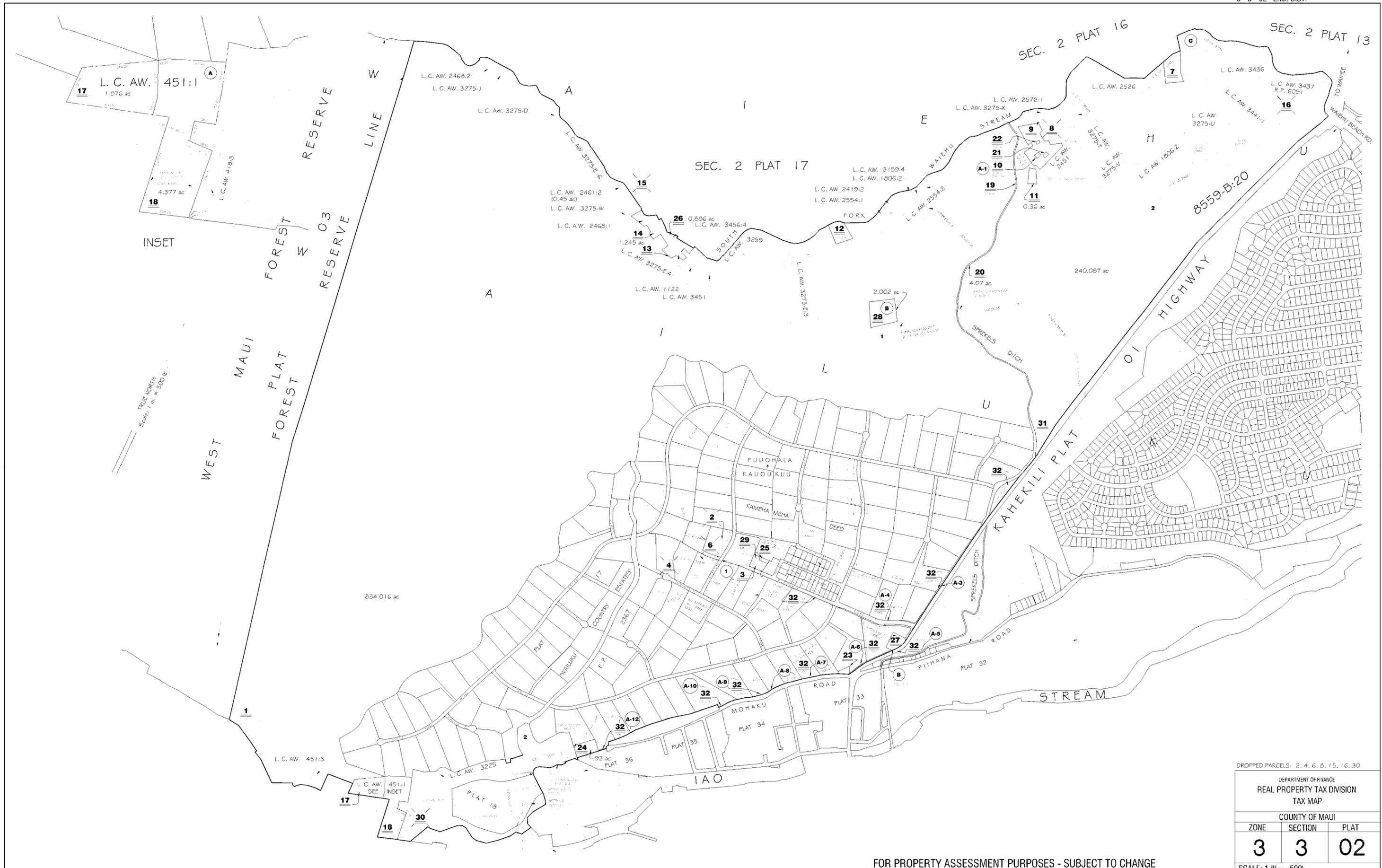




SOURCE: TMB & SURVEY/DEPT. BY: JMK DATE: 3/8/1934 DWS NO. 1927



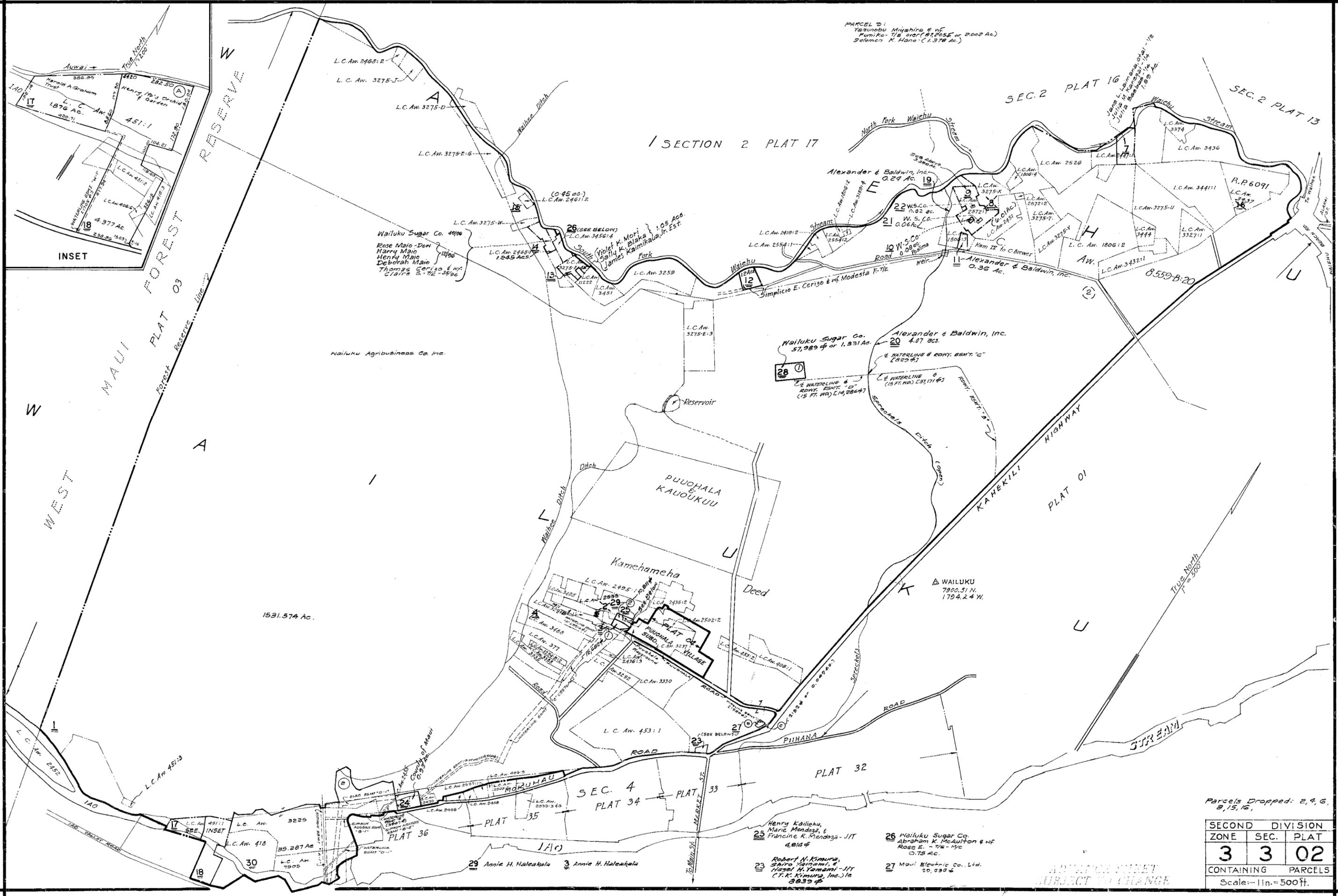
DROPPED PARCELS: 2, 4, 6, 8, 15, 16, 30

DEPARTMENT OF FINANCE		
REAL PROPERTY TAX DIVISION		
TAX MAP		
COUNTY OF MAUI		
ZONE	SECTION	PLAT
3	3	02
SCALE: 1 IN = 500'		

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

PRINTED:

SEP 8 1938  
 FEB 14 1939  
 NOV 23 1950  
 JUN 6 1966  
 JUN 27 1966  
 JUN 15 1972  
 JUN 15 1974  
 JUN 15 1977  
 JUN 9 1977  
 JUN 21 1983



PARCEL 5:  
 Tanihira Miyahira & W.F.  
 Punika 7 1/2 Acs (87,205 of 2002 Ac.)  
 Selemen K. Hana (1,378 Ac.)

INSET

Dwg No. 1927  
 By: J.A.K. March 8, 1934  
 Source: Top. Maps, Bureau & Survey Dept.

Parcels Dropped: 2, 4, 6, 8, 15, 16,

SECOND DIVISION		
ZONE	SEC.	PLAT
3	3	02
CONTAINING PARCELS		
Scale: 1 in. = 500 ft.		

AMERICAN STREET  
 SUBJECT TO CHANGE

PRINTED

<u>Land Comission Award</u>	<u>Royal Patent Number</u>	<u>Awarded To:</u>	<u>Native Registers</u>		<u>Native Testimony</u>		<u>Foreign Register</u>	<u>Foreign Testimony</u>	<u>English Trans Water in LCA</u>
			<u>Eng</u>	<u>Haw</u>	<u>Eng</u>	<u>Haw</u>			
