

JAMES PHILLIP DODD
P.O. Box 351
Wailuku, Hawai'i 96793
(808) 244-5300

2016 FEB -5 AM 9:31

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 JAMES PHILLIP DODD
Standards, Nā Wai 'Ehā Surface Water) ON BEHALF OF PATRICIA FEDERCELL;
Management Areas of Waihe'e, Waiehu,) EXHIBITS "2230-FEDERCELL-1" - "2230-
'Īao, & Waikapū Streams, Maui) FEDERCELL-4"
)
)

TESTIMONY OF JAMES PHILLIP DODD
ON BEHALF OF PATRICIA FEDERCELL

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2230, filed with the Commission on Water Resource Management on April 23, 2009, for a parcel in Waikapū, Tax Map Key ("TMK") No. (2) 3-5-012:001. My neighbor Mrs. Federcell is the owner of the property and I take care of her home garden. She has given me permission to submit this testimony on her behalf.

2. The domestic water use is a protected public trust purpose.

3. Because the land is adjacent to Waikapū Stream and I had an existing use of stream water on April 30, 2008, I am an existing riparian user under Hawai'i law, which is protected under Article XI, Section 7 of the Hawai'i Constitution.

4. Based on the information set forth below, I request recognition of appurtenant rights for TMK No. (2) 3-5-012:001 in the amount of 593,400 gallons per day. I request a

Surface Water Use Permit for my current reasonable-beneficial use of ‘auwai water for TMK No. (2) 3-5-012:001 of 4,133 gallons per day.

QUANTIFICATION OF APPURTENANT RIGHTS

5. TMK No. (2) 3-5-012:001 is comprised of Land Commission Awards (“LCA”) No. 460:1 to Puupahoehoe, confirmed by Royal Patent No. 2165. I am attaching various Māhele documents that confirm water use on TMK No. (2) 3-5-012:001 at the time of the Māhele.

6. Attached as “2230-FEDERCELL-1” is a true and correct copy of LCA No. 460 to Puupahoehoe, as well as the native testimony supporting the award (both the original and the English translation).

7. Attached as “2230-FEDERCELL-2” is a true and correct copy of a screen shot from the Office of Hawaiian Affairs’ Kīpuka Database, showing the location LCA No. 460 (in blue). This map has been marked to show the location of TMK No. (2) 3-5-012:001 (in red).

8. A true and correct copy of the County tax map for TMK No. (2) 3-5-012:001 is also attached as “2230-FEDERCELL-3.”

9. As depicted in “2230-FEDERCELL-2.” Mrs. Federcell’s land falls under ‘āpana I of LCA No. 460.

10. The documents in “2230-FEDERCELL-1,” referring to LCA No. 460, confirm that ‘āpana I, in the ‘ili of Pilipili, contained lo‘i kalo and kula kona.

11. Mrs. Federcell’s land is sloped and contains stone terraces, proving that this parcel is within the lo‘i portion of the LCA, as opposed to the kula kona portion. A true and correct copy of a photograph depicting these land features is attached as “2230-FEDERCELL-4.”

12. Mrs. Federcell’s land, TMK No. (2) 3-5-012:001, is 1.978 acres. Thus, because her land was cultivated in lo‘i kalo at the time of the Māhele, the quantification of the

appurtenant rights is the amount of water sufficient to grow kalo on 1.978 acres using traditional methods.

13. 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.

14. Thus, in my best estimation, the water right appurtenant to TMK No. (2) 3-5-012:001 is 593,400 gallons per day ("gpd") (1.978 acre x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

15. Currently, I divert water from the kuleana 'auwai that runs along Waikō Road, by using two 5/8-inch hoses to irrigate Mrs. Federcell's garden of dryland kalo, tī, bananas, 'awa, lemongrass, hō'i'o fern, māmaki, herbs, jackfruit, 'ulu, and flowers. This is the last property that utilizes the kuleana 'auwai. I am requesting a permit for the amount of water necessary for these agricultural uses.

