

MICHAEL RODRIGUES

2010 FEB 19 AM 9:59

215 River Rd.

Wailuku, Hawai'i 96793

(808) 250-2399

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 MICHAEL RODRIGUES;
Standards, Nā Wai 'Ehā Surface Water)	EXHIBITS "2269-RODRIGUES-1" - "2269-
Management Areas of Waihe'e, Waiehu,)	RODRIGUES-3"
'Īao, & Waikapū Streams, Maui)	
)	
)	

TESTIMONY OF MICHAEL RODRIGUES

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2269 and SWUPA No. 2270N, filed with the Commission on Water Resource Management on April 23, 2009, for land in Waihe'e, Tax Map Key ("TMK") Nos. (2) 3-2-004:015 ("Parcel 15") and (2) 3-2-004:017 ("Parcel 17").

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

3. Based on the information set forth below, I request recognition of appurtenant rights for TMK Nos. (2) 3-2-004:015 and :017 in the amount of 420,000 gallons per day. I request a Surface Water Use Permit for my reasonable-beneficial use for TMK Nos. (2) 3-2-

004:015 and :017 of 602,945 gallons per day, of which 296,700 gallons per day was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

4. Parcel 15 is 0.15 acres and is wholly comprised of Land Commission Award (“LCA”) No. 4405-R, ‘āpana 2, confirmed by Royal Patent No. 6459. Parcel 17 is 1.25 acres and is wholly comprised of LCA No. 4405-S, confirmed by Royal Patent No. 2345. I am attaching various Māhele documents that confirm water use on Parcels 15 and 17 at the time of the Māhele.

5. Attached as “2269-RODRIGUES-1” is a true and correct copy of LCA No. 4405-R to Mioi and the foreign testimony supporting LCA No. 4405-R (both the original and a transcription of the relevant portion).

6. Attached as “2269-RODRIGUES-2” is a true and correct copy of LCA No. 4405-S to Puhi and the foreign testimony supporting LCA No. 4405-S (both the original and a transcription of the relevant portion).

7. Attached as “2269-RODRIGUES-3” is a true and correct copy of the County tax map for Parcels 15 and 17, with arrows showing the diversion locations from the ‘auwai to my land, and the areas of water uses marked (horizontal lines for the areas of domestic uses and shading for the lo‘i kalo areas).

8. The documents in 2269-RODRIGUES-1, referring to LCA No. 4405-R, confirm that ‘āpana 2, in the ‘ili of Waihalulu, was cultivated in wetland kalo: the foreign testimony indicates there were eight lo‘i in ‘āpana 2.

9. The documents in 2269-RODRIGUES-2, referring to LCA No. 4405-S, confirm that Parcel 17 was also cultivated in wetland kalo: the foreign testimony indicates the land was

partly kalo (taro) and partly kula (pasture), with three pō'alima within the parcel. Based on the existence of ancient rocks walls throughout much of the parcel, the majority of the land was kalo.

10. Based on the Māhele documents in 2269-RODRIGUES-1 and 2269-RODRIGUES-2, my land has appurtenant rights, and the quantification of the appurtenant rights is the amount of water sufficient to grow kalo on approximately 1.4 acres using traditional methods.

11. 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.

12. Thus, in my best estimation, the water rights appurtenant to TMK Nos. (2) 3-2-004:015 and :017 is 420,000 gallons per day ("gpd") (1.4 acres x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

13. Currently, we receive water from the kuleana 'auwai on the north side of Waihe'e River, which receives water from a pipe in the Spreckels Ditch and also directly from Waihe'e River. The open 'auwai splits in two; one of the branches flows adjacent to my property. We divert some of the water in three locations. The water I do not use continues makai in the 'auwai.

14. I use the kuleana water on my land to feed my lo'i kalo, yard, and garden with things like ti leaf and banana. The water then returns to my neighbor or the Waihe'e River. I am requesting a permit for the amount of water necessary to irrigate my kalo, yard, and other plants.

15. On April 30, 2008, I was cultivating seven lo'i on approximately 0.55 acres. I also had domestic usage on 0.4 acres, for my yard and domestic plants like ti leaf and banana.

My estimated existing use on April 30, 2008 was 474,000 gpd, which I estimated by measuring how long it took to fill a five-gallon bucket at each of the diversions. This measurement included water used by Parcels 15 and 17 and on TMK No. (2) 3-2-004:016 ("Parcel 16"). Parcel 16 is 0.33 acres.

16. I applied the 2002 State of Hawai'i Water System Standard for Maui County of 3,000 gad to the 0.4 acres of diversified agriculture to determine that I use about 1,200 gpd of the 474,000 gpd for my diversified agriculture on Parcel 17.

