



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT**

**OBJECTION TO AN  
APPURTENANT RIGHTS CLAIM**

<b>Form APRT-OBJ</b>
For Official Use Only:
2012 SEP 21 PM 1:23

**Instructions:** Complete one (1) "Objection to an Appurtenant Rights Claim Form" (Form APRT-OBJ) for each Appurtenant rights claim to which you object.

- Any person or entity with a legal or material interest in the water may file written objections. Persons filing objections must serve copies of the written objection and all related documentation / evidence 1) on the applicant; and 2) on the Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.
- Appurtenant rights claimants will have an opportunity to submit a rebuttal to the written objections.
- For questions, contact the Commission's Stream Protection and Management Branch at (808) 587-0234.

<b>A. OBJECTOR</b>		
<b>NAME/COMPANY</b> Wailuku Water Company, LLC		<b>Contact Person</b> Avery B. Chumbley
<b>Mailing Address</b> P. O. Box 2790, Wailuku, Hawaii 96793		
<b>Phone</b> 808/244-7079	<b>Fax</b> 808/242-7968	<b>E-mail Address</b> abc@aloha.net

**Explain your legal or material interest in objecting to this Appurtenant rights claim.**  
Wailuku Water Company, LLC is the owner and operator of the private distribution system through which the Applicant receives surface water. Determination of Applicant's claim of an appurtenant right to water that is distributed through Wailuku Water Company, LLC's distribution system may impact the operation of the distribution system and will affect the property rights of Wailuku Water Company, LLC.

<b>B. APPLICANT (As listed in the Public Notice)</b>		
<b>NAME/COMPANY</b>	MTP Operating Company LLC dba Maui Tropical Plantation	<b>Per Use Permit Application No.</b>
<b>Mailing Address</b>	1670 Honoapiilani Highway Wailuku, HI 96793	
<b>Identify all Tax Map Keys (TMK)</b>	SWUPA# 2203 TMK: (2)3-6-005-007	

<b>C. REASON(S) FOR OBJECTION</b>
<i>Select all that apply below. The objector has the burden of proof on all objections.</i>
<input type="checkbox"/> The parcel was not used as a residence or for cultivation at the time of the Mahele.
<input checked="" type="checkbox"/> The Appurtenant right to water has been reserved or extinguished.
<input checked="" type="checkbox"/> There are materially false statements or representations in the claimant's application for Appurtenant rights.
Summarize carefully your objection and how approval of this Application would adversely affect your legal interests (Use separate page if needed): The claim must be reviewed in light of the following: 1-Whether the claim properly characterized the source of the water for which the claim is asserted; 2-Whether the rights claimed are subject to Public Utilities Commission Regulation; and 3-Whether the rights have been extinguished. See the attached sheets which expand on the objections and provide documentary support for the objection(s).

**Supporting documentation / evidence must be provided on separate sheets.**

<b>D. OBJECTOR SIGNATURE</b>		
<input type="checkbox"/> By checking this box (for electronic submissions) or signing below (for hardcopy submissions) indicates that the signatory understands and swears that the information provided is accurate and true to the best of their knowledge.		
<b>Print Name:</b> Avery B. Chumbley, Authorized Representative	<b>Signature:</b> 	<b>Date:</b> September 18, 2012

OTHEP 365D.6  
WUP-2203.6  
FILE ID: \_\_\_\_\_  
DOC ID: 10131

### Whether the Claim Properly Characterized The Source of Water

The claim contains an ambiguity or possibly a mischaracterization on the water source for the appurtenant right.

A claimant to an appurtenant right must establish that the surface water was taken directly from the stream, or from an auwai that was connected to a stream, at the time of the original conversion of the property to fee simple title.

Claims based on surface water taken from a privately owned distribution system and not from a stream, especially a distribution system that did not exist at the time of the original fee simple conversion, does not establish an appurtenant right to surface water delivered through a privately owned distribution system.

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights derives from a diversion that existed at the time of the original fee simple conversion from a stream or an auwai that was then connected to a stream.

In addition, factual and legal questions exist as to whether applicant is required to hold a stream diversion works permit and/or a stream channel alteration permit and whether there is a right to use a privately owned distribution system if the surface water is being diverted through that privately owned distribution system.

**Rights Claimed May be Subject to Public Utilities Commission Regulation**

The claim asserts a right to use surface water that reaches the claimant's property through a distribution system owned by Wailuku Water Company, LLC

The ability of Wailuku Water Company, LLC to deliver water through that distribution system is the subject of a proceeding pending before the State of Hawaii Public Utilities Commission ("PUC").

Any determination by the Commission on Water Resource Management on claims in which the surface water is delivered through use of the distribution system owned by Wailuku Water Company, LLC must include a condition that the delivery of the surface water is subject to applicable terms, conditions, rules, regulations, decisions, orders, tariffs, and actions of the PUC (collectively "PUC Regulation")

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights may be subject to PUC Regulation.

### Were Appurtenant Water Rights Extinguished

Appurtenant rights to surface water are created at the time the original conversion to fee simple land. While an appurtenant right to surface water cannot be transferred separately and apart from land to which it attaches, the right can be extinguished.

The appurtenant right to surface water is extinguished if the Grantor of the property transfers the property and either reserves the right to the Grantor or transfers the property without transferring the appurtenant right.

The conveyance document in the chain of title to the subject property contain language to the following effect:

EXCEPTING, RESERVING AND GRANTING, however, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property, including the right to develop and utilize the same; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

Accordingly, factual and legal questions exist as to whether an appurtenant right has been extinguished.