16. I used the modified bucket method to estimate our water use requested of 4,113 gallons per day. Measuring the flow rate of the hoses, each filled a quart jar in 7 seconds. I calculated the amount of water flowing over a 24-hour period as 6,170 gallons per day. My irrigation application varies depending of the season. During the wet winter months, I may not irrigate at all. But, during the hot summer months, I sometimes irrigate continuously, over a 24-hour period. Based on many years of water use, over a twelve-month period I irrigate Mrs. Federcell's garden using the hoses about 2/3 of the time. So, I estimate the average water use as 2/3 of 6,170 gallons per day, or 4,133 gallons per day.

Reasonable-Beneficial Analysis

17. 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.” Hawai‘i Revised Statutes § 174C-3.

18. The quantity I am requesting is necessary for the economic and efficient irrigation of Mrs. Federcell’s home garden, which includes dryland kalo, tī, bananas, ‘awa, lemon grass, hō‘i‘o fern, māmaki, herbs, jackfruit, and ‘ulu for consumption by Mrs. Federcell, myself, our ‘ohana, and neighbors, and tropical flowers, which provide us and our neighbors with aesthetic enjoyment. My use of the stream water is economic and efficient, as I use only the amount needed to irrigate Mrs. Federcell’s garden and lawn, and I implement measures to minimize water loss, including using garden hoses, which reduce evaporation and leakage.

19. My use of stream water to irrigate Mrs. Federcell’s garden is also consistent with the state and county land use plans and the public interest. Her land is classified by the State as urban, and zoned by the County as agricultural. My water use on Mrs. Federcell’s land for domestic cultivation is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

20. Because Mrs. Federcell’s land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the Māhele, she is not required to provide an alternatives analysis to show that she has no practicable alternative source of water. Her appurtenant right is for stream water, not for water from any other source, and her exercise of this right enjoys maximum protection and first priority under the law. Nonetheless, the Alternatives Analysis set forth in Mrs. Federcell’s SWUPA remains applicable, true, and correct.

21. Mrs. Federcell and I have always used a reasonable amount of 'auwai water to maintain her non-commercial garden of fruits and flowers, along with other community members along this traditional 'auwai. Other alternatives, such as municipal water, reclaimed wastewater, water from other ditch systems, desalinized water, and groundwater, are not practicable alternatives to the 'auwai water from Waikapū Stream. Requiring Mrs. Federcell to pay for these alternatives instead of diverting the small amount of stream water via the 'auwai that runs alongside her land would impose an unfair and impracticable cost on her and her family, given that she is a small, non-commercial, domestic water user who has always used the 'auwai that runs alongside her land to water her home garden.

SUMMARY

22. In sum: (1) our domestic water use is a protected public trust purpose; (2) our exercise of appurtenant rights is a protected public trust purpose; (3) we are entitled to 593,400 gallons per day; (4) at this time, we request a permit for our current and existing reasonable-beneficial uses on the property of 4,113 gallons per day, and this amount will be used to irrigate Mrs. Federcell's home garden and lawn, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

I, JAMES PHILLIP DODD do declare under penalty of law that the foregoing is true and correct.

