

Petitioners own the property at 92-9146 Tree Fern Lane, in the Hawaiian Ocean View Estates Subdivision, at the Kahuku, Ka`u, Hawai'i (TMK (3) 9-2-025: 047) (the "**Property**"). A copy of the TMK Map is attached hereto as **Exhibit A**. The Property is in in the State Land Use Agricultural District and is zoned A-1a by the County of Hawaii.

The Property is classified by the Land Study Bureau as overall (master) productivity rating class "E," which means that it is very poorly suited for agriculture. Specifically, the Property consists of land types "E258" and "E281." The Land Study Bureau's selected use ratings indicate that these land types are very poorly suited or unsuitable for each of six selected agricultural uses. Copies of relevant pages from the Land Study Bureau's Bulletin No. 6 are attached hereto as **Exhibit B**.

Petitioners operate family run pet boarding kennel servicing cats and dogs on part of the Property. They have done so for many years without regulatory problems or issues. A copy of web-based materials about the kennel service, downloaded by the County of Hawaii Planning Department on or about December 8, 2011, is attached hereto as **Exhibit C**.

**III. Statement of the Controversy; Designation of Specific Statutory Provisions and Rules in Question.**

On or about April 5, 2011, Petitioner's received a warning letter from the County of Hawaii Planning Department informing them that the Planning Department had received a complaint that they were operating a kennel on the Property (the "**Warning Letter**"). A copy of

the Warning Letter is attached hereto as **Exhibit D**.

The Planning Department acknowledged that a kennel is a permitted use on agricultural-zoned properties pursuant to Hawaii County Code (“HCC”) § 25-5-71; however, it stated that this was not a permissible use under state law because HRS §§ 502-2(d) and 502-4.5 do not specifically identify “kennel” or “boarding kennel” as a permitted use in the state agricultural district. See Exhibit D at 3-4. The Department stated that “[t]he State Land Use Law will prevail over the County Zoning Code.” Id. at 4.

The Planning Department indicated that it would issue a formal Notice of Violation & Order and fines unless Petitioners stopped operating the kennel and suggested that Petitioners “may consider applying for a Special Permit.” Id.

Petitioners’ counsel responded to the Planning Department and requested that the Department reconsider its position. Petitioners’ counsel explained that by operating a kennel, Petitioners were essentially using their property to raise animals and that this was indeed expressly permitted by HRS §§ 205-4.5(a) and 205-2(d). Copies of letters between Petitioner’s counsel and the Planning Department concerning the Department’s position are attached hereto as **Exhibits E through H**.

The Planning Department refused to reconsider its position. Instead, on October 13, 2011, it responded as follows:

Hawaii Revised Statute [sic] (“HRS”) Sections 205-2(d) and 295-4.5 of the HRS. [sic] Section 15-15-25(b), Hawaii Administrative Rules (“HAR”), do not identify “kennel” or “boarding kennel” as an expressly permitted use within the State Land Use Agricultural District and provides that “[p]ermissible uses within the agricultural district land classified by the land study bureau’s detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section 205-2(d), HRS. Section 15-15-23, HAR provides “uses not expressly permitted are prohibited.” Because a kennel or

boarding kennel is not identified nor expressly permitted under sections 205-2(d) and 205.4.5, HRS, it is prohibited[.]

...

Since the Land Use Law section 205-2(d), 205-4.5, HRS, does not identify Kennel or Boarding Kennel as a permitted use, and Section 15-15-25(b) [sic] HAR provides “uses not expressly permitted are prohibited”, therefore a Kennel or Boarding Kennel is not identified nor expressly permitted and is hereby prohibited. A special use permit is required for such use. This is consistent with past practice of the Planning Department requiring Special Use Permit for the established commercial Kennels on State Land Use Agriculturally classified land. This is also consistent with the practice in other counties in Hawaii.

Exhibit H at 2 (underline original).<sup>1</sup>

Accordingly, there remains a dispute as whether or not Petitioner’s use of the property as a pet boarding kennel is a permitted use on the subject Property pursuant to state land use laws.

The statutory provisions and rules at issue are:

1. HRS § 205-2(d), which provides in relevant part:

Agricultural districts shall include: . . . (2) Farming activities or uses related to animal husbandry and game and fish propagation[.]

2. HRS § 205-4.5, which provides in relevant part:

(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

...

- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. “Farm dwelling,” as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling[.]

...

(c) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class

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<sup>1</sup> Petitioners have appealed to the Hawaii County Board of Appeals from the decision embodied in this letter. That appeal is still pending.



C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

3. HRS § 205-5, which provides in relevant part:

(a) Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. . . .

(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. . . .

4. HAR § 15-15-23, which provides:

Except as otherwise provided in this chapter, the following land and building uses are compatible and permitted within the following land use districts, except when applicable county ordinances or regulations are more restrictive. Except as otherwise provided in this chapter, uses not expressly permitted are prohibited.

5. HAR § 15-15-25(b), which provides:

Permissible uses within the agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section 205-2(d), HRS.

6. HCC § 25-1-5(b), which provides in relevant part:

“Kennel” means a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation. The term includes animal quarantine stations.

7. HCC § 25-5-72(a), which provides in relevant part:

The following uses shall be permitted in the A district: . . . (16) Kennels.

**IV. Statement of Petitioners' Position.**

Petitioners' position is that by operating a pet boarding kennel they are using their land to care for domestic animals; that this constitutes or is compatible with “raising livestock” or “animal husbandry;” and that the use is therefore permitted as of right pursuant to HRS §§ 205-4.5(a)(3) and/or 205-2(d)(2).

Petitioners further contend that the Hawaii zoning code, which expressly permits “kennels,” is not in conflict with Chapter 205, but is a valid exercise of the County’s authority pursuant to HRS § 205-5 to zone within the agricultural district and permit specific uses that are consistent with the general scheme set forth in Chapter 205.

V. **MEMORANDUM IN SUPPORT OF PETITIONER’S POSITION.**

A. **Petitioners’ Use Constitutes Raising Livestock and Animal Husbandry and is Therefore Permissible.**

The Land Use Commission Rules provide that:

Permissible uses within the agricultural district land classified by the land study bureau’s detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section 205-2(d), HRS.

HAR § 15-15-25(b) (emphasis added).

In addition, the Commission recognizes that it has the authority to “to determine whether proposed uses on State Land Use Agricultural District lands with soil classified by the Land Study Bureau’s Detailed Land Classification System as overall (master) productivity rating class C, D, E, or U are compatible with agricultural activities and are therefore permitted uses[.]” In re The Sierra Club and David Kimo Frankel, No. DR00-23, Declaratory Order, at 12 (Haw. Land Use Comm’n Oct. 25, 2000) (emphasis added); see also HRS § 205-4.5(c) (“Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).”); id. § 205-5(b) (“Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted[.]”) (emphasis added).

HRS Section 205-4.5(a) identifies the following as permitted uses in the agricultural district: “(3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use; (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry.” HRS § 205-4.5(a) (emphasis added).

HRS Section 205-2 further states in relevant part: “Agricultural districts shall include . . . uses related to animal husbandry . . . .” HRS § 205-2(d)(2) (emphasis added).

As indicated above, Petitioners use part of their Property to board and care for pet dogs and cats. They submit that this use fits use within the meaning of “raising of livestock” or “animal husbandry” or at least that it is compatible with such activities.

Initially, these terms are not defined by Chapter 205 or the Land Commission Rules. The Ninth Circuit Court of Appeals has recognized that the term “livestock” is “much broader than the traditional categories of horses, cattle, sheep, and pigs.” United States v. Park, 536 F.3d 1058, 1060 (9th Cir. 2008). Indeed, the Court recognized that the “dictionary definition of ‘livestock’ is sweeping capturing every type of domesticated animal.” *Id.* at 1062 (emphasis added).

For example, Webster’s Third New International Dictionary defines “livestock” as “animals of any kind kept or raised for use or pleasure; esp.: meat and dairy cattle and draft animals—opposed to *dead stock*.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED 1324 (1981) (emphasis added); see also BLACK’S LAW DICTIONARY 953 (8th ed. 2004) (defining “livestock” as “[d]omestic animals and fowls that (1) are kept for profit or pleasure, (2) can normally be confined within boundaries without

seriously impairing their utility, and (3) do not normally intrude on others' land in such a way as to harm the land or growing crops.”).

This definition is clearly broad enough to include pet dogs and cats. Cf. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED at 1689 (defining “pet” as “a domesticated animal kept for pleasure rather than utility”) (emphasis added); Foster Village Cmty. Ass’n v. Hess, 4 Haw. App. 463, 470-72, 667 P.2d 850, 854-5 (Haw. Ct. App. 1983) (citing Webster’s Third International Dictionary where the Honolulu zoning code did not define the terms “livestock” or “pets;” finding that a pig, though normally classified as livestock, could also be a pet).

Moreover, the term “raising” is easily broad enough to encompass Petitioners’ activities, which can be described as boarding and caring for pet dogs and cats. Cf. Dictionary.com, <http://dictionary.reference.com/browse/raise> (defining “raise”: ““7. To grow or breed, care for, or promote the growth of: *to raise corn; to raise prizewinning terriers.*”) (underline added).<sup>2</sup>

Similarly, “animal husbandry” is broadly defined as “a branch of agriculture concerned with the production and care of domestic animals,” and an “animal husbandman” is defined as “one that keeps or tends livestock.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED at 85 (emphasis added).

There is ample authority for the proposition that running a pet boarding kennel fits within the meaning of “animal husbandry.” See Rootstown Twp. Zoning Bd. of Appeals, 338 N.E. 2d

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<sup>2</sup> Notably, counsel for petitioners sent the Planning Department a letter on April 29, 2011, which pointed out that “[r]aising is not a defined term under HRS chapter 205 and would, in its common meaning, encompass caring for adult and young animals.” See Exhibit E at 1. In its response dated May 2, 2011, the Planning Department did not dispute this interpretation of the term “raising” but instead appeared to dispute whether the animals Petitioners were caring for—cats and dogs—could be considered “livestock.” See Exhibit F at 1-2. As such, there does not appear to be any dispute that Petitioners’ activities fit within the meaning of the term “raising.”

763, 763 (Ohio 1975) (“The breeding, raising and care of dogs constitutes animal husbandry[.]”); Bd. of Brimfield Twp v. Bush, No. 2005-P-0022, 2007 WL 2759495, at \*4 (Ohio Ct. App. Sept. 21, 2007) (“[T]he dog is to be included within the class of animals customarily described as farm livestock and either as such, or as domestic animals, the dog is the subject for animal husbandry.”); id. at \*5 (acknowledging dog rescue operations and dog boarding operations as being agricultural uses); Linn County v. Hickey, 778 P.2d 509, 509 (Or. Ct. App. 1989) (“Defendant contends that, in the absence of more specific legislation bearing on the subject, kennel operations constitute ‘animal husbandry’ and therefore come within the definition of ‘farm use.’ We agree.”); Kang v. Dept. of Revenue, 12 Or. Tax. 407, 408 (Or. Tax. Ct. 1993) (“[T]here is no question that breeding and kenneling of dogs is animal husbandry[.]”); 83 Am. Jur. 2d Zoning and Planning § 323 (2d. ed. 2003) (“The breeding, raising and care of dogs constitutes animal husbandry[.]”); cf. Borrelli v. Zoning Bd. of Appeals, 941 A.2d 966 (Conn. Ct. App. 2008) (use of property as a horse boarding facility was “animal husbandry” and therefore a permitted agricultural use).

