

CECILIA CHANG
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WATER USE PERMIT APPLICANT PRO SE

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI I

Surface Water Use Permit Applications,)	Case No. CCH-MA15-01
Integration of Appurtenant Rights and)	
Amendments to the Interim Instream Flow)	TESTIMONY OF CECILIA CHANG;
Standards, N Wai Eh Surface Water)	EXHIBITS “2182-CHANG-1” – “2182-
Management Areas of Waihe e, Waiehu,)	CHANG-3”; CERTIFICATE OF SERVICE
ao, & Waikap Streams, Maui)	
)	
)	

TESTIMONY OF CECILIA CHANG

1. This testimony is provided in support of Surface Water Use Permit Application (“SWUPA”) No. 2182, filed with the Commission on Water Resource Management on April 21, 2009, for a parcel in Waiehu, Tax Map Key (“TMK”) No. (2) 3-2-016:001. The SWUPA was filed in my husband (Heinz Jung) and my names, but my husband has since passed away. I have lived on this land since the late 1990s and acquired it from my father, George K. Chang.

2. At the time I filed my SWUPA I believed that the land contained a reservation of rights therefore I did not claim appurtenant rights. However, based on my review of the Deed dated October 7, 1933, I found that the Deed contains no reservation of rights; as such I now reserve the right to claim appurtenant water rights.

3. My domestic water use is a protected public trust purpose.

4. Based on the information set forth below, I request recognition of appurtenant rights for TMK No. (2) 3-2-016:001 in the amount of 150,000 gallons per day (“gpd”). I request a Surface Water Use Permit for my current reasonable-beneficial use on TMK No. (2) 3-2-016:001 in the amount of 684 gpd, which was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

5. TMK No. (2) 3-2-016:001 is comprised of portions of two Land Commission Awards (“LCAs”), LCA No. 3446 to Kaahu, confirmed by Royal Patent No. 3938, and LCA No. 8559B:20.1 to Lunalilo. I am attaching various M hele documents that confirm water use on TMK No. (2) 3-2-016:001 at the time that it was converted to fee simple.

6. Attached as “2182-CHANG-1” is a true and correct copy of LCA No. 3446 to Kaahu, the foreign testimony, the native testimony (both the original and the English translation), the native register supporting the award, and the survey boundary.

7. Attached as “2182-CHANG-2” is a true and correct copy of a survey diagram showing the location of the kula land boundary of LCA No. 3446 along with the location of both LCA No. 3446 and LCA No. 8559B:20.1 in my property, TMK No. (2) 3-2-016:001. Also attached is a map indicating the triangular area of LCA No. 8559B:20.1 I used to calculate what percentage of 8559B:20.1 is part of my land.

8. A true and correct copy of the County tax map for TMK No. (2) 3-2-016:001 is also attached as “2182-CHANG-3.”

9. As depicted in 2182-CHANG-2, approximately 91% of my land falls under LCA No. 3446 and only 9% is within ‘pana 20 of LCA No. 8559B. I calculated the 9% by rounding to the nearest whole percent and utilizing two basic math concepts: (1) the area within my TMK that overlaps with LCA No. 8559B forms two right triangles; and (2) the sides of right triangle 1

are approximately 47 feet, 92.25 feet, and 103 feet, while the sides of right triangle 2 are approximately 6 feet and 127.94 feet (hypotenuse length not needed for triangle 2 to calculate area). I used the survey diagram boundary lengths (92.25 and 127.94) and the scale of 1 inch = 50 feet from 2182-CHANG-2 as the basis for determining the triangles' sides. I utilized the following formula to calculate area for a right triangle: $\text{Area} = ab/2$. The approximate area of triangle 1 is 2,168 square feet. The approximate area of triangle 2 is 384 square feet. Together the area of my land that overlaps with LCA 8559B:20.1 is 2,552 square feet, or approximately 9% of my total property area of 0.683 acres. The area of my land that overlaps with LCA 3446 is 0.624 acres, or approximately 91%.

10. The documents in 2182-CHANG-1, referring to LCA No. 3446 located in the 'ili of Poino, confirm that my land was cultivated in wetland kalo: the LCA itself describes the boundaries of two p alima within it, the foreign testimony says that the land consists of "one piece of kalo and kula land," with "5 poalima loi in it;" the translation of the native testimony specifies "1 taro section and pasture" with "5 poalima there." The native register specifies "aina lo'i" which means "wet taro land," and also specifies "lo'i 16" and "10 lo'i." Having consulted with experts in N Wai Eh land tenure at the time of the M hele, I understand that p alima in N Wai Eh , including mine, were all cultivated in lo i kalo. Therefore when my documents specify "poalima," it refers to one or many lo'i kalo. Additionally, after consulting with these M hele experts, kula means a non-flooded cultivated area. Based on the fact that lo'i and kula land are in LCA No. 3446, but the LCA is overwhelmingly described as containing lo i, it is likely that most of my property, though having some kula land, was cultivated in wetland kalo. Also, based on the fact that Waiehu Stream is located opposite from where my property is within LCA No. 3446, it is likely that my property in the LCA contained kula land because it was

further from the stream and therefore likely the non-flooded cultivated land. I approximate that 80% of my land within LCA No. 3446 was in wetland kalo cultivation at the time of the M hele. The documents in 2182-CHANG-1, establish my land contained lo'i kalo.

