

JORDANELLA CIOTTI
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2016 FEB -5 AM 9:57

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 JORDANELLA CIOTTI;
Standards, Nā Wai 'Ehā Surface Water) EXHIBITS "2247-CIOTTI-1" - "2247-
Management Areas of Waihe'e, Waiehu,) CIOTTI-3"
'Īao, & Waikapū Streams, Maui)
)
)
)

TESTIMONY OF JORDANELLA CIOTTI

1. This testimony is provided in support of Surface Water Use Permit Applications ("SWUPAs") No. 2247 and No. 2248N, filed with this Commission on Water Resource Management on April 23, 2009, for a parcel in Wailuku, Tax Map Key ("TMK") No. (2)3-4-004:019. I have lived on this land since I purchased it from Vanessa Ince, who filed the initial SWUPAs.

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

3. Based on the information set forth below, I request recognition of appurtenant rights for TMK No. (2) 3-4-004:019 in the amount of 135,300 gallons per day ("gpd"). I request a permit under SWUPA No. 2247 for my current reasonable-beneficial use for TMK No. (2) 3-4-004:019 of 1,088 gpd, which was the existing use on April 30, 2008, and is merely 1% of my appurtenant right. I also request an allocation under SWUPA No. 2248N for my desired future

reasonable-beneficial use for TMK No. (2) 3-4-004:019 of 17,717 gpd, to restore a small portion of the land to lo'i kalo and provide for domestic gardening on the remainder of the property.

This modest amount is merely 13% of my appurtenant right.

QUANTIFICATION OF APPURTENANT RIGHTS

4. TMK No. (2) 3-4-004:019 is comprised of Land Commission Award ("LCA") No. 3209:4 to Uwe, confirmed by Royal Patent 7893. I am attaching various Māhele documents that confirm water use for lo'i kalo on TMK No. (2) 3-4-004:019 at the time of the Māhele.

5. Attached as "2247-CIOTTI-1" is a true and correct copy of the TMK Map, confirming that the property consists of LCA No. 3209:4, and that the total area is 19,635 square feet, or 0.451 acres ("ac").

6. Attached as "2247-CIOTTI-2" is a true and correct copy of LCA No. 3209:4 and the foreign and native testimony supporting the award, which confirm use of the property for lo'i kalo cultivation at the time of the Māhele, giving rise to my appurtenant rights. As noted in the native testimony, on my property at the time of the Māhele there were "five taro lo'i in the 'Ili of Kalua, at Wailuku. They were from M. Keomailani in 1844, who had them from H. Kuihelani. *There is no opposition.* They are bounded mauka by Palaoanui . . ." (emphasis added). In fact, as shown in "2247-CIOTTI-3," which is a true and correct screenshot from Kīpuka with notations, my property is bounded mauka by TMK No. (2) 3-4-004:020, which is comprised of LCA No. 2621 to Palaoanui. Therefore, my property was in lo'i kalo at the time of the Māhele.

7. 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. Because the only

land use that is mentioned in the testimony supporting the LCA is “lo‘i” and “taro land,” the site was primarily used for taro cultivation and the upper range is appropriate.

8. Thus, in my best estimation, the water right appurtenant to TMK No. (2) 3-4-004:019 is:

$$(0.451 \text{ ac}) \times (300,000 \text{ gad}) = 135,300 \text{ gpd}$$

AMOUNT REQUESTED UNDER SWUPA NO. 2247

9. As described in SWUPA No. 2247, I currently use a modest amount of water conveyed via piping from a kuleana ‘auwai that receives water from Waihe‘e Ditch, south of ‘Īao Stream. Although the flow is inconsistent, when the water flows, we use some of it via an open ditch and pipes to water our yard and plants, including a small lo‘i kalo. When there is excess water, it flows into Spreckels Ditch, which is adjacent to my land. However, there is often not enough water to return to the ‘auwai, therefore the water I currently use seeps into the soil. Thus, my use has been limited by the availability of water.