Even if the terms “raising of livestock” and “animal husbandry” might be interpreted more narrowly, Hawaii courts have been clear that zoning statutes are in derogation of common law rights and that they must be construed in favor of the free use of land. See Topliss v. Planning Comm’n, 9 Haw. App. 377, 385, 842 P.2d 648, 653-54 (Haw. Ct. App. 1993) (acknowledging rule that “zoning statute[s] . . . must, as a general rule, be strictly construed against further derogation of common-law property rights.”); Hess, 4 Haw. App. at 469, 667 P.2d at 854 (“Zoning laws and ordinances are strictly construed, as they are in derogation of the common law, and their provisions may not be extended by implication. . . . Ambiguities in a zoning regulation should not be resolved in further derogation of common-law rights.”); id. at

470-71, 667 P.2d at 854-55 (rejecting narrow reading of accessory use provision in zoning code that would exclude pet pigs and thereby extend restrictions “in derogation of every property owner’s right to use his property in any lawful manner.”); cf. 1 Rathkopf’s *The Law of Zoning and Planning* § 5:13 (4th ed.) (“Since a zoning law or ordinance is in derogation of the owner’s common law rights in the use of his land, most state courts hold that ordinance provisions will be construed in favor of the free use of land. Where doubt exists as to the meaning of zoning restrictions, courts hold that such restrictions will be strictly construed in favor of the landowner.”).

Moreover, even if a pet boarding facility does not fit neatly within the meaning of “raising of livestock” or “animal husbandry,” there can be no doubt that it is “compatible” with these and other agricultural uses. See *Renson v. Zoning Hearing Bd. of Lower Southampton Twp.*, 406 A.2d 1160, 1162 (Pa. Commw. Ct. 1979) (holding that a kennel for boarding and grooming dogs could not be classified as a “traditional agricultural use” but nonetheless finding that it was permissible under an ordinance that permitted “any use of the same general character.”).

Under these circumstances, Petitioners respectfully submit that their use of their land should be declared permissible under State’s land use laws.

**B. The Hawaii County’s Zoning Code Is Consistent with State Land Use Laws.**

Petitioners further submit that Hawaii County zoning code expressly permits them to operate a kennel on their Property and that this is a valid exercise of the County’s authority pursuant to HRS § 205-5 to zone within the agricultural district.

As stated above, Petitioners’ property is zoned A-1a. The county zoning code permits “kennels” as of right in the “A” district. See HCC § 25-5-70(a)(16) (“The following uses shall

be permitted in the A district: . . .Kennels.”). “Kennel” is defined as “a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation.” HCC § 25-1-5(b). There is no question that Petitioners are operating a kennel on their Property and that this use is permitted under county law.

Moreover, state law expressly authorizes the counties to zone within the state agricultural district according to the dictates of HRS Section 46-4 and subject to the limitations within HRS chapter 205. See HRS § 205-5(a); Save Sunset Beach Coal. v. City & County of Honolulu, 102 Hawaii 465, 480, 78 P.3d 1, 16 (Haw. 2003).

If there is a conflict between the state land use laws and county zoning ordinances, the conflict is resolved in favor of the state laws. See Save Sunset Beach Coal., 102 Hawaii at 481, 78 P.3d at 17. But there is not necessarily a conflict just because the zoning code identifies a specific use that is not mentioned by name in chapter 205. The Hawaii Supreme Court has explained that:

In Hawaii’s land use system the legislature’s statutory districts constitute more of a general scheme, and . . . by delegating authority to zone to the counties, the legislature intended that specific zoning be enacted at the county level. . . . By adopting a dual land use designation approach, the legislature envisioned that the counties would enact zoning ordinances that were somewhat different from, but not inconsistent with, the statutes.

Id. at 482, 78 P.3d at 18 (emphasis added); accord 3 Rathkopf’s The Law of Zoning and Planning § 36:12 (4<sup>th</sup> ed.) (“Within the broad district classifications created under the statute, counties and municipalities retain power to impose more detailed zoning controls in urban, rural, and agricultural lands.”).


In other words, the question is not whether or not “kennel” or “boarding kennel” are specifically named as permitted uses in chapter 205; rather, the question is whether or not these

uses are “consistent” with the general categories of uses set forth in sections 205-4.5(a) and 205-2(d). Based on the authorities cited above, Petitioners submit that operating a kennel involves boarding and caring for domestic animals; that this is consistent with the general terms “raising of livestock” and “animal husbandry;” and that, therefore, the County ordinance that expressly permits kennels on agricultural lands such as Petitioners’ is valid.

For the reasons set out above, Petitioner respectfully requests that the Commission issue of a declaratory order providing that the operation of a pet boarding kennel is a permissible use on their Property.

DATED: Honolulu, Hawaii, March 21, 2012.

CADES SCHUTTE



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ROY A. VITOUSEK III  
SEAN M. SMITH  
Attorneys for PAMELA V. SPENCER and JAMES  
SPENCER



BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

JAMES SPENCER and PAMELA V.  
SPENCER

For a Declaratory Order Providing that the  
Operation of a Pet Boarding Kennel is a  
Permissible Use On Certain Land in the  
Agricultural District

DOCKET NO. \_\_\_\_\_

VERIFICATION

**VERIFICATION**

I, ROY A. VITOUSEK III, state and aver as follows:

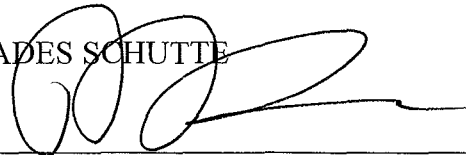
1. I am a partner at Cades Schutte LLP. My clients PAMELA V. SPENCER and JAMES SPENCER are the owners of the property that is the subject of this petition.

2. James Spencer is presently home in bed with the flu and a fever, and Pamela Spencer is caring for him. They are unable to make the hour drive to my office to sign and verify the Petition. Accordingly, I have been authorized to sign and verify the Petition on their behalf pursuant Hawaii Administrative Rules § 15-15-39(c).

3. I have read the Petition and hereby declare, verify and certify under penalty of law that the factual allegations therein are true and correct to the best of my knowledge, information and belief.

DATED: Honolulu, Hawaii, March 21, 2012.

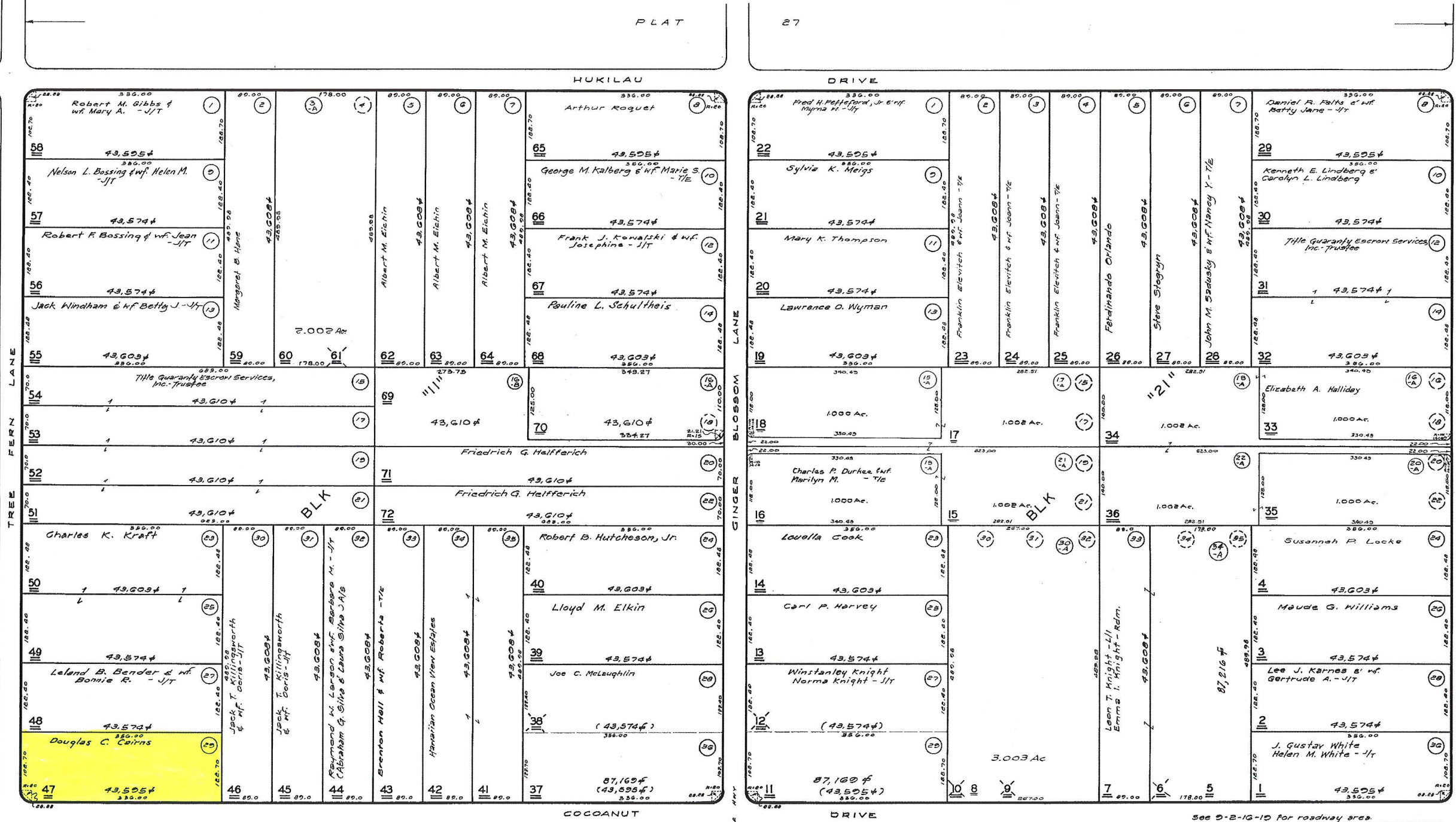
CADES SCHUTTE



ROY A VITOUSEK III

Attorney for PAMELA V. SPENCER and JAMES  
SPENCER

ZONE 9 SEC. 1



DWG. NO. 4800  
 SOURCE: F. P. 692  
 BY: H. W. B. 6/31  
 DATE: JANUARY 29, 1991

POR. HAWAIIAN OCEAN VIEW ESTATES, GR. 2791, KAHUKU, KAU, HAWAII. F. P. 692 (Formerly 9-2-01-7)

PARCELS DROPPED: 38, 42, G, G1.

DEPARTMENT OF TAXATION		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
THIRD	TAXATION	DIVISION
ZONE	SEC.	PLAT
9	2	25
SCALE: 1 IN. = 100 FT.		

FOR REAL PROPERTY TAXATION PURPOSES  
 SUBJECT TO CHANGE



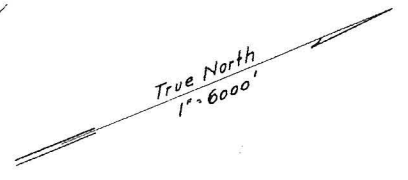
JAN 1959  
JUN 5 1970  
APR 9 1973

185  
186  
187  
188  
"HAWAIIAN OCEAN VIEW RANCHOS,"  
INCREMENT 1 - F. P. 1125

189  
190  
191  
192  
"HAWAIIAN OCEAN VIEW RANCHOS,"  
INCREMENT 2 - F. P. 1145

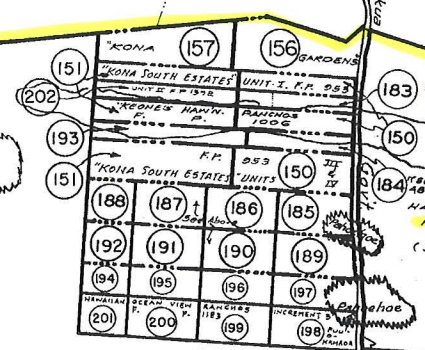
184  
193  
"KULA KAI VIEW ESTATES"  
F.P. 1099 INCREMENT 1  
"KULA KAI VIEW ESTATES"  
F.P. 1149 INCREMENT 2

SOUTH KONA  
ZONE 8  
SOUTH KONA FOREST RESERVE  
KAOHE-OPIHIHALI SECT.