377	5366	John Pillitier	None	None	None	None	x	x	
406	5376	Napela	x	x	x	x	None	x	x
453	997; 997(por.)	Kuihelani	x	x	x	x	None	None	x
2434	6397(por.)	Kahooke	x	x	x	x	None	x	x
2436	2009; 2009(por.)	Kahaiki	x	x	x	x	None	x	x
2495	7790	Kaiaholokuaau	x	x	x	x	None	x	x
2502	5973; 5973(por.)	Ihumai	x	x	x	x	None	x	x
2503	3652(por.)	Ohule	x	x	x	x	None	x	x
2533	6529(por.); 6437(por.)	Malaihi	x	x	x	x	None	x	x
3225	6298-6458 (por.)	Opunui	x	x	x	x	None	x	x
3237	6888(por.)	Hewahewa	x	x	x	x	None	x	x
3292		Mua	x	x	x	x	None	x	x
3330	4424(por.); 4622(por.)	Lonohiwa	x	x	x	x	None	x	x
3335	7774	Naonohi	x	x	x	x	None	x	x
3387	6065(por.)	Pooliilii	x	x	x	x	None	x	x
3388	6101	Paiwi	x	x	x	x	None	x	x
3488	5289	Kaawa	x	x	x	x	None	x	
3498	7432	Kaupe	x	x	x	x	None	x	
4452	7302(por.)	H. Kalama	x	x	x	x	None	x	
4461	6630	Kawaa	x	x	x	x	None	x	x
3275-E	5154	Kaleo	None	None	x	x	None	x	x
3294-B	6102; 6102; 6102(por.)	Moomooiki	None	None	x	x	None	x	x

**SCHEDULE "1"**

Land Commission Award Number 377 to John  
Pillitier (Volume 3, Page 259)

Claim N<sup>o</sup> 377. John Pittier

The present claim is for two pieces of land: the one, situated at Pahaina Maui, and the second piece at Waituku, on the same Island.

