

David Niehaus
1630 Piipolo Rd.
Makawao, HI 96768
Tel. (808) 572-6180

COMMISSION ON WATER RESOURCE MANAGEMENT
STATE OF HAWAII

2018 FEB -5 AM 7:57

Surface Water Use Permit Applications,)	Case No. CCH-MA 15-01
Integration of Appurtenant Rights and)	
Amendments to the Intermin Instream Flow)	OPENING BRIEF
Standards, Na Wai Eha Surface Water)	
Management Areas of Waihee, Waiehu, Iao)	
<u>And Waikapu Streams, Maui</u>)	

OPENING BRIEF

PARTY: DAVID NIEHAUS

My name is David Niehaus and I represent Mathias and Niehaus Family Limited Partnership. My family and I are owners of a parcel of property in Waikapu, Maui that borders Waikapu Stream -- TMK (2) 3-5-002:007. We are humbly asking for use of surface water for irrigation of food crops such as taro and sweet potato as for the cultivation of Native Hawaiian trees and plants such as Koaia, Aalii, Ohia, and Iliahi as expressed in our SWUPA application # No. 2163 (exhibit No. 2163-04). We are requesting approximately 48,000 gallons/day for approximately 1 acre of taro and 8 acres of other food crops (such as sweet potato) and native Hawaiian plants. Over 50% of this water will be returned to Waikapu stream (such as down-stream of taro).

The conveyance documents (exhibit no. 2163-02) state which LCA's, RP, and Grant No.s are part of our property. The Archaeological Inventory survey the parcel (exhibit no. 2163-03) shows that this property has an appurtenant water right due water use at the time primarily for taro cultivation and residences at the time of the Mahele.

Hawaii State Water Code HRS 174C-63 states that appurtenant rights are preserved (pass on with the property) and can not be extinguished by certain individuals or entities.

We hope that the attached exhibits and supporting documentation for our family's use of surface water of Waikapu stream further validates our request and aligns with the Commission's acceptable water uses and the ecological balance of Na Wai Eha.

Thank you.


David Niehaus

David Niehaus
1630 Piihola Rd.
Makawao, HI 96768
Tel. (808) 572-6180

COMMISSION ON WATER RESOURCE MANAGEMENT
STATE OF HAWAII

Surface Water Use Permit Applications,) Case No. CCH-MA 15-01
Integration of Appurtenant Rights and)
Amendments to the Intermin Instream Flow) WITNESS LIST
Standards, Na Wai Eha Surface Water)
Management Areas of Waihee, Waiehu, Iao)
And Waikapu Streams, Maui)
_____)

WITNESS LIST

PARTY: DAVID NIEHAUS

NAME/ORGANIZATION/POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
None		

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COMMISSION ON WATER RESOURCE MANAGEMENT
 STATE OF HAWAII

Surface Water Use Permit Applications,) Case No. CCH-MA 15-01
 Integration of Appurtenant Rights and)
 Amendments to the Intermin Instream Flow) OPENING BRIEF
 Standards, Na Wai Eha Surface Water)
 Management Areas of Waihee, Waiehu, Iao)
 And Waikapu Streams, Maui)
 _____)

EXHIBIT LIST

PARTY: DAVID NIEHAUS

EX NO.	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2163-Niehaus-1	List of LCA, RP, Grants as part of TMK 3-5-002:007 that contain or may contain appurtenant rights		
2163-Niehaus-2	Conveyance documents (deed) to Mathias & Niehaus Family Limited Partnership	State of Hawaii Bureau of Conveyance Doc No(s) 2008-119737	
2163-Niehaus-3	Archaeological Inventory Survey Report for the Proposed Well Construction and Pump Installation for Ola Wai Well 1	Cultural Surveys Hawai'i Inc. Tanya L. Lee-Greig, M.A. Robert R. Hill, B.A. And Hallet H. Hammatt, Ph.D.	
2163-Niehaus-4	SWUPA-E (No. 2163)	State of Hawaii DLNR CWRM	

Exhibit No. 2163-01

List of LCA, RP, Grants No.s As Part of TMK 3-5-002:007 that Contain Appurtenant Rights

RP 7991 LCA 446
RP 5356 LCA 2980
RP 3146 LCA 2981
RP 5333, LCA 3019
RP 3126, LCA 3104
RP 3137, LCA 3301
RP 3122, LCA 3549
RP GR 1511
RP GR 1512
RP GR 1514
RP GR 1153
RP 7694, LCA 76

List of LCA, RP, Grants No.s As Part of TMK 3-5-002:007 that May Contain Appurtenant Rights – Further
Historical and Archaeological Research Required

RP 6192 & 6194, LCA 6389
RP 168, LCA 236-I

EXHIBIT NO. 2163-NIEHAUS-2 - CONVEYANCE DOCUMENTS (DEED) TO
MATHIAS NIEHAUS FAMILY LIMITED PARTNERSHIP



R-898 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
JUL 25, 2008 03:00 PM
Doc No(s) 2008-119737



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

40 1/1 Z9

CTax (15): \$5.00

LAND COURT

Kh

REGULAR SYSTEM

Return By Mail Pick-Up To:

CARLSMITH BALL LLP
One Main Plaza, Suite 400
2200 Main Street, P.O. Box 1086
Wailuku, Maui, Hawaii 96793-1086

Attention: Paul M. Ueoka
Telephone: (808) 242-4535

TITLE OF DOCUMENT:

DEED

PARTIES TO DOCUMENT:

GRANTOR: DAVID PAUL NIEHAUS

GRANTEE: MATHIAS & NIEHAUS FAMILY LIMITED PARTNERSHIP
1630 Piihola Road
Makawao, Maui, Hawaii 96768

TAX MAP KEY(S): II-3-5-002:007

(This document consists of 0 pages.)

DEED

THIS INDENTURE made this 18 day of JUL, 2008, by and between DAVID PAUL NIEHAUS, husband of Deborah Laurine Mathias, whose address is 1630 Piiholo Road, Makawao, Maui, Hawaii 96768, hereinafter referred to as the "GRANTOR", and MATHIAS & NIEHAUS FAMILY LIMITED PARTNERSHIP, a Hawaii limited partnership, having its address at 1630 Piiholo Road, Makawao, Maui, Hawaii 96768, hereinafter referred to as the "GRANTEE",

WITNESSETH:

That the Grantor, for and in consideration of the sum of ONE AND NO/100 DOLLAR (\$1.00), lawful money of the United States of America, and for other good and valuable consideration to the Grantor paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, its successors and assigns, forever, all of the Grantor's right, title, and interest in and to the property described in Exhibit "A" attached hereto and by reference made a part hereof.

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereon and thereunto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy and estate as hereinabove set forth, forever.

The covenants and obligations, and the rights and benefits of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, devisees, personal representatives, successors, successors in trust, and assigns, and all covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless otherwise expressly provided herein. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall mean and include the singular and the plural, and the use of any gender shall mean and include all genders.

IN WITNESS WHEREOF, the Grantor has caused these presents to be duly executed on the day and year first above written.

Approved as to Form
CARLSMITH BALL LLP

David Paul Niehaus
DAVID PAUL NIEHAUS

By Sam M. Uecker

STATE OF HAWAII)
) ss.
COUNTY OF MAUI)

On July 18, 2008, before me personally appeared DAVID PAUL NIEHAUS, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.


Name: JAMES L. STARSHAK

Notary Public, State of Hawaii

My commission expires: 10/12/2008

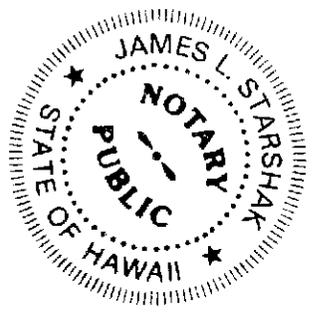


EXHIBIT "A"

ITEM I:

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Number 7991, Apana 1 of Land Commission Award Number 446 to Manu) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 1-6/100 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
 2. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and rights-of-way.
 3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.
- The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.
4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
 5. The land is not a lot of record.
 6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
 7. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

8. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM II:

All of that certain parcel of land (being all of the land described in and covered by Apana 2 of Royal Patent Number 5356, Land Commission Award Number 2980 to PAKELE), situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 0.240 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.
5. The land is not a lot of record.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

7. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

8. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM III:

All of that certain parcel of land (being the land described in and covered by Royal Patent Number 3146 Land Commission Award Number 2981 to Pipinui), situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 4.120 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and rights-of-way.

5. The land is not a lot of record.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

7. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

8. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM IV:

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Number 5333, Land Commission Award Number 3019, Apana 1 to Mehao) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 58/100 acre, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and rights-of-way.

3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

5. The land is not a lot of record.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

7. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

8. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM V:

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 3126, Land Commission Award Number 3104 to Kaelemakule) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 0.10 acre, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar

of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

2. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

4. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.

5. The land is not a lot of record.

6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

7. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

8. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM VI:

All of that certain parcel of land (being the land described in and covered by Royal Patent Number, 3137 Land Commission Award Number 3301 to Mahoe and Kamakea), situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 9.210 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the boundary of Waikapu Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
4. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

5. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.
6. The land is not a lot of record.
7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
8. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.
9. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM VII:

All of that certain parcel of land (being portion of the land described in and covered by Apana 2 of Royal Patent Number 3122, Land Commission Award Number 3549 to Keaka) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 1.0 acre, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the boundary of Waikapu Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
4. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

5. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.
6. The land is not a lot of record.
7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
8. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

9. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM VIII:

All of that certain parcel of land (being portion of the land described in and covered by Apana 3 of Royal Patent Number 3122, Land Commission Award Number 3549 to Keaka) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 2.30 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the boundary of Waikapu Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
3. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
4. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

5. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.

6. The land is not a lot of record. There shall be no liability by reason of the failure to comply with applicable subdivision ordinances, laws or regulations.

7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

8. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

9. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM IX:

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Numbers 6192 and 6194, Land Commission Award Number 6389 to Kahalelole) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 3-48/100 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the boundary of Waikapu Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
3. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and rights-of-way.

4. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

5. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

6. The land is not a lot of record.

7. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

8. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

9. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM X:

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Grant Number 1511 to Keaka) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 0.170 of an acre, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.
5. The land is not a lot of record.
6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
7. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.
8. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM XI:

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Grant Number 1512 to PAKELE) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 0.070 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map

attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.
5. The land is not a lot of record.
6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
7. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.
8. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM XII:

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Grant Number 1514 to MAHOE and KAMAKEA), situate, lying and being

at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 0.140 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.
5. The land is not a lot of record.
6. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
7. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.
8. The terms and provisions contained in the Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii on May 24, 2004, in Civil No. 03-1-0052(2), and recorded in said Bureau of Conveyances as Document No. 2008-069478.

Being a portion of the premises described in Final Judgment and Decree; Exhibit A filed in the Circuit Court of the Second Circuit, State of Hawaii, Civil No. 03-1-0052(2) on May 24, 2004, and recorded in said Bureau of Conveyances as Document No. 2008-069478.

ITEM XIII:

All of that certain parcel of land (being portion of the land described in and covered by Apana 2 of Royal Patent Number 168, Land Commission Award Number 236-I to Charles Copp) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of _____ acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the boundary of Waikapu Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
5. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.
6. Any unrecorded leases and matters arising from or affecting the same.
7. Claims arising out of the failure to convey the land described herein together with an easement or right of access.
8. The land is not a lot of record.

9. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

10. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

Being a portion of the premises acquired by the Grantor by Quitclaim Deed of Wailuku Agribusiness Co., Inc., successor in interest to Wailuku Sugar Co., a Hawaii corporation, dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

ITEM XIV:

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 1153 to E. Bailey) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 0.140 acre, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Rights of native tenants as reserved in Royal Patent Grant Number 1153 to E. Bailey.
3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. All rights, claims and/or interests of others which exist or might arise by virtue of those matters set forth in the following memorandum:

Royal Patent Grant Number 1153 was issued to E. BAILEY on July 11, 1853. No conveyances appear of record by E. BAILEY, nor is there a probate proceeding of the estate or judicial determination of the heirs.

By Quitclaim Deed dated February 21, 2002, recorded as Document No. 2002-040877, WAILUKU AGRIBUSINESS CO., INC., successor in interest to WAILUKU SUGAR CO., conveyed to DAVID PAUL NIEHAUS all right, title and interest in and to Tax Key Parcel (2) 3-5-002-007. This instrument is silent as to manner by which said Grantor acquired this interest.

No conveyances appear of record to WAILUKU SUGAR CO. and WAILUKU AGRIBUSINESS CO., INC.

5. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

6. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.

7. Any unrecorded leases and matters arising from or affecting the same.

8. Claims arising out of the failure to convey the land described herein together with an easement or right of access.

9. The land is not a lot of record.

10. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

11. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

Being a portion of the premises acquired by the Grantor by Quitclaim Deed of Wailuku Agribusiness Co., Inc., successor in interest to Wailuku Sugar Co., a Hawaii corporation, dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

ITEM XV:

All of that certain parcel of land (being all of the land described in and covered by Royal Patent Number 7694, Land Commission Award Number 76, No. 3, Part 2 to William Shaw) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of 3.42 acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the boundary of Waikapu Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
3. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
5. All rights, claims and/or interests of others which exist or might arise by virtue of those matters set forth in the following memorandum:

Land Commission Award Number 76, Survey No. 3, Part 2 was issued to WILLIAM SHAW on March 5, 1849 (the land under search is identified as "Haaua" and contains an area of 3.42 acres, more or less). Subsequently, Royal Patent Number 7694 was issued on October 9, 1883.

No conveyances appear of record by WILLIAM SHAW. Probate Number 312, filed on January 9, 1858 in the Second Judicial Circuit Court, is of the Estate of WILLIAM SHAW, Deceased. By the Last Will and Testament of WILLIAM SHAW, dated August 22, 1851 and Admitted to Probate on January 9, 1858, the land known by the name of "Haaua" was devised and bequeathed to GEORGE SHAW and ELIZABETH SHAW, testator's children, in equal shares.