10. As documented in SWUPA No. 2247, the existing water use is for two purposes. On approximately 0.1125 acres of my property, I use the water to irrigate my yard and non-commercial garden, including plants like banana, tī, plumeria, coconut, hibiscus, and herbs such as oregano and rosemary. As described in SWUPA No. 2247, I estimate that this existing use consumes approximately 338 gallons per day, in accordance with the 2002 State of Hawai‘i Water System Standard for Maui County of 3,000 gallons per acre.

11. As documented in SWUPA No. 2247, the existing use also includes an approximately 18-foot by 6-foot lo‘i kalo, comprising approximately 0.0025 acres.

12. Under SWUPA No. 2247, I request a permit for the amount of water necessary for these reasonable-beneficial uses.

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 gad, and, as described above, the upper range is appropriate for my property.

14. Therefore, under SWUPA No. 2247, I request a permit for the following amount:

Domestic: $(0.1125 \text{ ac}) \times (3,000 \text{ gad}) = 338 \text{ gpd}$

Existing lo'i kalo: $(0.0025 \text{ ac}) \times (300,000 \text{ gad}) = 750 \text{ gpd}$

Total: 1,088 gpd

This modest quantity is less than 1% of my appurtenant right.

AMOUNT REQUESTED UNDER SWUPA NO. 2248N

15. I purchased this land in 2011 from Vanessa Ince, who filed the original SWUPAs. I purchased the property in fee simple, with appurtenant water rights intact.

16. My actual water needs, include restoring a 60-foot by 40-foot lo'i kalo on my land, i.e., approximately 0.0551 ac, which is both reasonable-beneficial and a public trust purpose.

17. I would also like sufficient water to irrigate the grass and non-commercial crops throughout the remainder of my property, i.e., 17,235 square feet or 0.3957 ac.

18. I believe that the 2002 State of Hawai'i Water System Standard for Maui County quantity of 3,000 gad for domestic use would be sufficient for my proposed use for grass and non-commercial crops throughout the remainder of my property.

19. Therefore, under SWUPA No. 2248N, I request a permit for the following amount:

Domestic: $(0.3957 \text{ ac}) \times (3,000 \text{ gad}) = 1,187 \text{ gpd}$

Lo'i kalo: $(0.0551 \text{ ac}) \times (300,000 \text{ gad}) = 16,530 \text{ gpd}$

Total: 17,717 gpd

This modest quantity is only approximately 13% of my appurtenant right.

Reasonable-Beneficial Analysis

20. As detailed in my SWUPAs, my existing and future uses are "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.

21. The quantity I am requesting is necessary for the economic and efficient irrigation of my existing and proposed gardens and lo'i kalo cultivation. My use of the water is and will remain economic and efficient, using only the amount needed to irrigate my garden, lawn, and lo'i kalo. I will continue to implement measures to minimize water loss, including using garden hoses, which reduce evaporation and leakage. Moreover, any excess water that may flow from my property would either recharge the groundwater or return to Spreckels Ditch, which is located topographically downslope at the east border of my property, resulting in further beneficial effects.

22. My use of stream water to irrigate my garden and lo'i kalo is also consistent with the state and county land use plans and the public interest. My land is classified by the State as urban, and zoned by the County as residential. My existing and proposed water use on my land for domestic cultivation and lo'i kalo is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

23. Because my land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the Māhele, 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 SWUPAs remains applicable, true, and correct.

24. As detailed in my SWUPAs, I have always used, and will continue to use, a reasonable amount of 'auwai water to maintain my lawn, non-commercial garden, and lo'i kalo. Other alternatives, such as municipal water, reclaimed wastewater, water from other ditch systems, desalinized water, and groundwater, are not practicable alternatives to my kuleana water. Requiring me to pay for these alternatives instead of small fraction of my appurtenant right to stream water via the 'auwai would impose an unfair and impracticable cost on me, given that I am a small, non-commercial, domestic water user.

SUMMARY

25. 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) 3-4-004:019, I am entitled to 135,300 gallons per day; (4) at this time, I request a permit under SWUPA Nos. 2247 and 2248N for the reasonable-beneficial use of 18,805 gpd, of which 1,088 gpd is my existing use; and (5) I further request that the permitted water be allowed flow on a consistent, daily basis, as required to support lo'i kalo cultivation. This modest amount is but a small fraction of my appurtenant right, and will be used

to irrigate my non-commercial garden, lawn, and lo'i kalo, which are reasonable-beneficial uses of stream water, for which there is no practicable alternative.