11. TMK No. (2) 3-2-016:001 is 0.683 acres. As explained above, approximately 91% of my parcel, or 0.624 acres, is covered by LCA No. 3446. Based on M hele documents in 2182-CHANG-1, approximately 80% of my land located in LCA No. 3446 was cultivated in wetland kalo. Therefore, the quantification of the appurtenant rights is the amount of water sufficient to grow kalo on 80% of 0.624 acres, or 0.5 acres, using traditional methods.

12. It is my understanding that, on average, taking into account fallow lo'i and uncultivated areas such as banks between lo'i, healthy wetland kalo requires between 100,000 and 300,000 gallons of water per acre per day ("gad"), and that areas with greater proportions of lo'i in cultivation will require an amount closer to the upper end of this range.

13. Thus, in my best estimation, the water right appurtenant to TMK No. (2) 3-2-016:001 is 150,000 gpd (0.5 acres x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

14. I use water from the Waiehu Stream via Spreckels Ditch. It is my understanding that this 'auwai receives water from Spreckels Ditch, south of Waiehu Stream. The Wailuku town 'auwai receives water via a pipe in Spreckels Ditch and the water travels in pipes and ditches through Wailuku and eventually passes onto our land on Malaihi Road. We access the water via a Wailuku Water Company pipe in the 'auwai, which runs to my property. I would like to divert a modest amount of water from Waiehu Stream to irrigate my non-commercial garden of fig, mango, breadfruit, lychee, coconut, orange, lime, tangerine, avocado, kukui nut,

kumquat, palm, squash, tomato, eggplant, plumeria, heleconia, bird of paradise, periwinkles, basil, green onions, tarragon, chives, and mint, and to water my lawn.

15. I am requesting a permit for the amount of water necessary for these domestic uses. I believe that the 2002 State of Hawai'i Water System Standard for Maui County of 600 gpd per single family home is sufficient for my existing domestic water uses.

REASONABLE-BENEFICIAL ANALYSIS

16. My existing use is "reasonable-beneficial," defined as: "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest." HRS § 174C-3.

17. The quantity I am requesting is necessary for the economic and efficient irrigation of my home garden, which includes bananas and citrus for consumption by myself, 'ohana, and neighbors, and herbs and tropical flowers, which provide my neighbors and I with aesthetic enjoyment. My use of the stream water is economic and efficient, as I use only the amount needed to irrigate my garden and lawn, and I will implement measures to minimize water loss, including using a combination of garden hoses, pipes and sprinklers and water either early morning or early evening, which reduce evaporation and leakage.

18. My use of stream water to irrigate my garden is also consistent with the state and county land use plans and the public interest. My land is classified by the State as Rural, and zoned by the County as Residential. My water use on my land for domestic cultivation is in the public interest and fulfills a public trust purpose.

ALTERNATIVES ANALYSIS

19. Because my land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the M hele, I am not required to provide an alternatives analysis to show that I have no practicable alternative source of water. My appurtenant right is for stream water, not for water from any other source, and my exercise of this right enjoys maximum protection and first priority under the law. Nonetheless, the Alternatives Analysis set forth in my SWUPA remains applicable, true, and correct.

20. I will use a reasonable amount of Waiehu Stream water to maintain my non-commercial garden of fruits, herbs, and flowers, along with other community members along Waiehu Stream. Other alternatives, such as municipal water, reclaimed wastewater, water from other ditch systems, desalinized water, and groundwater, are not practicable alternatives to the water from Waiehu Stream. Requiring me to pay for these alternatives instead of diverting the small amount of stream water via the Waiehu Stream that runs near my land would impose an unfair and impracticable cost on me and my family, given that I am a small, non-commercial, domestic water user.

SUMMARY

21. In sum: (1) my domestic water use is a protected public trust purpose; (2) the exercise of my appurtenant right is also a protected public trust purpose; (3) because I have appurtenant rights for TMK No. (2) 3-2-016:001, I am entitled to 150,000 gpd; (4) at this time, I request a permit for my current reasonable-beneficial uses on my property of 684 gpd, and this modest amount will be used to irrigate my non-commercial garden and lawn, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

I, CECILIA CHANG, do declare under penalty of law that the foregoing is true and correct.

Dated: Waiehu, Hawai'i, 12/9/2015



CECILIA CHANG
WATER USE PERMIT APPLICANT PRO SE

Uku Pau Loa / 5.00
W. L. Lee
G. M. Robertson
J. Kaulahao
J. H. Smith

Honolulu, 2. Dec. 1852.