PART I:
AS TO THE INTEREST OF GEORGE SHAW:

No conveyances appear of record by GEORGE SHAW. Probate Number 311, filed on June 29, 1865 in the Second Judicial Circuit Court, is of the Estate of GEORGE SHAW, Deceased. The Petition for Administration of the Estate, filed therein, stated that said

decedent died intestate on June 22, 1865. By Court Decree filed on June 25, 1866, the Court determined that the heirs of the said GEORGE SHAW, deceased, were his widow and siblings, namely; MAUNAHINA (w), his widow, as to a 1/2 interest and his siblings, PEKE (w), also known as ELIZABETH SHAW COCKETT, also known as BECKY COCKETT, PATRICK SHAW, PIOE (w), also known as PHOEBE SHAW DAWSON, and the Heir (name not given) of MELE (w), also known as MARY SHAW GOHIER, as to the remaining 1/2 interest.

No conveyances appear of record by MAUNAHINA (w), nor is there a probate proceeding of her estate or judicial determination of her heirs.

PART I-A:
AS TO THE INTEREST OF PATRICK SHAW:

No conveyances appear of record by PATRICK SHAW, husband of LAHEL A SHAW, nor is there a probate proceeding of his estate or judicial determination of his heirs.

However, in Probate Number 1394, the Estate of LAHEL A SHAW, Deceased, filed in the Second Judicial Circuit Court, on October 22, 1895, the heirs to this estate were identified as being the children of said LAHELE SHAW and her husband, PATRICK SHAW, namely: WILLIAM SHAW, ALBERT K. SHAW, GEORGE N. SHAW, KALAE (w), also known as ELIZABETH J. RICHARDSON, ALICE SHAW, also known as ALICE KAAE, MARY ANN SHAW, also known as MARY ANN RICHARDSON, and MARY SHAW HOAPILI.

No conveyances appear of record by WILLIAM SHAW. The records at the Bureau of Health Statistics reveal the death of WILLIAM KAHELELANI SHAW, a married man, age 63 years, on October 1, 1915 at Lahaina, Maui. The decedent's parents were PATRICK SHAW and LAHEL A SHAW. His wife's name was not given. There is no record of a probate proceeding of his estate or judicial determination of his heirs.

AS TO THE INTEREST OF ALBERT K. SHAW:

No conveyances appear of record by ALBERT K. SHAW, also known as ALBERT KALEHUA SHAW, nor is there a probate proceeding of his estate or judicial determination of his heirs. However, the following appear of record:

Deed dated April 4, 1932, recorded in Liber 1158 on Page 113, in which AWILI SHAW, "the widow and heir of Albert K. Shaw, deceased", conveyed to REBECCA K. DAVIS, "lands of her husband (not lands under search)...inherited by me as the heir of my husband Albert K. Shaw.";

Deed dated August 6, 1941, recorded in Liber 1654 on Page 442, in which WILLIAM K. SHAW, "Heir of Albert K. Shaw", conveyed to ALICE K. SHAW, "my aunt", "lands conveyed to my uncle, ALBERT K. SHAW, now deceased by Lahela Shaw and Patrick Shaw, her husband...the same interest inherited by me as the heir of my Uncle, Albert K. Shaw". No conveyances appear of record by WILLIAM K. SHAW. The records at the Bureau of Health Statistics reveal the death of WILLIAM SHAW, age 69 years, on April 30,

1952. There is no record of a probate proceeding of his estate or judicial determination of his heirs;

Deed dated August 3, 1944, recorded in Liber 1847 on Page 29, in which ALICE K. SHAW KAAE conveyed to MRS. AWILI SHAW KULANIAKEA all of her right, title and interest "in the Estate of Albert K. Shaw, my deceased brother" in and to lands not under search. The Interest of ALICE K. SHAW KAAE is continued under "AS TO THE INTEREST OF ALICE SHAW ALSO KNOWN AS ALICE KAAE:".

AS TO THE INTEREST OF AWILI SHAW:

No conveyances appear of record by AWILI SHAW, also known as MRS. ALBERT K. SHAW. The records at the Bureau of Health Statistics reveal the death of AWILI SHAW on November 19, 1936 at Lahaina, Maui.

Probate Number 3072, filed on May 5, 1937 in the Second Judicial Circuit Court, is of the Estate of MRS. ALBERT K. SHAW, Deceased, an intestacy. The Petition for Letters of Administration filed therein and Withdrawn on June 19, 1937, stated that the heirs at law of said decedent were her children from a former marriage, namely: JOSEPH KEKOA and SAM PEA.

Probate Number 3083, filed on June 4, 1937 in the Second Judicial Circuit Court is of the Estate of AWIKI SHAW, also known as MRS. ALBERT K. SHAW, Deceased. The Petition for Letters of Administration filed therein listed no real property in the estate and that said decedent was survived by her children, JOSEPH KEKOA PAA and SAM PAA. On July 24, 1937 letters of Administration was issued to FRANK ALAMEDA. Nothing further was had in this matter.

No conveyances appear of record by JOSEPH KEKOA PAA and SAM PAA. The records at the Bureau of Health Statistics reveal the death of JOSEPH KEKOA PAA, a widower, age 73 years, on November 30, 1952 at Wailuku, Maui. His father's name was Paa Lono and his mother's name was not given. There is no record of a probate proceeding of his estate or judicial determination of his heirs.

Small Estate Number 4225-E, filed on September 26, 1947 in the First Judicial Circuit Court, is of the Estate of SAMUEL PAA, also known as SAM PAA, Deceased. The Petition for Administration filed therein by Borthwick Funeral Parlors (Creditor), recited that said decedent died on August 16, 1942 at Waikane, Oahu, leaving a personal estate of \$56.15 dollars. The Information Sheet dated September 25, 1947 stated that decedent died intestate with no known heirs. There is no record of a Final Order of Distribution or Determination of Heirs.

AS TO THE INTEREST OF MARY SHAW HOAPILI:

By Deed dated October 27, 1936, recorded in Liber 1348 on Page 219, MARY KAWAIELI SHAW HOAPILI conveyed to ALICE K. HOAPILI, her daughter, all of her real and personal property in the Territory of Hawaii.

No conveyances appear of record by ALICE K. HOAPILI. The records at the Bureau of Health Statistics reveal the death of ALICE KALANIMAKAKAUOKE HOAPILI, single and "never married", age 94 years, on January 28, 1984 at Hawaii. The decedent's parents were Albert Hoapili and MARY KAWAIELI SHAW. There is no record of a probate proceedings of her estate or judicial determination of her heirs.

AS TO THE INTERESTS OF GEORGE N. SHAW:

No conveyances appear of record by GEORGE N. SHAW. The records at the Bureau of health Statistics reveal the death of GEORGE N. SHAW, a married man, age 55 years, on February 28, 1912 in Honolulu. The decedent's parents were PADDY SHAW and Lahela Nalehu (w). The name of his spouse was not shown. There is no record of a probate proceeding of his estate or judicial determination of his heirs.

However, there appears of record a Deed dated November 8, 1919, recorded in Liber 539 on Page 237, in which LAHELA NAOHO and her husband, Daniel Naoho, and KALUAHINUI SHAW, widow of GEORGE SHAW, conveyed an undivided 1/12 interest in and to lands belonging to the Estate of LAHELE SHAW, widow of PATRICK SHAW (lands not under search) to the TRUSTEES OF THE ESTATE OF H. P. BALDWIN.

No conveyances appear of record by LAHELA NAOHO and KALUAHINUI SHAW, nor are there probate proceedings of their estates or judicial determination of their heirs.

AS TO THE INTEREST OF KALAE (W) ALSO KNOWN AS ELIZABETH J. RICHARDSON:

No conveyances appear of record by KALAE (w), also known as ELIZABETH J. RICHARDSON. The records at the Bureau of Health Statistics reveal the death of ELIZABETH V. RICHARDSON on April 3, 1901 in Honolulu. There is no record of a probate proceeding of her estate or judicial determination of her heirs.

In Divorce Number 299 filed in the Second Judicial Circuit Court, JOHN RICHARDSON (Libellant) vs. ELIZABETH V. S. RICHARDSON (Libellee), the proceedings reveal that six children were born to JOHN and ELIZABETH RICHARDSON, three boys and three girls. In the answer of Libellee acknowledged on April 8, 1889, the names and ages of five of the children are shown as follows: GEORGE K. (11 years), JOHN K. (9 years), RACHEL R. K. (8 years), IVY K. (5 years) and ELIZABETH MABEL M. (2 years). Filed therein are Discontinuances dated May 28, 1889 and December 6, 1892.

No conveyances appear of record by GEORGE K. RICHARDSON. The records at the Bureau of Health Statistics reveal the death of GEORGE RICHARDSON, widower of Mary Napaepae, age 51 years, on December 27, 1928 at Makawao, Maui. The decedent's parents were JOHN RICHARDSON and ELIZABETH SHAW. There is no record of a probate proceeding of his estate or judicial determination of his heirs.

No conveyances appear of record by JOHN K. RICHARDSON, nor is there a probate proceeding of his estate or judicial determination of his heirs.

No conveyances appear of record by ELIZABETH MABEL RICHARDSON, also known as MABEL ELIZABETH RICHARDSON, nor is there a probate proceeding of her estate or judicial determination of her heirs.

AS TO THE INTEREST OF RACHEL R. K. RICHARDSON ALSO KNOWN AS ROWENA R. K. HOSE:

No conveyances appear of record by RACHEL R. K. RICHARDSON, also known as ROWENA R. K. HOSE. The records at the Bureau of Health Statistics reveal the following:

1. The marriage of ROWENA R. K. RICHARDSON to JOHN WILLIAM HOSE on November 8, 1902 at Lahaina, Maui. The bride's parents were JOHN RICHARDSON and KALAI RICHARDSON (w); and

2. The death of ROWENA RACHEL KAHEKUIOKALANI HOSE, wife of John William K. Hose, age 68 years, on April 29, 1950 on Maui. The decedent's parents were JOHN K. RICHARDSON and ELIZABETH K. SHAW.

Probate Number 4736, filed on May 8, 1950 in the Second Judicial Circuit Court, is of the Estate of ROWENA K. HOSE, Deceased. By Order Approving Accounts, Determining Trust and Distributing the Estate filed on October 31, 1951, all of the real property in the estate was distributed to MAILE-GENE LOVELL, subject to the life estate of JOHN W. K. HOSE.

The records at the Bureau of Health Statistics reveal the death of JOHN WILLIAM KUAKAHI HOSE, widower of ROWENA KUI HOSE, age 71 years, on August 14, 1951 in Honolulu.

No conveyances appear of record by MAILE-GENE LOVELL.

AS TO THE INTEREST OF IVY K. RICHARDSON ALSO KNOWN AS IVY K. BUCHANAN:

No conveyances appear of record by IVY K. RICHARDSON, also known as IVY K. BUCHANAN. The records at the Bureau of Health Statistics reveal the death of IVY KALEIALOHAONAPALI BUCHANAN, a widow, age 91 years, on January 20, 1975 at Honokowai, Maui. The decedent's parents were JOHN RICHARDSON and ELIZABETH SHAW.

Probate Number 6124, filed on March 12, 1975 in the Second Judicial Circuit Court, is of the Estate of IVY K. BUCHANAN, Deceased. By Order Approving Final Accounts and Distributing and Settling Estate filed therein on October 11, 1996, the estate was distributed to the following heirs: ELIZABETH B. WODEHOUSE, ROWENA B. JUNK (deceased), MARIA HIXSON, IVY B. CORREA, WILLIAM K. BUCHANAN, JR., ALEXANDER B. BUCHANAN, and HARRIET DENISON.

No conveyances appear of record by MARIA HIXSON, IVY B. CORREA, WILLIAM K. BUCHANAN, JR., ALEXANDER B. BUCHANAN, and HARRIET DENISON.

No conveyances appear of record by ROWENA B. JUNK, nor is there a probate proceedings of her estate or judicial determination of her heirs.

No conveyances appear of record by ELIZABETH B. WODEHOUSE. The records at the Bureau of Health Statistics reveal the death of ELIZABETH BUCHANAN WODEHOUSE, a widow, age 90 years, on October 29, 2000 in Honolulu. The decedent's parents were WILLIAM K. BUCHANAN and IVY SHAW RICHARDSON. There is no record of a probate proceedings of her estate or judicial determination of her heirs.

AS THE INTEREST OF ERNEST K. RICHARDSON:

No conveyances appear of record by ERNEST K. RICHARDSON. The records at the Bureau of Health Statistics reveal the following:

1. The marriage of ERNEST K. RICHARDSON to Hattie Kaleinani Saffery on March 9, 1945 at South Kona, Hawaii. The groom's parents were JOHN K. RICHARDSON and ELIZABETH SHAW; and
2. The death of ERNEST RICHARDSON, widower of Kalei Saffery Richardson, age 68 years, on April 22, 1958 in Hilo, Hawaii.

Probate Number 2821, filed on May 2, 1958 in the Third Judicial Circuit Court, is of the Estate of ERNEST K. RICHARDSON, Deceased. By Decree of Distribution of Real Property, dated and filed on September 9, 1959 and recorded on September 25, 1959 in Liber 3694 on Page 227, all of the real property of the estate was distributed to ELIZABETH B. WODEHOUSE, devisee under the Last Will and Testament of ERNEST K. RICHARDSON.

No conveyances appear of record by ELIZABETH B. WODEHOUSE. The records at the Bureau of Health Statistics reveal the death of ELIZABETH BUCHANAN WODEHOUSE, a widow, age 90 years, on October 29, 2000 in Honolulu. There is no record of a probate proceeding of her estate or judicial determination of her heirs.