After hearing evidence upon these claims, the Board have disallowed that situated at Pahaina - and confirmed the one at Waituku, which is proved to have been given to the Claimant by the King in the Year 1834, & which the Claimant afterwards occupied & cultivated, until he went to California - when he left it in charge -

We therefore award a fee-simple title to John Pittier for a piece of land situated in Kapatalua, Waituku, Maui; reserving in this award, the rights of Naonahi, and Moornooiki - as described in the accompanying survey of the same, made by J. Metcalf and E. Bailey.

"In Kapatalua, Waituku Maui;"  
Commencing at Rock, at S. E. Corner of this land, at Junction of Water-Courses - Running N. 6° W. 5 Ch. along Kawahies land, & away to angle - Thence N. 6° E. 2 Ch. Left along away to N. E. Corner of this land - Thence S. 70° 15' W. 8 Ch. 12 1/2 ft. along land called "Punkie," to angle - Thence S. 70° 15' W. 1 1/2 Ch. along "Punkie," to wall by away, at N. W. Corner of this land - Thence

After hearing evidence upon the claims, the Board have disallowed that situated at Pahoa - and confirmed the one at Waikutu, which is proved to have been given to the Claimant by the King in the Year 1834, & which the Claimant afterwards occupied & cultivated, until he went to California - when he left it & changed -

We therefore award a fee simple title to John Pillitter for a piece of land situated in Kapatalaea, Waikutu, Maui; reserving in this award, the rights of Naonahi, and Moornooti - as described in the accompanying survey of the same, made by J. Metcalf and E. Bailey.

"On Kapatalaea - Waikutu Maui;

Commencing at Rock, at S. E. Corner of this land, at Junction of Water-Courses - Running N. 6° W. 5 Ch. along Naonahi's land, & awwai to angle - Thence N. 6° E. 2 Ch. left along awwai to N. E. Corner of this land - Thence S. 70° 15' W. 8 Ch. 22 1/2 ft. along land called "Puntii," to angle - Thence S. 70° 15' W. 1 1/10 Ch. along "Puntii," to wall, by awwai, at N. W. Corner of this land - Thence S. 15° E. 5 Ch. 23 ft. along wall, & awwai, to S. W. Corner of this land - Thence S. 39° E. 3 1/2 Ch. along "Umoeu," to angle of Umoeu - Thence N. 81° 15' E. 5 1/2 Ch.

along avenue to place of Commencement.

Including an area of 6 Acres  $\frac{16}{100}$ .

J. McKay Esq.

Aug. 3. 1849.

Deduct the Vuleanas of Naonohi & Moomooitiki as follows:

For Naonohi, measure from the S. W. Corner of this, N. 18° W.

2. 64 Ch. to S. W. corner of Naonohi house lot, thence run around Naonohi lot thust: N. 1° W. 1.30 Ch. & N. 75° E. 1.96 Ch. and S. 6 3/4° E. 1 Ch. & S. 89 1/2° E. 5.10 Ch. and N. 82 1/2° E. 3.18 Ch. and S. 12° E. 78 Ch & S. 83° W. 1.13 Ch. & due W. 1.46 & 2.00 to S. W. Corner again; deducting that part of the area, which falls within this lot, viz  $\frac{69}{100}$  of an acre. There remains  $5 \frac{17}{100}$  Acres.

For Moomooitiki, from N. E. corner of this lot, measure

S. 18 1/2° W. 2.89 Ch. to N. E. Corner of Moomooitiki lot; thence run around it thust: S. 80 1/2° W. 1.07 Ch & S. 81 1/2° W. 3.07 Ch. & S. 95° E. 62 Ch. & N. 86 1/2° E. 2.76 Ch & 82 1/2° E. 1.30 Ch. & N. 56° E. 20 Ch. & N. 11 3/4° W. 73 Ch. to N. E. Corner again.

The area of which 1/2 acre, deduct from the remaindes above, leaves a balance of  $1 \frac{97}{100}$  Acres

Jan. 1852.

E. Bailey Esq.

6.16  
1.19  
4.97  
69  
100



For Naonohi measure from the S.W. corner of this, a S. 48° E.

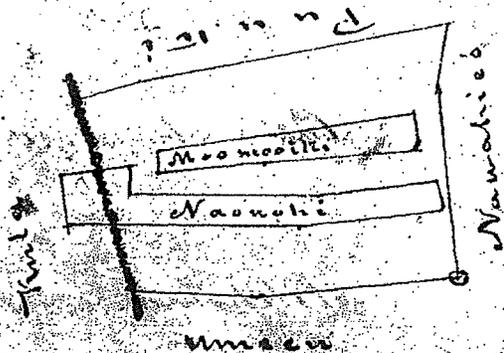
2. 64 ch. to S.W. corner of Naonohi's house lot, thence run around Naonohi's lot thus: N. 1° W. 1.30 ch. & N. 75° E. 1.96 ch. and S. 6 3/4° E. 1 ch. & S. 89° 3/2 E 5.10 ch. and N. 82 1/2 E 3.18 ch. and S. 12° E. 78 ch & S. 83° W. 1.13 ch. & due W. 1.46 & 2.00 to S.W. corner again; deducting that part of the area, which falls within this lot; viz 69/100 of an acre. There remains 5 27/100 Acres.