Hulu 550¹/₂ Paluahi.

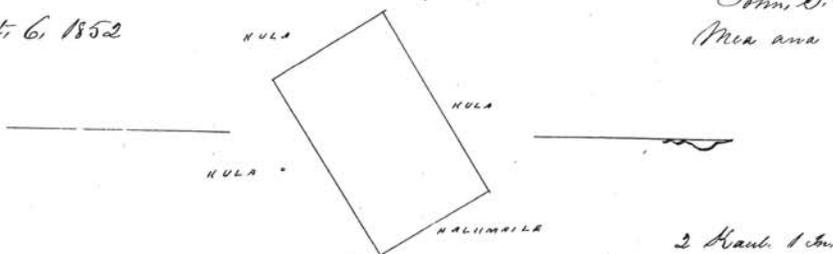
Hamakua, Maui.

Apana 1.	Si Kaluaka.	Whupuwa Kaopa	Chomata ke ana ma ke kiki Kema o Keia,
Akau,	58°	Hikina	248 Kaulahao
Akau,	32°	Komohana,	4.00 " Kula.
Kema,	58°	Komohana	2.50 " "
Kema,	32°	Hikina,	3.99 " "

a hiki ma kahi i Chomata'i, a maloko oia anapuni, 1 Eka.
Maui apana ke aole ma i mahi ia,

Wailuku, Sept. 6, 1852

John S. Lewis,
Maui ana aina.



Uku Pau Loa / 4.00
W. L. Lee
G. M. Robertson
J. Kaulahao
J. H. Smith

Honolulu, 2. Dec. 1852.

Hulu 3446 Kaahu

Waiau Maui.

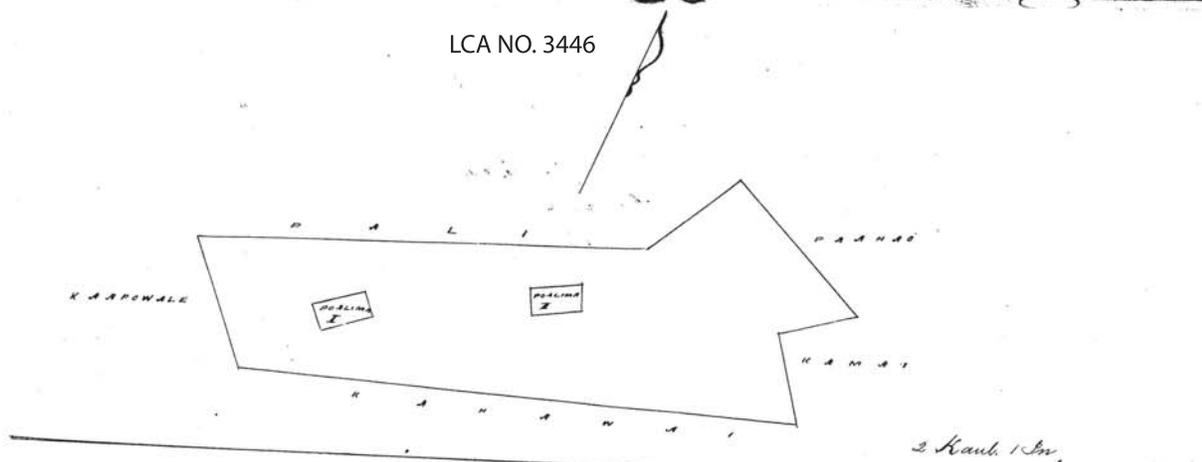
Si Poina, Chomata ke ana ma ke kiki Hikina Kema o Keia, Ak. 38¹/₂, Kom. 180 Kaul. ma Kama,
Ak. 50¹/₂; Hikina 160 Kaul. ma Kama, Akau 68¹/₂, Kom. 348 Kaul. wahi Paahao, Kom. 25¹/₄, Kom. 281,
Kaul. ma Kula, Kom. 63¹/₂, Kom. 868 Kaul. ma Pali, Kom. 14¹/₂, Hiki 270 Kaul. ma Kaopowale, Ak. 63¹/₂,
Hiki, 1484 Kaul. ma Kahawai, a hiki ma kahi i Chomata'i, a maloko oia anapuni 3 Eka.

Paalima I. Chomata ke ana ma ke kiki Kema o Keia, ma ke kiki Kema o Keia Kuleana,
Ak. 41, Hiki 1,74 Kaul. Ak. 46, Hiki 104 Kaul. Ak. 46, Kom. 52 Kaul. Kom. 16, Kom. 104 Kaul.
Kom. 16, Hiki, 52 Kaul. a hiki ma kahi i Chomata'i, a maloko oia anapuni, 5¹/₁₀ Eka.