RECORDATION REQUESTED BY:  
83- 29905<sup>1</sup>

83 MAR 21 P2.00

AFTER RECORDATION, RETURN TO:

*Security Title Corp*

16933 469

When completed: Mail ( )

Pick up ( ) Phone:

DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU SUGAR COMPANY, a Hawaii corporation, of Wailuku, Maui, Hawaii, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration to it paid by THE HAWAII TROPICAL PLANTATION, a Hawaii limited partnership, with principal place of business and post office address at 1200 College Walk, Suite 204, Honolulu, Hawaii 96817, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee and its successors and assigns:

ALL of those certain premises described in Exhibit "A" attached hereto and made a part hereof, subject, however, to the encumbrances mentioned in said Exhibit "A";

AND the reversions, remainders, rents, issues and profits thereof, together with all buildings, improvements, tenements, rights, easements, privileges and appurtenances to the same belonging or appertaining or held and enjoyed therewith, and all of the estate, right, title and interest of the Grantor both at law and in equity therein and thereto;

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns as aforesaid, forever, subject as aforesaid;

STATE OF HAWAII  
CONVEYANCE  
TAX  
500.00  
HAWAII  
MAR 21 1983  
RECORDED

4 5 2 3 4 4  
RECORDED

16933 470

AND the Grantor, for itself, its successors and assigns, hereby covenants with the Grantee and its successors and assigns: THAT the Grantor is the owner in fee simple of the premises described in said Exhibit "A"; that the same are free and clear of and from all encumbrances except as mentioned in said Exhibit "A"; that it has good right to grant and convey the same unto the Grantee as aforesaid and will WARRANT AND DEFEND the premises described in said Exhibit "A" unto the Grantee forever against the lawful claims and demands of all persons claiming by, through or under the Grantor except as aforesaid.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed by its duly authorized officers this 24th day March, 1983.

WAILUKU SUGAR COMPANY

By James L. Higgins  
VICE PRESIDENT  
By Donald P. Macomb  
Its Asst Secretary

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STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this 1st day of March, 1983, before me appeared JAMES G. HIGGINS and HAROLD P. LUSCOMB, to me personally known, who, being by me duly sworn, did say that they are Vice President and Assistant Secretary, respectively, of WAILUKU SUGAR COMPANY, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of such corporation and that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors; and said JAMES G. HIGGINS and HAROLD P. LUSCOMB acknowledged such instrument to be the free act and deed of such corporation.

Pamela Jean Simon  
Notary Public, State of Hawaii

My commission expires: 9/13/93 B

16933 471

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Pamela Jean Simon  
Notary Public, State of Hawaii

My commission expires: 9/13/93 *KS*

PARCEL I

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All of that certain piece or parcel of land (being PORTIONS of Land Commission Award No. 432, Royal Patent No. 102 to ANTHONY SYLVA; Royal Patent (Grant) No. 3172 to HENRY CORNWELL; Royal Patent (Grant) No. 2904 to JOHN CROWDER; and Royal Patent (Grant) No. 3043 to JOHN BROADMAN; and ALL of Apana 4 of Land Commission Award No. 10160, Royal Patent No. 3148 to MAHOE; Royal Patent (Grant) No. 1146 to ANTONIO SYLVA; Apana's 1 and 2 of Land Commission Award No. 416, Royal Patent No. 41 to JOHN CROWDER; Apana 2 of Land Commission Award No. 455, Royal Patent No. 324 to HAA; Apana's 1 and 2 of Land Commission Award No. 462 to MAHUKA; Apana's 1, 2 and 3 of Land Commission Award No. 491, Royal Patent No. 3139 to Haawahine; Apana 2 of Land Commission Award No. 5324, Royal Patent No. 6374 to KEAKINI; Apana's 2 and 4 of Land Commission Award No. 5774, Royal Patent No. 4014 to KAAI; Apana's 1, 2 and 3 of Land Commission Award No. 8874, Royal Patent No. 3130 to KANEAE; Apana 1 of Royal Patent (Grant) No. 2747 to EUGENE BAL; Royal Patent (Grant) No. 2342 to EUGENE BAL; Royal Patent (Grant) No. 1674 to E. W. GLEASON; Apana 1 of Land Commission Award No. 236-I, Royal Patent No. 498 to CHARLES COPP; Apana 1 of Land Commission Award No. 3527, Royal Patent No. 3156 to KAMOHAI; Apana 1 of Royal Patent (Grant) No. 2069 to KAAI; and Royal Patent (Grant) No. 2960 to JOHN BROADMAN), being a portion of Lot 1 and all of LOT 2 and LOT 3, situate at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, containing an approximate area of 69.794 acres, more or less, and designated as a portion of Tax Map Key: 3-6-04-02; a portion of Tax Map Key:

EXHIBIT "A"

3-6-05-07 and all of Tax Map Key 3-6-07-14, cross-hatched as shown on map attached as SCHEDULE "A".