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

Dated: Wailuku, Hawai'i, 12/9/15.



JORDANELLA CIOTTI
WATER USE PERMIT APPLICANT PRO SE

Exhibits:

2247-CIOTTI-1: TMK Map

2247-CIOTTI-2: Māhele documents for LCA No. 3209

2247-CIOTTI-3: Neighboring property TMK No. (2)3-4-004:020, showing LCA No. 2621 to Palaoanui

DWG. NO. 1863
Taxation
Source By: J.H.H.

2247-CIOTTI-1

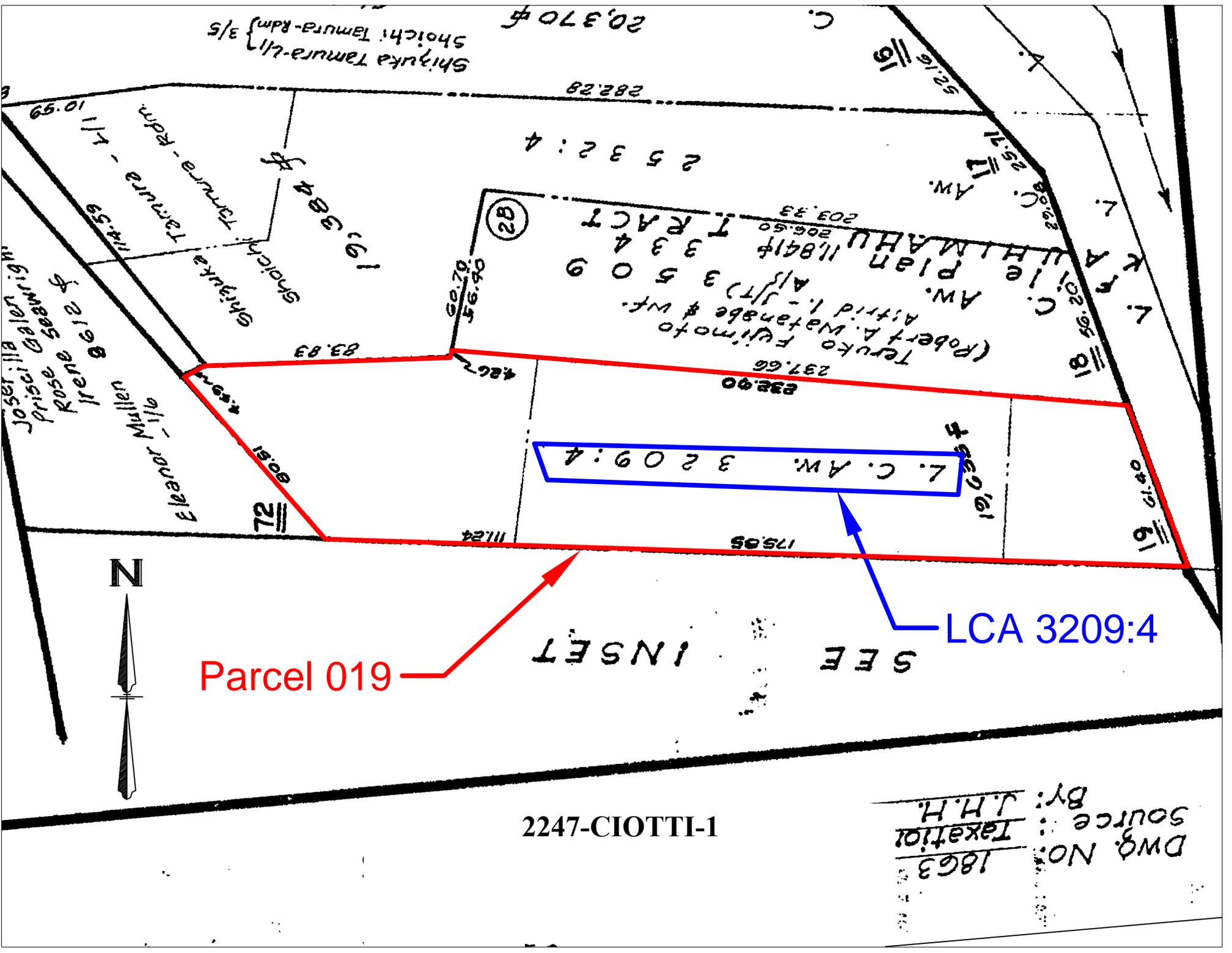


Parcel 019

INSET

SEE

LCA 3209:4



20,370 #

Shizuka Tamura-2/1 } 3/5
Shoichi Tamura-Rdm

2532:4

(2B)

Teruko Fujimoto & Wf.