Paalima II. Chomata ke ana ma ke kiki Komohana o Keia, ma ke kiki Hikina o Keia Paalima I
Ak. 60¹/₄, Hiki, 316 Kaul. Akau, 56, Hiki, 99 Kaul. Kom. 30, Hiki, 70 Kaul. Kom. 56, Kom. 99 Kaul.
Ak. 30, Kom. 70 Kaul. a hiki ma kahi i Chomata'i, a maloko oia anapuni, 7¹/₁₀ Eka.

Wailuku, Oct. 13, 1852

John S. Lewis,
Maui ana aina.



Uhu Pau Log # 6.
 W. L. Lu
 G. M. Robertson
 J. Kukaulahao
 J. H. Smith

Honolulu, 2. Feb. 1852.

Heleu 3336. Kalopi

Kamakahala Maui

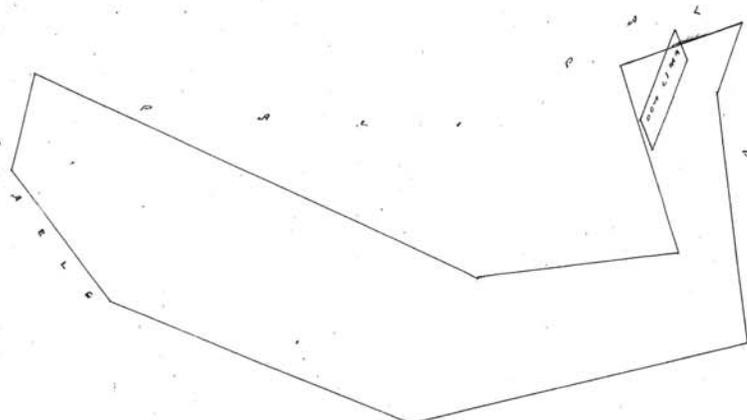
Aprawa III Ili Kupouama. Kiri'aha Nihina, Chormaka ke awa ma ke kiki Koomahana Akau + Kira, ma ke ka hohokau, Kom. 71° Nite, 141 Kaul. ma Komohiki, Ak. 81° Nite, 5.20 Kaul. ma Pali, Kom. 16° Nite, 6.68 Kaul. ma ke Pali, Kom. 20° Kom. 6.53 Kaul. ma ke Pali, Kom. 51° Kom. 3.5 Kaul. ma ke Pali, Ak. 4 1/2°, Kom. 120 Kaul. ma ke Pali, Ak. 23 1/2°, Nite, 9.44 Kaul. ma ke Pali, Ak. 7 1/2°, Kom. 389 Kaul. ma ke Pali, Kom. 7 1/2°, Kom. 380 Kaul. ma ke Pali, Ak. 21 Kom. 2.61 Kaul. ma ke Pali, a kiki ma kahi e hormaka'i, a waleke via anapuni 5 1/200 Eka.

Pulima, Chormaka ke awa ma ke kiki Akau + Kira, ma ke ka paku lua + Kira Kuluana, Kom. 43° Kom. 84 Kaul. Kom. 65 1/2°, Kom. 60 Kaulahao, Kom. 70 1/2°. Nihina 136 Kaulahao Akau 65 1/2°, Nite 60° Kaulahao, Akau 70 1/2°, Kom. 136 Kaulahao, a kiki ma kahi e hormaka'i, a waleke via anapuni 7/100 Eka.

- Aprawa I & III, Ua hwa de,
- Aprawa II, Ua huai aku, huai mai me Kapihē,
- Aprawa V, Ua huai aku, huai mai me Limaitaitas,
- Aprawa VI, Ua hwa de in,

Wailuku, Sept. 10, 1852

John S. Swain
 Meas ana aina,



2182-CHANG-1-P.2

FOREIGN TESTIMONY

the Pali, Makai, by Malauhi's land. Maalaea, by the Pali.
N^o 3. is bounded. Mauka, by Kuki's land. Makae, by the Creek of
Abikuli. Makai, by Kawakaaki's land. Maalaea, by the Pali.
N^o 4. is bounded on all sides, by Nuki's land.

Cl. 3459. Kaawa.

Kaawa *See.* *The Cl's land consist of one piece, so far as I know*
which is a kaah land, in the ili of Ohiaiki, Abikuli, Maui.

The Cl. rec^d it from me before 1860, and his title has never
been disputed.

It is bounded. Mauka, by Namaheli's land. Makae, by the Creek
of Abikuli. Makai, by my land. Maalaea, by the Pali of Abikuli.

Nunau *See.* *The Cl. has three pieces in Waikuu, Maui.*

N^o 1. is a section of his in Ohia.

" 2. " one loi — " Luakihua.

" 3. " 2 lois — " Nonuhou.

The Cl. rec^d these lands from Laua in 1838, and his
title has never been disputed. There is one pualima loi in N^o 1.