Being all of the land acquired by the Grantor by and through the following:

1. DEED dated November 20, 1894, recorded on December 4, 1894, in said Bureau of Conveyances in Book 152 on Pages 86-89, by and between T. W. MacFARLANE and wife, EMILIE MacFARLANE (who releases her dower) and WILLIAM H. CORNWELL, no marital status shown, as Grantor(s), and WAILUKU SUGAR COMPANY, an Hawaiian corporation, as Grantee(s), conveys, besides other lands.
  - a. Apana's 1 and 2 of Land Commission Award No. 416, Royal Patent No. 41 to JOHN CROWDER
  - b. Apana's 1 and 2 of Land Commission Award No. 462 to MAHUKA
  - c. Apana's 2 and 3 of Land Commission Award No. 5324, Royal Patent No. 6374 to KEAKINI
  - d. Apana's 2 and 4 of Land Commission Award No. 5774, Royal Patent No. 4014 to KAAI
  - e. Apana 1 of Royal Patent (Grant) No. 2747 to EUGENE BAL; and
  - f. Royal Patent (Grant) No. 2342 to EUGENE BAL; and
  - g. Royal Patent (Grant) No. 1674 to E. W. GLEASON
  - h. Portion of Royal Patent (Grant) No. 2904 to JOHN CROWDER; and
  - i. Portion of Royal Patent (Grant) No. 2960 to JOHN BROADMAN; and
  - j. Portion of Royal Patent (Grant) No. 3042 to JOHN BROADMAN; and

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- k. Portion of Royal Patent (Grant) No. 2069 to KAAI
  - l. Apana 1 of Land Commission Award No. 236-I, Royal Patent No. 498 to CHARLES COPP
  - m. Apana's 1, 2 and 3 of Land Commission Award No. 8874, Royal Patent No. 3130 to KANEAE
2. DEED dated December 30, 1896, recorded on December 30, 1896 in said Bureau of Conveyances in Book 164 on Pages 475-477, by and between WILLIAM H. CORNWELL (who signs as Wm. H. Cornwell), no marital status shown, as Grantor, and WAILUKU SUGAR COMPANY, an Hawaiian corporation, as Grantee(s); conveys:
- a. Royal Patent No. 324, Land Commission Award No. 455 to HAA containing 35 acres, being all of Apana's 1 and 2, besides other lands.
3. DEED dated April 4, 1898, recorded on April 11, 1898 in said Bureau of Conveyances in Book 176 on Pages 434-434, by and between J. A. PAAIKIKI and husband Z. PAAIKIKI, as Grantor(s), and WAILUKU SUGAR COMPANY, an Hawaiian corporation, as Grantee(s), conveys:
- a. Apana's 3 and 4 of Land Commission Award No. 5324, Royal Patent No. 6374 to KEAKINI
4. DEED dated September 1, 1921, recorded on September 2, 1921 in said Bureau of Conveyances in Book 605 on Pages 418, by and between WAIKAPU AGRICULTURAL COMPANY, LIMITED, an Hawaiian corporation, as Grantor(s), and WAILUKU SUGAR COMPANY, an Hawaiian corporation, as Grantee(s), conveys:
- a. All of Land Commission Award No. 3527, Royal Patent No. 3156 to KAMOHAI, besides other lands, and all water rights
5. DEED dated February 15, 1952, recorded on February 26, 1952 in the Bureau of Conveyances of the State of Hawaii in Book 2560, Page 57, from MAUI ASSOCIATES, LIMITED, a Hawaiian corporation, as Grantor(s).

TOGETHER WITH the following easements appurtenant to the land herein conveyed:

1. A perpetual easement and right to discharge surface water runoff, from the parking lot and other improved areas from time to time constructed on the land herein conveyed, into existing drainage channels and culverts paralleling Honoapiilani Highway situated within Second Division Tax Map Key 3-6-4-1.

2. A perpetual easement and right to install, replace, maintain, repair and use, within Tax Map Key 3-6-4-1, (a) a waste water pipeline, and (b) an injection well or wells, together with the non-exclusive right of ingress thereto and egress therefrom over the Grantor's adjoining land, the exact location of the waste water pipeline easement and the injection well easements to be designated by the Grantee, subject to the approval of the Grantor, which approval shall not be unreasonably withheld.

3. As an alternative to the easement provided for in paragraph 2 above, at the option of Grantee, a perpetual easement and right to install, replace, maintain, repair and use, a waste water pipeline, together with the non-exclusive right of ingress thereto and egress therefrom, over the Grantor's adjoining lands to the north, to connect with the public sewerage pipeline servicing the new Wailuku Heights development; the exact location of the waste water pipeline easement will be designated by the Grantee, subject to the approval of the Grantor, which approval shall not unreasonably be withheld taking fully into account the economic and technical conclusions of the civil engineering study, now being undertaken at the request of Grantor and Grantee

with respect to the pipeline and its connection to the public sewerage pipeline; Grantee shall further have the right to use any easements or rights of way available to Grantor for the purpose of enabling the waste water pipeline to cross under or over Waikapu Stream, Waiko Road and Kuikahi Drive to connect with the Wailuku Heights sewerage pipeline to the north of the latter road.

4. A perpetual easement and right to install, replace, maintain, repair and use, within the area labelled proposed water storage easement and proposed water pipeline easement on the plan attached hereto as Schedule "B", (a) a water storage tank, and (b) water pipelines between the western boundary of the land herein conveyed and the aforesaid water storage tank, together with the non-exclusive right of ingress thereto and egress therefrom over the Grantor's adjoining land, the exact location of the water pipeline easements and the water storage tank easement to be designated by the Grantee (within an area not to exceed 5,000 square feet for the storage tank and fifteen feet wide for the water pipeline easements), subject to the approval of the Grantor, which approval shall not be unreasonably withheld.

5. A perpetual nonexclusive waterline easement in the area designated proposed waterline extension by C. Brewer on the plan attached hereto as Schedule "C", for waterlines to connect to the existing public waterline at the corner of Kemoa Place and Wilikona Place, and thence running to the northern boundary of the land herein conveyed, subject to the right of Grantor to dedicate the proposed waterline extension to the County of Maui for public purposes.