Dated: Waikapū, Hawai'i, February 3, 2016

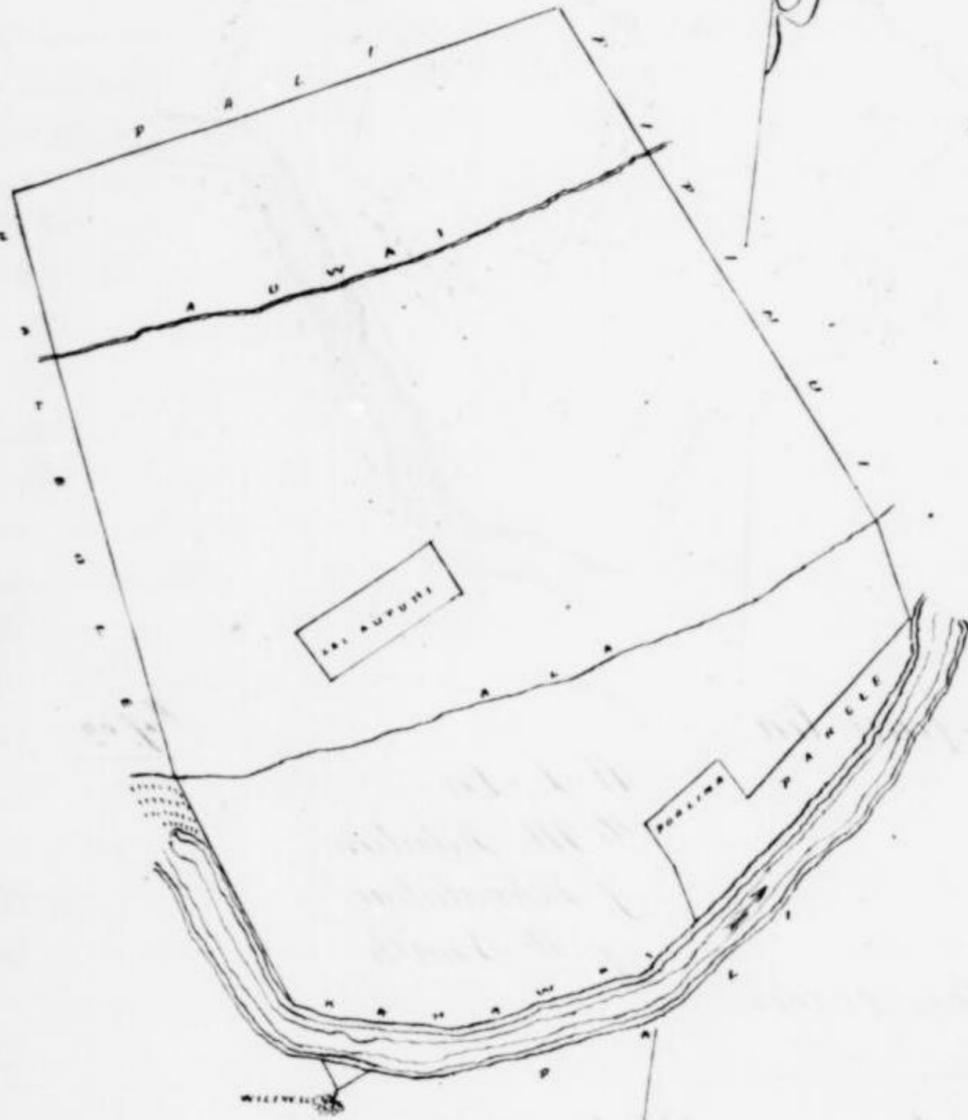
James Phillip Dodd

JAMES PHILLIP DODD

WATER USE PERMIT APPLICANT PRO SE

Ulu 53 1/2 He 70 Ili. He 54 1/2 He 211 Ili. He 52 1/2 He 41 Ili. i kahu i hiamaka'i 1 1/2 Ili
 C. Bailey
 Ulu ana'aina.

April 27. 1852.



Ulu pau loa

10 1/2

H. L. Lee
 G. M. Robertson
 J. Nohaulakao
 J. H. Smith

Honolulu June 25. 1852.

Kelu me Suupahochoe Maikapu Mauu.

Palapala ne ke ana ana i ke Kulaana me ne Suupahochoe, ma ka 'ili o
 Pali'ili, Maikapu, Moku'auia o Mauu.