N^o 1. is bounded. Mauka, by Pailukoula's land. Makae, by the
Nonuhou's land. Makai, by Kaniolo's land. Maalaea, by the Creek.

N^o 2. is bounded. Mauka and Makae sides, by Pohuli's land.
Makai, by Pailukoula's land. Maalaea, by the Creek.

N^o 3. is bounded. Mauka, by Kaku-koo's land. Makae, by Pipo-
hi's land. Makai, by Maawai's land. Maalaea, by Kaku-koo's land.

Cl. 3446. Kaahu.

Pohuli *See.* *The Cl's land consist of one piece of kaah & kula land in*
the Ahupuaa of Poinoiki, in Napo, Maui.

The Cl. rec^d it from Paha before 1860, I think in 1838. His
title has never been disputed. There are 5 pualima loi in it.

It is bounded. Mauka, by Kakaula's land. Makae, by the
same, Makai, by the Paakas lois. Maalaea, by the Creek of Kai-
ahu.

No. 3459 Kēawe (cont.)

Sections 3 and 4 from Kekaula in 1838. 1 Poalima in Ohia, no objection.

Section 2 - Taro pauku in Ohia

Mauka	Paikalehoula
Waihee	Polea konohiki
Makai	Kaniolo
Malaaea	Stream

Section 3 -1 Taro patch in Lualailua

Mauka and Waihee	Kapohuli
Makai	Paikalehoula
Malaaea	Stream

Section 4 - 2 Taro patches in Honuhonu

Mauka	Z. Nakookoo's land
Waihee	Popoki
Makai	Wawae
Malaaea	Z. Nakookoo's land

No. 3446 Kaahu

July 17

Page 304

Kapohuli sworn He has seen 1 taro section and pasture in the ahupuaa of Kapoinoiki of Kapoho.

Land from Polea before 1840. 5 Poalima there, no objection

Mauka and Waihee	Kekaula
Makai	Aupuni
Malaaea	Waiehu stream

No. 3427 Kaliula

July 17

Kula sworn He has seen 2 sections in these ilis of Waiehu, land from Eleele during the time of Kam. II. 2 Poalimas in these 2 sections, no objections.

Section 1 - Taro moo at Piilani

Mauka	Kapoila
Waihee	Stream

Section 2 - Taro moo at Omao

Mauka	Kapoila
Waihee	Kapahi
Makai	Z. Nakookoo's land
Malaaea	Kula's land

SEE page 315

No. 3440 Kaiakahi

July 17

Koula sworn He has seen 3 sections at Waiehu and Halelena.

First section from Mahina before 1839.

2nd sections from Kaawa in (before 1837.

3rd section from Kaliula in 1842, no objection. 1 Poalima in the first section.

Section 1 - Taro pauku in Halelena ahupuaa

Mauka	Pauanihi
Waihee	Wawae
Makai	Kahilanakea
Malaaea	Stream

Section 2 - Taro pauku in Holoikanai ili

Mauka	Z. Nakookoo's land
Waihee	Wahinekaahiki
Makai and Malaaea	Z. Nakookoo's land

NATIVE REGISTER

80	3443	<u>Keamai</u>	<p style="text-align: center;">Aloha ma Iuna Hoona kuleana Aina. He hai aku nei au i keia wahi kuleana ia ou- Kou, aia i Kaalaino 11 loi, oia ka wahine u Pele mai Kei, a make ia no Pele mai Kei e oiaho nei Aloha ma Iuna Hoona kuleana Waiau. Na Keamai me hae Dec 17, 1848 } wahine Kahomoc</p>
	3444	<u>Kealapa</u>	<p style="text-align: center;">Aloha ma Iuna Hoona He hai aku nei au ia oukou i Kei mau loi ana Onas 22 loi, 2 loi Malo. Onas. Na Kealapa. Waiau 28 Dec 1847</p>
	3445	<u>Kealaikaukaha</u>	<p style="text-align: center;">Aloha maikai ma Iuna Hoona kuleana, He hai aku nei i ma loi aia ana Keala- ino, 16 loi me ke Mula, a me ma Kukui me ke Kuleana Hale Waiau. Na Kealaikaukaha 30 Dec 1847</p>
	3446	<u>Keahu</u>	<p style="text-align: center;">Aloha maikai ma Iuna Hoona kuleana Aina loi, aia ma Kaapuna iki na loi 16 i Waiau, 10 loi oia o Keahu, aia keia kuleana e oiaho nei. Waiau, 5 Jan 1848. Na Keahu</p>

SURVEY BOUNDARY

KAAHU - WAIEHU - MAUI

L. C. A. 3446
R. P. 3938
Bk. 8, Page 417

Ili Poinoi Beginning at the South corner
 N. 38 $\frac{1}{2}$ ° W. 1.80 chains along Kamai 118.8' ✓
 N. 50 $\frac{1}{4}$ ° E. 1.60 chains " 105.6' ✓
 N. 68 $\frac{1}{2}$ ° W. 3.48 chains wahi Paahao 229.68' ✓
 S. 25 $\frac{1}{4}$ ° W. 2.31 chains along Kula 152.46' ✓
 S. 65 $\frac{1}{2}$ ° W. 8.68 chains " Pali 572.88' ✓
 S. 44 $\frac{1}{2}$ ° E. 2.70 chains " Kaapowale 178.2' ✓
 S. 68 $\frac{3}{4}$ ° E. 10.84 chains " Kahawai 715.44' ✓
 to the beginning.