For Moomooiki, from N.E. corner of this lot, measure S. 18 1/2 W. 2.89 ch. to N.E. corner of Moomooiki's lot; thence run around it thus: S. 80 1/4 W. 1.07 ch & S. 81 1/2 W. 3.07 ch. & S. 5° E. 62 ch. & N. 86 1/2 E 2.76 ch & 82 1/2 E 1.30 ch. & N. 56° E. 20 ch. & N. 12 3/4 W. 73 ch. to N.E. corner again; the area of which 1/2 acre, deduct from the remaindes above, leaves a balance of 4 97/100 Acres

Jan 12. 1854.

E. Bailey Sr

6.16	69
1.19	30
4.97	99



February 16. 1854

W. L. Lee  
G. R. Robertson  
J. H. Smith  
J. K. Smith

Call

Survey	10.00
Commission	4
	14.00

Royal Patent Number 5366  
(Volume 21, Page 387)



HELU.....5366

PALAPALA SILA NUI.

A KE ALII, MAMULI O KA OLELO A KA POE HOONA KULEANA.

NO KA HEA, Ua hoocholo na Luna Hoona i na kumu kuleana aina i ka ololo, he kuloana oia ko ma ke ANO Aledio iloko o kahi i oleloia malalo.

Kuleana Helu..... 777

Nolaila, ma keia Palapala Sila Nui, ke hoike aku nei o Kamehameha IV, ke Alii nui a ke Akua i kona lokomaikai i hoonoho si maluna o ko Hawaii Pae Aina, i na kanaka a pau, i keia la nona iho, a no kona mau hope alii, ua haa'wii aku oia ma ke ANO Aledio ia i kela . wahi a pau loa ma penei na mokuna,

Commencing at Rock at S.E. Corner of this land at junction of Water Courses & running  
North 6° West 5 Chains along Kawaike's land & Auwai to angle  
6° East 2 " 4 ft " Auwai to N.E. Corner of this land  
South 78.15 West 8 " 4 1/2 " Land Called Kupu to angle  
70.15 " 1 1/2 " " Puu to Wall by Auwai N.W. Corner  
16° East 5 " 23 ft " Wall & Auwai to S.W. Corner  
89° " 3 1/4 " " Auwai to angle of Auwai  
North 84.15 " 5 3/4 " " Auwai to Commencement  
Area 6.16 acres

Subst claim of Keonohi 0.69 ac. } 1.19  
" " " Mooswick 0.50 } 4.97 Acres

Keonohi - from S.W. Corner of this N. 48° W. 2.64 Ch. to S.W. Corner of his House  
thence run round his lot thus - N. 4° W. 1.30 Ch. - N. 75 1/2° E. 96 Ch. -  
S. 6 3/4° E. 1 Ch. - S. 89 3/4° E. 5.10 Ch. - N. 82 1/2° E. 3.48 Ch. - S. 12° E. 0.78 Ch.  
S. 83° W. 4.13 Ch. and due West 4.46 + 2.00 to S.W. Corner again  
deducting that part of the area which falls within this lot 100.00 Acres  
Mooswick - from N.E. Corner of this - S. 18 1/2° W. 2.89 Ch. to N.E. Corner  
of his lot - thence run round it thus - S. 80 1/4° W. 4.07 Ch. - S. 84 1/4° W.  
3.07 Ch. - S. 5° E. 0.62 Ch. - N. 86 3/4° E. 2.76 Ch. - N. 80 1/4° E. 4.50 Ch.  
N. 50° E. 0.20 Ch. - N. 14 1/2° W. 0.73 Ch. to N.E. Corner again  
Area 50

Maloko o *Olā* *upana* *4.97* Eka  
a oi iki aku, a emi iki mai paha. Ua koe nāe i ke aupuni na mīse minerela a me na metela a pau.

No *John P. ...*  
ua aia la i haawina ma ke **Ame Aledia** a se kōna mau hoollina, a me kōna waihona; ua pili nāe  
ka aubau a ka **Pos-Ahaolelo** e kau like ai ma na aia alodio i keia manawa i keia manawa.

A I MEA E IKEA AI, ua kau wau i ko'u iāoa, a me ka Sila Nui o ko Hawaii Pae  
Aina ma Honolulu i Eia-ia

*Lupe* 18 63 *27*

*Kaahumanu*

*Kamehameha*

*L. Kamehameha*

# **FOREIGN REGISTER**

Notest? See also testimony of John Young and Mr. Pelly. <sup>(direction)</sup> (appended to the <sup>document by W. Richards Esq.</sup>) with the following:

taken - it should be read also

"Personally appeared before the Commission to quiet said title Mamake, and made oath that to the best of his knowledge the foregoing statements are all true."