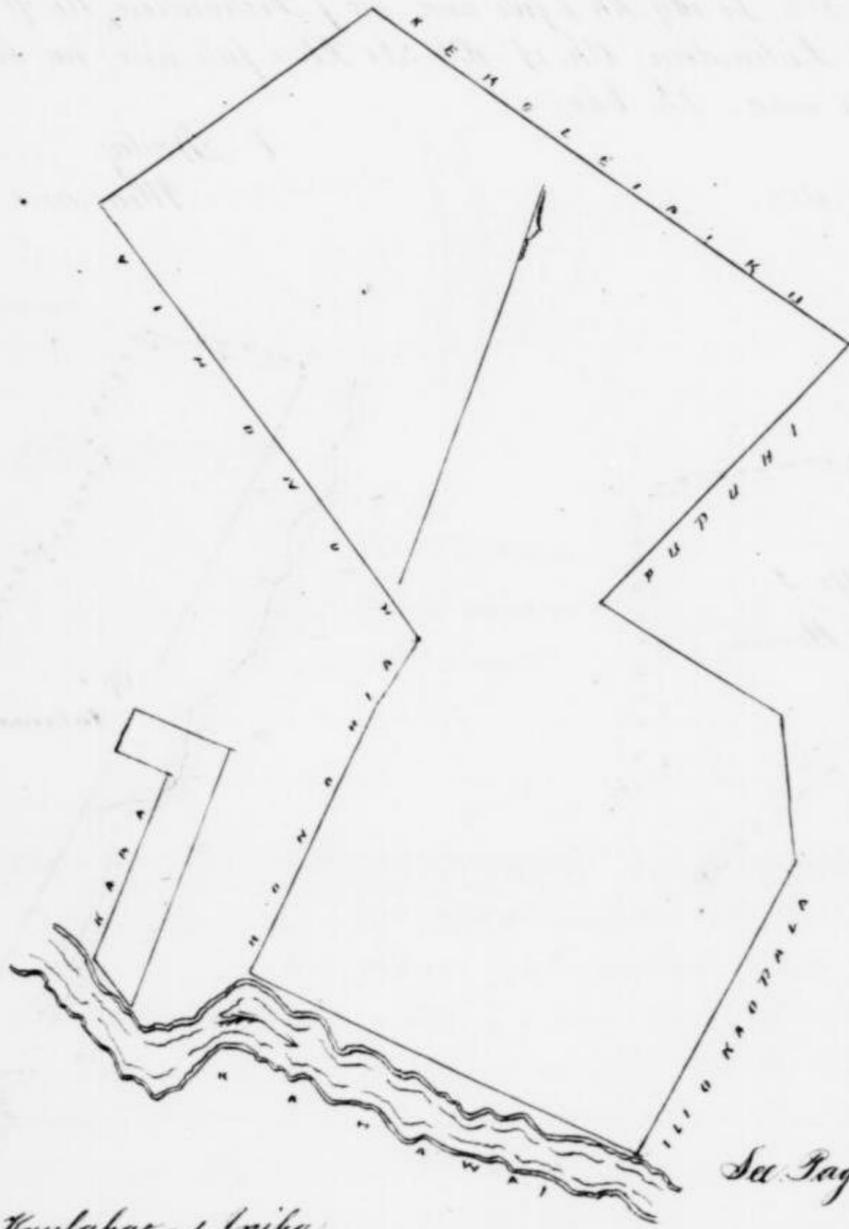
Ulu 1. E hiamaka i ke ana ma ke hiki Ulu e hui e pili ana
 me ke Kulekaiaku Kauahi a me Moku'auia, a e hoi Kona 4 1/2 Iliina 4 1/2
 Ili ma ke Kulekaiaku. He 32 1/2 He 17 1/2 Ili ma ke Suupahochoe He 4 1/2 He 2 1/2

1713 2163

Ihā e pūke ana, me ke Pūpūhi, He 23' He 156' Ihā ma ka ili o Haapala, He 4' He 215' Ihā ma ka ili o Haapala, He 9' He 234' Ihā ma Kahawai, He 11' He 215' Ihā ma Kahawai, He 49' He 210' Ihā ma Kahawai, He 6' He 291' Ihā ma ke Kōnehia, He 15' He 111' Ihā ma ke Kōnehia, He 57' He 693' Ihā ma ke Kōnehia, He 34' He 1124' Ihā ma ke Māmūhū, a hiki ma haku i hoemaha'i, a malake ia anapuni. E hiku Eka 200, a he Eka.