AS TO THE INTEREST OF ALICE SHAW ALSO KNOWN AS ALICE KAAE:

No conveyances appear of record by ALICE SHAW, also known as ALICE KAAE. The records at the Bureau of Health Statistics reveal the death of ALICE K. KAAE, widow of William Frederick Kaae, age 88 years, on April 16, 1956 at Lahaina, Maui. The decedent's parents were PATRICK SHAW and LAHELA (w).

Probate Number 4993, filed on April 19, 1956 in the Second Judicial Circuit Court, is of the Estate of ALICE K. KAAE, Deceased. By Decree Determining Heirs, and Distributing Real Estate, dated and filed on January 16, 1958 and recorded on January 20,

1958 in Liber 3373 on Page 184, the sole heir of ALICE K. KAAE was determined to be WILLIAM F. KAAE, her son.

No conveyances appear of record by WILLIAM F. KAAE. The records at the Bureau of Health Statistics reveal the death of WILLIAM FREDERICK KAAE, widower of Rosaline Kauinui, age 76 years, on December 19, 1978 in Honolulu.

Probate Number 39935, filed on January 19, 1979 in the First Judicial Circuit Court, is of the Estate of WILLIAM FREDERICK KAAE, Deceased. By Order Approving Final Accounts and Distributing and Settling Estate, filed therein on December 28, 1982, the remaining property in the estate was distributed to decedent's children, LEONARD KUULEINAMOKU KAAE, WILLIAM KELEKINO KAAE, LOUISE ZELPHA BARTON, ROSE KELIIMANOANO GILTNER, WILLIAM NALEHU KAAE, WILLIAM WILLIE GARDNER KELANI KAAE, GEORGE NUINUI KAAE, the ESTATE OF ISAAC KAHOOHANOHANO KAAE, DECEASED, Helen Ahia Walrath, Personal Representative, and ETHEL KANE HADLEY.

No conveyances appear of record by LEONARD KUULEINAMOKU KAAE, WILLIAM KELEKINO KAAE, LOUISE ZELPHA BARTON, ROSE KELIIMANOANO GILTNER, WILLIAM NALEHU KAAE, WILLIAM WILLIE GARDNER KELANI KAAE, GEORGE NUINUI KAAE and ETHEL HADLEY.

Probate Number 41736, filed on July 22, 1981 in the First Judicial Circuit Court, is of the Estate of ISAAC KAHOOHANOHANO KAAE, Deceased. By Order of Formal Probate of Will, Determination of Testacy and Heirs, and Appointment of Personal Representative, filed therein on September 14, 1981, the sole devisee and Personal Representative named in the Will was determined to be HELEN AINA (AHIA) WALRATH.

No conveyances appear of record by HELEN AINA (AHIA) WALRATH.

AS TO THE INTEREST OF MARY ANN SHAW ALSO KNOWN AS MARY ANN RICHARDSON:

No conveyances appear of record by MARY ANN SHAW, also known as MARY ANN RICHARDSON. The records at the Bureau of Health Statistics reveal the following:

1. The marriage of MARY ANN SHAW to JOHN RICHARDSON on October 21, 1901 in Honolulu; and
2. The death of MARY ANN KAULA SHAW RICHARDSON, widow of JOHN RICHARDSON, age 71 years, on September 12, 1935 on Maui. The decedent's parents were PATRICK SHAW and LAHELA (w).

Probate Number 2886, filed on September 16, 1935 in the Second Judicial Circuit Court, is of the Estate of MARY ANN KAULA SHAW RICHARDSON, Deceased, an intestacy. By Order Approving Accounts, Determining Trust and Distributing the Estate, dated and filed on December 15, 1936 and recorded in Liber 1577 on Page 53, the remaining

property in the estate was distributed to decedent's children, namely: ARNOLD B. M. RICHARDSON, MRS. GAELIC RICHARDSON FITZGERALD, WILFRED K. RICHARDSON, HELEN DUDOIT RICHARDSON, THOMAS RICHARDSON CLARK, NELLIE E. M. RICHARDSON.

AS TO THE INTEREST OF NELLIE E. M. RICHARDSON ALSO KNOWN AS NELLIE RICHARDSON BRIDGFORD:

No conveyances appear of record by NELLIE E. M. RICHARDSON, also known as NELLIE RICHARDSON BRIDGFORD. The records at the Bureau of Health Statistics reveal the following:

1. The marriage of NELLIE DORCAS LELEO RICHARDSON to RUSSELL HESSONG BRIDGFORD on December 5, 1942 in Honolulu. The bride's parents were JOHN RICHARDSON and MARY ANN KAULA SHAW; and

2. The death of NELLIE RICHARDSON BRIDGFORD, wife of Russell Hessong Bridgford, age 46 years, on December 17, 1946 in Honolulu. The decedent's parents were JOHN RICHARDSON and MARY ANN KAULA SHAW.

Small Estate Number 4390, filed on April 3, 1948 in the First Judicial Circuit Court, is of the Estate of NELLIE R. BRIDGFORD, also known as NELLIE RICHARDSON BRIDGFORD, Deceased, an intestacy. By Order Approving Final Account, Distribution of Estate and Discharge of Statutory Administratrix, filed therein on August 22, 1951, the heirs of said NELLIE RICHARDSON BRIDGFORD, deceased, were determined to be the her husband and siblings, namely: RUSSELL H. BRIDGFORD, her husband, GAELIC FITZGERALD, HELEN K. RICHARDSON, WILFRED K. RICHARDSON, THOMAS K. CLARK, and ARNOLD RICHARDSON.

No conveyances appear of record by RUSSELL H. BRIDGFORD. The records at the Bureau of Health Statistics reveal the death of RUSSELL BRIDGFORD on July 16, 1962. There is no record of a probate proceeding of his estate or judicial determination of his heirs.

AS TO THE INTEREST OF HELEN DUDOIT RICHARDSON ALSO KNOWN AS HELEN K. RICHARDSON:

No conveyances appear of record by HELEN DUDOIT RICHARDSON, also known as HELEN DUDOIT KEALIIHOOHULI RICHARDSON. The records at the Bureau of Health Statistics reveal the death of HELEN DUDOIT KEALIIHOOHULI RICHARDSON, a single woman, age 72 years, on October 27, 1970 in Honolulu. The decedent's father was JOHN RICHARDSON, her mother's name was not given.

Probate Number 35193, filed on July 23, 1971 in the First Judicial Circuit Court, is of the Estate of HELEN K. RICHARDSON, Deceased. By Order Approving First and Final Account, Determining Trust and Distributing Estate, filed therein on August 11, 1972, all of the property remaining in the estate was distributed to ALICE SHANDRY PERRY, Devisee under the Will.

No conveyances appear of record by ALICE SHANDRY PERRY.

AS TO THE INTEREST OF THOMAS RICHARDSON CLARK:

No conveyances appear of record by THOMAS RICHARDSON CLARK. Probate Number 24252, filed on May 3, 1964 in the First Judicial Circuit Court, is of the Estate of THOMAS R. CLARK, Deceased, testate. The Petition for Ancillary Administrator With-the-Will-Annexed, filed therein, stated that said decedent died on December 14, 1962 in San Francisco, California, testate. By Order Approving Accounts and Discharging Ancillary Administrator With the Will Annexed, filed on November 12, 1964, distributed the remaining property in the estate to EUNICE CHENENA CLARK, widow and sole legatee under the Will of said decedent.

No conveyances appear of record by EUNICE CHENENA CLARK.

AS TO THE INTEREST OF GAELIC RICHARDSON FITZGERALD:

No conveyances appear of record by GAELIC RICHARDSON FITZGERALD. The records at the Bureau of Health Statistics reveal the death of GAELIC RICHARDSON FITZGERALD, wife of ARTHUR R. FITZGERALD, age 58 years, on November 15, 1951 in Honolulu. The decedent's parents were JOHN K. RICHARDSON and MARY ANN KAULA SHAW. The Informant was JOHN A. FITZGERALD.

Probate Number 15915, filed on September 12, 1949 in the First Judicial Circuit Court, is of the Guardianship of GAELIC RICHARDSON FITZGERALD, an incompetent person. In the Petition for Appointment of Guardian, Order and Summons filed therein by JOHN A. FITZGERALD, the son of GAELIC RICHARDSON FITZGERALD, said petitioner asked the Court to appoint him as Guardian of the property and person of the said GAELIC RICHARDSON FITZGERALD, who was in a coma and unable to conduct her business affairs or to care for her property, real and personal.

On October 6, 1949, JOHN A. FITZGERALD was appointed the Guardian of the person and estate of GAELIC RICHARDSON FITZGERALD and a Letter of Guardianship issued to him. The Inventory filed on September 24, 1951 listed lands and interest in lands not under search. An Order Authorizing Release of Dower and Other interests in Real property was filed on September 28, 1951, in which said JOHN A. FITZGERALD, guardian of the person and estate of GAELIC RICHARDSON FITZGERALD, an incompetent person, was "authorized to release the interest of said GAELIC RICHARDSON FITZGERALD, whether by way of dower, community property or otherwise," in and to properties, not land under search.

The last entry entitled "Supplementary Account, Determination of Trust and Distribution of Estate, filed therein on January 25, 1952, stated in part, to wit: "That said Gaelic Richardson Fitzgerald, an incompetent person, died on November 15, 1951, in Honolulu, City and County of Honolulu, Territory of Hawaii, leaving her Last Will and Testament. WHEREFORE, it is prayed that said Supplementary Account be examined and allowed, and that an order be made to deliver over such property as remains to the Executor of

the Estate of said Gaelic Richardson Fitzgerald, deceased; and that the Guardian be discharged from all further responsibility herein." Nothing further was had in this matter.

No conveyances appear of record by ARTHUR R. FITZGERALD and JOHN A. FITZGERALD.

AS TO THE INTEREST OF ARNOLD B. M. RICHARDSON:

No conveyances appear of record by ARNOLD B. M. RICHARDSON. Probate Number 30726, filed on April 27, 1968 in the First Judicial Circuit Court, is of the Estate of ARNOLD BARRISTER MOLIAKALANIKEOLA RICHARDSON, Deceased, an intestacy. By Order for Allowance of Final Accounts, Determination of Trust and Distribution of Estate dated and filed on September 17, 1976, recorded in Liber 11687 on Page 125, the real property of the estate was distributed to COLONEL ARNOLD RICHARDSON and BARRISTER ALLEN RICHARDSON.

No conveyances appear of record by COLONEL ARNOLD RICHARDSON and BARRISTER ALLEN RICHARDSON.

Probate Number 42162, filed on February 24, 1982 in the First Judicial Circuit Court, is of the Estate of B. ALLEN RICHARDSON, Deceased, testate. The Petition for Probate of Will and Appointment of Personal Representative filed therein stated that said decedent died on December 30, 1981, testate. By Order Approving Final accounts and Distributing and Settling Estate filed on August 16, 1988, the real property in the estate was distributed to FLORENCE CHING RICHARDSON.

No conveyances appear of record by FLORENCE CHING RICHARDSON.

AS TO THE INTEREST OF WILFRED K. RICHARDSON:

No conveyances appear of record by WILFRED K. RICHARDSON. The records at the Bureau of Health Statistics reveal the death of WILFRED KELELANI RICHARDSON, husband of AMY WUNG, age 73 years, on January 30, 1968. The decedent's parents were JOHN RICHARDSON and MARY ANN KAULA SHAW.

Probate Number 30496, filed on March 12, 1968 in the First Judicial Circuit Court, is of the Estate of WILFRED KELELANI RICHARDSON, Deceased, testate. By Order for Allowance of Final Accounts, Determination of Trust, and Distribution of Estate, filed therein on June 24, 1970, the remaining property in the estate was distributed to AMY WUNG RICHARDSON, Devisee under the Will.

No conveyances appear of record by AMY WUNG RICHARDSON. The records at the Bureau of Health Statistics reveal the death of AMY WUNG RICHARDSON on March 30, 1980 in Honolulu. Probate Number 40911, filed on June 12, 1980 in the First Judicial Circuit Court, is of the Estate of AMY WUNG RICHARDSON, Deceased. By Order Approving Final Accounts and Distributing and Settling Estate, dated May 18, 1984 and filed therein on May 23, 1984, recorded in Liber 17913 on Page 53, the property remaining in the estate was distributed to: AMY RICHARDSON KAHOIWAI, GRACE RICHARDSON

WONG, WILLIAM SHAW RICHARDSON, ARLON WUNG RICHARDSON, PEARL RICHARDSON NISHIMURA, and ROBERT KELELANI RICHARDSON.

No conveyances appear of record by AMY RICHARDSON KAHOIWAI, GRACE RICHARDSON WONG, WILLIAM SHAW RICHARDSON and PEARL RICHARDSON NISHIMURA.

No conveyances appear of record by ROBERT KELELANI RICHARDSON. The records at the Bureau of Health Statistics reveal the death of ROBERT K. RICHARDSON, husband of HELEN SHIM, age 75 years, on December 17, 2001 in Honolulu. The decedent's parents were WILFRED RICHARDSON and AMY WUNG. There is no record of a probate proceeding of his estate or judicial determination of his heirs.

AS TO THE INTEREST OF ARLON WUNG RICHARDSON:

No conveyances appear of record by ARLON WUNG RICHARDSON. The records at the Bureau of Health Statistics reveal the death of ARLON WUNG RICHARDSON, husband of MARY KEMAONA KAHALEPUNA, age 74 years, on September 14, 1996 in Honolulu. The decedent's parents were WILFRED K. RICHARDSON and AMY L. WUNG. There is no record of a probate proceeding of his estate or judicial determination of his heirs.