Area 3 Acres

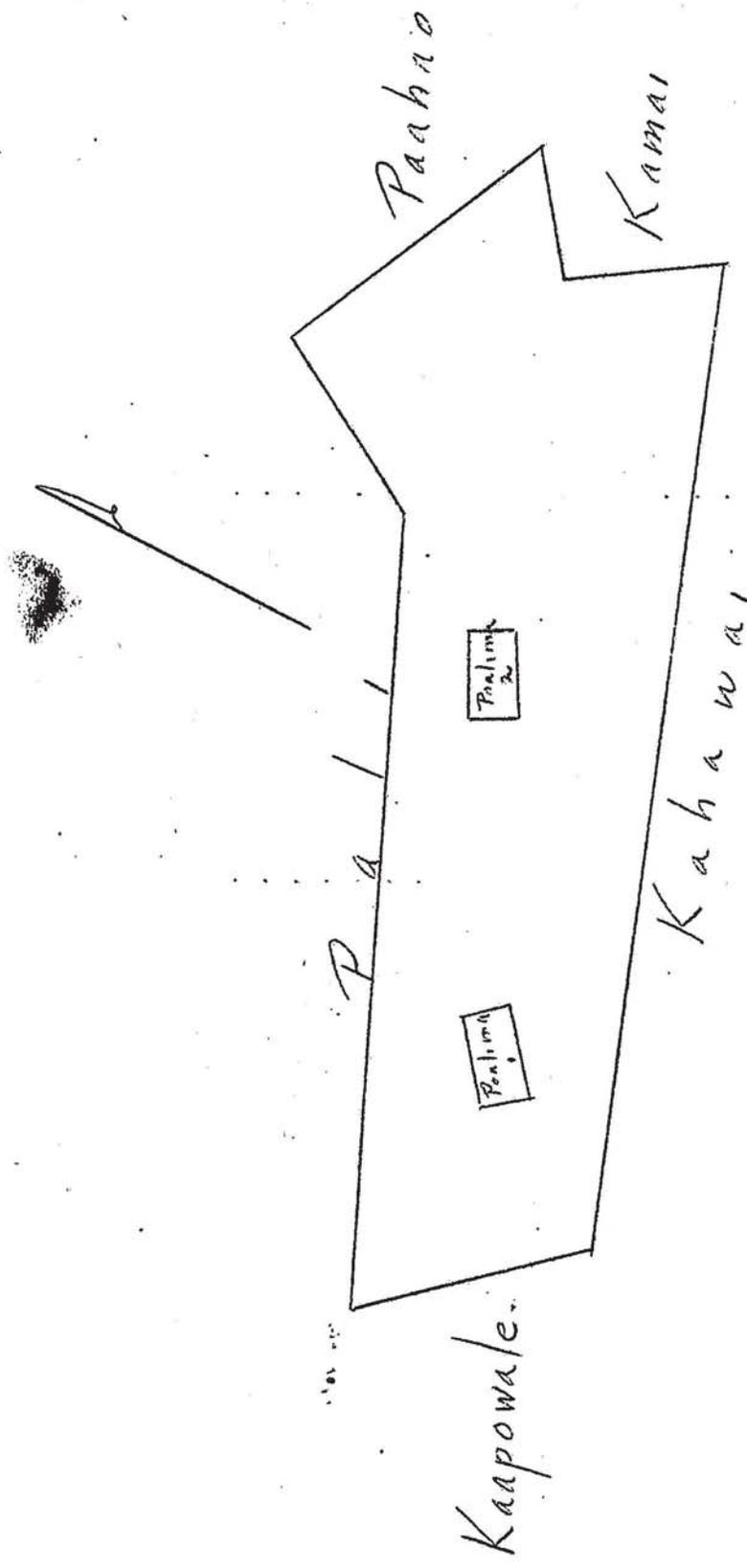
Poalimali Beginning at the South corner, mai ke South corner of
 this Kuleana
 N. 41° E. 1.74 chains
 N. 46° E. 1.04 chains
 N. 46° W. 52 chains
 S. 46° W. 1.04 chains to the beginning.
 S. 46° E. 52 chains to the beginning.
 Area 5/100 Acre

Poalima 2 Beginning at the West corner o keia, mai ke East corner
 of Poalima 1
 N. 60 $\frac{1}{4}$ ° E. 3.16 chains
 N. 56° E. 99 chains
 S. 30° E. 70 chains
 S. 56° W. 99 chains
 N. 30° W. 70 chains to the beginning.
 Area 7/100 Acre