Apāna 2. E hoemaha i ke ana ma ke Kahawai e pūke ana me ke Kōnehia a hiki He 4' He 563' Ihā ma ke Kōnehia, He 19' He 111' Ihā ma ke Kōnehia me ke Kōnehia, He 14' He 55' Ihā ma ke Kōnehia, He 19' He 111' Ihā ma ke Kōnehia, He 12' He 256' ma ke Kōnehia i ke Kahawai, He 57' He 71' Ihā ma ke Kahawai a hiki ma haku i hoemaha'i a malake ia anapuni he 200 Eka.

C. Bailey
Mea ana aina.



See Page 414 of Awards.

2 Kaulahat - 1 Niha.

Uku pūke

4.15

W. L. Lee
G. M. Robinson
J. Kaulahat
J. H. Smith

Kōnehia 25, 1852

Hulu 429 Kawelohea

From 12th 172

Hooohikiia o Puupahoehe
 Na ike no au i kahi o Kawelohea e hoopi
 mai nei, he malawauke, aea ma Kahiki
~~ma. Iao. nona no ia wahi maia a hua~~
 mui ka nohu ana, a ia Kaluwardhoun
 i keia wa i paipia ka mea ililo ai is in
 uole au loka ka mea i hemo ai, Ma
 ike au ka nui o ka loaa malaila ia wa
 he mau no ka loaa malaila

Wailuku Feb. 18 1847

Hulu 430 Puupahoehe

Hooohikiia o Ceka ma ka ole a ke
 . Ikuar Na ike no au ia mau aina a pau
 a Pe hoopi aku nei ia oukou, o Ohaia,
 o Pelipili, o Kukulakela, o Haamui, Olohe,
 o kona mau palena, o ke ala ai o
 Kaunuuhe ma ka Hik. ma ka Hema
 o ke Ala a me ke kai, ma ke Koukouana
~~ma~~ ke kuahiwi mauka pono o Waikapu
 he mau kula no iloko o ka pa aina
 He aina o Pelipili, he mau loi a ke
 kula kona, o Haamui he aina no ia,
 nona ke kuahiwi mauka o Waikapu
 he mau loi no malaila a me ke kula
 maloko o ka pa aina o Olohe, he
 loi no malaila a ke kula no wa
 kapu ia e Kimo i ke ko manua
 o kela mau loi i hoolimalimais he
 rama ka waiwai i lilo malaila,
 a he Houe kahi a me na Kao he
 kanaha, oia ka lilo no kela mau
 Loi

Mai kōhiko loa mai no ka loa ana o
 kua mau aina ia Pūpūhāhāe. Aole
 ona mea nana i keakea mai.

Hōhōkūia, Kōhōi ma ka olelo a ke
 Akua. Ma ike no au i kahi o Pūpūhāhāe
 o kōpū mai nei, aia ma Waikāpū
 o Ohia, o Pūpūhāhāe, o Makahāhāe
 o Haunui, o Pūhāhāe, no kona kūi hua
 ana mai kona o Kalainohōini. He
 inoa no Kūmōkū mai ke Kalai-
 nohōini. Ma ike au i ka noho ana
 malaila, ma kahi aua no au o
 Waikāpū, a hale kūi mau makahāhāe
 alaila hoi mai au a noho pu mākou
 malaila, a ia wa lohe au he mau
 aina pono i kela no lakou. he
 / kōi paakai o Ohia a me ke kula
 a he kōi no hoi mai ke ala ge,
 mai a Haunui a me na kula
 eue i kela ma Waikāpū, a he
 kula eue no iloko o ka pa aina o
 Waikāpū, no Ohia, a he mau lōi
 kūi he mau lōi no ke Pūpūhāhāe
 a he kula no hoi malohe o ka pa
 aina, o Haunui he mau lōi no
 kona a me ke kula no, a no
 Haunui no hoi ke kūi hāhāe, Waikā-
 hāhāe, o Makahāhāe, he kula kona,
 o Pūhāhāe mau lōi no kona a me
 ke kula, aia ma ka Akua, ka
 hale pūhāhāe. He mau lōi no
 kahi o Pūpūhāhāe i kōi lina lina

ia, he wana he kuniu a he hawa
kahi a me na kaa he kaniha, a he
Mama kekahi i lilo no ka huna ana
a he ia maoli no kahi i lilo ake
~~he ka mea wana i heahea o Haanui~~
He ae mai no aia no Haanui io no ia
aia.

