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Waikapū, Hawai'i 96793
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2016 FEB -5 AM 9:42

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 IONE SHIMIZU;
Standards, Nā Wai 'Ehā Surface Water) EXHIBITS "2276-SHIMIZU-1" - "2276-
Management Areas of Waihe'e, Waiehu,) SHIMIZU-2"
'Āao, & Waikapū Streams, Maui)
)
)
_____)

TESTIMONY OF IONE SHIMIZU

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2276, filed with the Commission on Water Resource Management on April 23, 2009, for a parcel in Waikapū, Tax Map Key ("TMK") No. (2) 3-5-012:031.

2. I am claiming an appurtenant right to water. Therefore, I am providing information regarding water use at the time of the Māhele.

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) 3-5-012:031 in the amount of 159,000 gallons per day. I request a Surface Water Use Permit for my reasonable-beneficial use for TMK

No. (2) 3-5-012:031 of 11,052 gallons per day, which was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

5. I am attaching various exhibits that confirm water use on TMK No. (2) 3-5-012:031 at the time of the Māhele.

6. TMK No. (2) 3-5-012:031 is comprised of a portion of Land Commission Award (“LCA”) No. 205 to Anthony Catalena, confirmed by Royal Patent No. 7660. Attached as “2276-SHIMIZU-1” is a true and correct copy of LCA No. 205 to Anthony Catalena (original in English). The LCA refers to “kalo patches of this land” and “coffee ground,” but it is unclear where these crops were located.

7. I believe lo‘i kalo were located on my portion of LCA No. 205 for two reasons. First, remnants of an extensive lo‘i kalo complex with stone terracing still exists on my land today. Second, an ‘auwai runs through the south side of my land, and it is my understanding that lo‘i kalo were raised near ‘auwai.

8. Attached as “2276-SHIMIZU-2” are true and correct copies of photographs depicting the stone terraces and ‘auwai present on my land. I have counted at least 10 distinct lo‘i kalo in various sizes.

9. My land, TMK No. (2) 3-5-012:031, is 0.53 acre. Based on the Māhele documents in 2276-SHIMIZU-1, and the physical, cultural features of my land, as depicted in 2276-SHIMIZU-2, the quantification of the appurtenant rights is the amount of water sufficient to grow kalo on 0.53 acre using traditional methods.

10. 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.

11. Thus, in my best estimation, the water right appurtenant to TMK No. (2) 3-5-012:031 is 159,000 gallons per day (“gpd”) (0.53 acre x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

12. Currently, I divert a modest amount of water from the kuleana ditch that runs along Waikō Road. Water is diverted into the ditch from Waikapū Stream through a traditional po‘owai just mauka of my house. The water comes directly from the kuleana ditch through a pipe and water hoses. I use this water to irrigate my wetland kalo (0.032 acre) and a non-commercial garden of sweet potatoes, eggplant, papaya, bananas, herbs, coconuts, passion fruit, breadfruit, mango trees, corn, beans, lettuce, and other vegetables, as well as sunflowers (0.484 acre). I am requesting a permit for the amount of water necessary for these domestic uses.

13. Applying the kalo water duty noted above, I am requesting 9,600 gpd to irrigate my wetland kalo (0.032 acre x 300,000 gpd). Applying the 2002 State of Hawai‘i Water System Standard for Maui County of 3,000 gad, I am requesting 1,452 gpd to irrigate my non-commercial garden (0.484 acre x 3,000 gpd). In sum, I am requesting a Surface Water Use Permit for 11,052 gpd (9,600 gpd + 1,452 gpd).

Reasonable-Beneficial Analysis

14. As I am claiming an appurtenant right to water, I do not need to prove my use is reasonable-beneficial. Nevertheless, 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.