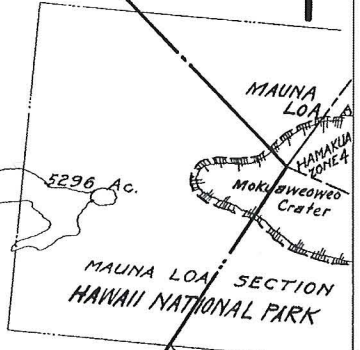


KEAULOU 2  
NORTH ZONE 7

SOUTH KONA FOREST RESERVE  
KAPUA-MANUKA SECTION  
SECTION 1



Grant 2791



Dwg. No. 1175  
By: J.S.C. & R.R. - Sec. 1922  
Source: Top. Maps Bureau.  
Appr. by: [Signature]  
Revised by: [Signature]  
Appr. by: [Signature]

KAHUKU, KAU, HAWAII.

Dropped plats: 152, 153, 154, 155

THIRD DIVISION	
ZONE	SEC.
9	2
CONTAINING PLATS	
Scale 1 in = 6000 ft.	

ADVANCE SHEET  
SUBJECT TO CHANGE

PRINTED



NOTE: See 9216-19 for rdwy area in F.R. 692  
 See 9240-73 for rdwy area in F.R. 738  
 See 9287-72 for rdwy area in F.R. 787  
 See 92188-37 for rdwy area in F.R. 1011

MANUKA

FOREST

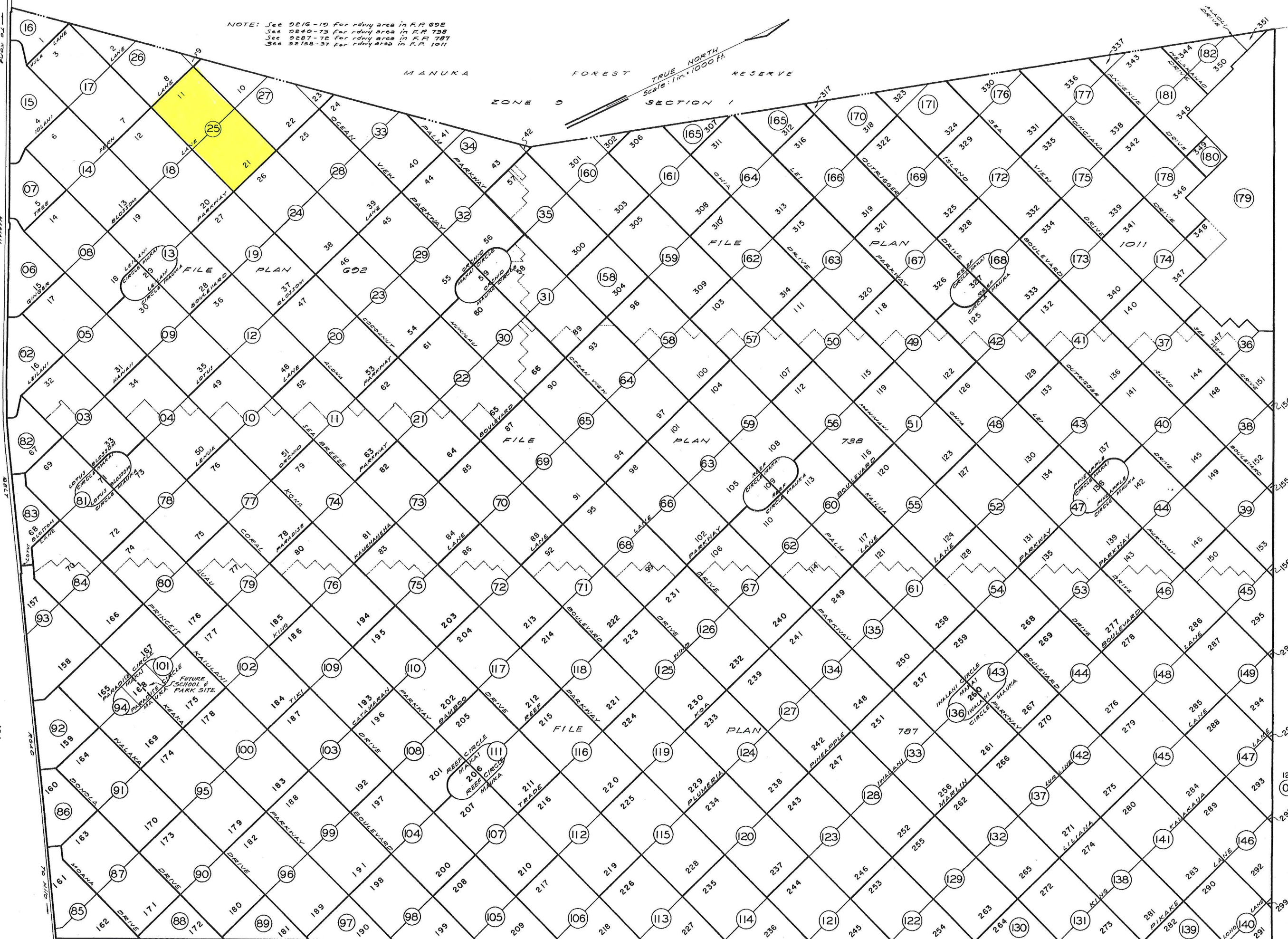
RESERVE

ZONE 9

TRUE NORTH  
 Scale: 1 in. = 1000 Ft.

SECTION 1

DRAWING NO. 4895 (REVISED TRACING)  
 TAXATION MAPS BUREAU  
 SOURCE  
 BY L.B. & L.N. DATE, AUGUST 25, 1951 & MAY 1, 1952  
 HAWAIIAN OCEAN VIEW ESTATES F.R. 692, 738 & P.O. GRANT 2791 KAHUKU, KAU, HAWAII

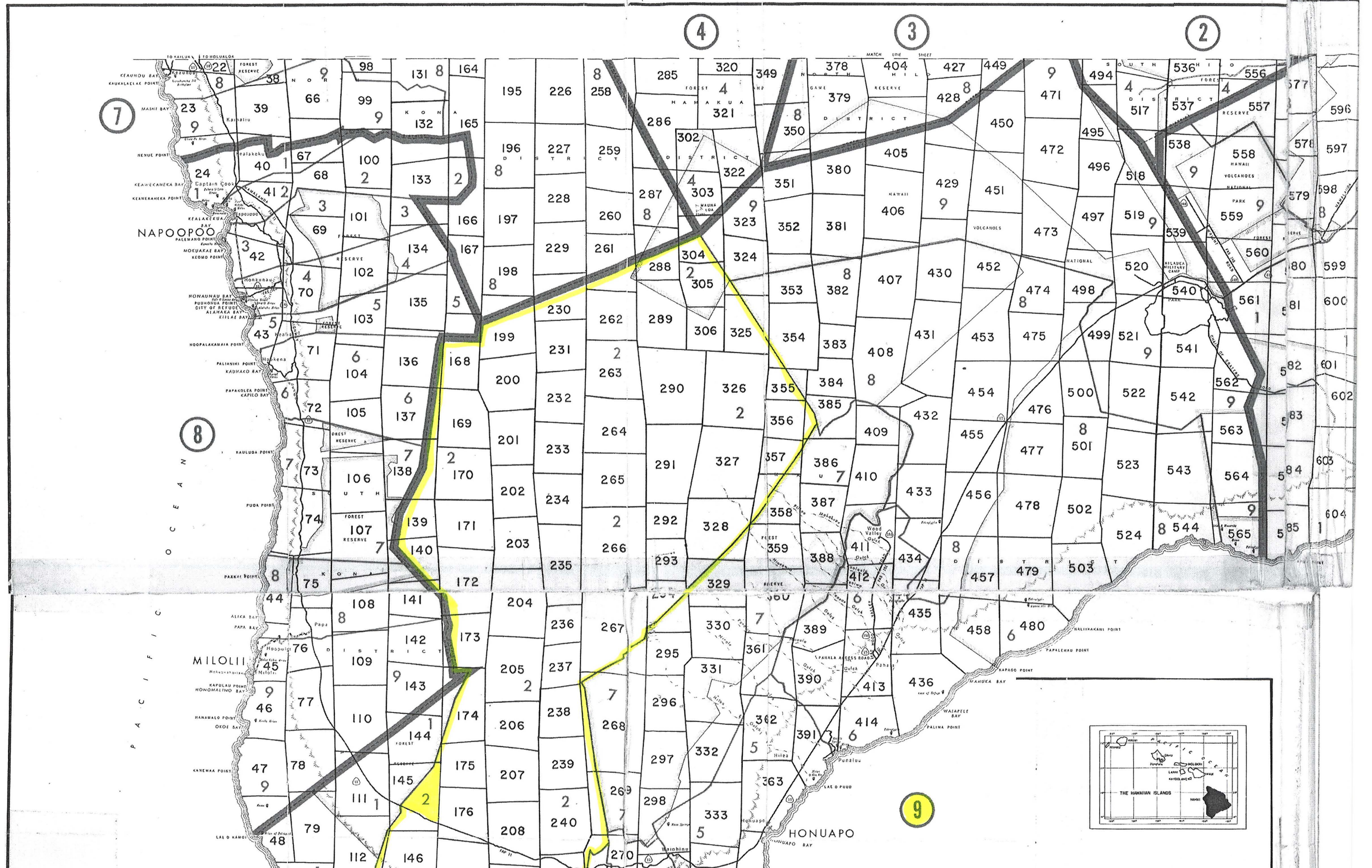


NOTE:  
 12 BLOCK NUMBER  
 01 PLAT NUMBER

SUPPLEMENTARY MAP

DEPARTMENT OF TAXATION	
TMB	
STATE OF HAWAII	
TAX MAP	
THIRD TAXATION DIVISION	
ZONE	SEC
9	2
SCALE: 1 in. = 1000 ft.	





7

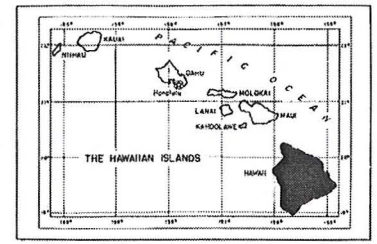
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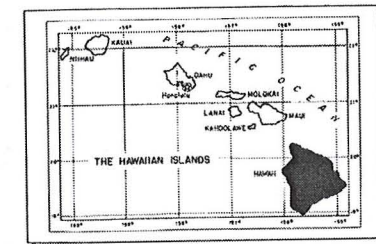
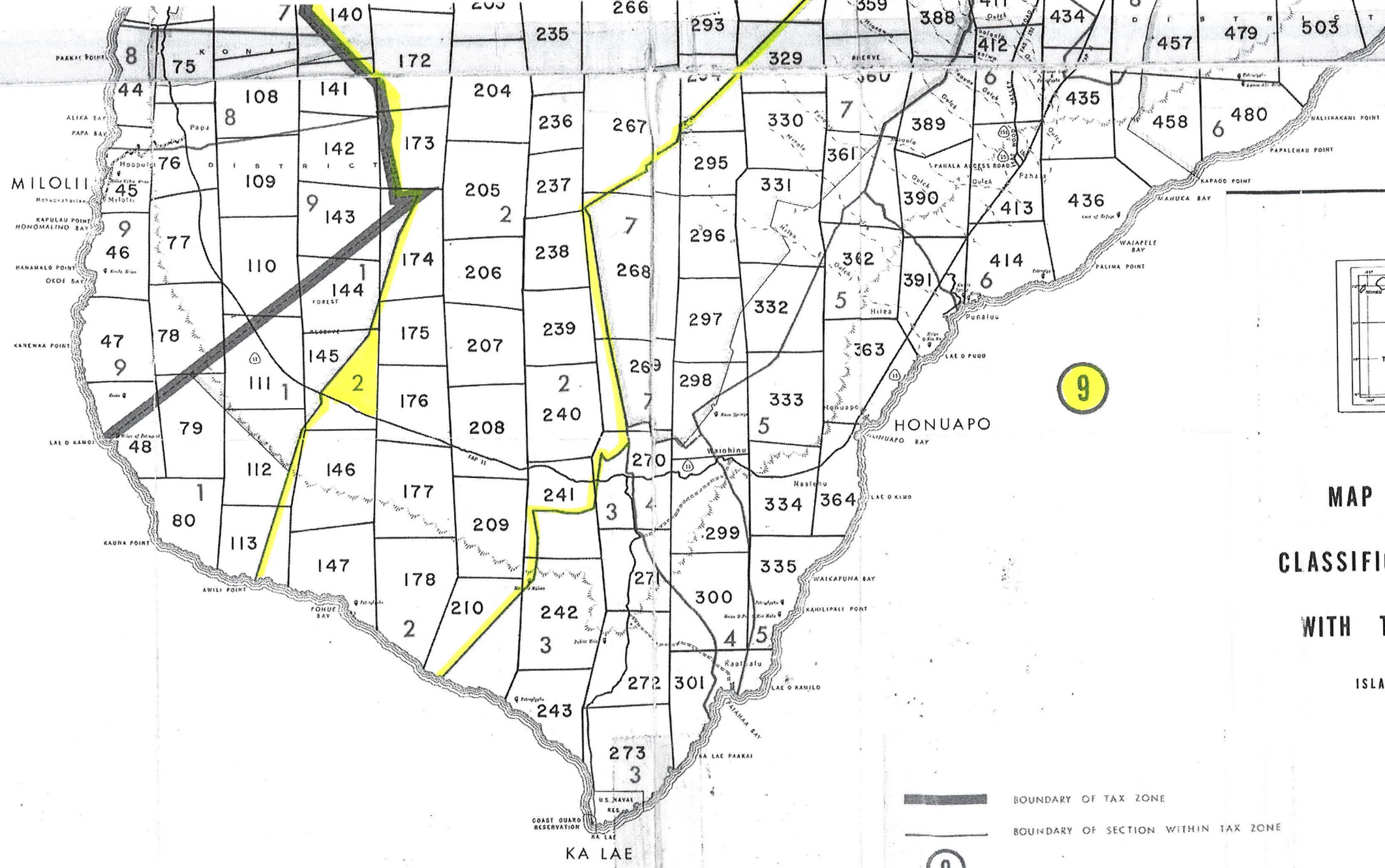
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9