6. A perpetual nonexclusive easement for roadway purposes, for maintenance and agricultural support, but not for movement of visitors except to the extent approved by Grantor, over and across the existing dirt road: (i) in Second Division Tax Map Keys 3-6-4-2 and 3-6-5-7 commencing at Honoapiilani Highway, approximately 180 feet north of the southern property line of the Land herein conveyed, thence running in a westerly direction to the vicinity of Waihee ditch, thence in a northerly direction between Waihee Ditch and the western boundary of the land herein conveyed, (ii) in Second Division Tax Map Key 3-6-5-7 over and across R.P. 4014 L.C. Aw 5774:1 to Kaai and Grant 3152 to Henry Cornwell (reserving, however, unto the Grantor the right to relocate said existing dirt road); and (iii) in Second Division Tax Map Key 3-6-4-2 over and across the existing 12 ft. wide right-of-way easement to Honoapiilani Highway. Grantor shall have the right to realign but not materially relocate those portions of said roadway described in (i) and (iii) above.

The easements described in paragraphs 2(b) and 4(a) shall be exclusive easements. The easements described in paragraphs 2(a), 3 and 4(b) shall be non-exclusive and Grantor reserves the right to use the easement areas for purposes which do not interfere with Grantee's use of the easements but Grantor shall not grant easements to third parties in the easement areas unless Grantor shall require the third party to agree for the benefit of Grantee not to interfere with Grantee's use of the easements.

RESERVING, HOWEVER, unto the Grantor and its successors and assigns:

1. A perpetual nonexclusive easement and right to install, replace, maintain, repair and use, in the easement area, shown in green in Schedule "D" attached hereto, an underground water pipeline, together with the right of ingress thereto and egress therefrom over the land herein conveyed, subject to that certain unrecorded Agreement concerning water pipeline of even date herewith.

2. A perpetual exclusive easement to maintain, repair and use that portion of the existing Waihee Ditch situated on any portion of the land herein conveyed.

3. A perpetual nonexclusive easement to maintain, repair and use the settling pond shown on Schedule "E" attached hereto.

4. A perpetual nonexclusive easement for roadway purposes over and across the portion of the existing dirt road described in item 6 of Grantee's appurtenant easements situated on any portion of the land herein conveyed.

5. A perpetual nonexclusive easement and right to install, replace, maintain and use, in the easement area shown as "8" water pipeline easement on Schedule "F" attached hereto, together with the right of ingress thereto and egress therefrom over the land herein conveyed.

6. And, excepting from this deed, all surface waters and ground waters and water rights including any applicable riparian or other appurtenant or prescriptive rights as may now or hereafter exist with respect to the property or any part thereof; provided however, that this exception is subject to the provisions of that certain unrecorded water agreement which provides in certain circumstances, for the right of Grantee, to drill a well or wells and to draw

therefrom up to 500,000 gallons of water per day. **16933 479**

SUBJECT, HOWEVER, to:

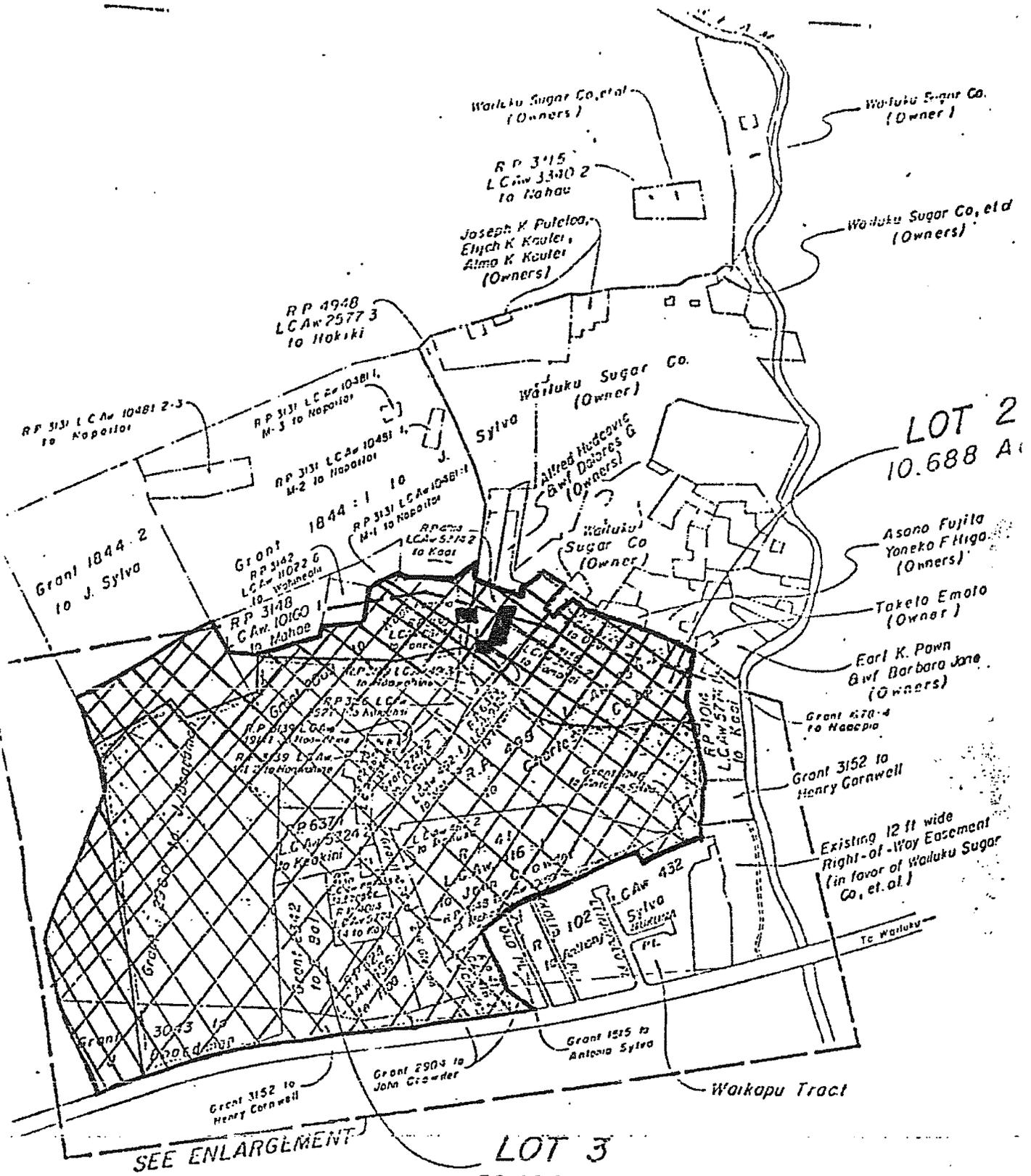
1. Reservation in favor of the State of Hawaii of all mineral and metallic mines in the following Awards and Grants:

