



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

**OBJECTION TO AN
APPURTENANT RIGHTS CLAIM**

Form APRT-OBJ
For Official Use Only:
2012 SEP 19 PM 2:08

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.

A. OBJECTOR

NAME/COMPANY Office of Hawaiian Affairs, Hui O Na Wai Eha and Maui Tomorrow	Contact Person Pamela W. Bunn, Alston Hunt Floyd & Ing, for OHA; Isaac Moriwake, Earthjustice, for Hui O Na Wai Eha and Maui Tomorrow
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Mailing Address
1001 Bishop Street, Ste. 1800, Honolulu, HI 96813 (Bunn); 223 S. King Street, 4th Floor, Honolulu, HI 96813 (Moriwake)

Phone 524-1800 (Bunn) 599-2436 (Moriwake)	Fax 524-4591 (Bunn); 521 6841 (Moriwake)	E-mail Address pbunn@ahfi.com; imoriwake@earthjustice.org
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Explain your legal or material interest in objecting to this Appurtenant rights claim.
See attached.

B. APPLICANT (As listed in the Public Notice)

NAME/COMPANY Hawaiian Commercial & Sugar Co. (see also Waikapu Properties, LLC)	Surface Water Use Permit Application No. 2205 (see also 2356/2297N)
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Mailing Address
P.O. Box 266, Puunene, HI 96784

Identify all Tax Map Keys (TMK) related to this objection:
(2) 3-6-04:003

C. REASON(S) FOR OBJECTION

Select all that apply below. The objector has the burden of proof on all objections.

- The parcel was not used as a residence or for cultivation at the time of the Mahele.
- The Appurtenant right to water has been reserved or extinguished.
- 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):
See attached.

Supporting documentation / evidence must be provided on separate sheets.

D. OBJECTOR SIGNATURE

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.

Print Name: Pamela W. Bunn Isaac Moriwake	Signature: 	Date: 19 September 2012
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FILE ID: SWUP-2205.6/5 WUP-2356.6/SWUP-2297.6
DOC ID: 9975

Form APRT-OBJ 08/29/2012

ATTACHMENT TO OFFICE OF HAWAIIAN AFFAIRS' AND HUI O NĀ WAI 'EHĀ'S AND MAUI TOMORROW FOUNDATION, INC.'S OBJECTIONS TO APPURTENANT RIGHTS CLAIMS OF WAIKAPU PROPERTIES, LLC (2356/2297N) AND HAWAIIAN COMMERCIAL AND SUGAR COMPANY (2205) RE TMK NO. (2) 3-6-04:003

Explain your legal or material interest in objecting to this appurtenant rights claim.

Office of Hawaiian Affairs (“OHA”), Hui o Nā Wai ‘Ehā (“Hui”) and Maui Tomorrow Foundation, Inc. (“Maui Tomorrow”, and together with Hui, the “Community Groups”) are parties with legally established due process interests and standing in ongoing proceedings regarding the waters of Nā Wai ‘Ehā, Waihe‘e River and Waiehu, ‘Īao, & Waikapū Streams. OHA is statutorily and constitutionally mandated to protect the cultural and natural resources of Hawai‘i for its beneficiaries – native Hawaiians and Hawaiians. Haw. Rev. Stat. §§ 10-3(3), (5); Haw. Const. art. XI, § 1; Haw. Const. art. XII, § 2. The Hui is a community-based organization that was formed to protect and restore Nā Wai ‘Ehā’s water resources and the practices that depend on them, including traditional and customary Native Hawaiian practices. Maui Tomorrow, a community based-organization with over 1,000 supporters, is dedicated to protecting Maui’s natural and cultural resources, promoting principles of ecologically sound development, and preserving rural lifestyles on Maui.

OHA beneficiaries, and the Community Groups’ members and supporters, rely on, use, or seek to use surface water from the Nā Wai ‘Ehā surface water management areas and their nearshore marine waters for purposes including but not limited to fishing and gathering, agriculture, aquaculture, research, education, recreation, artistic activities, aesthetic enjoyment, spiritual observance, and traditional and customary Native Hawaiian practices. OHA beneficiaries and the Community Groups’ members and supporters own and reside on land along each of the streams within the Nā Wai ‘Ehā surface water management areas and hold appurtenant, traditional and customary, and public trust rights to Nā Wai ‘Ehā surface water. In sum, OHA and its beneficiaries and the Community Groups and their members and supporters have legally protected rights and interests in Nā Wai ‘Ehā surface water, which are legally and materially affected by and adverse with the claims of appurtenant rights at issue. At the Commission’s request, OHA and the Community Groups can provide further information regarding their rights and interests in this matter.

Summarize carefully your objection and how approval of this Application would adversely affect your legal interests.