Kaala Pelokane Jan 11. 1847

Signed William Richards

See also C. 5909 Pika wife of Aldiman <sup>Testimony of Young & Pelly written</sup>

No 375 & 376

Claims No 375 & 376

Copied in Native Register

Claim No 377. John Peltier Claimant Maui.  
The Comm<sup>rs</sup> for quieting land titles. Kahaina Jan 18<sup>th</sup> 1847.  
Gent<sup>l</sup>

The undersigned begs leave to lay the following claims for your adjudication. One building lot, situated in Kahaina, given to me by his Majesty Kamehameha III for work done for him as a Blacksmith in the year 1836.

Also one land situated in Waituku called Kapalaaalaa (pencil) <sup>aka-pig (ink)</sup> given to me by Kamehameha III for work done as a Blacksmith in 1836. His highness the Premier wrote the letter to the head man in Waituku for him to give me up the Land. Kaubi-leppoleppo, who is since defunct

Signed John Peltier <sup>mark</sup>

Mr. Jones at Home Office is agent in C<sup>t</sup> - absence as stated by C<sup>t</sup> 5 July - and who states, his wife to be here in case of his death

No 378

Claims No 378 to 386

Copied in Native Register

**FOREIGN TESTIMONY** (1)

Vol 2  
Page 15  
Walstead

Claim No 374 Antonia Lyova Maui Jan 18

John F. Walstead sworn deposed that while Lord Paulet had charge of the Island, the place of Miamukie was advertised for sale at auction it was done by written notice. Mr. Mellich was auctioneer, and told me it was to be sold to foreclose a mortgage which Lord Paulet had ordered to be foreclosed; I went to the Auction, but some other things being sold first, I did not stay to witness the sale of the Premises, but Mellich told me afterwards that Antonio had purchased it at 550 dollars. (For remaining testimony see Hawaiian Book)  
Note: Refer to Mr. John Young Resumed Page 156 Vol 3.

Vol 2  
Page 15  
Butler

Claim No 377 John Pelletier Maui

W. Butler sworn deposed. In 1836 I spoke to the King in behalf of Claimant, and he gave him a building spot here in Lahaina. I believe a part of it in Paecoli, and bounded Mahele by my land, I believe Paerewa on one side, and he has occupied that spot undisturbed down to the present time. About the same time I went with the King to Waikutu in the Becket, and the King took Pelletier with him, and gave him a land in Waikutu by the name of Kapa Luolua, which land he has occupied undisturbed down to the present time, which is all I know.  
Note. For further evidence consult the King and Mr. Young.

Vol 2  
Page 15  
Lawrence

Claim No 280.B. G. J. Swinton Maui

July Test 21<sup>st</sup> 1860  
<sup>Katapuiaha deposed</sup>  
George Lawrence sworn deposed acknowledging the signatures to the original deeds. In 1834 Wiburji was living on the premises in question, and bargained with men to make the adobies for the Queen. I heard that the Premises were given him by Kalaitou for building.  
R 377

**FOREIGN TESTIMONY (2)**

N. 377 John Pilleter. K.P. 1807 ✓

H. L. Brooks, sworn, knows the land occupied by claimant. It was given to him by the King in the year 1837. He built houses and lived on the place up to the year 1849, when he went to California. He left his wife in charge of his property. She was taken sick and died in their house at Lahaina. Claimant planted sugar cane and kalo on this land. Witnesses was present when the King gave claimant the land.

Pauw, sworn, knows the land in Wailekū given by the King to claimant in the year 1834. It is bounded Maunā by the Kula lands, Waikapu, by Uniu, Makai, by Mawāheke's land, Waikua, by Pūkei. Claimant possessed and cultivated the land up to the time he went to California, when he left it in charge of witnesses. There are several Kūlānānā in the land.

Knows the house lot of claimant in Lahaina. Knows that he lived there previous to his obtaining the land at Wailekū. It joins Mt. Butler's land. Claimant's wife died there since he went to California. (cont. at page 107)

N. 425. Pū

Ka, sworn, knows claimant's land at Waikua. It consists of one piece on which his house is situated, and several Kalo patches.

It is bounded, Maunā, by Kamaoka's land, Kahakūloa, by water course and pali, - Makai, by the Kouhiki's land, Waikua, by Pūkei's land.

Claimant got this piece of land from J. Kamaikai in the time of Hoapili, and has held uninterrupted possession of it up to this time.

J. Kamaikai, sworn. - Witnesses gave the

FT 377

**FOREIGN TESTIMONY (3)**

Lot N<sup>o</sup> 8, was given to claimant by Kawaiahoala in <sup>107</sup>  
the year 1847.

He held undisturbed possession of these  
several Lots up to the time of his death in 1857.

Kiupooa, sworn, knows that Kawaiahoala put in his  
claim for three pieces of land. Knows the pieces  
of land, and confirms in full the testimony of  
the former witnesses.

(From page 66.)

N<sup>o</sup> 3420 B. Kawakipi.

The House Lot claimed by Kawakipi, in Paohi,  
is the same as that claimed by John Peltier N<sup>o</sup> 377.

Manoa, sworn, says this House Lot belonged in  
ancient times to Puah, the father of Kawakipi. He  
lived here with <sup>his</sup> family. The origin of John Peltier  
living there was that he married the daughter  
of Puah and came to live with the family. He  
never owned the lot.

Waike, sworn, confirms in full the testimony  
of last witnesses.

(From page 102.)

N<sup>o</sup> 377 John Peltier.

Decided that the House Lot claimed by John  
Peltier, belongs to Kawakipi N<sup>o</sup> 3420 B.