Oct. 13, 1852

2182-CHANG-1-P.7

SURVEY BOUNDARY



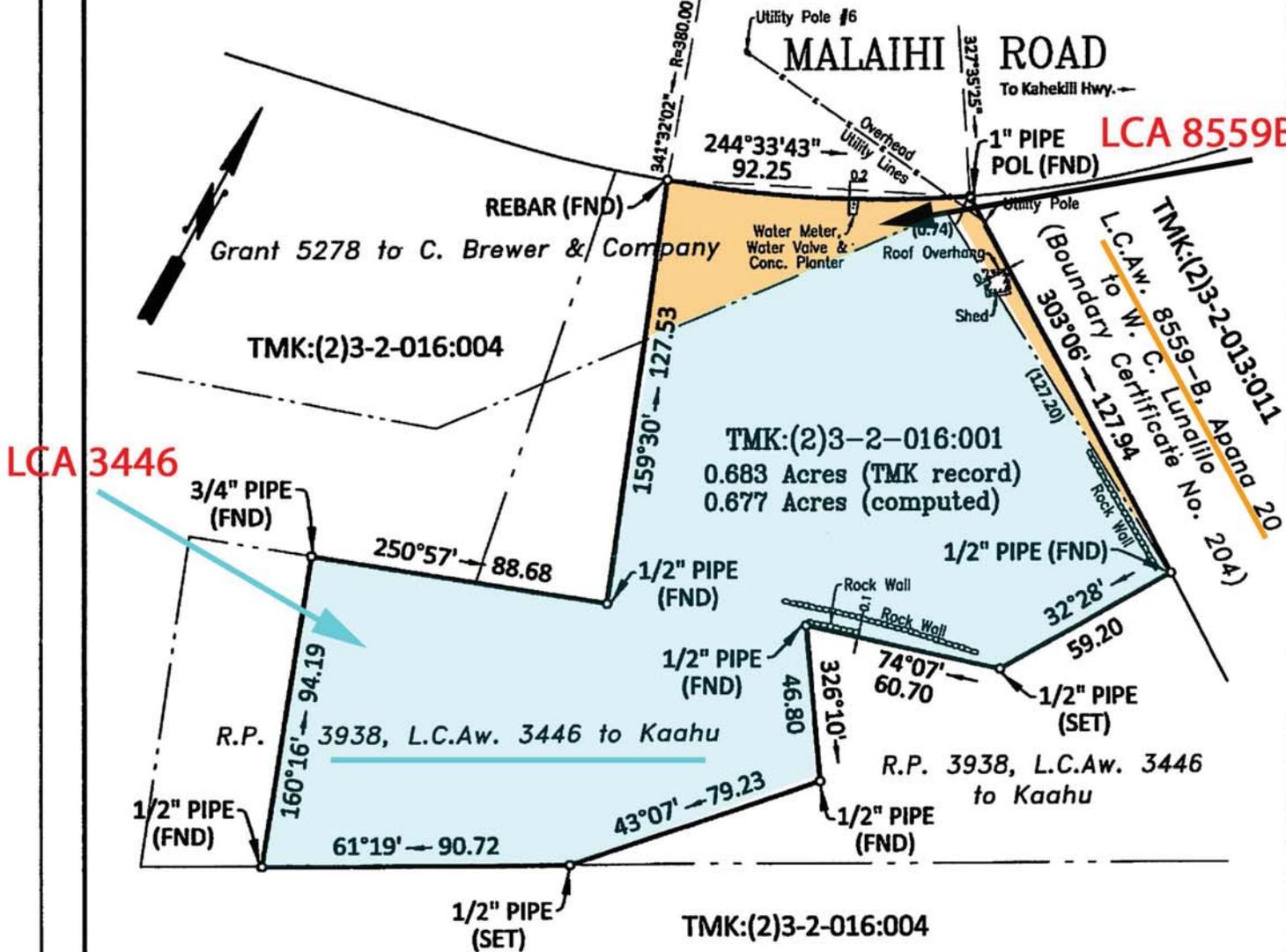
2182-CHANG-1-P.8

COPY

P.O. Box 1001
Kihei, Maui, HI 96753

Valley Isle Surveyors, Inc.

TEL: (808)874-8066
FAX: (808)874-8366



LCA 3446

LCA 8559B:20.1

Prepared For:

Cici Chang
PO Box 1211
Wailuku, Maui, HI 96793

This map was prepared by me or under my direct supervision.