Waikapu Properties, LLC (“WP”) (No. 2356/2297N), and Hawaiian Commercial and Sugar Company (“HC&S”) (No. 2205), have both made claims for claims for appurtenant rights on TMK parcel (2) 3-6-04:003, a 657.2-acre parcel (the “Property”) owned by WP, a portion of which HC&S leases and cultivates. As indicated by the attached tax map, the vast majority of the acreage derived from Grant 1844 to Joseph Sylva or Grant 3152 to Henry Cornwell. With respect to those grants, WP and HC&S have failed to adduce any evidence that, at the time of the Māhele, there was cultivation or water use on that land. *See Peck v. Bailey*, 8 Haw. 658, 661 (1867) (maintaining that absent “immemorial usage” of water, land grants “certainly could take nothing by having been a portion of the Ahupuaa”).

Although there are several small kuleana parcels along Waikapū Stream, HC&S and WP cannot even agree on how many they are claiming appurtenant rights for. HC&S claims appurtenant rights for three Land Commission Awards (“LCAs”), including 14 apana, that are within the Property but not in the portion leased and cultivated by HC&S. WP, on the other hand, claims appurtenant rights for 17 LCAs including 61 apana, and an additional five Royal Patent Grants to native tenants including seven apana. Based on the documentation provided, it does not appear that either is correct, although HC&S, unlike WP, appears to have reviewed the deeds by which WP’s grantors took title. Wailuku Agribusiness Co., Inc. conveyed the portions of the Property it actually had title to by Limited Warranty Deed. The Limited Warranty Deed (attached as Exhibit “1”) specifically excepted most of the parcels for which WP is claiming appurtenant rights (*see* Exhibit A to Exhibit “1”), because WACI obviously could not warrant title as to those, and with good reason – *it didn’t own them*. For example, WP claimed appurtenant rights for Royal Patent Grant 2109 to Joseph Enos for “loi’s called Nohoana.” Enos, however, was in the Pellegrinos’ chain of title to Nohoana Farm, which the Pellegrinos, and not WP, own.

Approval of this application would adversely affect the rights and interests of OHA and its beneficiaries and the Community Groups and their members and supporters in Nā Wai ‘Ehā surface water because it would erroneously recognize priority claims of appurtenant rights to such water without legal and factual basis and contrary to established law, to the prejudice of the opposing rights and interests of OHA and its beneficiaries and the Community Groups and their members and supporters.



R-1044 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 DEC 03, 2004 09:00 AM
 Doc No(s) 2004-245132



/s/ CARL T. WATANABE
 REGISTRAR OF CONVEYANCES
 CONVEYANCE TAX: \$6000.00

21 1/4 Z2

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (✓) Pickup () To:

Lodi Development, Inc
 P.O. Box 1237
 Lodi, CA 95241

TG: 200440718-5
 TGE: A42010727
 DORIE SCHOEPPNER

Tax Key: (2) 3-6-004: 003, 006

Total No. of Pages: 21

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, formerly known as Wailuku Sugar Company, also known as Wailuku Sugar Co., whose address is 255 East Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by LODI DEVELOPMENT, INC., a California corporation, MICHAEL W. ATHERTON, WILLIAM S. FILIOS, Trustee of The William Filios Separate Property Trust

dated April 3, 2000, with full power to purchase, sell, mortgage, dispose or otherwise hypothecate real property, BOYCE HOLDINGS, INC., a California corporation, and BOYCE RESOURCE DEVELOPMENT COMPANY, a California corporation, all whose address is 1132 Norman Drive, Manteca, California 95336, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant and convey unto the Grantee as tenants in common (the said LODI DEVELOPMENT, INC., a California corporation, holding an undivided fifty percent (50%) interest, MICHAEL W. ATHERTON, holding an undivided sixteen and 6666/10000 percent (16.6666%) interest, WILLIAM S. FILIOS, Trustee of The William Filios Separate Property Trust dated April 3, 2000, holding an undivided sixteen and 6666/10000 percent (16.6666%) interest, BOYCE HOLDINGS, INC., a California corporation, holding an undivided eleven and 1111/10000 percent (11.1111%) interest, and BOYCE RESOURCE DEVELOPMENT COMPANY, a California corporation, holding an undivided five and 5557/10000 percent (5.5557%) interest), all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"); subject, however, to all encumbrances noted on said Exhibit "A".

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances made by persons claiming by, through or under the Grantor, except the liens and encumbrances hereinbefore mentioned, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor, except as aforesaid.

The Grantee does hereby covenant and agree with the Grantor to observe and perform at all times all of the terms, covenants, conditions and restrictions set forth in the Declaration of Covenants, Conditions, Easements, Reservations and Restrictions between Grantor and Grantee dated DEC 03 2004, and recorded in the said Bureau of Conveyances as Document No. _____, referred to in said Exhibit "A", as the same may from time to time be amended, on the Grantee's part to be observed and performed as and when required to do so.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

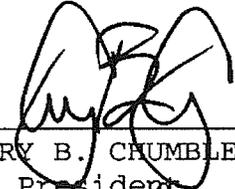
The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

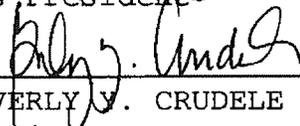
IN WITNESS WHEREOF, the Grantor and the Grantee have
executed these presents on this ____ day of DEC 03 2004, 20__.