N<sup>o</sup> 4878 K. Piiaopia (for Halama). P. P. 33 77

Claimant appeared in person and relinquished  
her claim for the Apanas 2 & 3 of her claim in the  
Uti of Kalua Kaaunuu.

FT 377

# TOM QUITQUIT CHEE WATTS & YAMAMOTO, LLP

Carl Tom  
S.V. (Bud) Quitquit  
David W.H. Chee  
Jeffrey D. Watts

ATTORNEYS AT LAW  
841 Bishop Street, Suite 2125  
Honolulu, Hawaii 96813  
Telephone: (808) 526-3011  
Fax: (808) 523-1171  
dyamamoto@btpqlaw.com

Donna H. Yamamoto  
Danielle Degele-Mathews  
Jerilynn Ono Hall  
Edward R. Brooks

April 27, 2012

Department of Land and Natural Resources  
Commission on Water Resource Management  
Attention: Robert Chong  
Kalanimoku Building, Room 227  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

2012 APR 27 AM 10:37  
COMMUNICATIONS SECTION  
PROPERTY

**Re: Wailuku Country Estates Irrigation Company and the Wailuku Country Estates Community Association, Inc.**

**Appurtenant Rights Determination in Na Wai Eha Surface Water Management Areas (Waihee, Waiehu, Iao and Waikapu Streams)**

Dear Ladies and Gentlemen:

This firm represents the Wailuku Country Estates Irrigation Company ("WCEIC") and the Wailuku Country Estates Community Association, Inc. ("WCECA") in connection with their applications that were submitted to the Commission for existing and new water uses.

This letter is in response to the water commission's letter dated February 21, 2012, regarding the water commission's review and comments to the information we submitted for appurtenant right claims (for TMK: (2) 3-2-002: various) except with respect to the following which the water commission found to support WCEIC's and WCECA's appurtenant right claims:

1. LCA 2533:1 and RP 6529 (appurtenant right claim documented for Ap 1).
2. LCA 3225 and RP 6298 & 6458 (appurtenant right claim documented).
3. LCA 3292 (appurtenant right claim documented).
4. LCA 3330 and RP 4424, 4622 (appurtenant right claim documented).
5. LCA 3335 and RP 7774 (appurtenant right claim documented).
6. LCA 3387 and RP 6065 (appurtenant right claim documented).
7. LCA 3388 and RP 6101 (appurtenant right claim documented).

Department of Land and Natural Resources  
Commission on Water Resource Management  
Attention: Robert Chong  
April 27, 2012  
Page 2

Please see the attached chart with our responses to the water commission's February 21, 2012 letter. In addition, we would like to add the following which explains our responses to the water commission's comments that there were no references to water use in some of the Royal Patents ("RP") and Land Commission Awards ("LCA") in WCEIC's/WCECA's application. In short, implicit in a LCA and RP is the appurtenant right to water. Since the LCA and RP were required to be in literal agreement with the other, reference to water use in either one means that there was a reference to water use in the other.

Further, as explained below, since the form of the RP required description by metes and bounds only, reference to water use may not be in the RP. This should hold true for LCAs as well. Consequently, testimony at the time of application (which we submitted) should weight in on whether the lands were being cultivated at that time.

### **Background**

In 1845, the Board of Land Commissioners to quiet land titles was formed. It was the Land Commission's responsibility to ascertain or reject claims of interest in land brought before it. The Board was not empowered to grant fee simple title to land. Its duty was to determine each applicant's identifiable interests in land and issue an award describing those interests. *Public Access Shoreline Hawaii v. Hawaii County Planning Commission*, 79 Haw. 425, 445, 903 P.2d 1246, 1266 (1995) ("*PASH*"); *Application of Elizabeth Cockett Robinson*, 49 Haw. 429, 434, 421 P.2d 570, 574 (1966) (the Land Commission Award is a determination of a right to a patent). Actual title to land could be gained only by a payment of commutation to the Kingdom and issuance of a royal patent. *PASH*, 79 Haw. at 445, 903 P.2d at 1266; *Omerod v. Heirs of Kainoa Kupuna Kaheananui*, 116 Haw. 239, 247, 172 P.3d 983, 991 (2007) (citing *PASH*).

After the Land Commission entered a LCA, the Minister of Interior could issue a RP after the awardee paid a commutation fee. In essence, a RP was a quitclaim of the government's interest in the land. *Id.*; *Brunz v. Mott Smith*, 3 Haw. 783, 1877 WL 7569 (1877) (the effect of a patent is to relinquish the government's interest in the area described therein unto the original awardee). In summary, neither the LCA nor RP was required to show the use of the land.

### **Additional Responses to Water Commission's Comments**

#### **Form of RP required metes and bounds**

The water commission commented that there were no references to water use in some of the LCA's and/or RP's in WCEIC's/WCECA's application. However, this should not be determinable on the issue of water use or cultivation on the lands since they were only required to show the lands' metes and bounds.

Department of Land and Natural Resources  
Commission on Water Resource Management  
Attention: Robert Chong  
April 27, 2012  
Page 3

The form of all RPs were required to describe the land therein by metes and bounds or by natural boundaries. In order to obtain a RP and obtain fee simple ownership of land conveyed during the Mahele, an awardee needed to present a Boundary Commission judgment describing his or her land by metes and bounds. *Id.*; *Greenwell v. Paris*, 6 Haw. 315, 1882 WL 7783 (1882) (The object of the boundary commissioner is to enable parties to obtain such Royal Patents defining their lands by metes and bounds); *See Application of Elizabeth Cockett Robinson*, 49 Haw. 429, 421 P.2d 570 (1966) (the form of all Royal Patents shall describe the land by actual survey or by natural boundaries as the case may be).