15. The quantity I am requesting is necessary for the economic and efficient irrigation of my home garden, which includes wetland kalo and a non-commercial garden of sweet potatoes, eggplant, papaya, bananas, herbs, coconuts, passion fruit, breadfruit, mango trees, corn, beans, lettuce, and other vegetables, as well as sunflowers. My use of the stream water is economic and efficient, as I use only the amount needed to irrigate my garden and wetland kalo, and I implement measures to minimize water loss, including using garden hoses, which reduce evaporation and leakage.

16. 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 urban, and zoned by the County as agricultural. My water use on my land for domestic cultivation is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

17. I have always used a reasonable amount of ‘auwai water to maintain my lo‘i kalo and 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 me to pay for these alternatives instead of diverting the small amount of stream water via the ‘auwai that runs alongside 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 who has always used the 'auwai that runs alongside and through my land to water my home garden.

18. Because I am claiming appurtenant rights to stream water 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 SWUPA remains applicable, true, and correct.

SUMMARY

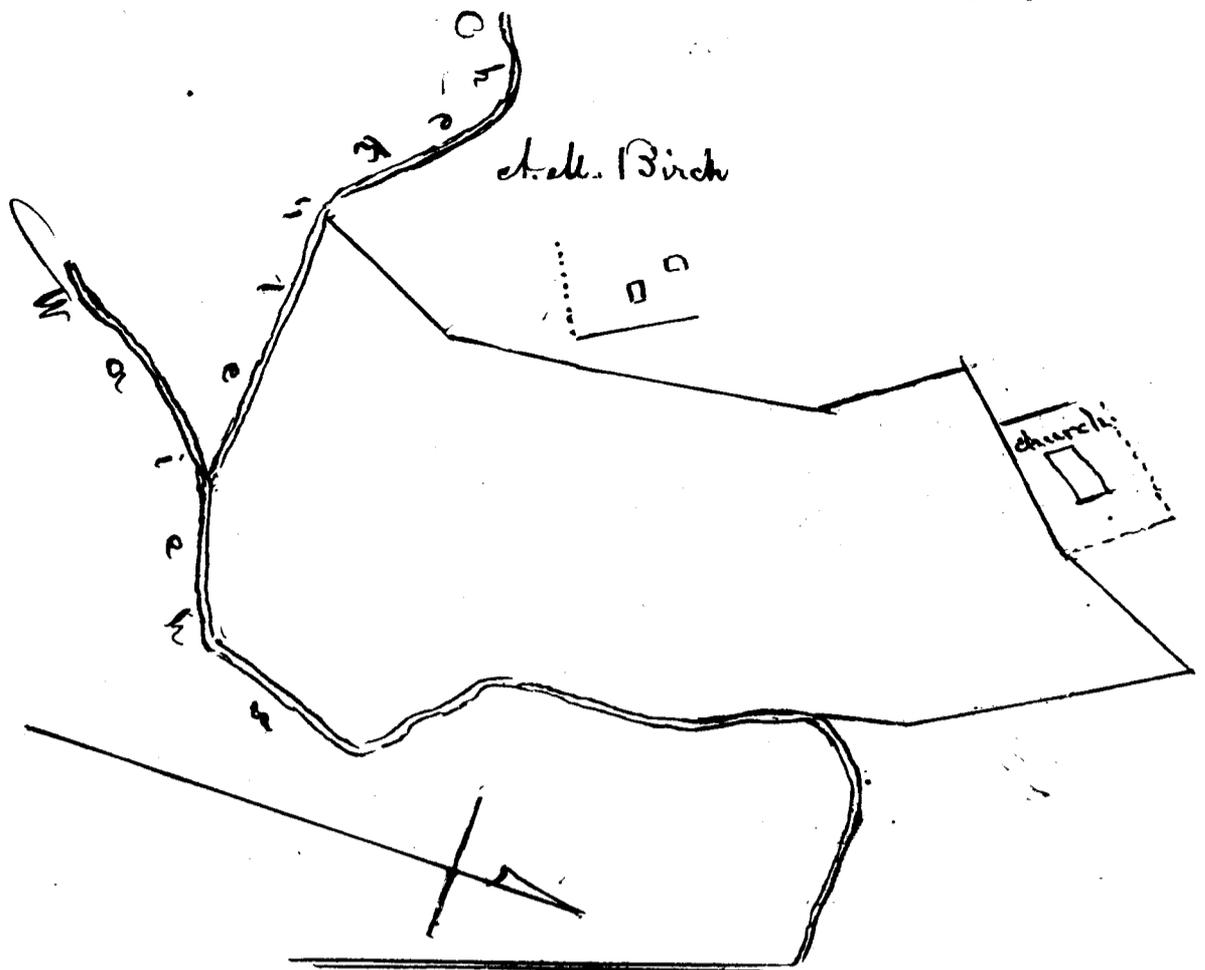
19. In sum: (1) my domestic water use is a protected public trust purpose; (2) the exercise of the rights appurtenant to TMK No. (2) 3-5-012:031 is a protected public trust purpose, and I am entitled to 159,000 gallons per day; (3) at this time, I request a permit for my reasonable-beneficial uses on the property of 11,052 gallons per day, and this amount will be used to irrigate my non-commercial garden, wetland kalo, and lawn, which are reasonable-beneficial uses of stream water, for which there is no practicable alternative.