(Robert A. Watanabe & Wf.
Astrid L. - JT) 3509
AM. PLAN 11841# 334
ULHIMAHU TRACT
203.33
206.50

L.C.A.W. 3209:4

Josefilla Galarriga
Priscilla Galarriga
Rose Sees
Irene Sees
Eleanor Muller
Shizuka Tamura - Rdm
Shoichi Tamura - Rdm

52.16
11/10

19 61.40
11/10
11/10
11/10

72

1124

175.85

56.90
58.70

83.83

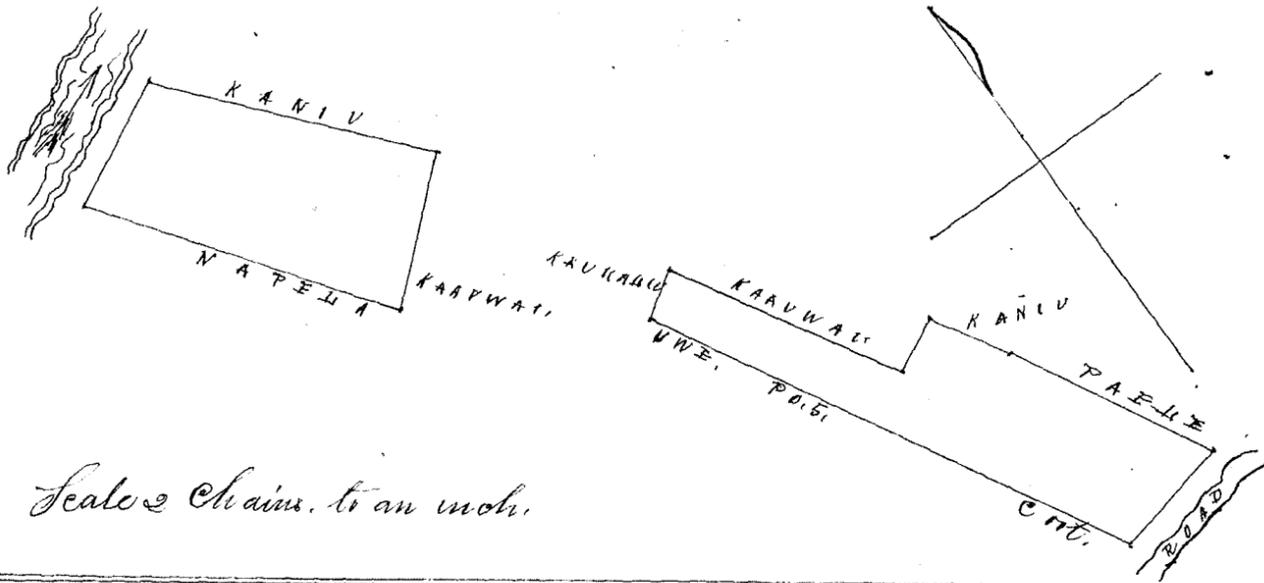
237.66
232.90

160.61

370. Kaulahao ma ko Kauhahi. He. 28^o 00' N. 5.72 Kaulahao ma ko Uve. Po 8^o 00' N. 1.37 Kaulahao ma ko ka pa o ka aina Misimari. a hiki i kahi i hoomakai, a malo ko oia Apiana 57/100 o ka Eka.