However, there appears of record an Affidavit of Surviving Tenant dated February 20, 1997, recorded as Document No. 97-078649 in which the children of ARLON WUNG RICHARDSON and MARY K. RICHARDSON are identified as the following: KAHALEPUNA BENEE RICHARDSON, RACHEL PILIALOHA RICHARDSON, ANNA KUULEIONAONA RICHARDSON, ARLON KELELANI RICHARDSON, MARY KEONAONA SUEOKA and WAIPUNANANI HELOISE WALSH.

No conveyances appear of record by KAHALEPUNA BENEE RICHARDSON, RACHEL PILIALOHA RICHARDSON, ANNA KUULEIONAONA RICHARDSON, ARLON KELELANI RICHARDSON, MARY KEONAONA SUEOKA and WAIPUNANANI HELOISE WALSH.

PART I-B:

AS TO THE INTEREST OF PIOE (W) ALSO KNOWN AS PHOEBE DAWSON:

No conveyances appear of record by PIOE (w), also known as PHOEBE DAWSON, wife of JAMES DAWSON, nor is there a probate proceeding of her estate or judicial determination of her heirs.

There appears of record a Deed dated November 11, 1873, recorded in Liber 38 on Page 331, in which SARAH DAWSON, "the only child of JAMES and PHOEBE DAWSON of Honolulu", conveyed all of her right, title and interest in and to "land situated at Waikapu Maui aforesaid and called Auwailimu Nui, and containing 10 1/2 acres more or less, said land formerly belonged to my Grandfather, William Shaw,...and was willed by him to George Shaw and Beke Cockett jointly and the said George Shaw and his wife Maunahina did

on the 14th day of June A.D. 1862 convey unto my mother PHOEBE DAWSON all of their right, title and interest in and to said land".

By Deed dated November, 1884, recorded in Liber 92 on Page 222, SARAH DAWSON FISHER, "one of the heirs to the Estate of her uncle GEORGE SHAW late of Lahaina Maui", and her husband, F. M. Fisher, conveyed to JOSEPH COCKETT "All of their right, title and interest in and to the Estate of the aforesaid GEORGE SHAW both real and personal".

No conveyances appear of record by JOSEPH COCKETT. Probate Number 1261, filed on August 23, 1889 in the Second Judicial Circuit Court, is of the Estate of JOSEPH COCKETT, Deceased, an intestacy. The Petition for Letters of Administration filed therein by MAHIKI COCKETT, the widow of JOSEPH COCKETT, cited that said decedent died on January 25, 1889 at Waikapu, Maui, possessed of "4 or 5 pieces (of land) in Waikapu, Maui" and that his next of kin and heirs-at-law were his widow, said MAHIKI COCKETT, and his children, namely: CHARLES B. COCKETT, LIZZIE COCKETT, JOSEPH COCKETT, JR., WILLIAM COCKETT, GEORGE COCKETT, SARAH COCKETT, EDMUND COCKETT and JOHN COCKETT. On October 10, 1889, the Court appointed MAHIKI COCKETT the Administratrix of the Estate and Guardian of the minor children. The last entry filed on January 23, 1893 is an Order Confirming Sale of Real Property, lands not under search. Nothing further was had in this matter.

By deed dated March 16, 1899, recorded in Liber 191 on Page 113, WILLIAM COCKETT, the "own child of JOSEPH COCKETT, deceased, and Mrs. MAHIKI COCKETT, deceased", conveyed to ELIZABETH COCKETT all of his undivided right, title and interest in and to all of the lands of JOSEPH COCKETT, "my father".

By Deed dated November 21, 1899, recorded in Liber 203 on Page 115, CHARLES B. COCKETT and his wife, Hattie Cockett, conveyed to LIZZIE COCKETT an undivided 1/8 interest in and to "all of the lands of JOSEPH COCKETT, my father, deceased".

By Deed dated July 24, 1901, recorded in Liber 223 on Page 363, SARAH VIDA (also known as SARAH COCKETT) and her husband, Daniel R. Vida, conveyed to ELIZABETH COCKETT "all of my undivided interest and other rights received and inherited by me, upon the interest described below, pertaining to the entire interest of said JOSEPH COCKETT, our father, deceased, and all the interest of said MAHIKI COCKETT, our mother, deceased...as follows: 1. My entire undivided interest within the interest of GEO. COCKETT and ESTHER COCKETT, his wedded wife, which was conveyed to MAHIKI COCKETT, our mother, deceased on the 4th day of July, A. D. 1897 (the land under search)". Said deed of GEORGE COCKETT and ESTHER COCKETT dated July 4, 1889 is described under "-PART II-", the "INTEREST OF ELIZABETH SHAW".

By Deed dated July 1, 1905, recorded in Liber 272 on Page 250, JOSEPH COCKETT and his wife, Becky Cockett, LIZZIE COCKETT, GEORGE COCKETT and his wife, Hui Cockett, EDMUND COCKETT and his wife, Julia Cockett, and JOHN COCKETT and his wife, Rachel Cockett, conveyed to C. BREWER & COMPANY, LIMITED all of their

right, title and interest in and to Land Commission Award No. 76 to WILLIAM SHAW, situate at Waikapu, Maui.

From the date of the foregoing deed title to this interest descends straight and unbroken by mesne conveyances to DAVID PAUL NIEHAUS, the present titleholder.

PART 1-C:
AS TO THE INTEREST OF THE HEIR OF MARY SHAW GOHIER:

Probate Number 310, filed on June 4, 1866 in the Second Judicial Circuit Court, is of the Estate of MARY GOHIER (nee Shaw), Deceased, an intestacy. The Petition for Administration filed therein by PAT SHAW, alleged that MARY GOHIER, died intestate, possessed of real estate. A Hearing was held on the Petition and the Court dismissed the Petition. On August 25, 1866, CHARLES GOHIER, husband of MARY GOHIER, filed a Petition for the appointment of a guardian for their son, an heir to the Estate of MARY GOHIER. A Hearing was had, and the Court appointed CHARLES GOHIER, as guardian of their son, CHARLES GOHIER. Nothing further was had in this matter.

AS TO THE INTEREST OF CHARLES GOHIER:

Probate Number 787, filed on December 30, 1884 in the Second Judicial Circuit Court, is of the Estate of CHARLES GOHIER, a minor. On December 31, 1884 the Court discharged the Guardian of said CHARLES GOHIER, who "having arrived at age of majority on December 22, 1884".

There appears of record a Mortgage dated January 31, 1885, recorded in Liber 94 at page 24, in which ADRIAN CHARLES GOHIER mortgaged all of his right, title and interest in and to Land Commission Award No. 76, Royal Patent No. 7661 to WILLIAM SHAW (lands not under search) to THOMAS BROWN.

No conveyances appear of record by CHARLES GOHIER, also known as ADRIAN CHARLES GOHIER, nor is there a probate proceedings of his estate or judicial determination of his heirs.

The records at the Bureau of Health Statistics reveal the death of CHARLES ADRIAN GOHIER, widower of LOUISE BECK GOHIER, age 61 years, on February 2, 1953 in Honolulu. The decedent's parents were ADRIAN CHARLES GOHIER and NANCY WILCOX.

Small Estate Number 5355, filed on May 6, 1953 in the First Judicial Circuit Court, is of the Estate of CHARLES A. GOHIER, also known as ADRIAN C. GOHIER, Deceased, testate. The Last Will and Testament of said decedent dated October 28, 1943 devised and bequeathed all of the residuary estate in equal shares to his sons, CHARLES K. GOHIER, ROBERT H. GOHIER, THOMAS B. GOHIER, ADOLPH K. GOHIER and JAMES K. GOHIER. By Order Approving Final Account, Distribution of Estate and Discharge of Statutory Administrator With the Will Annexed filed therein on May 24, 1955, the heirs and devisees to the estate were determined to be the following: ROBERT H. GOHIER, THOMAS B. GOHIER, ADOLPH K. GOHIER, JAMES K. GOHIER and the

children of CHARLES K. GOHIER, deceased, namely: CLAYTON C. P. GOHIER, LEONETTE M. GOHIER, QUENTIN J. GOHIER, and WINONA GOHIER.

The records at the Bureau of Health Statistics reveal the following:

1. The death of CHARLES LOUIS GOHIER, divorced, age 34 years, on February 23, 1952 on Johnson Island. The decedent's parents were CHARLES ADRIAN GOHIER and LOUISE BECK; and
2. The marriage of LEONETTE M. GOHIER to Lawrence M. Young on February 17, 1962 in Honolulu. The bride's parents were CHARLES LOUIS GOHIER and Minnie K. Maioho.

No conveyances appear of record by ROBERT H. GOHIER, JAMES K. GOHIER, ADOLPH K. GOHIER, CLAYTON C. P. GOHIER, LEONETTE M. GOHIER, also known as LEONETTE M. YOUNG, QUENTIN J. GOHIER and WINONA GOHIER. The records at the Bureau of Health Statistics reveal the following:

1. The death of ROBERT HEEIA GOHIER, who remained unmarried, age 56 years, on December 17, 1975 in Honolulu. The decedent's parents were CHARLES GOHIER and LOUISA BECK. There is no record of a probate proceeding of his estate or judicial determination of his heirs;
2. The death of JAMES CHRISTOPHER K. GOHIER, divorced, age 68 years, on November 25, 1993 on Hawaii. The decedent's parents were CHARLES ADRIAN GOHIER and LOUISA BECK. There is no record of a probate proceeding of his estate or judicial determination of his heirs; and
3. The death of ADOLPH ILIEHA K. GOHIER, divorced, age 73 years, on July 19, 1996 in Honolulu. The decedent's parents were CHARLES ADRIAN GOHIER and LOUISA BECK. There is no record of a probate proceeding of his estate or judicial determination of his heirs.

AS TO THE INTEREST OF THOMAS B. GOHIER:

No conveyances appear of record by THOMAS B. GOHIER. The records at the Bureau of Health Statistics reveal the death of THOMAS BECK GOHIER, husband of MONA GOHIER, age 39 years, on September 25, 1957 in Honolulu.

Probate Number 20069, filed on November 6, 1957 in the First Judicial Circuit Court, is of the Estate of THOMAS BECK GOHIER, Deceased, an intestacy. By Amended Order Approving First and Final Accounts of Administrator, Distribution of Estate and Discharge, filed therein on August 19, 1959, the distributees and heirs to the estate were determined to be decedent's children, namely: MARVIN LEE GOHIER, ALYCE ROBIE GOHIER, LESLYE CARTER GOHIER and THOMAS BECK GOHIER, JR.

The records at the Bureau of Health Statistics reveal the following:

1. The marriage of LESLIE CARTER KALEHUAIKAWAI GOHIER to Wilfred Pilago Magallanes on February 25, 1967 in Honolulu. The bride's parents were THOMAS BECK GOHIER and MONA M. MAKAEANA;

2. The marriage of ALYCE ROBIE GOHIER to Roy Hanohano on June 1, 1968 in Honolulu. The bride's parents were THOMAS BECK GOHIER and MONA MOKU MAKAEANA; and

3. The marriage of THOMAS BECK KUKUNAOKALA GOHIER to Francine Pomaikaioluwehioualani Ganeau on April 12, 1989 in Honolulu. The groom's parents were THOMAS BECK GOHIER and MONA M. MAKAEANA.

No conveyances appear of record by MARVIN LEE GOHIER, ALYCE ROBIE GOHIER, also known as ALYCE R. HANOHANO, LESLYE CARTER GOHIER, also known as LESLIE C. MAGALLANES, and THOMAS BECK GOHIER, JR.

PART II:

AS TO THE INTEREST OF ELIZABETH SHAW ALSO KNOWN AS BECKY COCKETT ALSO KNOWN AS PEKE (W):

No conveyances appear of record by ELIZABETH SHAW, also known as BECKY COCKETT, also known as PEKE (w). Probate Number 1259, filed on January 29, 1890 in the Second Judicial Circuit Court, is of the Estate of BECKY COCKETT, Deceased, testate. The Petition for Probate of will filed therein state that said decedent died testate on October 18, 1889 at Waikapu, Maui. By the Last Will and Testament of BECKY COCKETT dated February 4, 1889 and Admitted to Probate on April 25, 1890, Royal Patent No. 7694, Land Commission Award No. 76 was devised and bequeathed to testator's children and 2 grandchildren, namely: CHARLES COCKETT, GEORGE COCKETT, PATRICK COCKETT, MRS. BECKY TAYLOR, MRS. PHOEBE HARRISON and EDGAR MORTON and DAVID MORTON, her grandchildren, stipulating that "one must sell to the other if sale is considered and not to any person who has not inherited under my will".

By Deed dated October 1, 1896, recorded in Liber 164 on Page 348, DAVID MORTON and his wife, Ellen Morton, and EDGAR MORTON and his wife, Kamala Morton, conveyed to ELIZABETH COCKETT and JOSEPH COCKETT an undivided 1/6 interest in and to Royal Patent No. 7694, "being the portion of our grandmother's estate devised to us, jointly under the will".

By Deed dated July 4, 1897, recorded in Liber 177 on Page 276, GEORGE COCKETT and his wife, Esther Cockett, conveyed to MRS. MAHIKI COCKETT an undivided 1/5 interest in and to Royal Patent No. 7694, Land Commission Award No. 76.

By Deed dated January 31, 1899, recorded in Liber 191 on Page 14, CHARLES COCKETT conveyed to PATRICK COCKETT and MRS. BECKY TAYLOR an undivided 1/6 interest in and to Land Commission Award No. 76 situate at Auwaiolimu and Haaua, Waikapu, "being the Kuleana of my mother, Elizabeth Cockett, deceased".

By Deed dated May 17, 1902, recorded in Liber 231 on Page 391, BECKY TAYLOR conveyed to C. BREWER & COMPANY, LIMITED an undivided 1/6 interest and 1/12 interest in and to Apana 2 of Land Commission Award No. 76, containing an area of 3-42/100 acres, "inherited by her from her mother, Becky Cockett," and conveyed to her in Deed dated January 31, 1899, recorded in Liber 191 on Page 14.