Land Commission Award 236-I	Grant 1674 Land
Commission Award 416	Grant 2069 Land
Commission Award 455	Grant 2342 Land
Commission Award 491	Grant 2747 Land
Commission Award 3527	Grant 2960 Land
Commission Award 5324	Grant 3043 Land
Commission Award 5774	Grant 1146 Land
Commission Award 8874	Royal Patent 3143
Royal Patent 102	

2. Rights of native tenants in the following Grants:

Grant 2342	Grant 1146
Grant 2747	
Grant 2904	
Grant 2960	
Grant 3043	

3. That certain Grant dated April 30, 1974, in favor of Maui Electric Company, Limited, recorded in said Bureau in Book 9921, Page 1, granting a nonexclusive right and easement to build, etc., maintain and operate pole and wire line or lines, etc., for the transmission of electricity, etc., along, across, over, through and upon the land herein conveyed.



SEE ENLARGEMENT

LOT 3  
59.106 Acs.

SCHEDULE A

 Property included in this conveyance

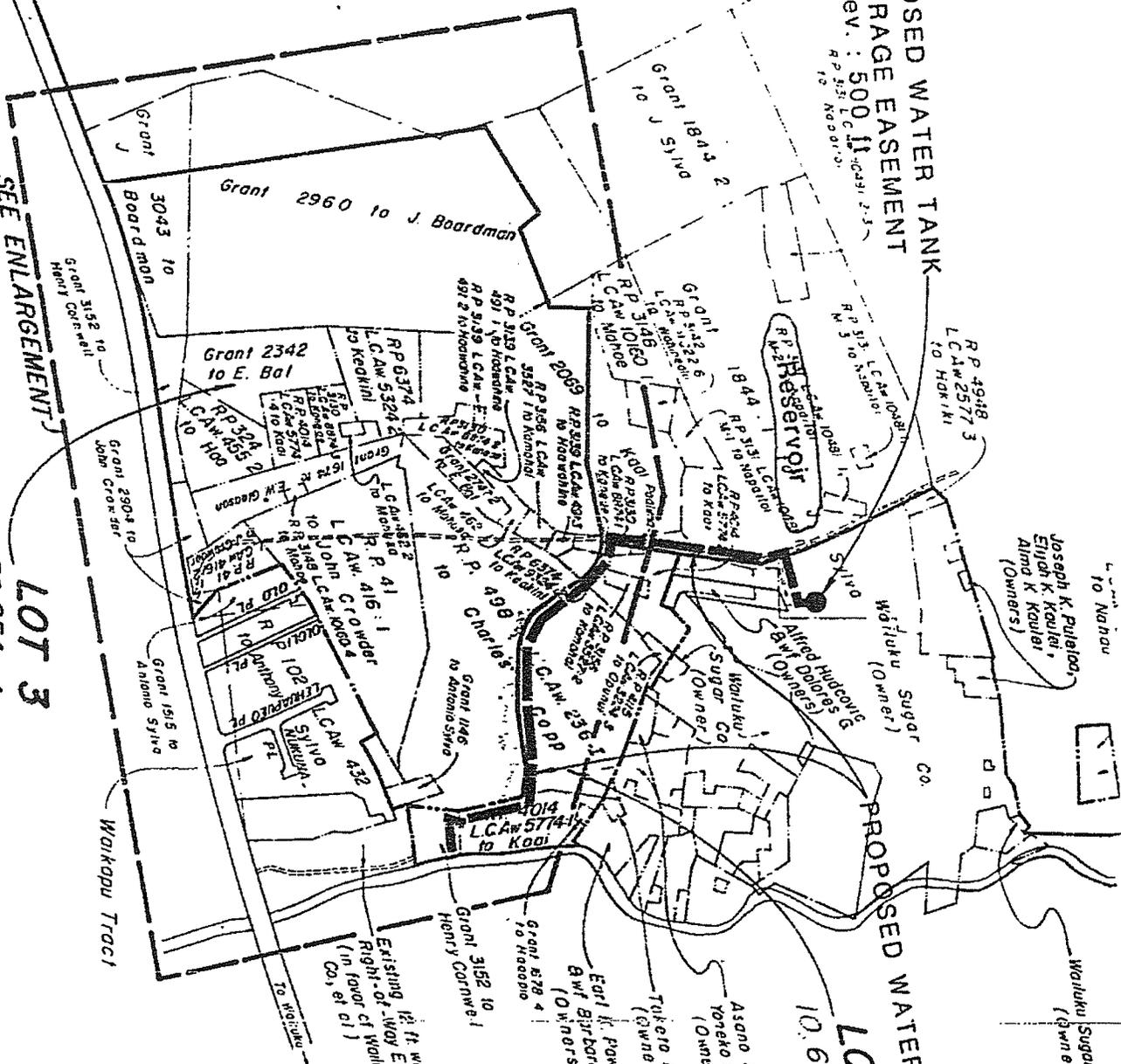


899,567 Acs.