Randall Sherman
Licensed Professional Land Surveyor
State of Hawaii Certificate Number LS4187
License Expiration Date: April 30, 2016
Land Court Certificate Number 189



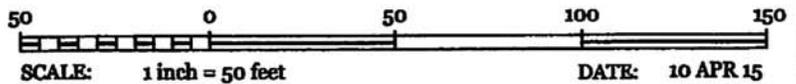
Exhibit Showing

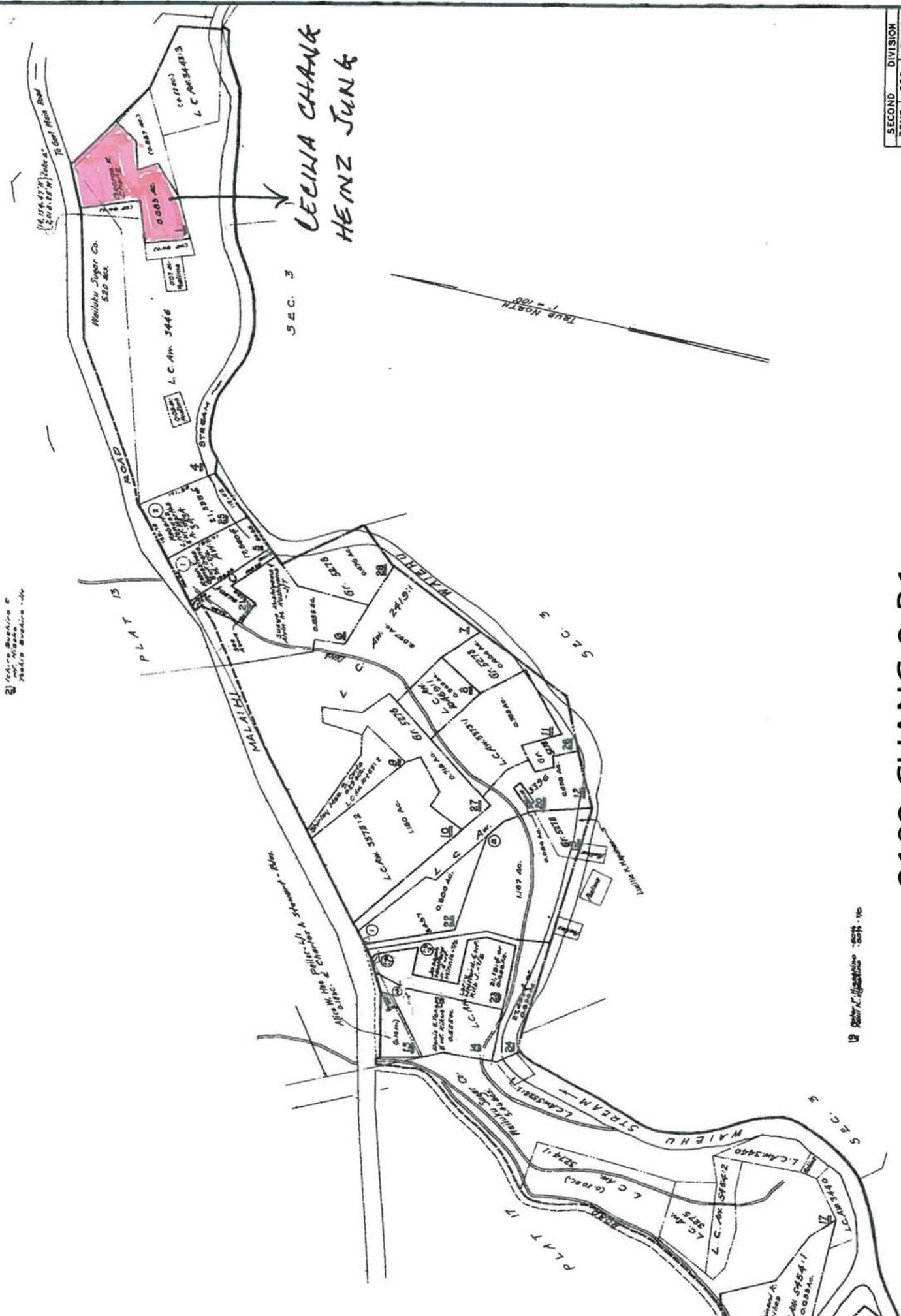
portions of
R.P. 3938, L.C.Aw. 3446
to Kaahu,
Grant 5278
to C. Brewer & Company,
and a strip of the Konohiki land described in
L.C.Aw. 8559-B, Apana 20
to W. C. Lunalilo

Situated at
Kapoino & Waiehu, Wailuku, Maui, Hawaii

NOTES:

1. This map is based on an actual field survey performed on 1 APR 15.
2. Unless shown herein no encroachments were noted during the course of this survey.
3. POL: Point-on-line





SECOND	DIVISION
ZONE	SEC
3	2
CONTAINING	PLAT
PARCELS	16
SCALE: 1 in = 100 ft	

ADVANCE SHEET
SUBJECT TO CHANGE

PRINTED

2182-CHANG-3-P.1

19 State of Hawaii - 2014 - 100