From the date of the foregoing deed title to this interest descends straight and unbroken by mesne conveyances to DAVID PAUL NIEHAUS, the present titleholder.

By Deed dated July 1, 1905, recorded in Liber 272 on Page 250, JOSEPH COCKETT and his wife, Becky Cockett, and LIZZIE COCKETT (also known as ELIZABETH COCKETT), etals conveyed to C. BREWER & COMPANY all of their right, title and interest in and to Land Commission Award No. 76 to WILLIAM SHAW, situate at Waikapu, Maui.

From the date of the foregoing deed title to this interest descends straight and unbroken by mesne conveyances to DAVID PAUL NIEHAUS, the present titleholder.

By Deed dated May 17, 1902, recorded in Liber 231 on Page 392, PATRICK COCKETT and his wife, Kamai Cockett, conveyed to C. BREWER & COMPANY, LIMITED an undivided 1/6 and 1/12 interest in and to apana 2 of Land Commission Award No. 76, containing an area of 3-42/100 acres, "inherited by him from his mother, Becky Cockett," and conveyed to him in Deed dated January 31, 1899, recorded in Liber 191 on Page 14.

From the date of the foregoing deed title to this interest descends straight and unbroken by mesne conveyances to DAVID PAUL NIEHAUS, the present titleholder.

AS TO THE INTEREST OF PHOEBE HARRISON:

No conveyances appear of record by PHOEBE HARRISON, nor is there a probate proceeding of her estate or judicial determination of her heirs.

By Deed dated October 22, 1902, recorded in Liber 241 on Page 216, HENRY J. HARRISON, the "sole heir-at-law of PHOEBE HARRISON, nee Cockett", and his wife, Emma Harrison, conveyed to C. BREWER & COMPANY, LIMITED an undivided 1/6 interest in and to Land Commission Award No. 76, Apanas 1 and 2, containing an aggregate area of 13-76/100 acres (besides other lands).

From the date of the foregoing deed title to this interest descends straight and unbroken by mesne conveyances to DAVID PAUL NIEHAUS, the present titleholder.

AS TO THE INTEREST OF MAHIKI COCKETT:

No conveyances appear of record by MAHIKI COCKETT, wife of JOSEPH COCKETT, nor is there a probate proceeding of her estate or judicial determination of her heirs.

However, in Probate Number 1261, the Estate of JOSEPH COCKETT, Deceased, filed on August 23, 1889 in the Second Judicial Circuit Court, the heirs-at-law of said decedent were identified as his wife, MAHIKI COCKETT and his children, namely: CHARLES B. COCKETT, LIZZIE COCKETT, JOSEPH COCKETT, JR., WILLIAM COCKETT, GEORGE COCKETT, SARAH COCKETT, EDMUND COCKETT and JOHN COCKETT.

By Deed dated November 21, 1899, recorded in Liber 203 on Page 115, CHARLES B. COCKETT and his wife, Hattie Cockett, conveyed to LIZZIE COCKETT an undivided 1/8 interest in the estate of his mother, MAHIKI COCKETT, in and to the land situate at Waikapu, conveyed to Mrs. MAHIKI COCKETT by deed of GEORGE COCKETT and his wife, Esther Cockett, dated July 4, 1897.

By Deed dated March 16, 1899, recorded in Liber 191 on Page 113, WILLIAM COCKETT conveyed to ELIZABETH COCKETT, an undivided 1/8 interest in the estate of his mother, MAHIKI COCKETT, in and to the land situate at Waikapu, conveyed to Mrs. MAHIKI COCKETT by deed of GEORGE COCKETT and his wife, Esther Cockett, dated July 4, 1897.

By Deed dated July 24, 1901, recorded in Liber 223 on Page 363, SARAH VIDA and her husband, Daniel R. Vida, conveyed to ELIZABETH COCKETT all of her right, title and interest in and to the lands of my mother, MAHIKI COCKETT (w), in and to the "Kuleana of GEORGE COCKETT and Esther Cockett, his wife, conveyed to MAHIKI COCKETT, my mother, deceased, by deed dated July 4, 1897...situate at Waikapu".

By Deed dated July 1, 1905, recorded in Liber 272 on Page 250, JOSEPH COCKETT and his wife, Becky Cockett, LIZZIE COCKETT (also known as ELIZABETH COCKETT), GEORGE COCKETT and his wife, Hui Cockett (w), EDMUND COCKETT and his wife, Julia Silva Cockett, and JOHN COCKETT and his wife, Rachel Cockett, conveyed to C. BREWER & COMPANY, LIMITED all of their right, title and interest in and to Land Commission Award No. 76 to WILLIAM SHAW situate at Waikapu, Maui.

From the date of the foregoing deed title to this interest descends straight and unbroken by mesne conveyances to DAVID PAUL NIEHAUS, the present titleholder.

6. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.
7. Any unrecorded leases and matters arising from or affecting the same.
8. Claims arising out of the failure to convey the land described herein together with an easement or right of access.
9. The land is not a lot of record.
10. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

11. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

Being a portion of the premises acquired by the Grantor by Quitclaim Deed of Wailuku Agribusiness Co., Inc., successor in interest to Wailuku Sugar Co., a Hawaii corporation, dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

ITEM XVI:

All of that certain parcel of land (being portion of the land described in and covered by Apana 1 of Royal Patent Grant Number 2007 to John Richardson) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-5-002-portion 007, containing an area of _____ acres, more or less.

TOGETHER WITH a perpetual non-exclusive easement for access and utility purposes, over and across Easement "A-1" situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, area 7,612 square feet, more or less, as shown on the map attached as Exhibit "A" and more particularly described in Exhibit "B" attached to that certain Easement dated February 21, 2002, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2002-040874, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2785313, and noted on Land Court Certificate of Title No. 1853.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Rights of native tenants as reserved in Royal Patent Grant Number 2007.
3. Location of the boundary of Waikapu Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.
4. Drain Easement "B" containing an area of 204 square feet, as shown on tax map.
5. The terms and provisions contained in Quitclaim Deed dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

The foregoing includes, but is not limited to, matters relating to reservations to water and easement rights.

6. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

7. Any and all existing roadways, trails, easements, irrigation ditches (auwai) and right-of-way.

8. Any unrecorded leases and matters arising from or affecting the same.

9. Claims arising out of the failure to convey the land described herein together with an easement or right of access.

10. The land is not a lot of record.

11. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

12. Reservation in favor of the State of Hawaii of all right, title, interest, or claim to waters having their source upon or flowing over or under this property.

Being a portion of the premises acquired by the Grantor by Quitclaim Deed of Wailuku Agribusiness Co., Inc., successor in interest to Wailuku Sugar Co., a Hawaii corporation, dated February 21, 2002, recorded in said Bureau of Conveyances as Document No. 2002-040877.

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The principal plantation in this district, called Waikapu (Wy-kah-poo) lies about midway between the two bays, watered by a small stream, descending in a south-eastern direction from the lofty mountains, that lie between Lahinah [sic] and that place. At this plantation which belongs to Cox [Kahekili Ke'eaumoku] and Kaahoomanoo [Ka'ahumanu], there are about 100 houses, six head of neat cattle, and eight horses. This is the most important, and almost the only inland settlement that I have seen in the islands. Its situation is very pleasant. You stand upon the bank of this little rivulet in the midst of the bananas, sugarcane, and taro; and the plains that lie upon the two bays spread upon your right and left, containing perhaps 100 or 150 square miles. Before you, at the distance of 15 (Bingham 1824:111).

Foreign commercialism initially came to Waikapū in the form of sugar processing and coffee production (Wyllie 1854). A man by the name of Antone (Anthony) Catalena was running a cane syrup factory at Waikapū circa 1823 and is credited with being the founder of the industry in Hawai'i (Thrum 1874) while Antonio Silva set up a plantation and a mill in Waikapū circa 1828 (Thurston 1906). At about the same time Antonio was also engaged in coffee agriculture with trees that reportedly produced above 20 lbs. annually (Wyllie 1854). These early commercial developments along with the establishment of the branch station of the American Board of Commissioners for Foreign Missions (A.B.C.F.M) at Wailuku in November 1831 (Edwards 1832:403) would alter the traditional lifeways of Na Wai Eha and Waikapū. The mission census data of 1831-32 records the population of Waikapū at 733 inhabitants (Schmitt 1973:18).

3.1.2.1 The Great Māhele and Kuleana Act of 1848 at Waikapū

The most significant event in the change of land-use patterns and allocation came with The Great Māhele of 1848 and the privatization of land in Hawai'i. This action hastened the shift of the Hawaiian economy from that of a subsistence based economy to that of a cash based economy. By the mid 1800's, Hawai'i was infiltrated by a growing community of foreign business entrepreneurs, transient whalers, and Calvinist-minded missionaries; all of whom had personal interests to protect and virtues to impress upon the Hawaiian people. Encouraged by these foreign factions, the western-like land divisions of the Māhele were instigated under Kamehameha III (Kauikeaouli). The series of acts to "Organize the Executive Ministry" known commonly as the Organic Acts of 1845 and 1846, initiated the process of the Māhele, or division of Hawaiian lands, which would introduce private property ownership into Hawaiian society, as well as, transform the governance of the Kingdom from a full monarchy to a constitutional monarchy (Van Dyke 2008:32-33).

In 1848 the crown and the *ali'i* (royalty) received their land titles and awards for both individual parcels within an *ahupua'a* and whole *ahupua'a* which were then subsequently granted in 1850 (Alexander 1890:114). Crown Lands were lands defined as follows:

... private lands of His Majesty Kamehameha III., to have and to hold for himself, his heirs and successors forever; and said lands shall be regulated and disposed of according to his royal will and pleasure subject only to the rights of tenants. (Kingdom of Hawaii 1848)

At the death of Kamehameha IV, it was decided by the Supreme Court that ...under the confirmatory Act of June 7th, 1848, "the inheritance is limited to the *successors* to the *throne*," "the wearers of the crown which the conqueror had won," and that at the same time "each successive possessor may regulate and dispose of the same according to his will and pleasure as private property, in the manner as was done by Kamehameha III" (Alexander 1890:121). The documents of the Māhele 'Āina do not record any Crown Lands within Honua'ula.

Lands were further partitioned and set aside as Government lands which were defined and managed as indicated below:

... those lands to be set apart as the lands of the Hawaiian Government, subject always to the rights of tenants. And we do hereby appoint the Minister of the Interior and his successors in office, to direct, superintend, and dispose of said lands, as provided in the Act ... (p)rovided, however, that the Minister ... shall have the power, upon the approval of the King in Privy Council, to dispose of the government lands to Hawaiian subject, upon such other terms and conditions as to him and the King in Privy Council, may seem best for the promotion of agriculture, and the best interests for the Hawaiian Kingdom ... (Kingdom of Hawaii 1848)

In 1850, most of the chiefs ceded a third of their lands to the Government in order to obtain an allodial title for the remainder and thus greatly increasing the Government land base (Alexander 1890:114). The designation of lands to be set aside as Government lands, paved the way for land sales to foreigners and in 1850 the legislature granted resident aliens the right to acquire fee simple land rights (Moffat and Fitzpatrick 1995:41-51). With regard to Waikapū, the majority of the *ahupua'a* was retained by the Government and given over to the Department of Education (Department) (In the Matter of the Boundaries of Pulehunui 4 Haw. 239 [Haw. King. 1879]).

As illustrated above, in designations of lands as either Crown or Government, and through all awards of whole *ahupua'a* and *ili*, the rights of the native tenants were expressly reserved, "*Koe na Kuleana o Kanaka*" (Reserving the Rights of Native Tenants) (Alexander 1890:114). In an Act ratified on August 6th, 1850, the gathering rights of the common people for personal use, which included the gathering of both terrestrial and marine resources, in addition to the right to water and the right of way on the lands of the Konohiki, were guaranteed and embodied in Section 10477 of the Civil Code (Alexander 1890:114-115). By this same Act, resolutions passed by the Privy Council granted fee simple titles, free of all commutation, with the exception of awards granted within the towns of Honolulu, Lāhainā, and Hilo, to all native tenants for their cultivated lands and house lots (hereafter referred to as *kuleana* land) (Alexander 1890:115). Claims of the native tenants, or *kuleana* land claims, were presented to and heard by the Land Commission whose duty was to:

...ascertain the nature and extent to each claimant's rights in land, and to issue an Award for the same which is *prima facie* evidence of title "and shall furnish as good and sufficient a ground upon which to maintain an action for trespass, ejectment or other real action against any other person or persons whatsoever, as if the claimant, his heirs or assigns had received a Royal Patent for the same." (Alexander 1890:110)

Kuleana land awards, or *kuleana* claims that were approved by the Land Commission (hereafter referred to as Land Commission Awards [L.C.A.]), were granted to tenants of the land, native Hawaiians, naturalized foreigners, non-Hawaiians born in the islands, or long-term resident foreigners, who could prove occupancy on the parcels prior to 1845. The awards were then confirmed by issuance of a Royal Patent and payment of a patent fee. Approximately 126 *kuleana* claims were made for lands within Waikapū Ahupua'a, 28 of which appear not awarded (Office of Hawaiian Affairs 2011). Examination of historic maps shows L.C.A. distribution concentrated along Waikapū Stream and upper alluvial plain of Waikapū Ahupua'a (Figure 6). A review of L.C.A awards adjacent to the current project area shows a total of 18 awards within a 0.25 mi. radius (Figure 7 and Table 2).