Apiana 3. E hoomaka ma ke kili Akau o keia aina ma ke Kahawai e pili ana me ke Stanin u u holo ana He. 64^o 00' N. 1.53 Kaulahao ma ke Kahawai o Wailuku. He. 35^o 45' N. 3.59 Kaulahao ma ko Napela i ka pali k auwai. A. 49^o 00' N. 1.77 Kaulahao ma ko Kamawai i ke Stanin. A. 39^o 15' N. 2.63 Kaulahao ma ko Stanin a hiki i kahi i hoomakai, a malo ko oia Apiana 57/100 o ka Eka.

E. Bailey
Ma ana



Scale 2 Chains to an inch.

Uve paan loa

\$ 5.00

Whee
Joan Li
G. M. Robertson
J. Kekaulahao
J. H. Smith
Honolulu Palai 24/1851.

Hole 3209. Uve

Wailuku Maui

7893

Palapala no ke ana ana i ke Stuleana 3209 no Uve, ma Wailuku mokupuni o Maui.

Apiana 1. He aina kaula ma ka ili o Kaula 1. E hoomaka ma ke kili. Komohana o keia Apiana e pili ana me ke Pae, a e holo ana. A. 30^o 30' N. 1.84 Kaulahao ma ko Pae palana Hikina. A. 59^o 45' N. 6.3 Kaulahao ma ko Pualina. He. 33^o 00' N. 1.87 Kaulahao ma ko Kauhahaua. He. 63^o N. 6.9 Kaulahao ma ko Kumilani a hiki i kahi i hoomakai, a malo ko oia Apiana 12/100 o ka Eka.

12
32
20
23
55

Apiana 2. He lilo i kekahi Apiana 3. He aina kaula ma ka ili o Kaula 2. E hoomaka ma ke kili Akau e pili ana me Napela a e holo ana. He. 49^o N. 5.5 Kaulahao ma ko Pali. He. 27^o N. 1.33 Kaulahao ma ko Napela. A. 64^o 30' N. 3.71 Kaulahao ma ko Kauhahaua. He. 31^o 45' N. 7.71 Kaulahao ma ko Kauhahaua. A. 61^o N. 8.0 Kaulahao ma ko Pualina. A. 38^o 30' N. 1.20 Kaulahao ma ko Puaa. He. 48^o N. 6.0 Kaulahao ma ko Napela. A. 28^o N. 1.11 Kaulahao ma ko Napela, a hiki i kahi i hoomakai, a malo ko oia Apiana 2/10 o ka Eka.

Apiana 4. He aina kaula ma ka ili o Kaula. E hoomaka ma ke kili Komohana Hema, ona e pili ana me ke Palawanii, a e holo ana. A. 52^o N. 2.54 Kaulahao ma ko Palawanii. A. 93^o N. 8.4 Kaulahao ma ko Kamakona. He. 86^o 30' N. 2.47 Kaulahao ma ke Kamakona. He. 47^o 45' N. 1.00 Kaulahao ma ko Kamakona a hiki i kahi i hoomakai, a malo ko oia Apiana 23/100 o ka Eka.

E. Bailey
Ma ana

C. 3339. Napue.

Kamanalau Siv. I know the lands of the Ct. They consist of 3 pieces of land in the isle of Katalua, Wailuku, Maui.

N^o 1. is 2. Mors of Keala land.

" 2. " on low " " "

" 3. " " " & Kulu "

The Ct. rec^d these lands from Nabalipua, in the year 1825, and his title has never been disputed. There are 2 *fratima* l^{is} in N^o 1.

N^o 1. is bounded. Maaka, by George Lawrence's land. Wahee, by Kooli & Kamakahi's land. Maikai, by the Govt. Lt. Maalaea, by Kamakaharohau's land.

N^o 2. is bounded. Maaka, by Kamakahi's land. Wahee, by the first piece bounded.

In fact these 3 pieces are all joined & bounded as in N^o 1.

C. 3483. Kahuaki.

This Claim is the same as N^o 2420. Heard this day July 5. 1849.

Wailuku July 6th 1849.

C. 3209. Ave.

Hahitikaula Siv. I know the lands of the Ct. They consist of 3

pieces of land so far as I know. They are in Waikato.