There were some instances where the water commission noted references to water use in the LCA but not in the RP, and vice versa. However, the metes, bounds and description of the survey in the petition must be in literal agreement with the award. *Brunz*, 3 Haw. 783, 1877 WL 7569 (1877) . Consequently, if water use is referenced in either the LCA or the RP it should apply equally to the other.

#### *Testimony Regarding Water Use*

We note that the water commission did not comment on the testimony submitted and so are unsure on the water commission's position regarding the same. Since neither the LCA nor RP can be relied upon to reference water use (since metes and bounds only were required in them), testimony by applicants and others at the time of application should weigh equally in on the question. Furthermore, by virtue of the lands being Kuleana lands, the use of water thereon is implied. In this regard, the first six sections of the Kuleana Act enabled the common people of Hawaii to secure fee simple title to the **lands they actually cultivated**. The seventh section contained the rights that were to accompany a commoner's tenancy. *Reppun v. Board of Water Supply*, 65 Haw. 531, 549, 656 P.2d 57, 69 (1982).

Generally, the conveyance of land, confirmed by a LCA and/or when the RP was issued based on such award, **carried with it the appurtenant right to water** for taro growing. *McBryde Sugar Company, Limited v. Robinson*, 54 Haw. 174, 188, 504 P.2d 1330, 1339 (1973); *See also Maikai v. Hasings & Co.*, 5 Haw. 133, 1884 WL 6659 (1884) (Holders of Kuleanas are entitled to water for irrigation purposes from the stream in the land which their Kuleanas are situated.) Unlike riparian rights, appurtenant water rights are incidents of land ownership. This includes the water on their lands and all the water which the lands had enjoyed from time immemorial. *Reppun*, 65 Haw. at 551, 656 P.2d at 70.

We are also enclosing the following documents that respond to the Commission's various comments:

1. File Plan - regarding location of the various apanas.
2. Enlargement of File Plan re LCA 4452:9, RP 7302.
3. Index re LCA 3237.

4. Land Patent No. S-8536 re LCA 3237:3 issued in 1960.
5. Copy of RP 6102

We trust our responses satisfies the Commission's comments. Please do not hesitate to advise the undersigned if you have any questions. Thank you for your consideration in this matter.

Very truly yours,

TOM QUITIQUIT CHEE WATTS &  
YAMAMOTO, LLP



Donna H. Yamamoto

Enclosures

cc: client

**WAILUKU COUNTRY ESTATES IRRIGATION COMPANY  
and the WAILUKU COUNTRY ESTATES COMMUNITY ASSOCIATION, INC.**

<b>Document</b>	<b>Commission Comment</b>	<b>WCEI/WCECA Comment</b>
LCA 377	Appurtenant right claim documented for “cultivated” and “kuleana” land.	The description of the land in the LCA and the RP are the same. Consequently, both LCA and RP document the appurtenant right claim.
RP 5366	Appurtenant right claim documented	
LCA 406:1	11 Apana are listed. No specific ref to water use for Ap 1. Further documentation required for Ap1. NR, NT, and FT refer to loi, taro, sugar cane and potato patches but do not specify which apana.	The LCA states: “There are many dry taro lots in the ili of Puhiaawaawa.” Puhiaawaawa is apana 1. Consequently, appurtenant right is documented for apana 1. See the following that references “Puhiaawaawa: 1. English translation 2. native register (English) that “some taro patches are at Puhiaawaawa...” 3. native testimony (English) by Kuihelani: “There is a patch and a field at Puhiaawaawa...”, by Kailihiwa: “There is a field and patches at Puhiaawaawa...”
RP 5376	No ref to water use.	As well, the RP says that the land is in Puhiaawaawa. This should be tied in to the LCA that says there are many dry taro lots in the ili of Puhiaawaawa.
LCA 453: 1 & 2	Appurtenant right claim documented.	

RP 997	RP refers to LCA 3572. No ref to water use.	The File Plan refers to RP 997 (which we submitted for your reference only). However, we believe RP “997” is a typo on the File Plan (the “1” is missing) and RP “1997” is correct because RP 1997 cites LCA 453. Furthermore, RP 1997 mirrors the description in LCA 453 and as such documents the appurtenant right claim. Also, the register references taro patches and the native testimony references patches and farming.
LCA 2434 & 2435	LCA 2434 & 2435 are not shown on survey or TMK maps. Documentation provided for LCA 2435 but 2435 is crossed out. NR, NT, FT documentation provided for LCA 2434.	<p>There appears to be two (2) LCA 2435's. One was issued to Kaakole (a copy was submitted) and the other was issued to <b>Kahooke</b> (a copy was submitted). The RP 6397 also states Kuleana Helu 2435 to <b>Kahooke</b>. However, we believe the LCA and RP for <b>Kahooke</b> showing 2435 are typos ( and should be 2434) because the register and testimony for <b>Kahooke</b> (property in Wailuku) is numbered 2434 while the property for Kaakole (2435) is in Kapunakea. A poalima is referenced in the LCA for <b>Kahooke</b>. The register for 2434 refers to loi's and the native testimony refers to taro and 3 po'alimas and the foreign testimony references kalo and 3 poalimas on the property.</p> <p>See File Plan (LCA 2435 indicated below Lot 69)</p> <p><b><u>NOTE: all LCA's that were commented as not located are shown highlighted on the File Plan.</u></b></p>
RP 6397	RP ref to LCA 2435.	See above. A poalima is also referenced in the RP. The description of the land mirrors the LCA.