Hokuwahi Kaluani

Hookikua o Kalua ma ka olelo a he Ahu a
He ike no au i kahi o Kaluani, aia ma
Kapaakukui ma Iao, moe aku kona noho
ana malaila, no Mahune mai koe, a
no ka Mei mai ho Mahune, he kamahele
kumanalima au i i haawi ai, a o ka
ma kahi eae, a huia he hanakolu kuma
ma iwa a pau, ole ona mea wana i hea
hehea mai.

Hookikua o Huhu ma ka olelo a he Ahu a
He ike no au i kahi o Kaluani i hookii mai
mei ia eue, moe aku kahi mau i oi ona
no Mahune mai koe, a no Kamahele
mai ho Mahune, aia ma Kapaakukui
kamahele ona he aia oha no ia, aia
ma Kaluani kahi ona, ole nae au ike
kono i ka wai, na i malaila, ole
no kai he mea ona wana i heahea

Relevant portions of the Native Testimony for LCA 460 to Puupahoehoe translated to English:

Eeka on February 12, 1847 testified that there were numerous taro patches and a kula in Pilipili. No one disputed his claim. Kaili testified that he knew of the lands in Pilipili and that there were numerous taro patches and a kula situated there.

KIPUKA

Search Print

460:1 go

1 Records Found. Clear Results

Crown Lands (0) TMK (0)

'Ili (0) Ahupua'a (0) Moku (0)

Historic Sites (0) **Land Awards (1)**

[Export Results](#)