17. I estimate that the rest of the flow, or 472,800 gpd, was used for 0.88 acres of lo'i kalo on Parcels 15, 16, 17. Subtracting a pro rata amount of water for 0.33 acres of Parcel 16 ($(472,800 \text{ gpd}/0.88 \text{ acres}) \times 0.33 \text{ acres} = 177,300 \text{ gpd}$), I estimate I use 295,500 gpd on my 0.55 acres of lo'i kalo as of April 30, 2008.

18. Based on my current use, I believe that I need 537,273 gad to cultivate healthy kalo on my land ($295,500 \text{ gpd}/0.55 \text{ acres}$). I would like to restore an additional 0.57 acres of lo'i kalo. Based on the water duty of 537,273 gad to cultivate healthy kalo on my land, I will need 306,245 gpd for an additional 0.57 acres of lo'i kalo.

19. I would also like enough water to use a water wheel on my land to produce hydro-electricity for domestic purposes. Based on my neighbor's water wheel, I estimate I would need 432,000 gpd to produce enough electricity for my domestic needs. Because I would use the water for my lo'i kalo, yard, and garden after the water is used to produce electricity, I do not request an additional amount of water for this use.

20. Thus, I request a water use permit in the amount of 602,945 gpd for my current and future uses ($1,200 \text{ gpd} + 295,500 \text{ gpd} + 306,245 \text{ gpd}$) on Parcels 15 and 17.

Reasonable-Beneficial Analysis

21. “Reasonable-beneficial use” is 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.

22. My use of water is “economic and efficient” because I only use the amount I need to irrigate my lo‘i and diversified agriculture and for domestic purposes. I continually work to make my water use more efficient by using pipes to minimize water loss through evaporation and seepage, and after my minimal consumptive uses, the remaining water flows to my neighbor and back to Waihe‘e River.

23. The quantity I am requesting for my uses is necessary for the irrigation of my lo‘i kalo, domestic plants, which includes ti leaf and banana, and the economic and efficient operation of a water wheel to generate domestic electricity.

24. The use of stream water to irrigate the lo‘i kalo and diversified agriculture 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 agricultural. The water use on my land for lo‘i kalo and domestic cultivation is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

25. 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 SWUPA No. 2269 remains applicable, true, and correct.

SUMMARY

26. In sum: (1) my domestic water use is a protected public trust purpose; (2) the exercise of my appurtenant right is a protected public trust purpose; (3) because I have appurtenant rights for TMK Nos. (2) 3-2-004:015 and :017, I am entitled to at least 420,000 gpd; (4) at this time, I request a permit for the existing and future reasonable-beneficial uses on the property of 602,945 gallons per day, of which 296,700 gallons per day was the existing use as of April 30, 2008, to irrigate lo'i kalo, my yard, and garden, and to operate a water wheel to produce electricity, which are alone and cumulatively a reasonable-beneficial use of stream water, for which there is no practicable alternative.

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

Dated: Waihe'e, Hawai'i, 1-29-16.



MICHAEL RODRIGUES
WATER USE PERMIT APPLICANT PRO SE

Utao Pau Lea p 6.
W. Allen
G. M. Robertson
J. H. Smith
J. Mekaulehau

Honolulu Jan 4 1853.

Welu 4405 R. Mici

Waikoa, Maui

Apawa I. Ili Waipae. E hoomaka ke ana ma ke kahi Akau o Waia, ke kahi Kamehameha
o Kaalapa II

Heu.	36 1/2	Hiki.	132	Kh.	Kaalapa.
Heu.	56	Kom.	45	"	Poalima.
Heu.	30	Hiki.	40	"	"
Ak.	56	Hiki.	45	"	"
Heu.	36	Hiki.	3,36	"	Kaalapa.
Heu.	9	Kom.	51	"	"
Heu.	66	Kom.	3,03	"	Poalima.
Ak.	24 1/4	Kom.	535	"	Kaalapa.
Ak.	66 3/4	Hiki.	216	"	Papohaku.

a hiki ma kahi i hoomaka'i, a maloko ia anapuni 1.46 per Eka.