PROPOSED WATER TANK  
STORAGE EASEMENT  
Elev. : 500 ft

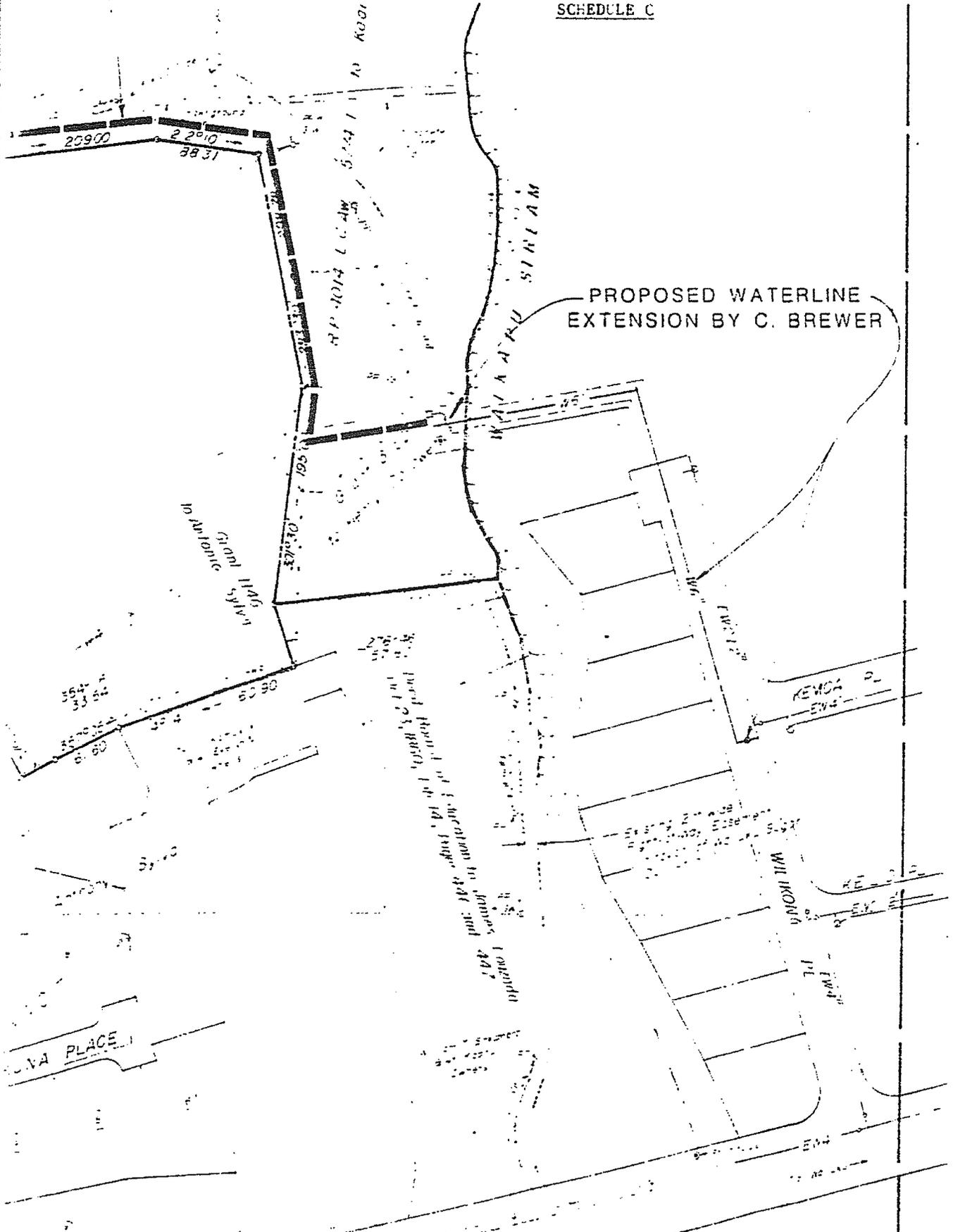
SEE ENLARGEMENT

LOT 3  
59,054 Acs.