GO TO > **460:1**

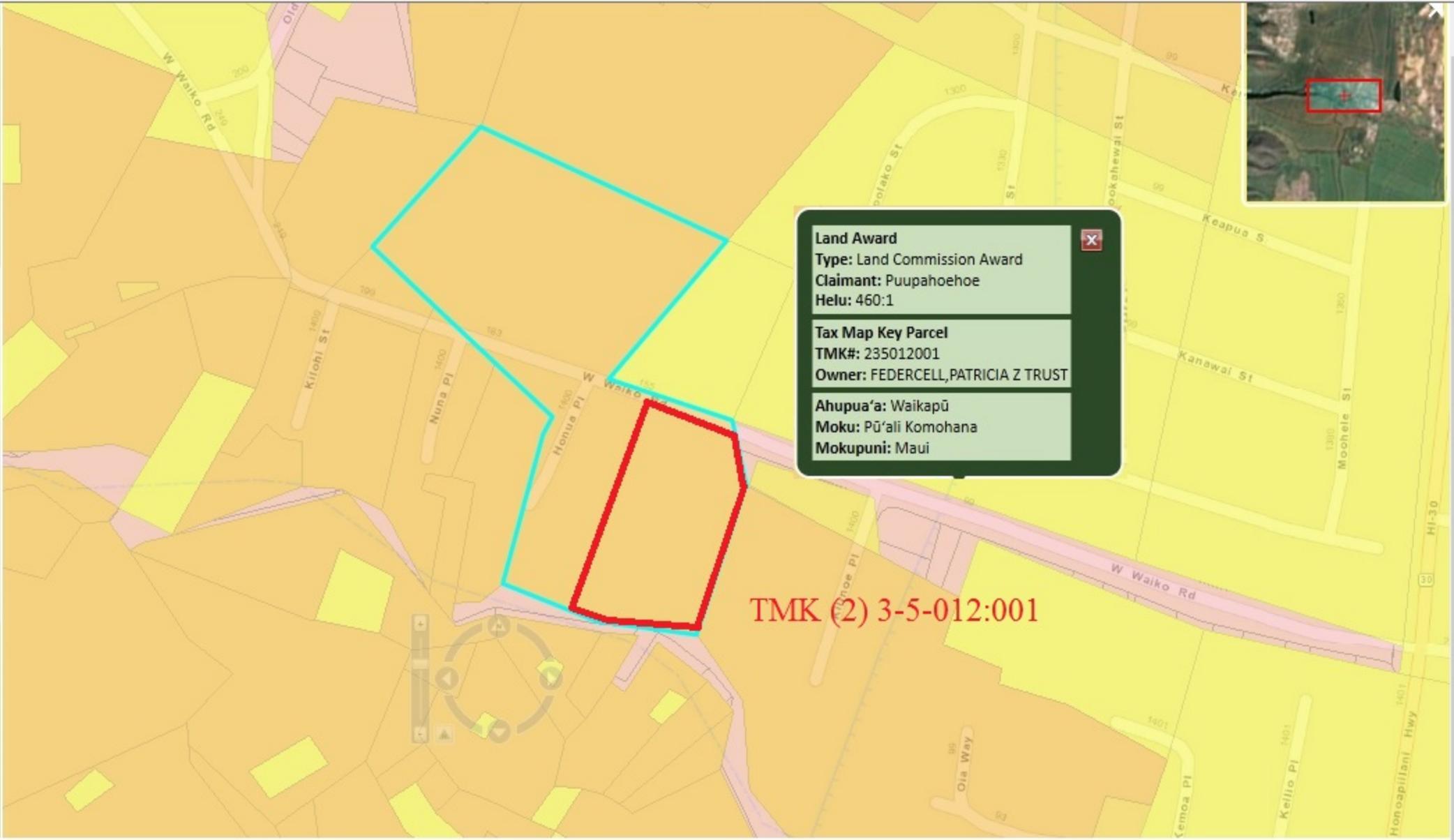
DETAILS > Puupahoehoe

STREET/BIRD'S EYE > Land Commission Award

Terrain Street Aerial

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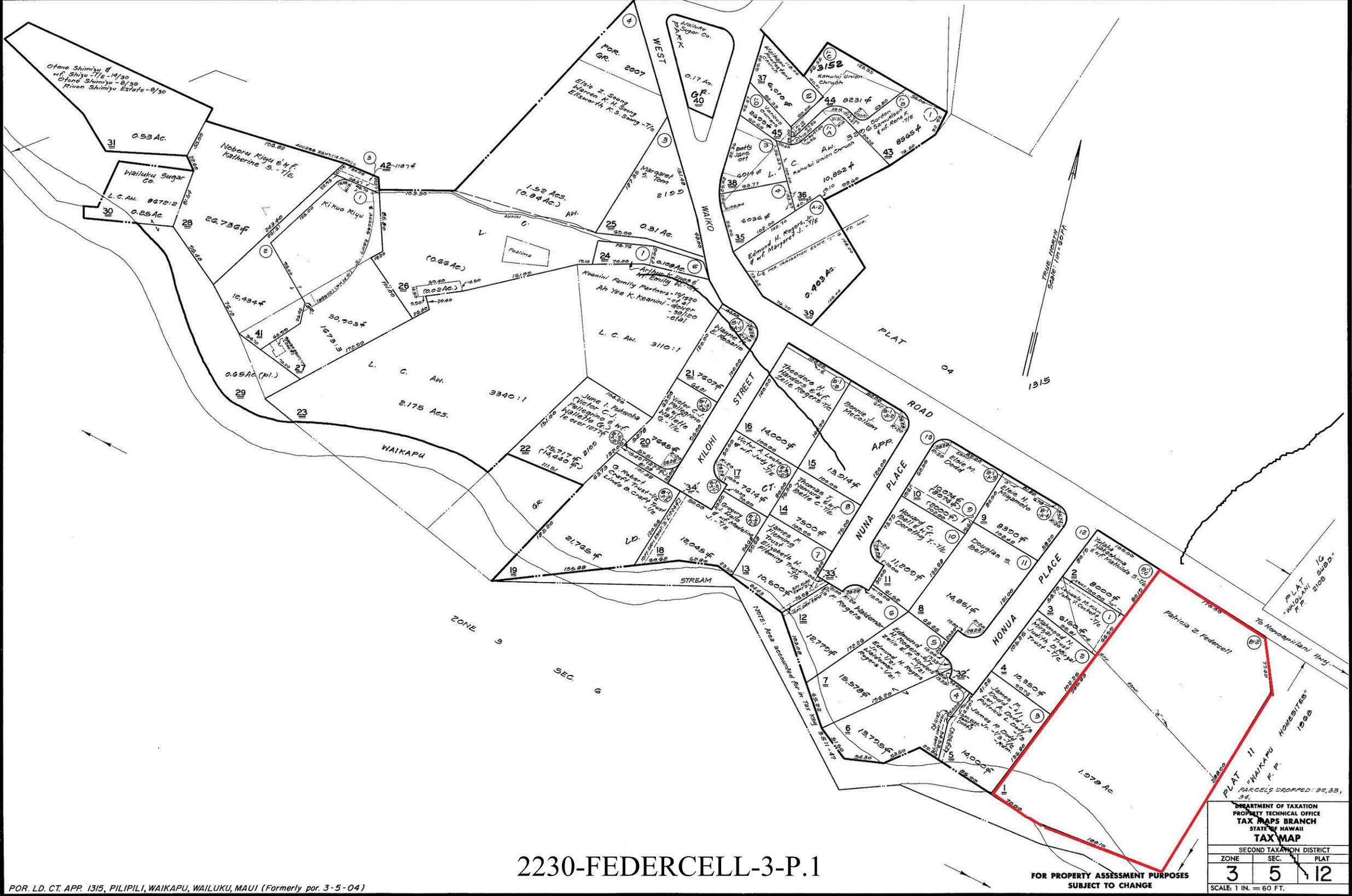
JAN 2 3 1978
JAN 2 3 1978
DEC 2 1977