Examination of these awards are important for understanding the traditional land use of an area during the time of the Māhele and also provides insight for land uses and land tenure prior to Western contact. With regard to subsistence agriculture, the native testimony for 16 out of 3 awards

made claims for *lo 'i* within their lands and, as mentioned previously, was comprised of a collective minimum of 356 taro patches. Though there was no specific mention of potato agriculture, there were seven claims for *kula*, or pasture, lands. The term *kula*, generally refers to pasture or open plain; however, dryland agriculture, as opposed to wetland or *lo 'i* agriculture, is also referred to as *kula* agriculture and therefore the possibility of potato cultivation associated with claims for *kula* should also be considered. Finally, there were six claims for *pa hale* (house sites) with the remainder referencing one area of *wauke*, an area of *hala*, and one lowland section of land with no specific agricultural description.

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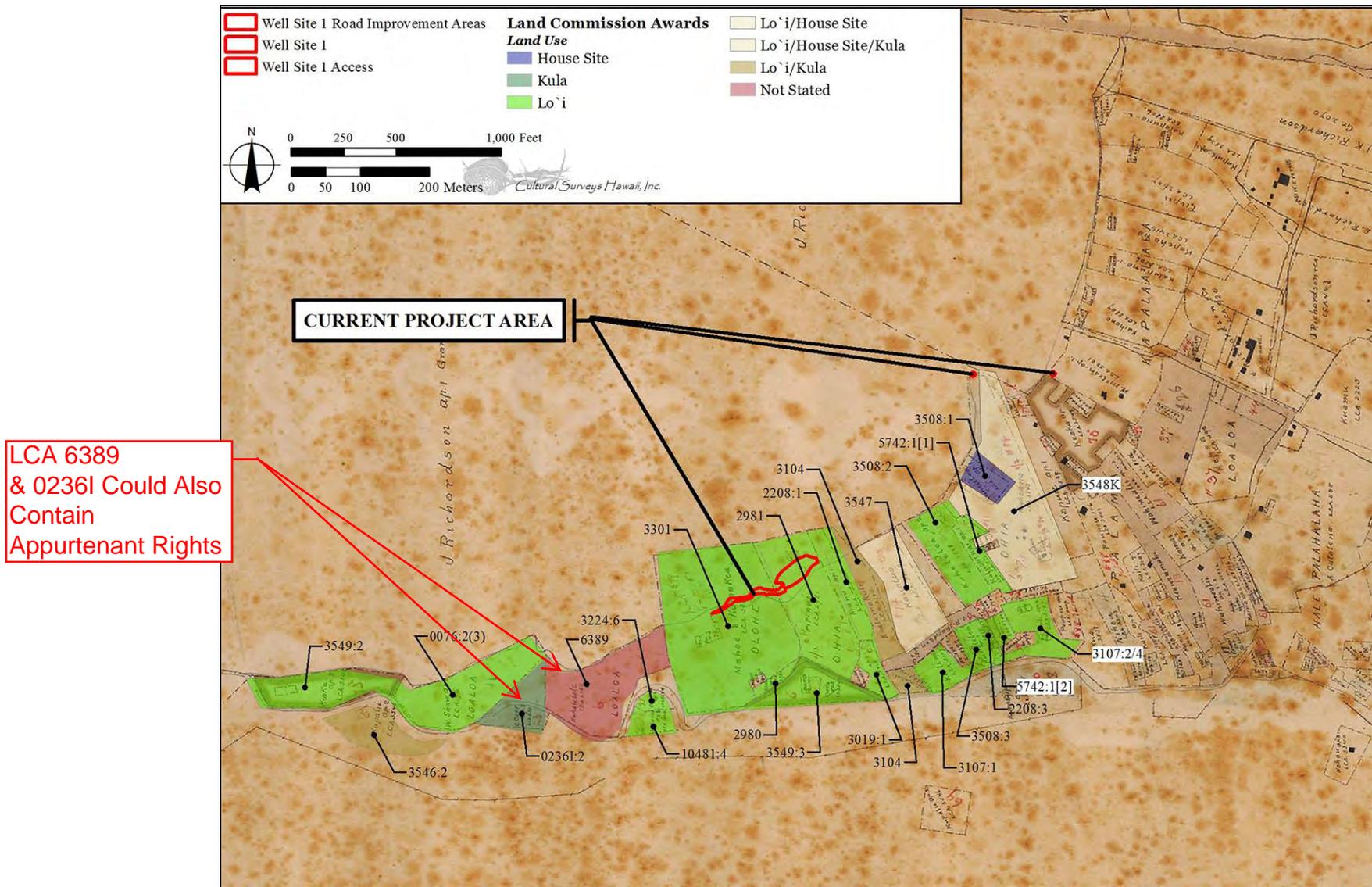


Figure 7. A portion of L.C.A and Land Grant map of Waikapū Ahupua‘a showing awards and grants in the vicinity of the current project area (Monsarrat n.d., map scan courtesy of Mr.Hōkūao Pellegrino).

Table 2. Land Commission Awards Within and Adjacent to the Current Project Area (Office of Hawaiian Affairs 2011; Waihona 'Aina 2002)

Helu	RP#	Claimant(s)	'Ili	Summary of Lands, Land Use of the Claimant(s), and Notes on Landmarks	Award and Acreage
0076:2 (3) ²	7694	Shaw	Loaloa	Mahele Award Apana 2 (3): One farm section at Waikapū named Waiolimu given by Hoapili Wahine. Bound by the “water run” (Palolo [Everett] Ditch) on the <i>mauka</i> side. Notes the name of the mountain as Kaanui.	Apana 2 (3): 3.42 acres.
0446:1	7991	Manu (Hakapau)	Ohia	Testimony was given for Hakapau's <i>mo'ō</i> claim to this <i>kuleana</i> , however documents show that the <i>kuleana</i> was granted to Manu as Kuleana 446:1.	0.06 acres
0236I:2	0498	Charles Copp	Luapuaa (Kaluapuaa)	Mahele Award: Apana 2: Papala is the name of the farm. Survey map refers to the name of the Waikapū Stream as “Kahawai Nui o Waikapu” Z. Kaaupai sworn: Three pieces: one the lowland, one a kula land in the valley, one an area of <i>wauke</i> . Claimant receive from Hoapili wahine in 1836 due to health issues experienced in Lāhainā.	Total award: 16.50 acres Apana 2: acreage not indicated
10481:4	3131	Napailoi	Kaloaloa (Loaloa)	Mahele Award: Bound by the <i>kahawai</i> (Waikapū Stream) to the east and west, <i>pali</i> to the south.	0.66 acres
2208: 3	7919	Manu	Ohia	Manu testifies: <i>a mo'ō</i> from Napuupahoehoe in 1839, two <i>lo'i</i> from the <i>makuahine</i> of my <i>wahine</i> Mahele Award: Apana 3 ma Ohia, Apana 2 and 4 dropped; shares a boundary with a Po'alima	Apana 3: acreage not indicated

² Mahele Award lists the Waikapū apana as “No. 3” R2-V1-I00055 and -I00056 (papakilo) maps label the parcel as Apana 2

Helu	RP#	Claimant(s)	'Ili	Summary of Lands, Land Use of the Claimant(s), and Notes on Landmarks	Award and Acreage
→ 2980:2	5356	Pakele	Olohe	<p>Pakele testifies: In the 'ili of Olohe there are 13 <i>lo'i</i></p> <p>Mahele Award: Bound to the southwest by the <i>kahawai</i> (Waikapū Stream), a portion of the northern boundary is shared with a <i>po'alima</i>.</p>	Apana 2: 0.24 acres
→ 2981	3146	Pipinui	Ohia	<p>Pipinui testifies: 2 <i>mo'o</i> consisting of 34 <i>lo'i</i> and a separate <i>kula</i>. Bound to the south by the <i>kahawai</i> (Waikapū Stream). Occupied since the time of Kamehameha I.</p> <p>Mahele Award: Bound to the southwest by the <i>kahawai</i> (Waikapū Stream), to the north/northwest by the ditch (Palolo Ditch [Everett Ditch]), and to the southeast partially by a <i>po'alima</i>.</p>	4.12 acres
→ 3019:1	5333	Mehao	Ohia	<p>Mehao testifies: 6 <i>lo'i</i> received in 1839.</p> <p>Mahele Award Apana 1: 5 <i>lo'i</i>, bound to the southeast by the <i>kahawai</i> and <i>poalima</i> to the west along a portion of the boundary.</p>	Apana 1: 0.58 acres
→ 3104	3126	Kaelemakule	Ohia	<p>Kaelemakule testifies: 33 <i>lo'i</i> and a <i>kula</i>, received from Kapupuu, Napuupahoehoe was my <i>konohiki</i>. Bound by the <i>kahawai</i> (Waikapū Stream) to the south.</p> <p>Mahele Award: Bound by the <i>kahawai</i> (Waikapū Stream) to the south. Bisected by <i>poalima</i> (<i>ka Poalima o Kaulua</i>) in the southern section.</p>	1.88 acres

Helu	RP#	Claimant(s)	'Ili	Summary of Lands, Land Use of the Claimant(s), and Notes on Landmarks	Award and Acreage
3107:1, 2/4	2348	Kaili	Ohia	<p>Kaili testifies: A <i>mo'o</i> of 15 <i>lo'i</i>, in the <i>'ili</i> of Ohia there are 31 <i>lo'i</i>. The <i>pahale</i> (house lot) are the ditch to the south ... <i>pa Bipi</i> (cattle corral) to the east.</p> <p>Mahele Award: Apana 1: Bound by the <i>kahawai</i> (Waikapū Stream) to the southeast and a <i>poalima</i> to the northeast. Apana 2 and 4: Apana 4 joined with Apana 2; 2 <i>po'alima</i> and a <i>lo'i aupuni</i></p>	Apana 1: 0.8 acres Apana 2/4: 1.27 acres
3224:6	4115	Opunui	Loaloa	<p>Opunui testifies: 16 <i>lo'i</i> at Loaloa (Apana 6) received from the <i>konohiki</i> in 1839</p> <p>Hakili Sworn: No 3 is a section of <i>loi</i> in Kaloaloa received from Kaai in 1842 and he from his father in ancient times.</p> <p>Hakiki Sworn: Parcel 3. Taro <i>pauku</i> (section) in the <i>'Ili</i> of Kaloaloa received from Kaai in 1842 who received it from Keaho.</p> <p>Mahele Award Apana 6: Bound to the north by the <i>kahawai</i> (Waikapū Stream)</p>	Apana 6: 0.27 acres

Helu	RP#	Claimant(s)	'Ili	Summary of Lands, Land Use of the Claimant(s), and Notes on Landmarks	Award and Acreage
→ 3301:1		Mahoe and Kamakea	Olohe	<p>Kamakea and Mahoe (claimant) testify: A <i>mo'ō</i> of 43 <i>lo'i</i>, <i>kula</i> land, a house site (<i>kahua hale</i>) on the northeast side of the claim.</p> <p>Mahele Award: Though the claim was for two apana, the Mahele survey indicates that Apana 2 was abandoned. Notes a <i>wiliwili</i> tree as the survey starting point. <i>Lo'i Aupuni</i> (Government <i>Lo'i</i>) also located within the boundary of the award. Map shows Palolo Ditch (Everett Ditch) running through the northern section of the award, a road (<i>ala</i>) through the southern section of the road, and the location of the <i>lo'i aupuni</i>.</p>	9.7 acres
3508:1-3		Kuheleloa	Ohia	<p>Kuheleloa testifies: A <i>mo'ō aina a me ka hapa</i> (<i>mo'ō</i> and a half)</p> <p>Mahele Award: Apana 1: <i>Pahale</i> (house site), bound by the ditch (Palolo Ditch [Everett Ditch]) to the northwest Apana 2: <i>Kalo</i> (taro), bound by the ditch (Palolo Ditch [Everett Ditch]) to the northwest, <i>poalima</i> to the southeast Apana 3: <i>Kalo</i> (taro), bound by the <i>poalima</i> of Kaluahinui to the west, <i>kahawai</i> (Waikapū Stream) to the south, and <i>poalima</i> to the east.</p>	Apana 1: 0.69 acres Apana 2: 1.87 acres Apana 3: 0.65 acres
3546:2		Kupalii	Keana	<p>Kaai Sworn: No 2. Is <i>kula</i> and <i>kalo</i> in Keana.</p> <p>Mahele Award: Begin at the <i>kukui</i> base turn <i>mauka</i> to the <i>kahawai</i> (Waikapū Stream) and go along the <i>kahawai</i> to the <i>wiliwili</i> base turn at <i>makaloa</i> (<i>Cyperus laevigatus?</i>) then go along the <i>pali</i> (cliff).</p>	Apana 2: 1.26 acres

Helu	RP#	Claimant(s)	'Ili	Summary of Lands, Land Use of the Claimant(s), and Notes on Landmarks	Award and Acreage
3547		Kauaulua	Ohia	<p>Kauaulua testifies: 33 lo'i and a <i>kahuahale</i> (house site) to the north, bound to the south by the <i>kahawai</i> (Waikapū Stream). Received from Puupahoehoe, who gave it to Kahuhu, who gave it me.</p> <p>Mahele Award: Bound on the <i>mauka</i> side by the ditch (Palolo Ditch [Everett Ditch]) and toward the stream by a <i>poalima</i>.</p>	2.19 acres
→ 3549: 2,3		Keaka	Olohe Kapuhau (Pukau, Puhau)	<p>Keaka (claimant) testifies: 33 lo'i, a small house site, one kula</p> <p>Kuheleloa sworn: Apana 1: taro <i>pauku</i> (section) in Puhau Apana 2: taro <i>pauku</i> in Puhau Apana 3: taro <i>pauku</i> in Olohe Apana 1 and 2 were from Napuupahoehoe before Kamaehameha II, Apana 3 from Keaho in the time of Kamehameha 1. One lo'i <i>po'alima</i> and one lo'i <i>pa'ahao</i> in apana 1, two <i>po'alima</i> are in parcel 2, three lo'i <i>po'alima</i> are in parcel 3</p>	Apana 1: Apana 2: 3.5 Acres Apana 3 ³ :

³ LCA 3549:3 Waikapu Stream course different between what is illustrated on the Maui TMK map and historic map and māhele survey which shows the stream on the northern boundary of Apana 3. Maui TMK and historic map error mislabeled as apana 2.