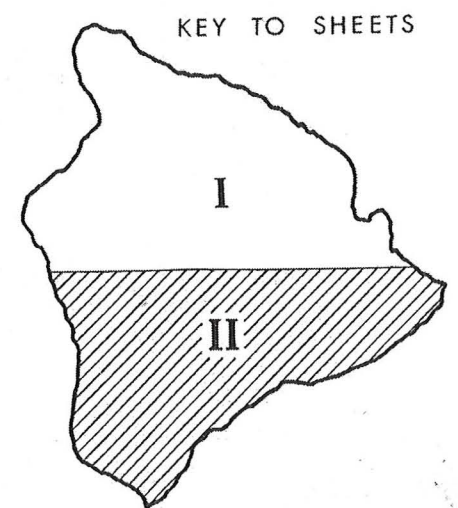


P A C I F I C



**MAP INDEX OF  
CLASSIFICATION SHEETS  
WITH TAX MAP KEY**

ISLAND OF HAWAII



- |  |   |  |
|--|---|--|
| <ul style="list-style-type: none"> <li>==== PRIMITIVE ROAD</li> <li>==== GRADED &amp; DRAINED ROAD</li> <li>==== BITUMINOUS SURFACE TREATMENT</li> <li>==== PORTLAND CEMENT CONCRETE, ASPHALTIC CONCRETE, BITUMINOUS PENETRATION, MACADAM</li> <li>----- PROPOSED ROAD</li> <li>==== HIGHWAY OVERPASS</li> <li>==== HIGHWAY UNDERPASS</li> <li>==== HIGHWAY BRIDGE</li> <li>==== TUNNEL</li> <li>==== NARROW GAUGE R.R.</li> </ul> | <ul style="list-style-type: none"> <li>~~~~ NARROW STREAM</li> <li>~~~~ INTERMITTENT STREAM</li> <li>~~~~ LAKE, RESERVOIR, OR POND</li> <li>~~~~ MARSH OR SWAMP LAND</li> <li>----- DISTRICT BOUNDARY</li> <li>----- URBAN AREA BOUNDARY</li> <li>----- MILITARY RESERVATION BOUNDARY</li> <li>----- PARK OR FOREST RESERVE BOUNDARY</li> <li>● STATE CAPITAL</li> <li>● COUNTY SEAT</li> <li>● TOWNS &amp; VILLAGES</li> </ul> | <ul style="list-style-type: none"> <li>⑪ ROUTE SIGN</li> <li>FAP FEDERAL AID PRIMARY HIGHWAY SYSTEM</li> <li>FAS FEDERAL AID SECONDARY HIGHWAY SYSTEM</li> <li>✈ AIRPORT COMPLETE FACILITIES</li> <li>✈ AIRFIELD LIMITED FACILITIES</li> <li>★ LIGHT HOUSE</li> <li>⊙ HISTORICAL SITE</li> </ul> |
|--|---|--|

- |      |                                     |
|------|-------------------------------------|
| ———— | BOUNDARY OF TAX ZONE                |
| ———— | BOUNDARY OF SECTION WITHIN TAX ZONE |
| ⑨    | NUMBER OF TAX ZONE                  |
| 9    | NUMBER OF SECTION WITHIN TAX ZONE   |

BASE MAP: STATE DEPARTMENT OF TRANSPORTATION 1963

**L E G E N D**

- |      |                                       |
|------|---------------------------------------|
| ———— | BOUNDARY OF LAND CLASSIFICATION SHEET |
| III  | NUMBER OF LAND CLASSIFICATION SHEET   |

BASE MAP: STATE DEPARTMENT OF TRANSPORTATION 1963

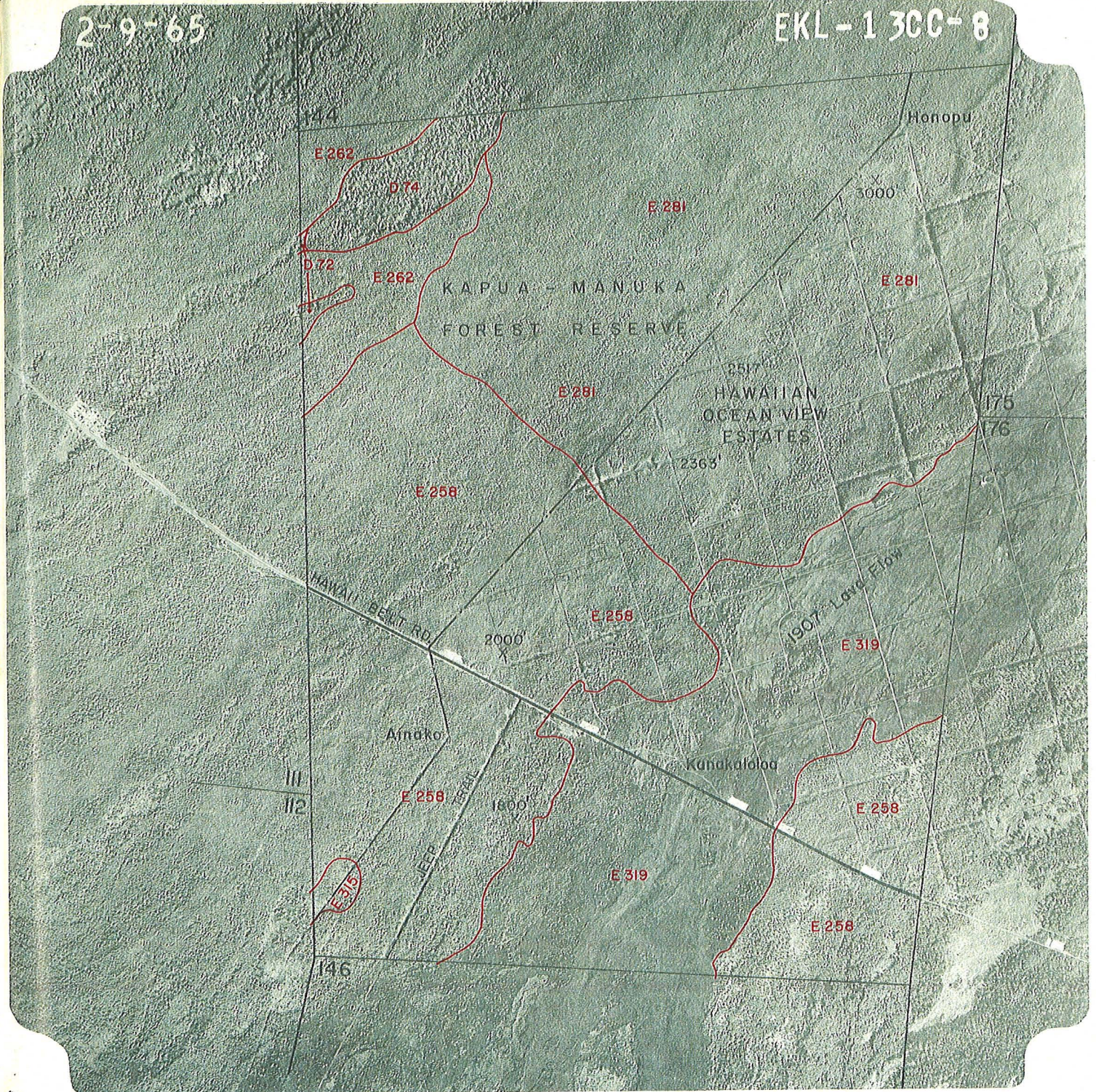
PREPARED BY: LAND STUDY BUREAU, UNIV. OF HAWAII

⑨  
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2-9-65

EKL-1300-8



Field mapped 1963-64

**LAND CLASSIFICATION SYMBOL:**

 Master Productivity Rating  
 Land Type. Number and letter "i" if irrigated; number only if unirrigated. (See sections of text where land types are defined and rated by selected uses.)



U.S.G.S. Quad. Reference: Papa, Pohue Bay

Approx. Scale (ft./in.) =  $\frac{15,000 - \text{Ground Elevation}}{6}$

Aerial Photographs: U.S. Dept. of Agric., A. S. C. S.

LAND STUDY BUREAU, University of Hawaii



Table 1 (continued)

Land Type No.	Soil Series	Depth	Texture	Color	Parent Material	Stoniness	Drainage	Slope (per cent)	Climate	Mean Annual Rainfall (inches)	Elevation (feet)	Machine Tillability	District	Remarks
256	Aa with Waiaha	Generally deep	—	Dark brown to nearly black	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35, with inclusions of undulating slope	Subhumid	30 to 50	Sea level to 1000	Unsuited	—	
257	Aa with Waikaloa & Puu Pa	Limited soil material	—	Dark brown to nearly black	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35, predominantly under 20	Subhumid	20 to 50, seasonal	1000 to 4500	Unsuited	—	
258	Aa clinkers	No soil material	—	Light brown to nearly black	Aa	Sharp lava clinkers	Excessively drained	0 to 20	Subhumid	20 to 40, seasonal	1000 to 4000	Unsuited	N. & S. Kona	
259	Aa	No soil material	—	Light brown to nearly black	Aa	Sharp lava clinkers	Excessively drained	0 to 35, mostly less than 20	Subhumid	20 to 40, seasonal	Up to 2500	Unsuited	Kau	
260	Aa land with Kainaliu	Limited soil material	—	Very dark brown to nearly black	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35	Subhumid	40 to 60	800 to 1200	Very poorly suited	N. Kona	
261	Aa land with Naalehu or Pahala	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35, mostly under 20	Subhumid	30 to 50	750 to 2250	Very poorly suited	Kau	
262	Aa	No soil material	—	Dark brown to nearly black	Aa	Sharp lava clinkers	Excessively drained	0 to 35	Subhumid	40 to 60	Sea level to 2500	Unsuited	—	
263	Aa with Waimea, Puu-waawaa & Ohaikea	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35	Cool & subhumid	30 to 50	2000 to 5200	Unsuited	—	
264	Aa with Heake	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Excessively drained	0 to 35	Cool & humid, frequent fog	65 to 100	5000 to 6500	Unsuited	Kau	
265	Aa	No soil material	—	Dark brown to nearly black	Aa	Sharp lava clinkers	Excessively drained	0 to 35	Cool & subhumid	30 to 45	2000 to 5000	Unsuited	—	
266	Aa with Alapai	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35	Humid	60 to 80	1200 to 2000	Very poorly suited	Kau	
267	Aa with Honoaulu & Moaula	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35	Humid	60 to 80	1000 to 2500	Unsuited	—	
268	Aa including pumice deposits	No soil material	—	Dark brown to nearly black	Aa, pumice	Sharp lava clinkers	Excessively drained	0 to 35	Humid	60 to 80	Sea level	Unsuited	Hamakua, Kau, & N. & S. Hilo	Rolled & smoothed; suited for orchards
269	Aa with Olaa	Limited soil material	—	Dark gray to nearly black	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 20	Humid	120 to 175	100 to 1000	Unsuited	Kau	