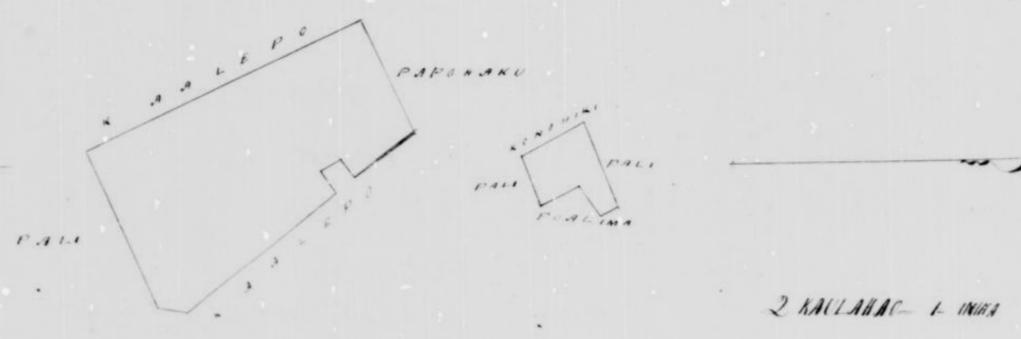
Apawa II Ili Waikalulu. E hoomaka ke ana ma ke kahi Akau o Waia e fili ana me
ka papali.

Ak.	70 1/2	Hiki.	92	Kh.	Pali.
Ak.	20 1/2	Kom.	77	"	Poalima.
Ak.	56 1/2	Hiki.	66	"	"
Ak.	21 1/2	Kom.	33	"	Poalima.
Heu.	7	Kom.	466	"	Pali.
Heu.	24 1/2	Hiki.	127	"	Kamehameha.

a hiki ma kahi i hoomaka'i, a maloko ia anapuni 15 per Eka.

Waikoa, July 10, 1852

John S. Gover,
Ma ana aina.



Utao Pau Lea p 6.
W. Allen
G. M. Robertson
J. H. Smith
J. Mekaulehau

Honolulu, Jan 4, 1853.

N^o 1. he had from me and so did he the other two in 1827.
His title has never been disputed. There are two *pealima* lots in
N^o 1

N^o 1. is bounded. Mauka, by Meo's land. Kakaakulua, by
the Govt lot. Makai, by Kawakalia's land. Waituku, by the Creek.

N^o 2. is bounded. Mauka, by Meo's land. Kakaakulua,
by the Govt land. Makai, by Hamualala's land. Waituku, by the
Creek.

N^o 3. is bounded. Mauka, by the di of Waihalulu. Kakaaku-
lua, by the Govt lot. Makai, by Meo's lot. Waituku, by the Creek.

^R
C. 4405 Meo.

The Claimant made oath that he duly entered his claim.
Pealima See. The title land consists of two pieces in Waikua, Meo.

N^o 1. is the di of Waipua 1.
2. 8 lots in Waikua.

The Claimant received N^o 1 from J. Karamore in 1827, and
N^o 2. from Makapu in 1826 and he from Govt Karamore. His
title was never disputed. There are 2 *pealima* lots in N^o 1

N^o 1 is bounded. Mauka, by the di of Tawakulana. Kaka-
kulua, by the Govt lot. Makai, by my land. Waituku, by the Creek.

N^o 2. is bounded. Mauka, by Meo's land. Kakaakulua, by
the same. Makai, by Puki's land. Waituku, by Meo's land

^P
C. 4406 Puki

Meo See. This claim was duly entered. The title land consist of
one piece of hale and hula in the di of Waihalulu. Waikua, Meo.

The Claimant received it from Makapu in 1826, and he
from Govt Karamore. His title is without dispute, but there are
2 *pealima* lots in it.

It is bounded. Mauka, by Meo's land. Kakaakulua, by
the Creek. Makai, by the di of Tawakulana. Waituku, by the
Creek.

Section 4 - 4 Taro patches at Waipae 4
 Mauka Kamsalaala
 Kahakuloa, makai, wailuku Kaalepo
 Section 2 from Nalu in 1839. Section 1 from Makapu in 1846. Section 3 from
 Kauhī in 1843. Kauhī's interest from Anakalea. Sections 4 from Kaalepo,
 before 1839, no objections. 5 Poalimas in section, 1,2, poalimas in section 2.

No. 4405 Q Kaalepo July 26, 1849

Pawaai sworn He has known - Kekahio had written before 1848. Z. Kasmwai sworn
 He has seen definitely 1 section in Waipae 2 ili of Waihee, he has not seen the
 other two sections.

Section 1 - Ili of Waipae 2

Mauka	Moo
Kahakuloa	Land fence
Makai	Kawahalea
Wailuku	Stream

Section 2 - 2 Moo's in Waipae 4

Mauka	Mioi
Kahakuloa	Land fence
Makai	Kamsalaala
Wailuku	Stream

Section 3 - 6 patches, pasture and house in Lonoakaulana

Mauka	Waihalulu ili
Kahakuloa	Land fence
Makai	Mioi
Wailuku	Stream

All sections from Kasmwai in 1829. 2 Poalimas in first section, no objection.