Helu	RP#	Claimant(s)	'Ili	Summary of Lands, Land Use of the Claimant(s), and Notes on Landmarks	Award and Acreage
5742:1 [Mahele 1 and 2]		Kaluahinui	Ohia	<p>Kaluahinnui testifies: Received from Kahuehu received 16 <i>lo'i</i>. From Kamai received 5 <i>lo'i</i>. From Kuheleloa received 10 <i>lo'i</i>. All in the time of Kaditch. 16 <i>lo'i</i>, some dry land, and a <i>hala</i> grove is another claim from Punipaa, his foster father (<i>makuakane hanai</i>), to his daughter.</p> <p>Mahele Award: Apana 1, Mahele 1: <i>Po'alima</i> to the south Apana 1, Mahele 2: <i>Po'alima</i> nearly bisects the parcel, bound to the south-southeast by <i>kahawai</i> (Waikapū Stream)</p>	Apana 1: Mahele 1: 0.72 acres Mahele 2: 0.36 acres
6389		Kahalelole	Loaloa	<p>Ili claim Bound by the ditch Palolo Ditch (Everett Ditch) to the north and the <i>kahawai</i> (Waikapū Stream) to the south. Claimant was a carpenter for Hoapili.</p>	3.48 acres ⁴
10481:4		Napailoi	Kaloaloa (Loaloa)	<p>Mahale Award Apana 4: Bound to the east and west by the <i>kahawai</i> (Waikapū Stream)</p>	0.66 acres
03548K		Naheana/ Nahoana	Ohia	<p>Kewalo and Nahoana testify: <i>moo aina he 49 loi (mo'o of 49 lo'i)</i>, <i>wahi kahua hale</i> (house lot), <i>wahi kula</i> (<i>kula</i> land)</p> <p>Mahele Award: <i>Lo'i paahao</i> within the claim and along the western ridge of an unnamed tributary to Waikapū Stream, house site in the northwestern corner of the claim and below Palolo Ditch (Everett Ditch), southeastern boundary adjacent to <i>lo'i paahao</i> and <i>po'alima</i></p>	5.07 acres

⁴ There are also two apana located in Paunau, Lāhainā that was awarded under the same helu

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Of particular interest with regard to the current project area and the Great Māhele with the shift in economic and social structures were the number of *pō'alima*, and presence of *lo'i pa'ahao*, and *lo'i aupuni* called out in both the native testimony and survey documents associated with the L.C.A. The ancient land tenure system and associated servitude practices, though not clearly defined, were universally acknowledged and followed the ancient traditions of conquest where the conquering *ali'i* would divide out lands won in battle to his principal warrior chiefs while retaining a portion for himself to be cultivated and managed by his immediate servants or attendants (Alexander 1890:107). These principle chiefs then subdivided the lands again which resulted in lands passing through several hands from the *Mo'i* or King to the *maka'ainānā* or tenant, all of whom were considered to have rights in the lands or the productions of them (Alexander 1890:107). Persons possessing landed property, whether chiefly or tenant, owed the King not only service but some portion of the crops cultivated and harvest from the land, in addition to yearly taxes. In this regard, certain areas of land or taro patches would be set aside and cultivated by the *maka'ainānā* exclusively for the *ali'i*, or chief, as well as the *konohiki*, or headman of the *ahupua'a* under the *ali'i*. Such patches were termed *kō'ele*, lands cultivated for the chief, and *hakuone*, lands reserved for the *konohiki* (Lucas 1995:23). The land taxes mentioned were essentially, in western terms, rent and by ancient usage went to the King and the *konohiki* as private income or revenue (Alexander 1890:108). Alexander acknowledges Judge Fornander who noted that Kamehameha I continued in this tradition of land re-distribution following conquest (Alexander 1890:108). This is very important to consider when understanding the differences between a *pō'alima*, *lo'i pa'ahao*, and *lo'i aupuni*.

As a part of the first written constitution of the Kingdom, Kamehameha III codified the traditional system of labor service and defined and regulated as labor tax in the declaration of rights on June 7, 1839 (Coman 1903). Prior to the initiation of the Great Māhele, when the lands of the Kingdom were still under the overall ownership of the King, held in trust by the lower chiefs and *konohiki*, and occupied by the tenants or *maka'ainānā* at the pleasure of those who held the land, the regulation of the labor tax was as follows:

During the first week of the month, the people are to work two days for the king and one day for the chief on whose land they dwell. In the second week of the month they work one day for the king and two days for the chief. When public work is to be done (the building of roads, bridges, fish-ponds, irrigating-ditches, and the like), the people must work three days in each of the last two weeks of the month until the work be accomplished. (Alexander 1890:108)

The labor tax was reduced in 1840 to 36 days in the year for the King and an equal number for the landlord or *konohiki*. This is possibly where the distinction between *pō'alima* and *lo'i pa'ahao* can be drawn. A *pō'alima* is a later land use term that was used for lands farmed by tenants for *ali'i* one day in five and generally obliged to work for the chief on Fridays, whereby a portion of the products of the land held by them would be given to the king as a form of taxation (Lucas 1995:94). This is analogous to what was traditionally known as a *kō'ele*. While Alexander had also included a *hakuone* under *pō'alima* (Alexander 1890:107), Lucas has indicated that there was a clear distinction between *hakuone* and *kō'ele* with regard to who the products, or tax, would benefit (see above). In this manner, the term *pa'ahao* when used in the same context as *lo'i* is defined as “proceeds paid to landholders of land on which land tenants worked.” Pukui and others (1971:210) define a *lo'i pa'ahao* as “(a) ‘prison’ taro patch, meaning that if a tenant failed to pay for use of the land he was imprisoned.” Within the 1847 Statute Laws of Kamehameha III a resolution for the releasing of certain persons from the labor tax and from other taxes was passed by the Nobles and Representatives of the common people, a portion of which directly addressed labor exemption

and release of people engaged in certain trades from going to the *pa'ahao* (prison) for failure to fulfill labor tax requirements for the government but not the Konohiki:

Passed by the Nobles and Representatives of the common people for the releasing of certain persons from the labor tax and from other taxes: --

1. All soldiers are hereby exempted from paying the poll tax, and from being called out to work on the days appointed for the government labor; but they shall still be liable to labor for their Konohikis.
2. All carpenters, sawyers, blacksmiths, overseers of sugar boiling, stores are hereby exempted from going to the paahao, provided they work at such trades as their regular employment. Those however who are tenants shall not be exempted from the work of their Konohikis. (Hawaii Kingdom and Jarves 1847:69)

In this manner, it is possible that the term *lo'i pa'ahao* was a more contemporary term for a *hakuone* or cultivation area dedicated to the labor for the *konohiki*.

These two distinctions – *kō'ele* vs. *hakuone* or *pō'alima* vs. *lo'i pa'ahao* – in keeping with both the ancient system of land tenure and division of labor as mandated after 1840, were specifically called out in the native testimony and survey notes for the awarded claim. Though it appears as though testimony given by a claimant may have included *pō'alima* or *lo'i pa'ahao* as a part of the claim, the Government retained ownership of such patches, as well as patches that were specifically set aside as “Lo'i Aupuni” or Government Lo'i, even in cases where these patches were surrounded by a *kuleana* claim. With regard to *lo'i aupuni*, it is thought that the purpose of these patches were to provide the needed crops for the livelihood of the servants or employees of the Government, as such individuals were busy doing the work of the Government and had neither the time to labor for their subsistence nor ability to fulfill the labor tax so long as they were doing the work of the government (Mr. Kepā Maly, Cultural Historian, personal communication). Such individuals may have included those cited in the above quote; as well as teachers, missionaries and servants of the missionaries (no more than two per missionary), and others who were not considered tenants with obligations to a Konohiki (Hawaii Kingdom and Jarves 1847:69-70) Government retention of *pō'alima*, *lo'i pa'ahao*, and *lo'i aupuni* is evident in some of the survey notes, where such patches were surrounded by a *kuleana* claim, and the final acreage calculations of the award (Figure 8 and Figure 9). Additionally, the documentary trail also shows that such areas sold in fee simple by the Government to both native and non-native individuals as Grants (Figure 10).

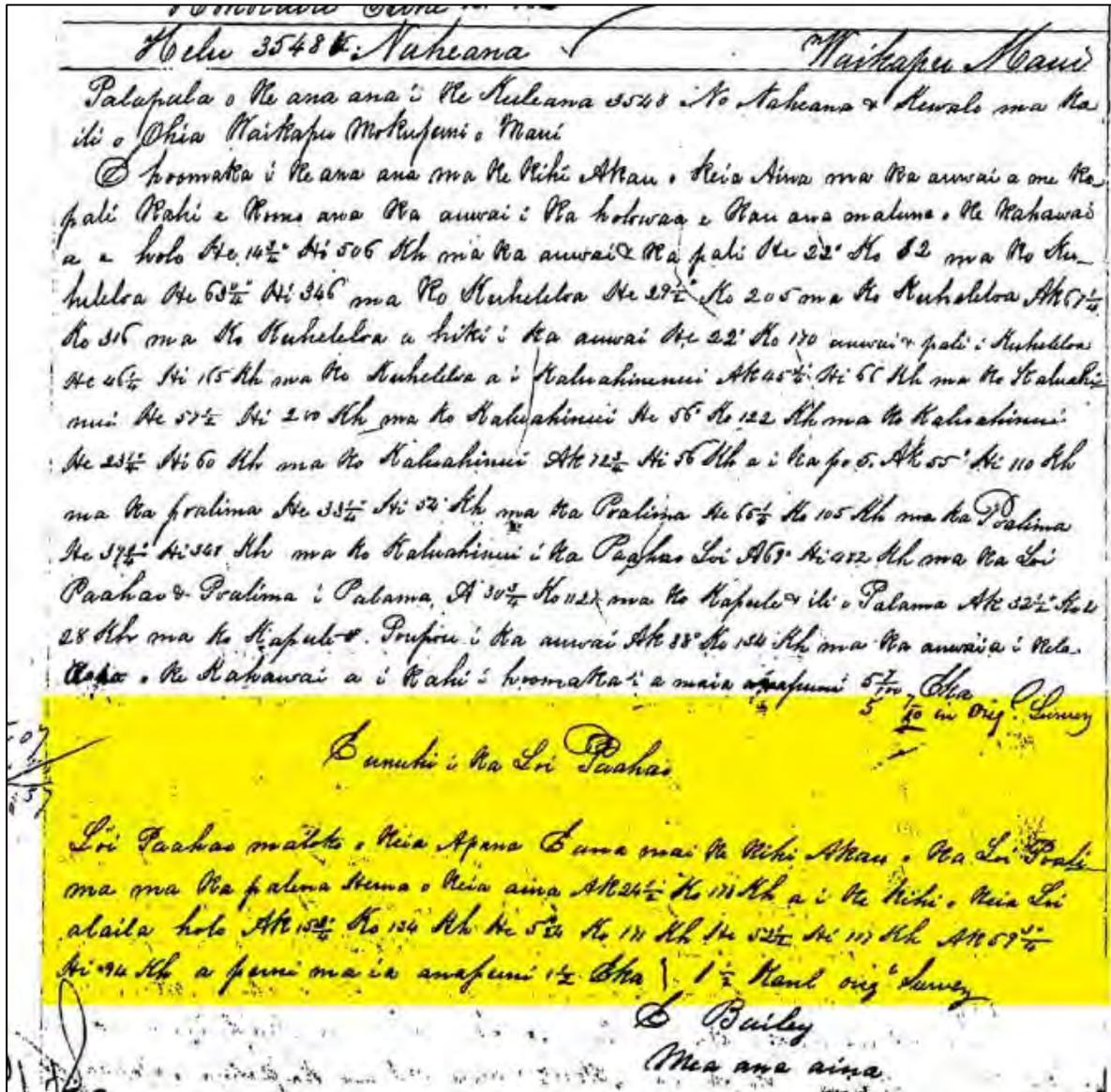


Figure 8. Survey notes for L.C.A. 3548K to Naheana (Office of Hawaiian Affairs 2011) showing the extraction of a lo'i pa'ahao, "E unuhi i ka Loi Paahao," from the overall award, note also the mention of pō'alima and another lo'i pa'ahao in the survey description.

In 1846, the Minister of the Interior was authorized to sell or lease the Government lands on vote of the Privy Council approved by the King. Royal Patents issued to those who purchased Government lands were documented as "Grants". According to Alexander, between the years 1850 and 1860, nearly all of the desirable Government lands were sold (Alexander 1890:119). According the Māhele records reviewed within the 0.25 mi. radius of the current project area, a total of 13 Grants are listed (Table 3), all of which appear to correlate to former pō'alima, lo'i pa'ahao, and lo'i aupuni (Figure 11), one of which is located within Well 2 Site of the Current Project area (Grant 1514 to Mahoe and Kamakea – lo'i aupuni, Figure 12 and Figure 13).