Table 1 (continued)

Land Type No.	Soil Series	Depth	Texture	Color	Parent Material	Stoniness	Drainage	Slope (per cent)	Climate	Mean Annual Rainfall (inches)	Elevation (feet)	Machine Tillability	District	Remarks
270	Aa with Kealakekua	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35	Humid & cloudy	80 to 100	2000 to 3500	Unsuited	N. & S. Kona	
271	Aa	No soil material	—	Dark brown to nearly black	Aa	Sharp lava clinkers	Excessively drained	0 to 35	Cloudy & cool	Over 80	2000 to 6000	Unsuited	—	
272	Aa with Akaka & Halemaumau	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Waterlogged	0 to 35	Cloudy & cool	Over 100	1000 to 6000	Unsuited	N. Hilo & Kau	
273	Aa with Puu Oo	Limited soil material	—	Very dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35	Cool & humid, frequent fog	65 to 100	5000 to 7000	Very poorly suited	N. & S. Hilo	
274	Aa with Monohaa	Limited soil material	—	Dark reddish brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35	Cool & subhumid, frequent fog	50 to 80	3000 to 4500	Unsuited	N. & S. Kona	
275	Aa	No soil material	—	Dark brown to nearly black	Aa	Sharp lava clinkers	Excessively drained	0 to 35	Droughty; cool	50 to 80	4000 to 7000	Very poorly suited	N. Hilo	
276	Aa with Punohu	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 20	Cool & subhumid, frequent fog	50 to 80	3000 to 4000	Very poorly suited	—	
277	Aa with Kilohana	Limited soil material	—	Dark brown to nearly black	Aa & cinders	Sharp lava clinkers	Excessively drained	0 to 35	Semiarid, frequent fog & occasional fog	10 to 20	5000 to 6500	Very poorly suited	Kau & Hamakua	Droughty
278	Aa with Apakuie	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35, with inclusions of steeper slopes	Cool & semiarid, frequent fog	15 to 35	5500 to 8000	Unsuited	—	
279	Aa	No soil material	—	Dark brown to nearly black	Aa	Sharp lava clinkers	Excessively drained	0 to 35	Cool & semihumid, fog & occasional frost	15 to 30	5000 to 8000	Unsuited	Hamakua & N. Hilo	
280	Aa with Hanaipoe	Limited soil material	—	Dark brown	Aa & volcanic ash	Sharp lava clinkers	Very well drained	0 to 35, with inclusions of steeper slopes	Cool & semihumid, frequent fog	30 to 45	5000 to 6500	Very poorly suited	Hamakua & N. Hilo	
281	Aa	No soil material	—	Gray to black	Aa	Sharp lava clinkers	Excessively drained	0 to 35	Semiarid, frequent fog	15 to 30	5000 to 8000	Unsuited	—	
282	Aa with Huikau	Limited soil material	—	Very dark gray	Volcanic ash & aa	Sharp lava clinkers	Excessively drained	0 to 35, with inclusions of steeper slopes	Frequent fog	Less than 25	6000 to 9000	Unsuited	N. Hilo & Hamakua	
283	Aa	No soil material	—	Gray to black	Aa	Sharp lava clinkers	Excessively drained	0 to 35, with inclusions of steeper slopes	Droughty	15 to 25	6000 to 9000	Unsuited	—	

Table 2. Agricultural Ratings of Land Types by Selected Uses And Over-all Suitability—Island of Hawaii

Land Type No.	Selected Uses						Over-all Suitability (Master Rating)
	Vegetables	Sugar Cane	Orchard	Grazing	Forage Crops	Forestry	
	Productivity Class						
1	c	c	c	c	c	Co	C
2	c	c	c	c	d	Co	C
3	d	d	d	c	e	Co	D
4	d	d	d	c	e	Co	D
5	e	d	d	d	e	Co	D
6	c	b	b	a	b	Co	B
7	c	b	b	a	c	Co	C
8	d	c	c	a	e	Co	C
9	c	b	c	a	c	Co	C
10	d	c	c	a	e	Co	D
11	e	e	c	a	e	Co	D
12	d	c	c	a	e	Co	C
13	d	d	c	a	e	Co	D
14	e	d	d	b	e	Co	D
15	e	d	d	b	e	Co	D
16	e	e	d	d	e	Co	E
17	e	e	e	d	e	Co	E
18	e	e	d	d	e	Co	D
19	e	e	d	d	e	Co	D
20	e	e	d	d	e	Co	D
21	e	e	d	d	e	Co	D
22	c	e	c	d	d	Co	D
23	c	e	c	d	d	Co	D
24	c	e	b	c	b	Co	C
25	d	e	b	c	d	Co	C
26	e	e	c	c	e	Co	D
27	e	e	e	d	e	Co	E
28	e	e	c	d	e	Co	D
29	e	e	e	d	e	Co	E
30	d	d	d	b	d	Nco	D
30i	b	b	b	a	b	Nco	B
31	d	d	d	b	d	Nco	D
31i	c	c	b	b	c	Nco	C
32	d	d	d	b	d	Nco	D
33	d	d	d	b	d	Nco	D
34	e	e	e	b	d	Nco	D
35	d	d	d	b	d	Nco	D
36	d	e	d	c	c	Co	D
37	d	e	d	c	e	Co	D
38	e	e	e	c	e	Co	D
39	b	d	b	b	c	Co	B
40	e	d	c	b	e	Co	D
41	d	d	d	d	e	Co	D
42	c	b	b	c	c	Co	C
43	c	b	b	c	c	Co	C
44	d	c	b	c	e	Co	C
45	d	c	b	c	e	Co	C
46	c	c	b	c	d	Co	C
47	e	d	d	c	e	Co	D
48	d	b	a	c	d	Co	D
49	b	b	a	b	d	Co	B

50	c	c	b	b	e	Co	C	108	e	e	e	a	e	Co	D	
51	c	b	b	b	e	Co	B	109	e	e	d	a	e	Co	D	
52	e	e	b	b	e	Co	C	110	d	d	b	a	d	Co	C	
53	e	e	b	b	e	Co	C	111	e	e	d	d	e	Co	D	
54	d	c	c	b	e	Co	C	112	e	e	e	d	e	Co	E	
55	e	d	c	b	e	Co	C	113	e	e	d	d	e	Co	D	
56	c	d	c	c	e	Co	C	114	c	d	c	b	e	Co	D	
57	c	d	c	c	e	Co	C	114i	b	b	b	b	b	Co	B	
58	d	d	c	c	d	Co	D	115	c	d	c	b	b	Co	B	
59	d	d	c	c	d	Co	D	115i	c	c	b	b	b	Co	B	
60	d	d	d	c	c	Co	D	116	d	d	d	d	b	Co	D	
61	d	d	d	c	c	Co	D	116i	d	d	d	d	b	Co	D	
62	d	d	c	d	e	Co	D	117	e	e	e	b	b	Co	E	
63	e	e	e	e	e	Co	E	118	d	d	d	b	b	Co	D	
64	e	e	e	e	e	Co	E	118i	d	c	c	b	c	Co	C	
65	e	e	e	e	e	Co	E	119	b	b	c	b	c	Co	C	
66	e	e	e	e	e	Nco	E	119i	b	c	c	b	c	Co	C	
67	e	e	e	e	e	Nco	E	120	c	c	b	c	c	Co	C	
68	e	e	c	c	c	Co	D	120i	c	c	b	c	c	Co	C	
69	e	e	c	c	d	Co	D	121	d	d	b	c	c	Co	D	
70	e	e	c	a	e	Co	C	122	c	d	b	c	c	Co	C	
71	e	e	c	a	e	Co	C	122i	c	d	b	c	c	Co	C	
72	e	e	c	b	e	Co	D	123	e	e	e	c	c	Co	E	
73	e	d	b	b	e	Co	C	124	c	c	c	c	b	Co	C	
74	e	e	d	b	e	Co	D	125	d	d	c	c	d	Co	D	
75	c	c	c	c	c	Co	C	126	d	c	b	b	d	Co	C	
76	c	c	c	c	c	Co	C	127	d	e	c	b	b	Co	C	
77	d	d	c	c	d	Co	D	128	e	e	e	d	e	Nco	E	
78	d	d	c	c	d	Co	D	129	e	d	d	b	d	Nco	D	
79	c	d	c	c	e	Co	C	130	d	c	d	d	d	Co	D	
80	(Combined with adjacent soils)						Co	C	131	d	c	d	d	d	Co	D
81	c	e	c	b	c	Co	C	132	d	d	d	d	d	Co	D	
82	c	e	c	b	d	Co	C	133	e	e	e	d	d	Co	D	
83	b	b	b	b	b	Co	B	134	d	d	d	d	d	Co	D	
84	b	b	b	b	b	Co	B	135	d	d	d	d	d	Co	D	
85	d	c	c	b	b	Co	C	136	e	e	e	d	d	Co	D	
86	c	b	b	b	b	Co	B	137	d	d	d	d	d	Co	D	
87	d	c	c	b	b	Co	C	138	e	e	d	d	d	Co	D	
88	e	e	d	b	d	Co	D	139	e	d	e	d	e	Nco	E	
89	d	d	c	b	d	Co	C	140	e	e	e	d	e	Co	E	
90	d	d	e	c	e	Co	D	141	e	e	c	c	e	Co	D	
91	e	d	d	c	e	Co	D	142	e	e	c	c	e	Co	D	
92	e	e	d	c	e	Nco	E	143	e	e	d	c	e	Co	D	
93	e	e	e	e	e	Nco	E	144	e	e	d	c	e	Co	D	
94	c	d	d	d	c	Co	C	145	e	e	e	d	e	Co	E	
95	d	d	d	d	d	Co	D	146	d	b	c	b	b	Co	B	
96	d	d	d	d	d	Co	D	147	d	b	c	b	b	Co	B	
97	e	e	d	d	d	Co	E	148	e	b	c	b	d	Co	B	
98	e	e	d	d	d	Co	E	149	e	c	c	b	e	Co	C	
99	d	d	d	d	d	Co	D	150	d	b	c	b	d	Co	C	
100	e	e	d	d	e	Co	E	151	d	b	c	b	d	Co	C	
101	e	e	d	d	e	Co	E	152	d	c	c	b	e	Co	C	
102	e	e	e	e	e	Nco	E	153	d	b	c	b	c	Co	C	
103	e	e	e	e	e	Nco	E	154	d	c	c	b	e	Co	C	
104	e	e	e	e	e	Nco	E	155	e	d	d	b	e	Co	D	
105	d	d	e	d	d	Co	D	156	e	d	d	b	e	Co	D	
106	b	d	b	a	a	Co	B	157	e	e	c	b	e	Co	D	
106i	a	d	b	a	a	Co	B	158	e	e	e	e	e	Nco	E	
107	c	d	b	a	a	Co	B	159	e	e	e	c	e	Co	E	