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

Dated: Waikapū, Hawai'i, Feb. 3, 2016.



IONE SHIMIZU
WATER USE PERMIT APPLICANT PRO SE



Costs of incidental Exp^{ts} actions &
 dt. test^d 1st ed^d of Augst 1847 & 30 June 1848
 Survey by J. Metcalf 10 & 23 for copy - 1 engraved
 Report of Com^{rs} this day rendered
 Hale Kooma L. Kaunani
 November 15. 1849

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Claim No 205 Anthony Catalena.

This is a claim to a land situated in Waikapu Island of Maui, and known by the name of "Kaliipatala" or "Kaliipatahalaha". The claim is clear beyond dispute and is based upon the following deed of the former Governess of Maui - Hoapili Wahine; which deed is approved by the King and the late Premier "Vehauluohi".

Copy of Deed.

"I, Hoapili Wahine hereby transfer & confirm to Anthony Catalena, and his Sandwich Island born heirs for ever, a certain land in Waikapu by the name of Kaliipatahalaha, also a certain fishing grounds with it the name of Anukoli - said land & fishing ground to belong to Anthony Catalena, and his Sandwich Island born heirs for ever more, together with all premises belonging to said land & fishing ground

and no Rent or Tax shall ever be required, more than is required of other lands and fishing grounds of the same Character. It is hereby also agreed that said land and fishing ground shall never be transferred to any alien or non-resident of the Sandwich Islands.

In testimony whereof we have hereunto set our hands and seals this 5th day of June 1840 at Pukainā.

Signed Anthony Catalina

Witness
William Richards.

his cross + 

Na Hoāpiti Wahine "