SOURCE: T.M.B.L., P.L.A.T. 1315, L.D. CT. APP. 1315

BY: J.T.Y.A.K.

DATE: July 29, 1978

DWG. NO. 2230-2



2230-FEDERCELL-3-P.1

POR. L.D. CT. APP. 1315, PILIPILI, WAIKAPU, WAILUKU, MAUI (Formerly por. 3-5-04)

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION
PROPERTY TECHNICAL OFFICE
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP

SECOND TAXATION DISTRICT		
ZONE	SEC.	PLAT
3	5	12

SCALE: 1 IN. = 60 FT.



JAMES PHILLIP DODD

P.O. Box 351

Wailuku, Hawai'i 96793

(808) 244-5300

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STATE OF HAWAI'I

Surface Water Use Permit Applications,) Case No. CCH-MA15-01
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 Standards, Nā Wai 'Ehā Surface Water)
 Management Areas of Waihe'e, Waiehu, 'Īao)
 and Waikapū Streams, Maui)
)
)
)

WITNESS LIST

PARTY: PATRICIA FEDERCELL/JAMES PHILLIP DODD

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
James Phillip Dodd	Need for and use of Nā Wai 'Ehā water	2230-FEDERCELL-1 to -4

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P.O. Box 351
Wailuku, Hawai'i 96793
(808) 244-5300

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STATE OF HAWAII

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and Waikapū Streams, Maui)
_____)

EXHIBIT LIST

PARTY: PATRICIA FEDERCELL/JAMES PHILLIP DODD

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2230-FEDERCELL-1	LCA No. 460, Native Testimony, Native Testimony Translation	Testimony of James Phillip Dodd, on behalf of Patricia Federcell	
2230-FEDERCELL-2	Screen shot from the Office of Hawaiian Affairs' Kīpuka Database, showing the location of LCA No. 460 and TMK No. (2) 3-5-012-001	Testimony of James Phillip Dodd, on behalf of Patricia Federcell	
2230-FEDERCELL-3	County tax map for TMK No. (2) 3-5-012-001	Testimony of James Phillip Dodd, on behalf of Patricia Federcell	
2230-FEDERCELL-4	Photograph depicting stone terraces on Mrs. Federcell's land	Testimony of James Phillip Dodd, on behalf of Patricia Federcell	