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Land Type No.	Selected Uses						Over-all Suitability (Master Rating)
	Vegetables	Sugar Cane	Orchard	Grazing	Forage Crops	Forestry	
Productivity Class							
273	e	e	d	c	e	Co	D
274	e	e	d	e	e	Co	D
275	e	e	e	d	e	Co	E
276	e	e	e	d	e	Co	E
277	e	e	e	d	e	Co	E
278	e	e	e	d	e	Co	E
279	e	e	e	e	e	Co	E
280	e	e	d	c	e	Co	D
281	e	e	e	e	e	Nco	E
282	e	e	e	e	e	Nco	E
283	e	e	e	e	e	Nco	E
284	e	e	e	e	e	Nco	E
285	e	e	e	c	e	Nco	E
286	e	e	e	e	e	Nco	E
287	e	e	e	e	e	Nco	E
288	e	e	e	d	e	Nco	E
289	e	e	e	c	e	Nco	E
290	e	e	e	b	e	Nco	D
291	e	e	e	b	e	Nco	D
292	e	e	e	b	e	Nco	E
293	e	e	d	b	e	Co	D
294	e	e	e	d	e	Nco	E
295	e	e	e	c	e	Nco	E
296	e	e	e	c	e	Co	E
297	e	e	e	c	e	Nco	E
298	e	e	e	d	e	Nco	E
299	e	d	e	c	e	Nco	E
300	e	d	d	c	e	Nco	D
301	e	d	e	d	e	Nco	E
302	e	e	e	d	e	Nco	E
303	e	d	d	d	e	Co	D
304	e	e	d	d	e	Co	D
305	e	d	e	e	e	Nco	E
306	e	e	d	d	e	Nco	E
307	e	e	d	d	e	Co	E
308	e	e	d	c	e	Co	D
309	e	e	e	d	e	Co	E
310	e	e	d	d	e	Co	E
311	e	e	e	c	e	Nco	E
312	e	e	e	d	e	Co	E
313	e	e	e	e	e	Co	E
314	e	e	e	d	e	Nco	E
315	e	e	e	e	e	Nco	E
316	e	e	e	e	e	Nco	E
317	e	e	e	e	e	Nco	E
318	e	e	e	e	e	Nco	E
319	e	e	e	e	e	Nco	E
320	e	e	e	e	e	Nco	E
321	e	e	e	d	e	Co	E
322	e	e	e	c	e	Co	E
323	e	e	e	c	e	Co	E
324	e	e	e	d	e	Nco	E
325	e	e	e	d	e	Co	E
326	e	e	e	c	e	Co	E
327	e	e	e	e	e	Nco	E

suitability ratings as follows: A, very good; B, good; C, fair; D, poor; and E, very poorly suited.

For all uses except forestry, a series of five-class productivity ratings has been developed for the selected uses with connotations similar to those ratings in over-all suitability. Because information about potential yields of lands in forestry use is presently limited, lands are classified into one of two forestry categories: namely, suitable for commercial forestry production (Co) and unsuitable for commercial forestry production (Nco.)

Water crops, such as taro, were not included in the use categories because very few land types are used for the production of these crops. Most of the water crops are grown on land type 39.

Ratings of land types in single uses are defined in terms of commonly used units of crop yields (Table 5). Because these ranges are based upon the assumption of prevailing statewide production practices (see section on Prevailing Cultural Practices, p. ), crop yields may differ somewhat from those obtained on individual operations. A farmer or rancher who uses more intensive production practices than most operators may be obtaining somewhat higher yields than indicated by the classification rating. Conversely, a land operator who uses less intensive practices than most operators may be obtaining lower yields than indicated. Also, as might be expected, limitations of map scale, time, and lack of justification for greater detail made it impractical to segregate certain fields which otherwise might have received a higher or lower agricultural rating.

#### DEVELOPING THE PRODUCTIVITY RATINGS

Physical productivity ratings are the end product of this land classification project. These ratings stop short of placing monetary value on the lands classified, but many users of land data are not immediately concerned with dollar values. Others prefer to make economic valuations using ratings developed here as basic foundation material.

Productivity ratings of various land types provide a needed common denominator for creating classes of agricultural suitability on a statewide basis. These ratings embrace and interpret the interacting complex influences of climate, surface relief, drainage, wind velocities, soil characteristics, and cultural

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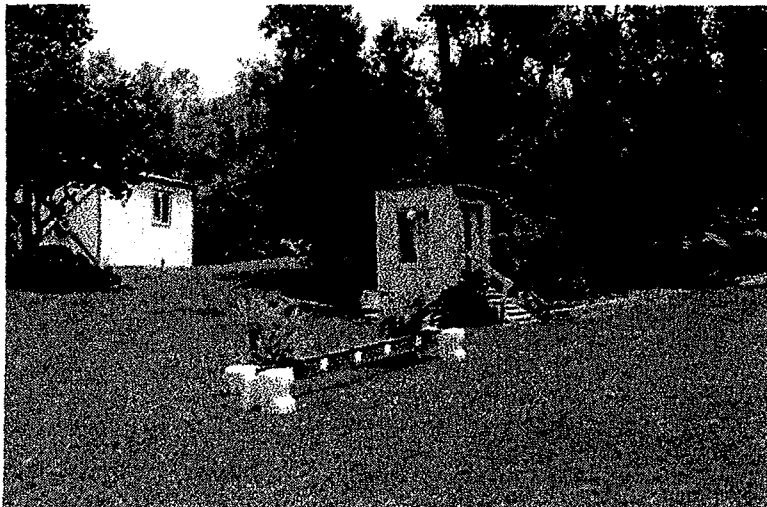


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**Pam Spencer**  
Owner, Operator &  
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Technician





**Jamesie Spencer**  
Activity Director & Boarding  
Assistant

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- [Cat Boarding](#)

## **Pick Up & Delivery**

Super Care Kennels services pets and their owners Island wide. Pick-up and delivery service is available. When you make an appointment with Pam, she will designate a convenient rendezvous point and safely transport your pet to and from the Super Care boarding facility.



Once your pet has arrived they will be assigned a kennel location, made comfortable, and given lots of love and attention to help them feel safe and secure. Your pets enclosure will be labeled with your contact information, pets name, feeding instructions, and any special needs or behavioral considerations.

## **PRICES**

**Pick-Up & Delivery**  
\$25 each way

### **Cats**

Kitty Condo = \$13.50/day  
Private In-Home Suite =  
\$15/day

### **Dogs**

1 Dog = \$25/day  
2 Dogs = \$20 each/day  
3 dogs = \$17.50 each/day

**COMING SOON!**

**Complete pet  
grooming services**





**Experience you can trust**

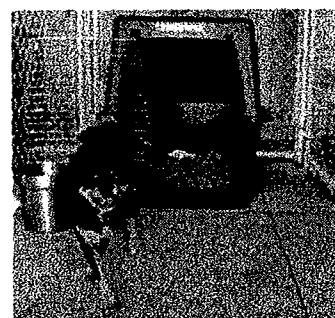


Pam Spencer, a licensed veterinary technician, has years of boarding experience and the expertise to care for all your pets special needs. From administering medications, to grooming or specialized treatments. Pam works closely with many of the Big Island veterinary clinics, is highly recommended, and capable of handling any minor or emergency situation.

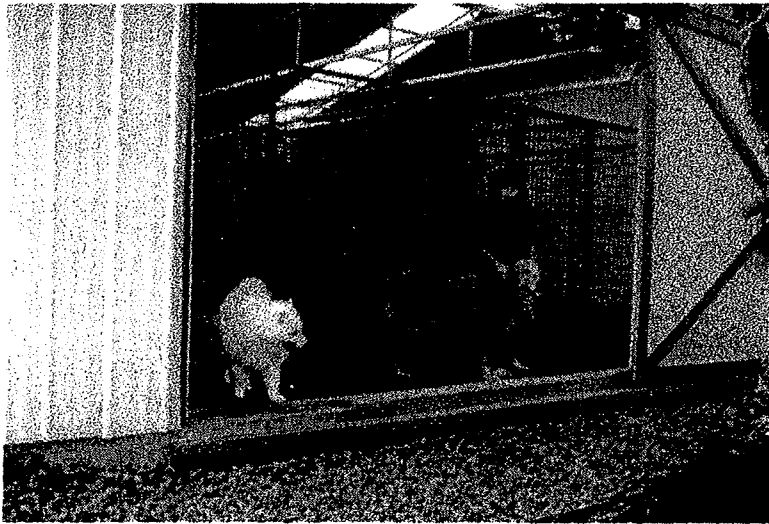


**Activities, Exercise & Play**

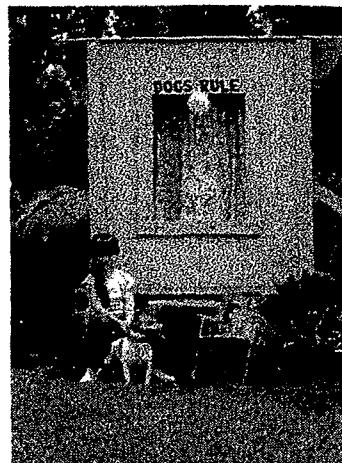
At Super Care Kennels your pet will receive all the proper nutrition, rewards, and exercise they need. Jamesie Spencer, Activity Director, spends individual quality time with each pet to ensure a happy boarding experience.







The large fenced in grassy yard provides a perfect place for your pet to sniff, play, run, jump or just relax.



**By appointment only**

**Ph: (808) 939-7003**

Home \* Services \* Dog Boarding \* Cat Boarding

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## Dog Boarding

- [Home](#)
- [Services](#)
- [Dog Boarding](#)
- [Cat Boarding](#)

**The Super Care facility offers two options for your dogs and their special needs.**

### **Main Dog Kennel**

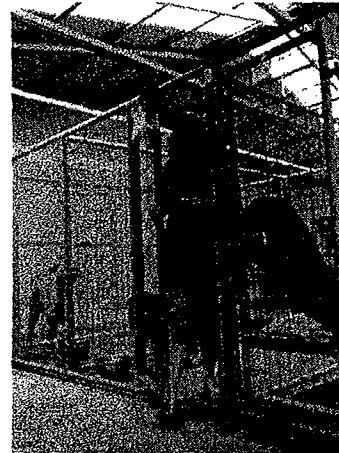
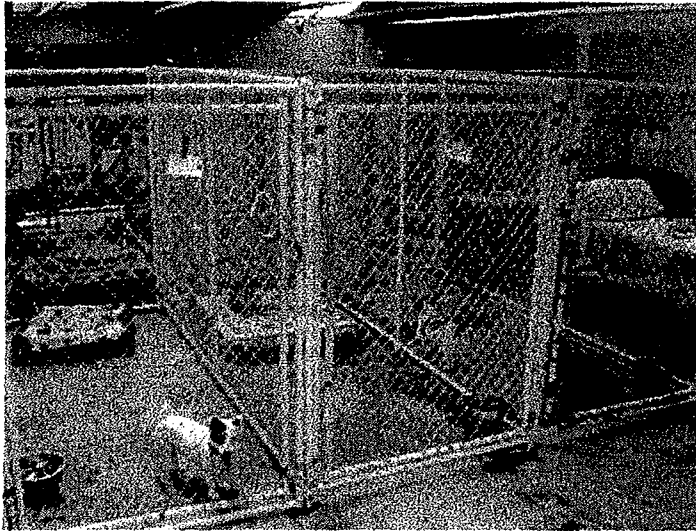
The main kennel, for well socialized dogs, houses 15, spacious, 10 x 5 x 6 foot enclosures. Set back on the property, the covered building offers natural lighting, open air circulation, companionship, and easy access to the fenced in grassy play yard. Each enclosure features raised bedding, portable cargo kennel (if needed for added privacy), fresh air and water at all times.