" We hereby approve the within document

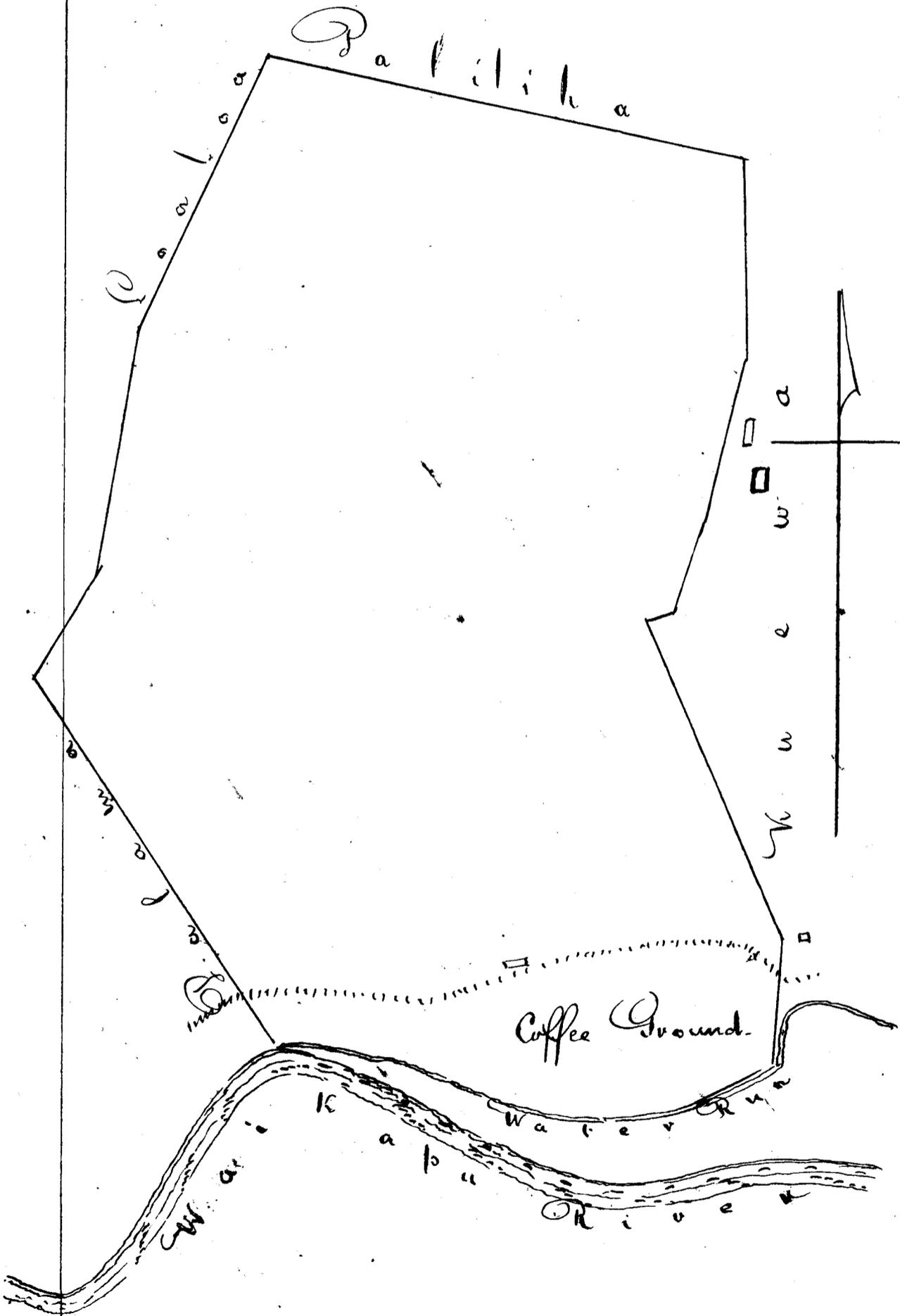
Kamehameha III 
Ke Kaulaohi "

The above deed renders the Claimants title to the Land, clear and we accordingly award to Anthony Catalina, and his Sandwich Islands born heirs, to have and to hold for ever, upon the terms and Conditions expressed in the above deed, this land, as defined by the annexed Survey of Theophilus Metcalf dated 1st February 1847.

"Kaliipatalii or Kaliipalahalaha.

"Commencing at Stone by water run at N.E. Corner of this land, joining Palitika on N & Kuewa on E and running N. 78° 30' W. 7 Ch. 6 1/2 ft. along boundary line between this land & Palitika to Koaloe by stone & water ditch - thence S. 24° W. 4 Ch. 38 1/2 ft. along Koaloe to angle by water ditch - thence S. 9° 30' W. 3 Ch. 41 ft. along ditch to angle - thence S. 31° 15' W. 1 Ch. 51 ft. along ditch & Koaloe to Palama by Pa pipi - thence S. 33° E. 5 Ch. 46 ft. along Palama to edge bank - thence S. 28° E. 51 ft. to River - thence S. 66° E. 5 Ch. 56 1/2 ft. along middle River to angle - thence N. 78° E. 62 1/2 ft. along River to S. E. Corner of this land at Kuewa - thence N. 1/2° E. 1 Ch. 23 1/2 ft. across River, along Makai side of Coffee to Water run - thence N. 64° E. 1 Ch. 23 ft. along water run to angle - thence N. 6° E. 1 Ch. 58 ft. along water run, up bank to point by house - thence N. 22° 15' W. 5 Ch. 13 ft. along between Kato patches of this