Table 3. Grants Within and Adjacent to the Current Project Area

Land Grant Number	Grantee	Land Use Designation
1514	Mahoe and Kamakea	Lo'i Aupuni
1512	Pakele	Pō'alima
1511	Keaka	Pō'alima
1153	E. Bailey	Pō'alima
1519	Richardson	Pō'alima
1699	M. Previer	Pō'alima
1517	Kuheleloa	Pō'alima
1698	Nahaolelua	Apana 1: Pō'alima Apana 2: Lo'i Aupuni
1709	Kuheleloa	Pō'alima
1145	Naheana	Apana 1: Pō'alima Apana 2: Lo'i Pa'ahao
1144	Kaili	Apana 1 and 2: Pō'alima

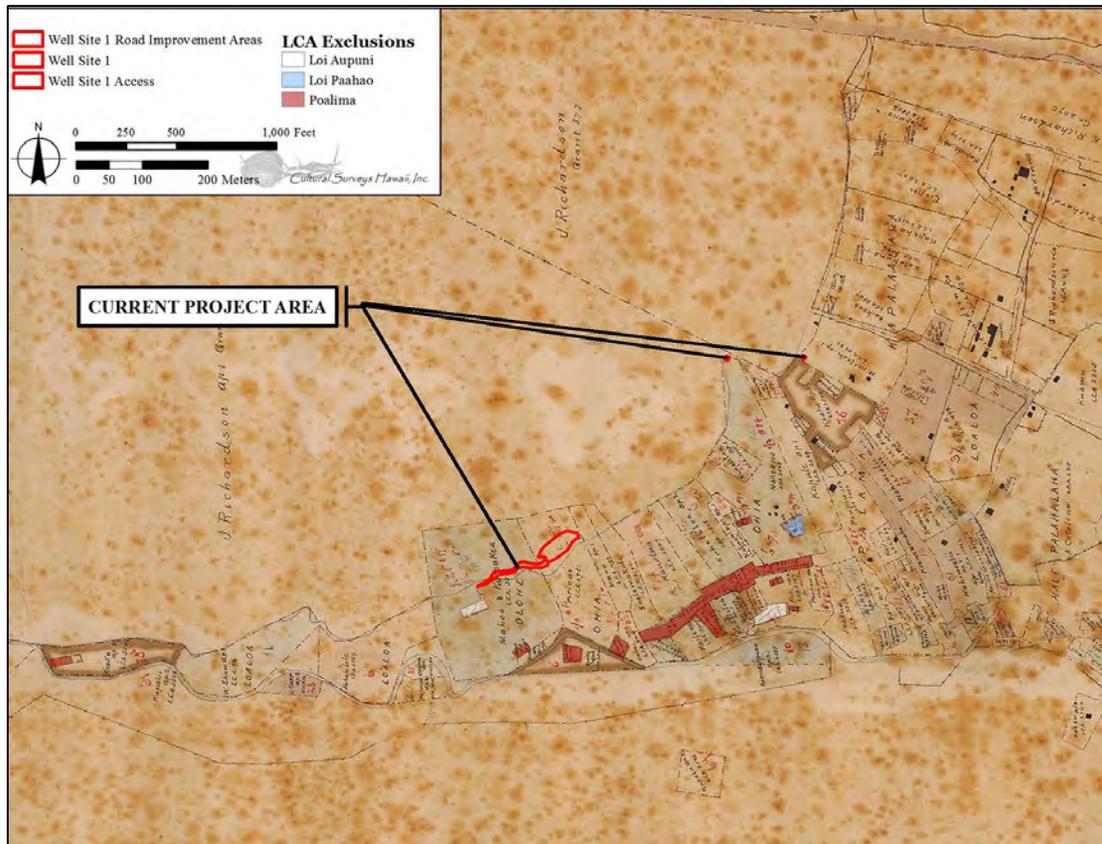
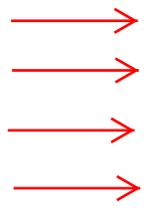


Figure 11. Portion of L.C.A and Land Grants map within Waikapū Ahupua‘a highlighting grants in the area and color coded by land use type (Monsarrat n.d., map scan courtesy of Mr.Hokuao Pellegrino)

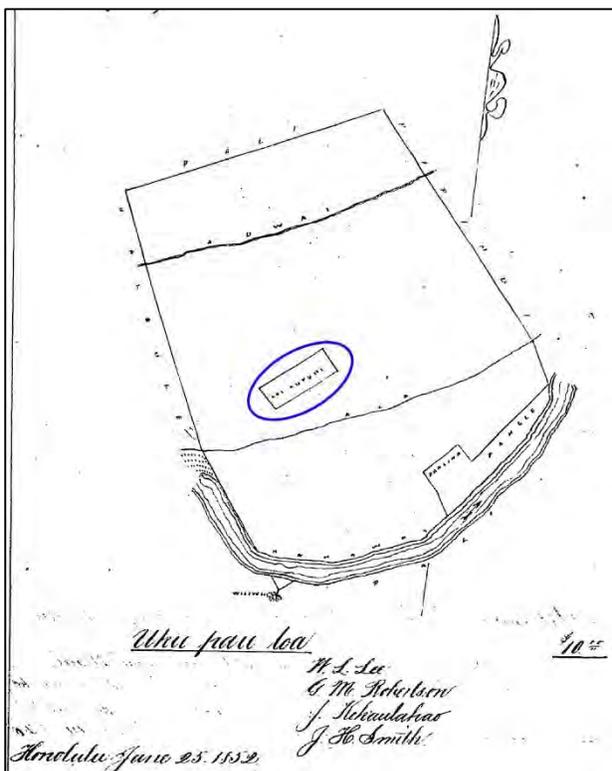


Figure 12. Survey plan for L.C.A. 3301 to Mahoe and Kamakea (Office of Hawaiian Affairs 2011) showing the location of the *lo'i aupuni* within the overall L.C.A

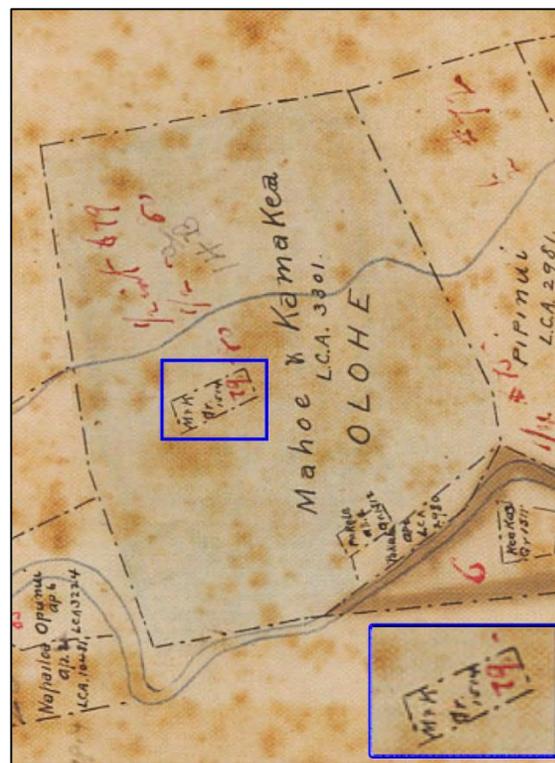


Figure 13. Portion of L.C.A and Land Grants map within Waikapū Ahupua'a focus on L.C.A. 3301 to Mahoe and Kamakea showing the *lo'i aupuni* within the overall L.C.A, sold as Gr 1514 to the same (Monsarrat n.d., map scan courtesy of Mr. Hokuao Pellegrino)

Finally, as previously noted, the majority of Waikapū Ahupua'a had been set aside as school lands to the Department of Education. According to Alexander, through an Act passed on July 9, 1850, one-twentieth of all lands belong to the Government was set apart for the general purposes of Education (Alexander 1890:121). In accordance with this Act, the Minister of Public Instruction was authorized to sell or lease any fo the lands set aside for education. In 1865, the same authority was given to the Board of Education in Section 749 of the Civil Code. It was under this authority that most of the School lands were sold in the same manner as other Government lands, with surveys and plans placed on file, except in the case of certain Ahupua'a that were sold by the Board of Education (Board), for which Grants by name were issued (Alexander 1890:121).

In 1875, the Board sold at auction, the “Land known as the Ahupuaa of Waikapu, saving grants hitherto made within said ahupua'a or sales by the Board of Education' to Henry Cornwell (Grant 3152) through a royal patent without survey or statement of area” who then sold to Claus Sprekels and others the portion known as Waikapū Commons (In the Matter of the Boundaries of Pulehunui, 4 Haw. 239 [Haw. King. 1879]). This is particularly poignant as these lands would form the basis of the sugar industry in along the alluvial plain of Na Wai Eha, as well as the Central Maui Isthmus.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

APPLICATION FOR SURFACE WATER USE PERMIT
 FOR EXISTING USE IN THE NA WAI EHA, MAUI, SURFACE WATER
 MANAGEMENT AREAS

FORM SWUPA-E (NA WAI EHA, MAUI)

For Official Use Only:

Event ID:

For detailed instructions on filling out this application, refer to the attached instructions.

APPLICANT INFORMATION: Note: In accordance with §174C-51(1)(B), HRS, in the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit.

1. APPLICANT'S NAME David Niehaus		Applicant's Contact 808-572-6180	2. SOURCE LANDOWNER'S NAME Same		Source Landowner's Contact
Applicant's Mailing Address, or Principal Place of Business 1630 Piiholo Rd Makawao, HI 96768			Source Landowner's Mailing Address, or Principal Place of Business 11		
Applicant's Phone 808 572-6180	Applicant's Fax 572-1722	Applicant's E-mail DDKK@clearwire.net	Source Landowner's Phone	Source Landowner's	Source Landowner's E-mail

EXISTING SOURCE INFORMATION

The following must be attached before this application is accepted as complete:
 • Portion of 7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion locations and quad map name.
 • Property Tax Map Key (TMK), showing stream or diversion location, and location of water use referenced to established property boundaries.
 • Photograph(s) of the surface water diversion works and end use.

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Waihee/6022 Waiehu/6023 Iao/6024 Waikapu/6001

4. DIVERSION LOCATION: Choose the appropriate category and enter information in either 4a or 4b.

4a. TMK OF STREAM DIVERSION LOCATION: 3 - 5 - 002 : 003
Zone Sector Plat Parcel

4b. TMK OF DITCH DIVERSION LOCATION: 3 - 5 - 002 : 007
Zone Sector Plat Parcel

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply.
 Pipe Pump Ditch/auwai Other Describe:
 Is the diverted water returned to the stream or ditch? Yes No If yes, how much water is returned?

6. FLOW MEASUREMENT INFORMATION:
 Does the stream diversion have a flowmeter with totalizer or other device to measure diverted amounts?
 Yes Enter the installation date
 Describe the device and enter measured amounts in Table 1.
 No Explain how you are measuring flow to justify amounts shown in Table 1 in the space below
USGA (Delwyn OK) Metered the flow DLNR 808-587 2433

EXISTING USER INFORMATION

7. APPURTENANT RIGHT: Do you claim an appurtenant right for your water use? Yes No
 If yes, has the appurtenant right been established by the courts or the Commission? Yes No

8. END USER INFORMATION: Are you an end user on an existing water system? Yes No
 If yes, who is the operator of the water system? I am Everett Ditch

9. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use with the Commission?
 Yes List the file reference name(s)
 No Wailuku Agri Business

10. STREAM DIVERSION WORKS PERMIT (SDWP):
 Have you ever been issued a SDWP by the Commission?
 Yes List the permit number(s):
 No

NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) if necessary, further information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited, to any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.

11. APPLICANT <u>David Niehaus</u> Signature <u>David Niehaus 3-18-09</u> Print Date	12. SOURCE LANDOWNER _____ Signature _____ Print Date
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**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 1: 12-MONTH AVERAGE DAILY USE
Measured or Calculated Use of Water at the Source: (Check one) Stream Ditch Auwai
As of the Effective Date of Designation, April 30, 2008

MONTH / YEAR	AVERAGE DAILY USE FOR THE MONTH IN GALLONS PER DAY (GPD)	Check one item per box				OTHER Please describe
		METERED	ESTIMATED	ACTIVE BUT UNKNOWN	INACTIVE	
May 2007		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
June 2007		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
July 2007		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
August 2007		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
September 2007		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
October 2007		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
November 2007		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
December 2007		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
January 2008		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
February 2008		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
March 2008		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
April 2008		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	1.99 cubic ft sec					
AVERAGE DAILY USE (Average of the above)	48,000 gal per day					

Most water is returned to Waikapu stream after the Tano patch.

DLNR-808-587-2433 + belwyn Oki measured the average flow twice and the April 29 discharge 493 cubic ft was larger than the April 30 (08) because there was ditch maintenance going on that day + Wailuku Water Co was putting all of their normal usage back into Waikapu Stream. Above the Everett ditch location

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY
(Attach additional copies of Table 2 if necessary)

LAND USE CONSISTENCY		EFFICIENCY OF USE					10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable attach sheets to show how this number was calculated. For Irrigation uses, fill in Table 3.		
1. PURPOSE / WATER USE CATEGORY	2. USE TRAIL ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE DISTRICT	4. CDUP REC'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SHAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)		8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE
Uses that require potable (drinking) water									
	Zone: _____	Block: _____	Parcel: _____						
	Zone: _____	Block: _____	Parcel: _____						
	Zone: _____	Block: _____	Parcel: _____						
	Zone: _____	Block: _____	Parcel: _____						
Uses that do not require potable water									
AGSCP	Zone: 3-5-002	Block: _____	Parcel: 007						
AGBTH	Zone: 3-5-002	Block: _____	Parcel: 007						
TOTAL POTABLE USE									GPD
TOTAL NON-POTABLE USE									GPD
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						48,000			GPD
If total use requested is not equal to the total monthly average in Table 1, please explain.						48,000			GPD
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. No									

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 4: ALTERNATIVES ANALYSIS

	Potable Alternatives Attach additional sheets if necessary.	Non-Potable Alternatives Attach additional sheets if necessary.
Municipal sources		None to this area
Wastewater reuse		None
Ditch system		Everett ditch is my source
Desalination		Not available
Ground water		Not available & expensive
Other (specify)		Not

PUBLIC INTEREST

§174C-2(g) states that: *The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

Explain below how the uses in your application are consistent with the public interest as described above. Attach additional sheets if necessary.

IRRIGATION for Aq uses — the water use is for Reforestation of native trees - maintenance of ecological balance & scenic beauty of the native forest.