### **Dog Boarding**

1 Dog = \$25/day  
2 Dogs = \$20 each/day  
3 dogs = \$17.50 each/day





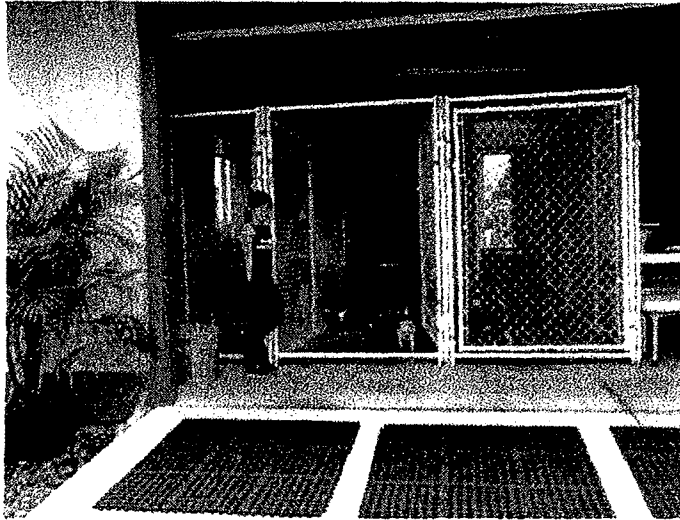
### Special Needs/V.I.P. Dogs

For more sensitive and special needs dogs, Super Care offers a quiet, private, three kennel option, which is adjoined to the family home. Complete with television, here your pet will receive the V.I.P. treatment they deserve, whether it be special dietary needs, medication, extra attention, or just a little quiet time.

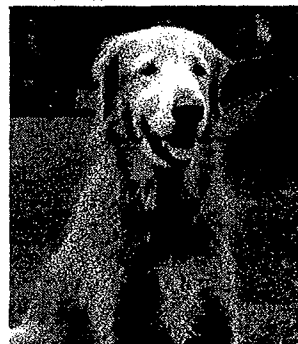


**Here's just a few  
of our satisfied  
customers**

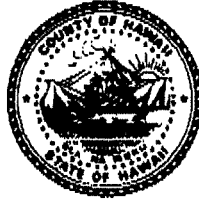




We love to develop that human bond with our boarded guests and often invite them into our home. Jamesie is even kind enough to share her own room with a special friend.



William P. Kenoi  
*Mayor*



B.J. Leithead Todd  
*Planning Director*

Margaret K. Masunaga  
*Deputy Planning Director*

## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

April 5, 2011

James and Pamela V. Spencer  
P.O. Box 54  
Kailua Kona, Hawaii 96745

Dear Mr. James Spencer and Ms. Pamela V. Spencer:

**SUBJECT: Warning Letter**  
**Complaint: Operating a Kennel in an Agriculture District.**  
**File No. 2011-00W, COR 11-00000**  
**TMK: 9-2-025:047 Por. Hawaiian Ocean View Estates, Kahuku, Ka'ū,**  
**Hawaii**

The Planning Department has received a complaint alleging that you are operating a Kennel on the above referenced property.

### FINDINGS

**Our initial research and investigation based on a complaint has revealed the following:**

1. The property is situated within the State Land Use Agriculture district and the County's Agricultural A-1a (minimum 1 acre) zoning district. The property has an area of approximately 43,595 square feet.
2. The property is located at 92-9146 Tree Fern Lane, within the Hawaiian Ocean View Estates Subdivision, Kahuku, Ka'ū Hawaii. Real Property Tax Office lists James and Pamela V. Spencer as the owner of the above referenced property.
3. A review of County records indicates that three (3) permits were issued for the above referenced property:
  - a) BP number 2032K, issued 11/30/04 with a completion date of 4/20/05 for a New 3 bedroom, 2 bath dwelling with living, dining, kitchen, covered lanai, utility room, 2 car garage and water catchment. M975059 was issued being associated with BP 965833 and completed 11/05/01.

James Spencer  
Pamela V. Spencer  
Page 2  
April 5, 2011

- b) Electrical permit E 2005-0047K issued on 1/11/05 being associated with BP 2032K and completed 4/12/05.
  - c) Plumbing Permit M 2005-0133K issued on 1/27/05 being associated with BP 2032K and completed on 4/12/05.
4. A site inspection was conducted on March 30, 2011, at approximately 1100 hrs. from the road which revealed the following:
- a. There is a structure built without a building permit as seen by our inspector.
  - b. According to the website for Super Care Kennels, ([www.supercarekennel.com](http://www.supercarekennel.com)), the structure houses the animals that are being boarded. The web site also provides the following information:
    - i. the owner Pam Spencer, is also the Operator and an Experienced Veterinary Technician.
    - ii. Super Care Kennels is a family run pet boarding kennel, servicing both cats and dogs and is operated by Pam, James and Jamesie Spencer.
    - iii. The structure houses 15 spacious 10x5x6 foot kennels along with 3 kennels for special needs/V.I.P. Dogs located within the attached garage which adjoins the family home.
    - iv. The structure also houses Cats that features 5 split level units complete with litter pan and bedding. For cats that need extra care, a private suite (the extra bedroom) in the family home comes complete with queen sized bed and family time in the evenings.
    - v. Photo's are provided on the web site and have been downloaded and saved for record.
5. Hawai'i County Zoning Code (Chapter 25, Hawaii County Code) defines "Kennel" as a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation. The term includes animal quarantine stations. (§25-1-5, HCC). Furthermore, the Zoning Code identifies "Kennel" as a permitted use within the Agricultural (A) zoned district (§25-5-71, HCC)
6. Hawai'i Revised Statute ("HRS") Sections 205-2(d) and 205-4.5 of the HRS. Section 15-15-25(b), Hawaii Administrative Rules ("HAR"), do not identify "kennel" or "boarding kennel" as an expressly permitted use within the State Land Use Agricultural District provides that "[p]ermissible uses within the agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section 205-2(d), HRS. Section 15-15-23,

James Spencer  
Pamela V. Spencer  
Page 3  
April 5, 2011

HAR, provides "uses not expressly permitted are prohibited." Because a kennel or boarding kennel is not expressly permitted under sections 205-2(d) and 205-4.5, HRS, it is prohibited.

7. The State Land Use Law will prevail over our County Zoning Code. Since the State Land Use Law does not identify "kennel" or "boarding kennel" as a permitted use within the Agricultural District, you may consider applying for a Special Permit.

### **WARNING**

This letter offers you the opportunity to correct the violation before a formal Notice of Violation & Order and fines are issued. To respond to the complaint please do the following by the "**Deadline Date**" of **May 15, 2011**:

**If you are operating a kennel, you must do the following:**

1. Stop operating the Kennel from the above referenced property.
2. Provide in writing to our office (Attention to: Mr. Horace Yanagi, Zoning Inspector) by the "**Deadline Date**" or sooner, the following for further evaluation:
  - a) A statement that you have ceased the operation of a kennel and removed all of the domesticated animals that is being boarded and not owned by you from the above referenced property.
  - b) A statement (if you so choose to pursue) that you will be pursuing to attain a Special Permit for the operation of a Kennel. In the mean time, you must cease the operation of the Kennel.
3. Contact our zoning inspector listed at the end of this letter to arrange to have the property inspected to verify compliance.

**If you are not operating a kennel, than do the following:**

1. Provide a letter to our office by the "**Deadline Date**" (Attention to: Mr. Horace Yanagi Zoning Inspector) stating that you are not operating a kennel on the above referenced property.
2. Contact our zoning inspector listed at the end of this letter to arrange a time on or before the **Deadline Date** to have the property inspected to verify compliance.

Upon receipt of your letter and after our satisfactory review we may close this complaint process with no formal action depending on the evidence that you provide to this office.



James Spencer  
Pamela V. Spencer  
Page 4  
April 5, 2011

### GENERAL INFORMATION

#### **What happens if you do not correct the alleged violation?**

If your letter is not received by the "Deadline Date" listed above, you will be issued a "Notice of Violation and Order" which could lead to daily fines and legal action against you.

#### **Can I get a time extension to have more time to correct the alleged violation?**

If you know you can not complete the corrective action for the alleged violation by the "Deadline Date", you may want to submit a "request for a time extension" before the "Deadline Date", **provided that the following conditions are met:**

1. Describe what you have accomplished prior to requesting this time extension.
2. Submit a detailed schedule for the amount of additional time necessary and the date in which you expect the violation to be fully corrected.

The mere submission of a time extension request does not guarantee the approval for the request.

You are being further notified that this Notice of Violations and Order is being forwarded to other Governmental Agencies for their review and actions.

Should you have any questions on this matter, please contact Zoning Inspector Mr. Horace Yanagi at 323-4770, at the West Hawaii Planning Department office.

Sincerely,

  
B.J. Leithead Todd  
Planning Director

HTY: hty

\\Coh21\Planning - Kona\Staff\Horace\warning\Spencer\warning 9-2-025-047 -Spencer - Kennel issued.doc

Cc

Mr. Dwayne Inouye Department of Pubic Works Building Division  
Mr. Wayne Saiki, Department of Pubic Works Electrical Division  
Mr. Bruce, Emond Department of Pubic Works Plumbing Division  
Mr. Dane Hiromasa Department of Health Waste Management  
Mr. Horace Yanagi, Zoning Inspector

**Roy A. Vitousek III**  
Direct Line: (808) 329-5811  
Direct Fax: (808) 326-1175  
E-mail: rvitousek@cades.com

April 29, 2011

B. J. Leithead Todd  
Planning Director  
County of Hawaii  
Aupuni Center, Suite 3  
101 Pauahi Street  
Hilo, Hawaii 96720

Re: Warning Letter  
Complaint: Operating a Kennel in an Agriculture District  
File No. 2011-00W, COR 11-0000  
TMK: 9-2-025: 047 Por., Hawaiian Ocean View Estates, Kahuku, Ka`u, Hawaii

Dear Ms. Leithead Todd:

This office has been asked to represent James and Pamela V. Spencer relative to the Warning Letter dated April 5, 2011, sent by your office to the Spencers. We respectfully disagree with your interpretation of Hawaii Revised Statutes § 205-4.5. We believe that the Spencers' use of their property in the State land use Agriculture District for raising of animals is expressly permitted by HRS 205-4.5 (3) and (4), and, as you recognize, by the Hawaii County Zoning Code. "Raising" is not a defined term under HRS chapter 205 and would, in its common meaning, encompass caring for adult and young animals.

We are disappointed that the County has responded in this way to a complaint made by a business competitor of the Spencers who does not live in the same community. The Spencers provide high quality service to a wide range of people in the community and have done so for many, many years without regulatory problems or issues.

It is requested that you:

- 1) reconsider your interpretation of HRS § 205-4.5; and

B. J. Leithead Todd

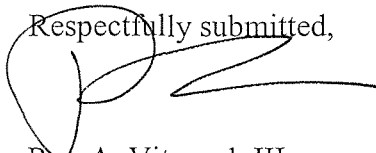
April 28, 2011

Page 2

- 2) grant an extension of time of 180 days for the Spencers to receive your final interpretation of HRS § 205-4.5 and to apply for any necessary and appropriate permits and/or take other action as appropriate under the relevant statutes, ordinances, and rules.

If you have questions or require additional information, please let me know.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roy A. Vitousek III", written over a circular stamp or mark.