No. 4405 R Mioi July 26, 1849

Claimant sworn Kekahio wrote (claim) before 1848. Pawaai sworn He has seen 2
 sections in the ilis of Waihee.

Section 1 - Ili of Waipae

Mauka	Lonoakaulana ili	Page 287
Kahakuloa	Land fence	
Makai	Kaalepo	
Wailuku	Stream	

Section 2 - 8 patches at Waihalulu

Mauka, Kahakuloa	Moo
Makai	Puhi
Wailuku	Moo

First section from Z, Kasmwai in 1829. Section 2 from Makapu in 1846.
 Makapu's land from M Kekanaoa. No objections. 2 Poalimas in first section,
 none in section 2.

No. 4405 S Puhi July 26, 1849

Moo sworn He has known - Kekahio had written (claim) before 1848. He has seen
 1 taro section and pasture in Waihalulu ili of Waihee. Puhi's land from Makapu
 in 1846. Makapu's interest from (M.K.). No objection, 3 poalimas in there.

Mauka	Mioi
Kahakuloa	Stream/Fa
Makai	Lonoakaulana ili
Wailuku	Stream

Hele 4405 F. Lou

Haihu Maui

Apana 1 Ili Nelu. E hoomaka ke ana ma ke kahi Kuma o Kua. Epili ana me Luamoo.

Akua	4 1/2	Komohana	128	Kaulahao	Luamoo
Akua	5 1/2	Hikina	354	"	Kalua
Hema	3 1/2	Hikina	148	"	Kapela
Hema	60	Komohana	342	"	Konohiki

a hiki ma kahi i hoomaka i, a maloko oia anapuni 4 25/100 Eka

Hailuku, July 7, 1852

John S. Cowen
Mea ana sina



Ulu Pau Lea / 4.
W. H. Lee
G. M. Robertson
J. H. Kaulahao
J. H. Smith

Honolulu, 25 Dec. 1852

Hele 4405 S. Puki

Haihu Maui

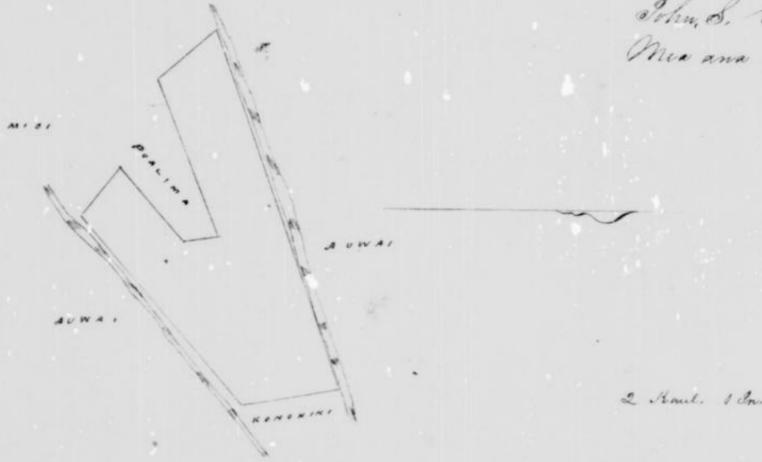
Ili Hailuku, E hoomaka ke ana ma ke kahi Akua. Ma kahi 2, ma ke kahi Kuma o Kua.

Akua	5 1/2	Komohana	107	Kaulahao	Konohiki
Akua	48	Hikina	170	"	Keatima
Akua	9	Komohana	63	"	"
Hema	6 1/2	Komohana	299	"	"
Akua	40	Komohana	137	"	Miri
Akua	70 1/4	Hikina	667	"	Kuwa
Hema	8 1/2	Hikina	179	"	Konohiki
Hema	49	Komohana	132	"	Kuwa

a hiki ma kahi i hoomaka i, a maloko oia anapuni 1 25/100 Eka

Hailuku, July 10, 1852

John S. Cowen
Mea ana sina



Ulu Pau Lea / 5.
W. H. Lee
G. M. Robertson
J. H. Kaulahao
J. H. Smith

Honolulu, 25 Dec. 1852

N^o 1. he had from me and so did he the other two in 1827.
His title has never been disputed. There are two *poakima* lots in
N^o 1

N^o 1. is bounded. Mauka, by Moos Land. Katakakuloa, by
the Govt lot. Makai, by Kawakalia's Land. Waituku, by the Creek.