LCA 2436:1, 2 &3	Appurtenant right claim documented for Ap 2. Survey map only shows Ap 2 but not Ap 1 or 3	LCA shows that all 3 apanas are identified as kalo (taro) lots and Apana 2 cites an auwai (ditch). See translation of LCA into English that was submitted. The register also refers to loi's and the native and foreign testimonies refer to loi's and kalo. The LCA, RP, testimony and register all cite the same areas of Pohakukupupu, Holu and Waikani  See File Plan Map (Apana 1 is indicated on Lot 43; Apana 3 is indicated on Lot 120)
RP 2009	Appurtenant right claim documented for Ap 2. Survey map only shows Ap 2 but does not show Ap 1 or 3.	The RP mirrors the LCA that shows all 3 apanas identified as kalo lots.
LCA 2495:1, 2, 3 & 4	Appurtenant right claim documented for Ap 1. TMK map only shows Ap 1 but does not show Ap 2-4.	Apana 4 contains a poalima Alii taro patch (see translation into English that was submitted and drawing of apana 4 in LCA with poalima drawn in). See register, native and foreign testimonies that references taro land/taro moo at Pohakupukupu (apana 1 & 2) and Puuokala (apana 3) and poalima (apana 4).  See File Plan (Apana 2 is indicated on Lot 43; Apana 3 is indicated on Lot 43; Apana 4 is indicated across Lots 37 and 44)
RP 7790	No ref to water use for Ap 1.	The land description in the RP and LCA are the same and the comment as to LCA 2495 applies here.

LCA 2502: 1 & 3	Appurtenant right claim documented for Ap 2 & 3	See English translation of LCA indicating water use for Apana 1 & 3 which are both taro lots and an auwai runs through Apana 3. See also the register (reference to loi) and native testimony (reference to taro (apana 1 & 3) & poalima (apana 3) and foreign testimony (reference to loi's (apana 1 & 3) and poalima (apana 3))
RP 5973	Appurtenant right claim documented for Ap 2 & 3	The description of the land in the RP mirrors the LCA.
LCA 2503: 2	LCA is not shown on TMK. Ref to kalo and pahale	See File Plan (LCA 2503:2 is indicated on Lot 12 of the North Iao Village)
RP 3652	RP is for LCA 2502	RP 3652 cites LCA 2502. However, we believe it is a typo because the description in RP 3652 is exactly the same as in LCA 2503. Consequently, both reference water use. Further, both RP 3652 and LCA 2503 are to Ohule. The LCA and RP references poalimas, the register references lois, native testimony references taro and poalimas and foreign testimony references kalo and poalima.
LCA 3237: 3	Appurtenant right claim documented.	

RP 6888	No ref to water use	<p>The purpose of the RP was to quitclaim the government's interest in the property and to contain metes and bounds description. Consequently, reference to water use would not necessarily be in the RP. The register references lois, native testimony references taro land, taro loi, taro pauku and foreign testimony references lois.</p> <p>Royal Patent 6888 is indicated in the Index for LCA 3237 but it is land in Kalihi, Oahu. Before 1960, no RP was issued. The RP was issued in 1960 and only shows metes and bounds. A copy is attached.</p>
LCA 3275-E: 3,4,6	Appurtenant right claim documented	
RP 5154	No ref to water use	<p>The description of the land in RP is the same as in LCA 3275-E and thus, appurtenant right claim was documented in the RP as well. Native testimony references taro patches (apana 3), taro pauku (apana 4 &amp; 6) and foreign testimony references lois (apana 3, 4 &amp; 6).</p>
LCA 3294-B: 2; LCA 3294-B:1, M1; LCA 3294-B- 1, M2	Appurtenant right claim documented	

RP 6102	No ref to water use.	RP tracks LCA and references kalo. Appurtenant right contained in LCA is in RP. Enclosed is a clearer copy of RP 6102. The native testimony references taro land and taro moo (cultivated piece of land) and foreign testimony references moo of kalo.
LCA 3488	Appurtenant right claim documented.	
RP 5289	No ref to water use.	The RP notes the land is "Aina Kalo". The register references 127 loi's, native testimony references taro and poalimas and foreign testimony references kalo land and poalimas,
LCA 3498	Appurtenant right claim documented.	
RP 7432	No ref to water	Reference to "kalo" is contained in both the LCA and RP. The description in the RP and the LCA are exactly the same. Consequently, both LCA and RP refer to water use. The register references taro.
LCA 4452:9	LCA is not shown on TMK map. No ref to Ap. 9.	Reference to "Apana 9" appears on the LCA under the words "Helu 4452"  See File Plan (LCA 4452 is shown on the enclosed 8 ½ x 11 map)

RP 7302	No ref to water use	RP evidenced the government's quitclaim of its interest in the property and the RP was only required to contain the metes and bounds of the property.
LCA 4461:1 & 2	LCA is not shown on TMK MAP. Ref to kalo and moo kalo.	See File Plan (Apana 2 is indicated across Lots 30 and 31; Apana 2 is indicated on Lot 32).
RP 6630	Ref to kalo and moo kalo.	RP references kalo moo and mirrors the LCA. Also, native testimony references taro moo.