Roy A. Vitousek III

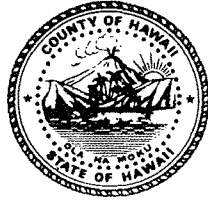
for

CADES SCHUTTE

A Limited Liability Law Partnership

cc: Dwayne Inouye, DPW, Building Div.  
Wayne Saiki, DPW, Elec. Div.  
Bruce Emond, DPW, Plumb. Div.  
Dane Hiromasa, DoH, Waste Mgmt.  
Horace Yanagi, Zoning Inspector  
James and Pamela V. Spencer

William P. Kenoi  
Mayor



BJ Leithead Todd  
Planning Director

Margaret K. Masunaga  
Deputy Planning Director

## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

May 2, 2011

Roy Vitousek III, Esquire  
Cades Schutte  
75-170 Hualalai Road B303  
Kailua Kona, Hawaii 96740

Dear Mr. James Spencer and Ms. Pamela V. Spencer:

**SUBJECT: Response to letter dated April 29, 2011  
Referencing Warning Letter  
Complaint: Operating a Kennel in an Agriculture District.  
File No. 2011-00W, COR 11-00000  
TMK: 9-2-025:047 Por. Hawaiian Ocean View Estates, Kahuku, Ka'ū,  
Hawaii**

The Planning Department acknowledges the receipt of your letter dated April 29, 2011 and received by the Planning Department on May 2, 2011 at our West Hawaii Office. Please include in your future correspondence to the Planning Department a notarized copy from the Spencer's stating that you are their representative for all future correspondence. The following is our response to your letter:

1. You state in part, while you respectfully disagree with our interpretations of Hawaii Revised Statute ("HRS") Section 205-4.5, along with Section 205-2(d), and Hawaii Administrative Rule ("HAR") 15-15-25(b), as stated in our Warning Letter to your client James and Pamela Spencer, you believe that your clients are using their property to raise animals is expressly permitted by HRS 205-4.5 (3) and (4), that "Raising" is not a defined term under HRS chapter 205 and would in its common meaning, encompass caring for adult and young animals.
  - a. In your letter to us, you fail to mention Super Care Kennel. The Warning Letter was issued for the operation of a Kennel. As stated under item 4 (b) of the warning letter, by your clients own web site that they operate a "Kennel" where they run a pet boarding operation servicing both cats and dogs. We will not be reconsidering our interpretation of HRS 205-4.5 as requested.

Roy Vitousek III, Esquire

Page 2

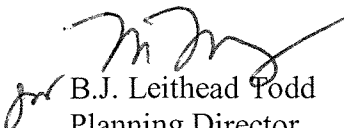
May 2, 2011

- i. Kennel is defined as a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained or sold all for a fee or compensation. The term included quarantine stations.
  - b. Raising of animals is not listed under Section 205-4.5 (3) permissible uses within the agriculture district. Raising of livestock is however listed.
    - i. Raising of livestock including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use.
    - ii. Section 25-1-5 of the Hawaii County Code defines Livestock as: all animals generally associated with farming which are raised or kept for food and other agriculture purposes. Such animals include horses, cattle, goats, sheep, chickens ducks, geese, and other poultry and swine.
2. You state in part that you are also disappointed that the County responded in such a manner to a complaint that you claim was made by a business competitor.
  - a. We will not confirm or deny your claim of where the complaint originated from. By rule, we are not allowed to reveal the identity of the complainant. While you may be disappointed that the County responded in this way, where the complaint originated from has no bearing in this instance. The operation of a Kennel is not listed as a permitted use and is why the County responded in this manner.

In your letter, you also request for a time extension of 180 days. The Planning Department is granting a time extension of sixty (60) days extending the **Deadline Date to July 14, 2011**. This is for your client to apply for any appropriate permits and / or take other action as appropriate under the relevant statutes. In the event that more time is needed, a 2<sup>nd</sup> request for time extension will be required and must include what they have accomplished to correct the alleged violation.

Should you have any questions on this matter, please contact our Zoning Inspector Mr. Horace Yanagi at 323-4770 at the West Hawaii Planning Department office.

Sincerely,

  
B.J. Leithead Todd  
Planning Director

HTY: hty

L:\warning\Spencer\response to attorney.doc

Roy Vitousek III, Esquire

Page 3

May 2, 2011

cc:

Ms. Amy Self, Esq. Corporation Council

Mr. Daryn Arai Planning

Horace Yanagi, Zoning Inspector

TMK File

July 13, 2011

**Roy A. Vitousek III**  
Direct Line: (808) 329-5811  
Direct Fax: (808) 326-1175  
E-mail: rvitousek@cades.com

Ms. B. J. Leithead Todd  
Planning Director  
County of Hawaii  
Aupuni Center, Suite 3  
101 Pauahi Street  
Hilo, Hawaii 96720

Re: Warning Letter  
Complaint: Operating a Kennel in an Agriculture District  
File No. 2011-00W, COR 11-00000  
TMK: 9-2-025:047 Por., Hawaiian Ocean View Estates, Kahuku, Ka'u, Hawaii

Dear Ms. Leithead Todd:

This office represents James and Pamela Spencer and Super Care Kennels. On April 29, 2011, we asked the County to reconsider its position relative to the above-referenced matter. The Planning Department replied on May 2, 2011, essentially declining to reconsider.

The purposes of this letter are (1) to request a further extension to January 14, 2012, for the Spencers to respond to the warning letter and apply for any necessary approvals and (2) to again ask the Planning Department to reconsider its position relative to the alleged violation.

The problem, as I see it, is that the County is using the County Zoning Code definitions of the terms “kennel” and “livestock” to interpret State law.

The Planning Department has acknowledged that the Spencers’ use of their property is permitted in lands zoned for agricultural use under the County Zoning Code. So there is no County zoning violation or issue involved and the definitions of “kennel” and “livestock” in Section 25-1-5 of the Zoning Code are neither relevant nor helpful to interpret the meaning of other words used in HRS § 205-4.5.

The County is alleging that the Spencers are violating HRS §§ 205-2(d) and 205-4.5 because they operate a “kennel” and because the word “kennel” has a fixed definition in the County Zoning Code. Again, there appears to be somewhat of a disconnect. HRS Ch. 205 does not identify permitted uses by describing specific structures or uses. Instead, HRS 205-4.5 has broader and more inclusive categories of permitted uses such as “cultivation of crops” and

“raising of livestock.” Under HRS Ch. 205, the relevant questions are: “what are the Spencers doing on their land?” and “is what they are doing a permitted use?” The question is not what the County Zoning Code calls this activity. HRS 205-4.5(a) states,

- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use[.]

HRS 205-2 states:

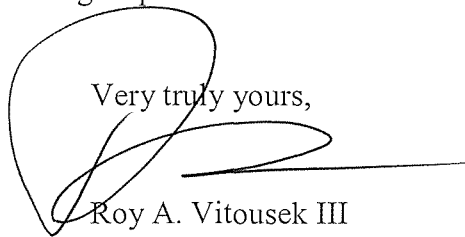
- (d) Agricultural districts shall include:
  - ....
  - (2) Farming activities or uses related to animal husbandry
  - ....

The Spencers are using part of their property to raise animals. This is a permitted use in the State agricultural district.

Thus, it appears to be the County’s position that even if the landowners’ use of their property is permitted under the County Zoning Code, if it is not permitted under the applicable State land use classification pursuant to HRS Ch. 205, the County will initiate enforcement action to enjoin such use. This seems inconsistent with the position the Planning Department is taking in other prominent land use issues.

If this is indeed the County’s position, may we request that the County confirm that position in writing so that the Spencers can seek appropriate review and so that members of the public will know what to expect from the Planning Department as it enforces the law in a consistent and evenhanded manner.

Very truly yours,



Roy A. Vitousek III

for

CADES SCHUTTE

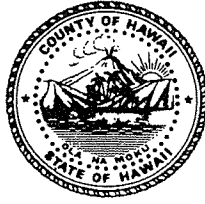
A Limited Liability Law Partnership

RAV:tmt

cc: Amy Self, Esq. - Office of the Corporation Counsel  
Daryn Arai - Planning Department  
Horace Yanagi - Zoning Inspector  
James and Pamela V. Spencer



William P. Kenoi  
Mayor



BJ Leithead Todd  
Planning Director

Margaret K. Masunaga  
Deputy Planning Director

## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

October 13, 2011

Roy Vitousek III, Esquire  
Cades Schutte  
75-170 Hualalai Road B303  
Kailua Kona, Hawaii 96740

Dear Mr. Roy Vitousek III, Esquire:

**SUBJECT: Response to letter dated July 13, 2011  
Referencing Warning Letter  
Complaint: Operating a Kennel in an Agriculture District.  
File No. 2011-28W, COR 11-070491  
TMK: 9-2-025:047 Por. Hawaiian Ocean View Estates, Kahuku, Ka'ū,  
Hawaii**

The Planning Department wishes to offer our sincere apology to you for not replying to your letter sooner.

The Planning Department acknowledges the receipt of your letter dated July 13, 2011 and received by the Planning Department on July 14, 2011 at our West Hawaii Office. Please include in your future correspondence to the Planning Department (our 2<sup>nd</sup> request) a notarized copy from the Spencer's stating that you are their representative for all future correspondence. The Planning Department will not respond to any further communication from you without the notarized letter from the Spencer's. The following is our response to your letter:

1. You state in part, the purpose of this letter are (1) to request a further extension to January 14, 2012, for the Spencer's to respond to the warning letter and apply for any necessary approval and (2) to again ask the Planning Department to reconsider its position relative to the alleged violation.
  - a. The Planning Department will grant your request for a time extension to January 14, 2012.
  - b. The Planning Department again declines to reconsider its position on this matter.
2. You state in part: "The problem as you see it, is that the County is using the County Zoning Code definition of the terms "Kennel" and "livestock" to interpret State Law."

- a. Planning Department Response. Paragraph 6 of the Warning Letter issued on April 5, 2011 states the following:
  - i. Hawai'i Revised Statute ("HRS") Sections 205-2(d) and 205-4.5 of the HRS. Section 15-15-25(b), Hawaii Administrative Rules ("HAR"), do not identify "kennel" or "boarding kennel" as an expressly permitted use within the State Land Use Agricultural District and provides that "[p]ermissible uses within the agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section 205-2(d), HRS. Section 15-15-23, HAR, provides "uses not expressly permitted are prohibited." Because a kennel or boarding kennel is not identified nor expressly permitted under sections 205-2(d) and 205-4.5, HRS, it is prohibited
3. You state in part: "Thus, it appears to be the County's position that even if the landowners' use of their property is permitted under the County Zoning Code, if it is not permitted under the applicable State land use classification pursuant to HRS Ch. 205, the County will initiate enforcement action to enjoin such use. This seems inconsistent with the position the Planning Department is taking in other prominent land use issues."

"If this is indeed the County's position, may we request that the County confirm that position in writing so that the Spencer's can seek appropriate review and so that members of the public will know what to expect from the Planning Department as it enforces the law in a consistent and evenhanded manner."

  - a. Planning Department response. Since the Land Use Law section 205-2(d), 205-4.5, HRS, does not identify Kennel or Boarding Kennel as a permitted use, and Section 15-15-25(b) HAR provides "uses not expressly permitted are prohibited", therefore a Kennel or Boarding Kennel is not identified nor expressly permitted and is hereby prohibited. A special use permit is required for such use. This is consistent with past practice of the Planning Department requiring Special Use Permit for the established commercial Kennels on State Land Use Agriculturally classified land. This is also consistent with the practice in other counties in Hawaii.
4. In the event that more time is needed, a 3rd request for time extension will be considered if you do the following:
  - a. Describe what you have accomplished prior to requesting this time extension.
  - b. Submit a detailed schedule for the amount of additional time necessary and the date in which you expect the violation to be fully corrected.
5. A time extension will not be granted if you do not submit what your client has accomplished.

Roy Vitousek III, Esquire

Page 3

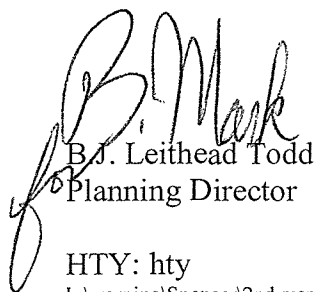
October 13, 2011

6. In the event that your client does not initiate or complete the corrective actions required to correct the alleged violation, a Notice of Violation and Order will be issued with the possibility of an initial civil fine and daily fines being assessed.

Your clients must also address the issue for a building permit with Department of Public Works Building Division.

Should you have any questions on this matter, please contact our Zoning Inspector Mr. Horace Yanagi at 323-4770 at the West Hawaii Planning Department office.

Sincerely,



B.J. Leithead Todd  
Planning Director

HTY: hty

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cc:

Ms. Amy Self, Esq. Corporation Council  
Mr. Daryn Arai Planning  
Mr. Dwayne Inouye Building Division, West Hawaii Office  
Horace Yanagi, Zoning Inspector  
TMK File