- N^o 1. is a half land in Hatauta 1.
- " 2. " 2 lots " " 2^d
- " 3. " 3 " " 3^d

The Ct. rec^d these lands from me except N^o 3. which he rec^d from Poi, in the year 1837. since 1837. he has possessed the lands in peace.

N^o 1. is bounded. Maunua by Kaitiaki's land. Waikae, by Kae's land. Maikai, by my land. Maalaea, by the same.

N^o 2. is bounded. Maunua's Waikae sides, by Poi's land. Maikai, by my land. Maalaea, by Kaitiaki's land.

N^o 3. is bounded. Maunua, by Kaitiaki's land. Waikae, by Kaitiaki's land. Maikai, by Poi's land. Maalaea, by Kaitiaki's land.

Mauielua (M) Sw I know that the Ct. has five lots in one piece in the is. of Hatauta. Waikato.

The Ct. rec^d these lots from Mikiu, a woman, in 1844. who rec^d them long before from her ancestors. His title is not disputed.

It is bounded. Maunua, by Pararangi's land. Waikae, by Kaitiaki's land. Maikai, by Kaitiaki's land. Maalaea, by Poi's land.

Ct. 10919. Uru.

This Claim is the same as N^o 3209 just heard.

Ct. 2527. Maunua.

Kae Sw I know the lands of the Ct. They consist of 4 pieces of land, in the is. of Hatauta. Waikato.

- N^o 1. is 2 Mos of half & House lot.
- " 2. " one lot
- " 3. " two lots
- " 4. " one lot

The Ct. is a Kaitiaki, and rec^d these lands from his parents, His title and peaceable possession extends back to the days of Kaitiaki.

from Nahalepuoa in 1825. There has been no opposition. There are two po'alima in it.

It is bounded mauka by Geo. Lawrence, Waihee by Akole and Kamakaha, makai by the land boundary wall, Maalaea by Kamakahano and Kamakona.

No. 2420 - Kekuauli See p. 588

This was entered in Claim No. 3483.

No. 3209 Uwe Wailuku, July 6, 1849

Kahilikaula sworn: I know his land at Wailuku, three parcels..

Parcel 1.	Taro land at Halaula	1.
" 2.	2 <u>lo'i</u>	" 2.
" 3.	3 "	" 3

Parcels 1 and 2 were from me in 1837. In this same year Pooa gave Parcel 3. There is no opposition.

1. is bounded mauka by Kalehua, Waihee by Naea, makai by Kahilikaula, Maalaea, the same.

2. is bounded mauka by Pae, Waihee, the same, makai by Kahilikaula, Maalaea by Kalapu.

3. is bounded mauka by Kaukaliu, Waihee by Napela, makai by Puaa, Maalaea by Naea.

Naiwielua (W) sworn: I know of five taro lo'i in the 'Ili of Kalua, at Wailuku. They were from M. Keomailani in 1844, who had them from H. Kuihelani. There is no opposition.

They are bounded mauka by Palaoanui, Waihee by Makahanohano, makai,

H. Kuihelani, Maalaea, Heaai.

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 Management Areas of Waihe'e, Waiehu, 'Īao)
 and Waikapū Streams, Maui)
)
)
)

WITNESS LIST

PARTY: JORDANELLA CIOTTI

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Jordanella Ciotti	Need for and use of Nā Wai 'Ehā water	2247-CIOTTI-1 to -3

JORDANELLA CIOTTI

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Wailuku, Hawai'i 96793

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STATE OF HAWAII

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and Waikapū Streams, Maui)
_____)
_____)

EXHIBIT LIST

PARTY: JORDANELLA CIOTTI

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2247-CIOTTI-1	TMK Map Showing LCA No. 3209:4	Testimony of Jordanella Ciotti	
2247-CIOTTI-2	LCA No. 3209:4, Foreign Testimony and Native Testimony Translation	Testimony of Jordanella Ciotti	
2247-CIOTTI-3	Screen Shot of TMK No. (2) 3-4-004:020 and LCA No. 2621	Testimony of Jordanella Ciotti	