land and Kuewa to angle. - thence N. $79^{\circ} 30'$ E. 21 ft.
 to angle, corner of Kato Patch. - thence N. 20° E 1 Ch.
 $31 \frac{3}{12}$ ft. to angle. - thence N. 14° E. 2 Ch. $35 \frac{3}{12}$ ft.
 along past sugar mill to angle. - thence N. $2^{\circ} 30'$ W.
 3 Ch. $3 \frac{1}{2}$ ft. always along between this land and
 Kuewa to point of Commencement - including an area
 of Acres $13 \frac{6}{100}$.
 Feb 31st 1847.



Board of Commissioners for Land Claims
 Adjudication of Claims No 205 and 206 Anthony Catalana D^r

N ^o 205	
To incidental expences	1
" action of Commissioners on 22 nd February 1847	1
" citation 50 ^{cts} draft depos ⁿ red ^d of 3. \$1.50	2
" Engross ^d Copy of Claimants Survey by J. Metcalf	2
" Report of Com ^{rs} this day rendered in this claim	5
<hr/>	
N ^o 206	
To incidental expences & action of Board on 22 nd Feb ^y 1847	2
" citation 50 ^{cts} & dr. dep ⁿ red ^d of 3. \$1.50	2
" draft testimony red ^d sent on 22 nd Feb ^y 1847 & 24 th June 1848	1 50
" engross ^d Copy of Cl ^{ts} Survey by J. Metcalf	2
" Report of Com ^{rs} this day rendered in this claim	5
<hr/>	
William L. Lee	12 50
deduction by order of Board	2 50
<hr/>	
	10

Kate Kawaiwa
 25 July 1848

[Signature]
 Ya Mame
 Loawe di
 T. Kuumari

Claim N^o 212. George D. Voyles

This is a claim to a house lot situated in Waitohi plains. Oahu.

How this lot was originally obtained, or by or from whom, does not appear. The first we learn of it is in the year 1833 when this lot was in the possession of Alexander Smith, when it was bought from him by John Sweetman. Sweetman held it in peaceable possession until the year 1835, when the Father of Claimant, James Voyles, bought the same of Sweetman for the sum of \$100. The deed of sale from Sweetman to Claimant is on file with the Board, and it appears that he has occupied this lot in peace from the year 1835 down to the present time.

The Claimants title is clear, coming directly under the first Rule of the Board, and be therefore awarded to the Claimant George D. Voyles, a freehold title less than allodial, or in other words, a life estate in this lot, which he may commute according to law.



2276-SHIMIZU-2-P.1



2276-SHIMIZU-2-P.2



2276-SHIMIZU-2-P.3



2276-SHIMIZU-2-P.4



2276-SHIMIZU-2-P.5



2276-SHIMIZU-2-P.6

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 and Waikapū Streams, Maui)
)
)
)

WITNESS LIST

PARTY: IONE SHIMIZU

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Ione Shimizu	Need for and use of Nā Wai 'Ehā water	2276-SHIMIZU-1 to - 2

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EXHIBIT LIST

PARTY: IONE SHIMIZU

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2276-SHIMIZU-1	LCA No. 205	Testimony of Ione Shimizu	
2276-SHIMIZU-2	Photos of the stone terraces present on my land that demonstrate my land was in kalo cultivation at the time of the Māhele	Testimony of Ione Shimizu	