N^o 2. is bounded. Mauka, by Moos Land. Katakakuloa,
by the Govt Land. Makai, by Kawakalia's Land. Waituku, by the
Creek.

N^o 3. is bounded. Mauka, by the site of Waikakulua. Katakaku-
loa, by the Govt lot. Makai, by Moos Land. Waituku, by the Creek.

R
C. 4405 Moos

The Claimant made oath that he duly entered his claim.
Moos See. The title land consists of two pieces in Waikua, Maui.

N^o 1. is the site of Waikua 1.
N^o 2. is 8 lots in Waikakulua.

The Claimant received N^o 1 from T. Kawakua in 1827, and
N^o 2. from Makapu in 1826 and he from Govt Kakuanaoa. His
title was never disputed. There are 2 *poakima* lots in N^o 1

N^o 1 is bounded. Mauka, by the site of Kawakulua. Kaka-
kulua, by the Govt lot. Makai, by my land. Waituku, by the Creek.

N^o 2. is bounded. Mauka, by Moos Land. Katakakuloa, by
the same. Makai, by Puhis Land. Waituku, by Moos Land

P
C. 4406 Puhis

Puhis See. This claim was duly entered. The title land consist of
one piece of hale and hula in the site of Waikakulua, Waikua, Maui.

The Claimant received it from Makapu in 1826, and he
from Govt Puhisanoa. His title is without dispute, but there are
3 *poakima* lots in it.

It is bounded. Mauka, by Moos Land. Katakakuloa, by
the Creek. Makai, by the site of Kawakulua. Waituku, by the
Creek.

Section 4 - 4 Taro patches at Waipae 4
 Mauka Kaealaala
 Kahakuloa, makai, wailuku Kaalepo
 Section 2 from Nalu in 1839. Section 1 from Makapu in 1846. Section 3 from
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No. 4405 Q Kaalepo July 26, 1849

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Section 1 - Ili of Waipae 2

Mauka	Moo
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Makai	Kawahalea
Wailuku	Stream

Section 2 - 2 Moo's in Waipae 4

Mauka	Mioi
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Section 3 - 6 patches, pasture and house in Lonoakaulana

Mauka	Waihalulu ili
Kahakuloa	Land fence
Makai	Mioi
Wailuku	Stream

All sections from Kaamwai in 1829. 2 Poalimas in first section, no objection.

No. 4405 R Mioi July 26, 1849

Claimant sworn Kekahio wrote (claim) before 1848. Pawaai sworn He has seen 2
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Section 1 - Ili of Waipae

Mauka	Lonoakaulana ili
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Makai	Kaalepo
Wailuku	Stream

Page 287

Section 2 - 8 patches at Waihalulu

Mauka, Kahakuloa	Moo
Makai	Puhi
Wailuku	Moo

First section from Z, Kaamwai in 1829. Section 2 from Makapu in 1846.
 Makapu's land from M Kekanaoa. No objections. 2 Poalimas in first section,
 none in section 2.

No. 4405 S Puhi July 26, 1849

Moo sworn He has known - Kekahio had written (claim) before 1848. He has seen
 1 taro section and pasture in Waihalulu ili of Waihee. Puhi's land from Makapu
 in 1846. Makapu's interest from (M.K.). No objection, 3 poalimas in there.

Mauka	Mioi
Kahakuloa	Stream/Pa
Makai	Lonoakaulana ili
Wailuku	Stream

MICHAEL RODRIGUES

215 River Rd.

Wailuku, Hawai'i 96793

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STATE OF HAWAII

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, Waichu, 'Īao)
and Waikapū Streams, Maui)
_____)
)

WITNESS LIST

PARTY: MICHAEL RODRIGUES

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Michael Rodrigues	Need for and use of Nā Wai 'Ehā water	2269-RODRIGUES-1 to -3

MICHAEL RODRIGUES
 215 River Rd.
 Wailuku, Hawai'i 96793
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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) EXHIBIT LIST
 Standards, Nā Wai 'Ehā Surface Water)
 Management Areas of Waihe'e, Waiehu, 'Āao)
 and Waikapū Streams, Maui)
)
)

EXHIBIT LIST

PARTY: MICHAEL RODRIGUES

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2269-RODRIGUES-1	LCA No. 4405-R Foreign Testimony and Transcription	Testimony of Michael Rodrigues	
2269-RODRIGUES-2	LCA No. 4405-S, Foreign Testimony and Transcription	Testimony of Michael Rodrigues	
2269-RODRIGUES-3	County Tax Map for Parcels 15 and 17	Testimony of Michael Rodrigues	