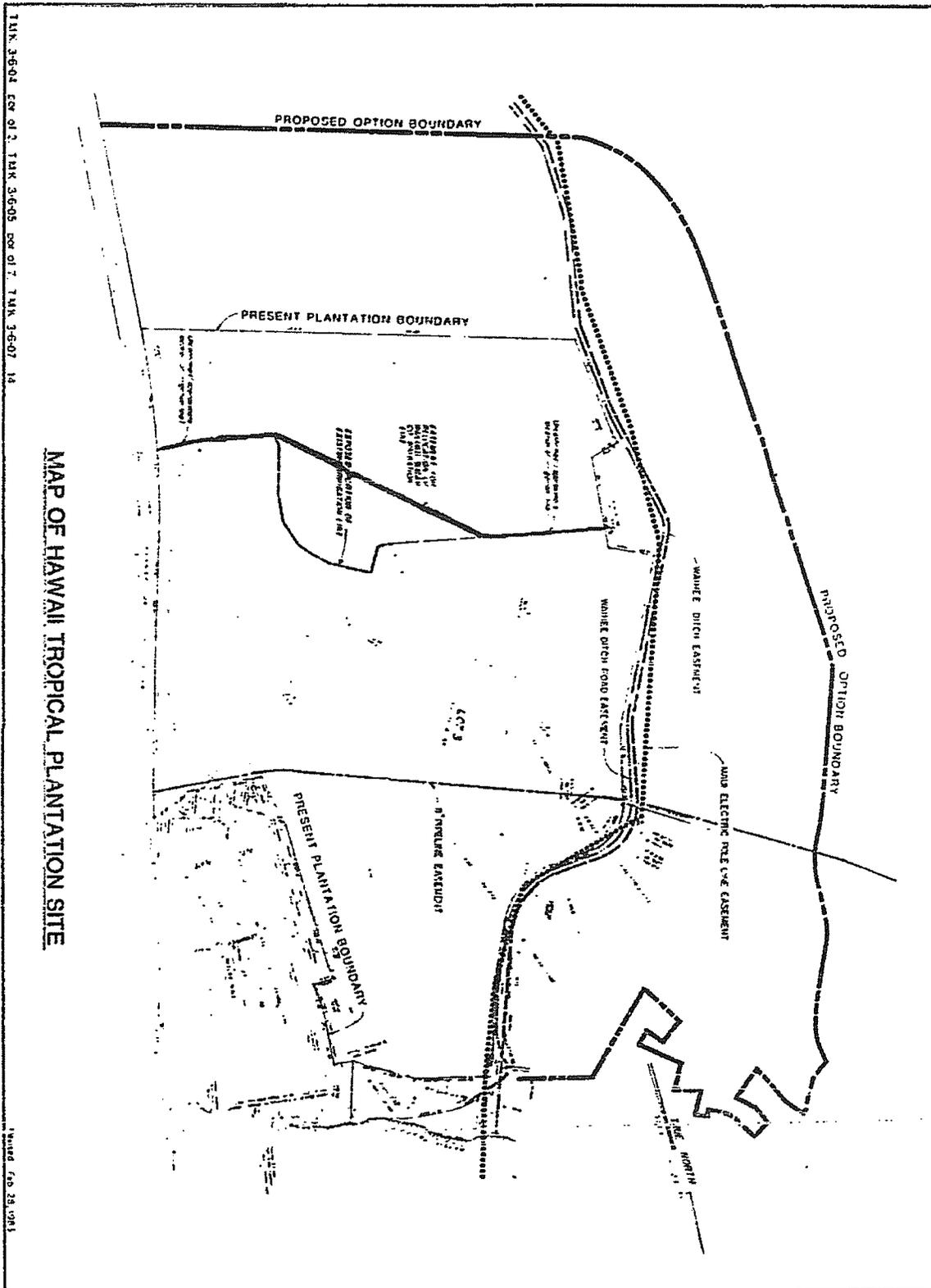


SCHEDULE C

PROPOSED WATERLINE  
EXTENSION BY C. BREWER



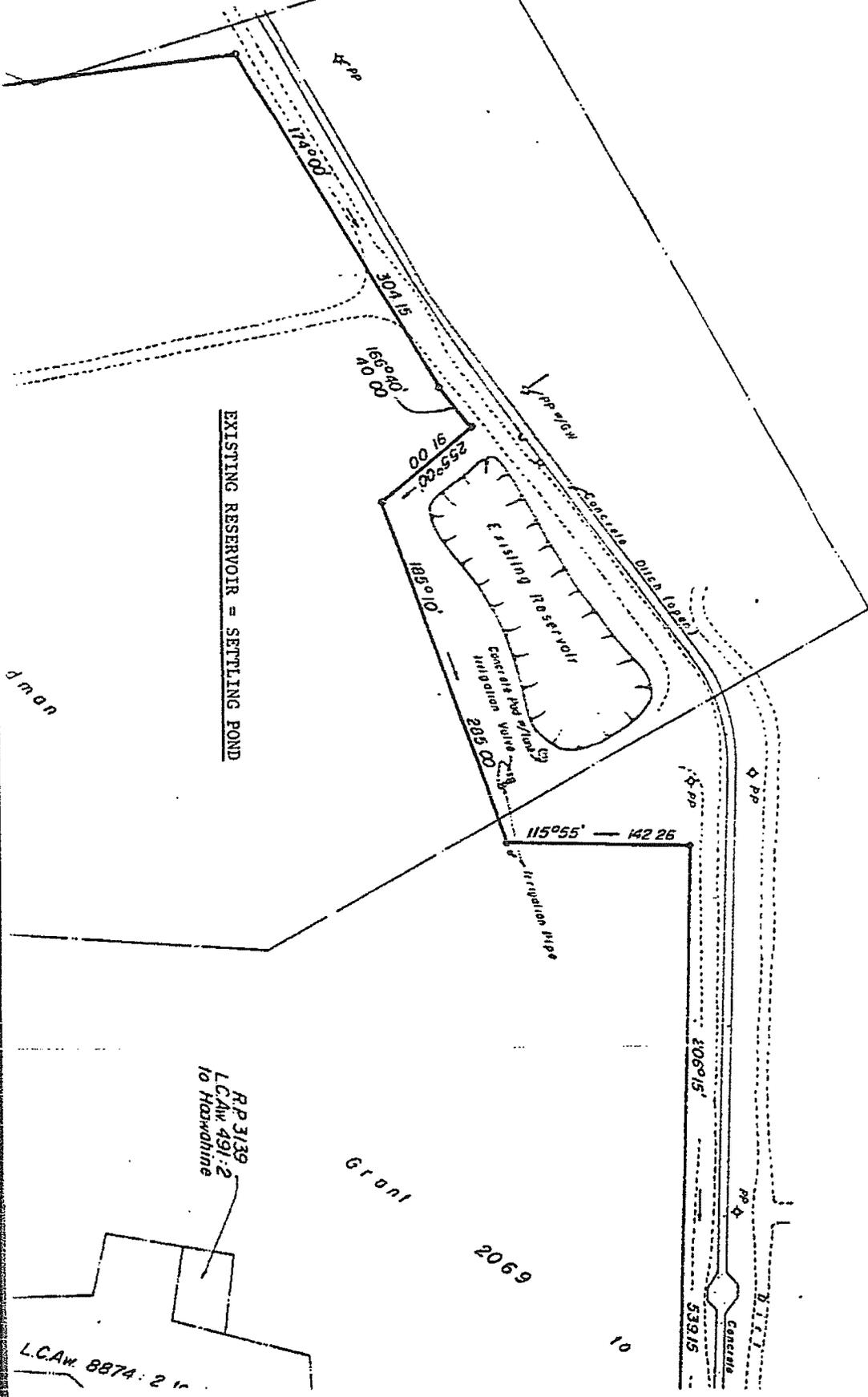
SCHEDULE D

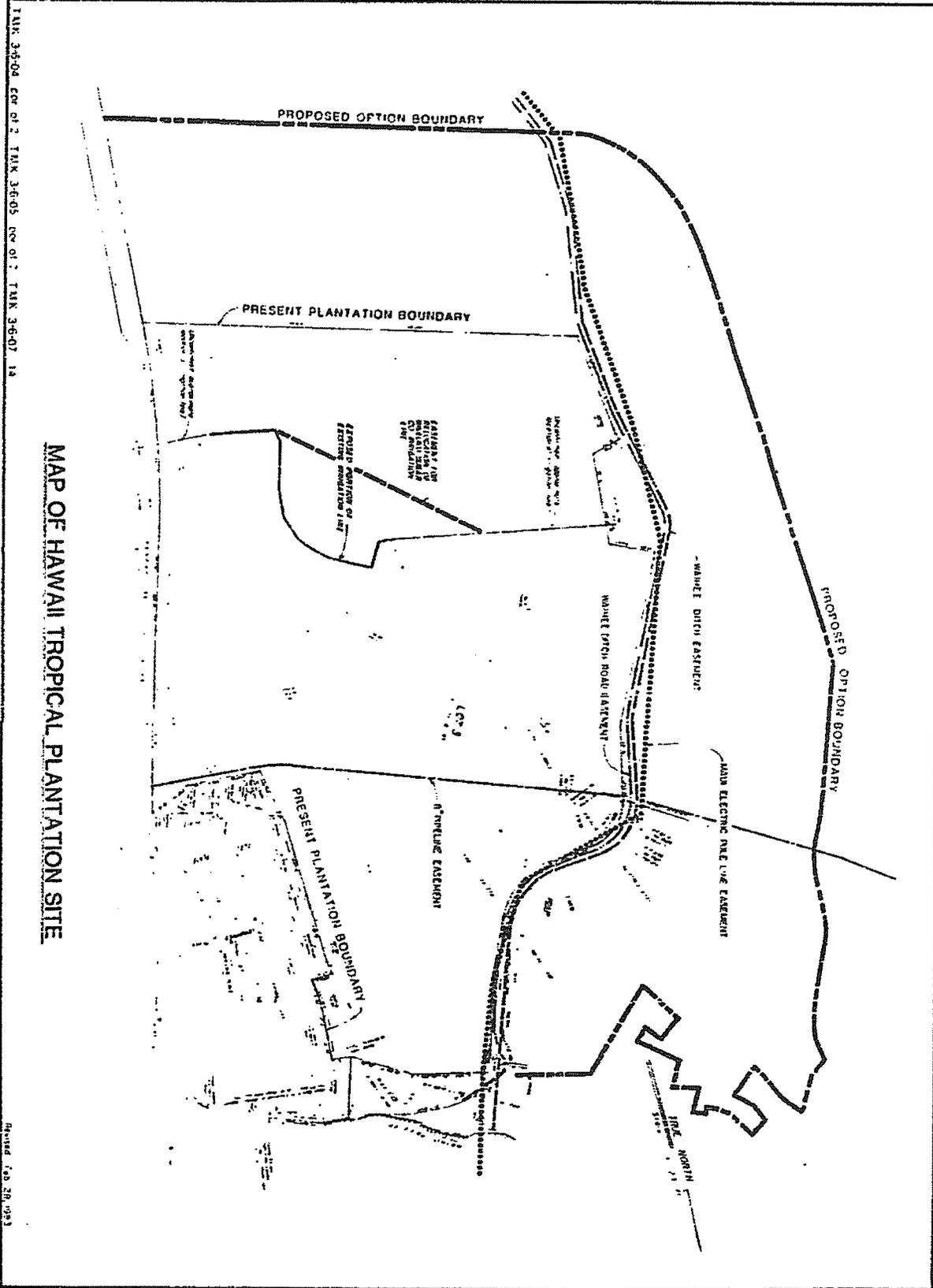


MAP OF HAWAII TROPICAL PLANTATION SITE

WIND ELECTRIC PILE CASE EXTENSION  
8" WINDLICK EXTENSION

LOT 1  
899.509 Acres





MAP OF HAWAII TROPICAL PLANTATION SITE

TAK 3-6-04 EOW of 2 TAK 3-6-05 EOW of 2 TAK 3-6-07 1A

Revised (to 28, 1983) 1st 24, 1981