APPROVED AS TO FORM:
MANCINI, WELCH & GEIGER

By Peter A. Horovitz

WAILUKU AGRIBUSINESS CO., INC.
formerly known as Wailuku Sugar
Company, also known as Wailuku
Sugar Co.

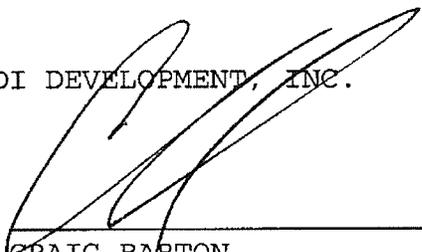
By  _____
AVERY B. CHUMBLEY
Its President

By  _____
BEVERLY V. CRUDELE
Its Secretary

Grantor

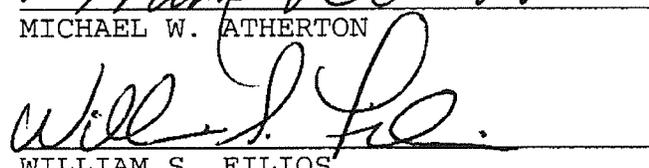
LODI DEVELOPMENT, INC.

By


CRAIG BARTON

Its Chief Financial Officer

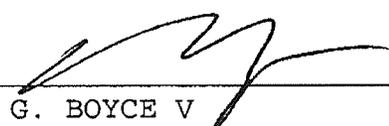

MICHAEL W. ATHERTON


WILLIAM S. FILIOS

Trustee of The William Filios
Separate Property Trust dated
April 3, 2000

BOYCE HOLDINGS, INC.

By


ALBERT G. BOYCE V

Its President

BOYCE RESOURCE DEVELOPMENT COMPANY

By


ALBERT G. BOYCE V

Its Vice President

Grantee

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 23rd day of November, 2004, before me appeared AVERY B. CHUMBLEY and BEVERLY Y. CRUDELE, to me personally known, who being by me duly sworn or affirmed, are the PRESIDENT and SECRETARY, respectively, of Wailuku Agribusiness Co., Inc., a Hawaii corporation, and that the foregoing instrument was signed on behalf of the corporation by authority of its Board of Directors, and the said officers acknowledged the instrument to be the free act and deed of the corporation.

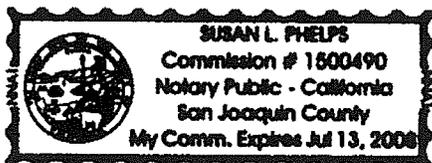
Nora Rosario L.S.
Name: Nora Rosario
Notary Public, State of Hawaii

My commission expires: 12-13-2006

Michael W. Atherton is a married man

STATE OF CALIFORNIA)
) SS.
COUNTY OF San Joaquin)

On this 23rd day of November, 2004, before me personally appeared CRAIG BARTON, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

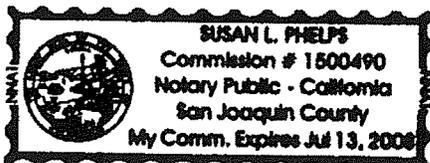


Susan Phelps
Print Name: Susan L. Phelps
Notary Public, in and for said
State and County.

My commission expires: 7-13-08

STATE OF CALIFORNIA)
) SS.
COUNTY OF San Joaquin)

On this 23rd day of November, 2004, before me personally appeared MICHAEL W. ATHERTON, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

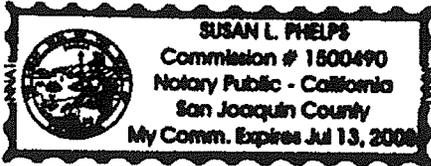


Susan Phelps
Print Name: Susan L. Phelps
Notary Public, in and for said
State and County.

My commission expires: 7-13-08

STATE OF CALIFORNIA)
) SS.
COUNTY OF San Joaquin)

On this 23rd day of November, 2004, before me personally appeared WILLIAM S. FILIOS, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

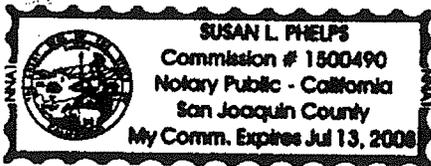


Susan Phelps
Print Name: Susan L. Phelps
Notary Public, in and for said
State and County.

My commission expires: 7-13-08

STATE OF CALIFORNIA)
) SS.
COUNTY OF San Joaquin)

On this 23rd day of November, 2004, before me personally appeared ALBERT G. BOYCE V, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Susan Phelps
Print Name: Susan L. Phelps
Notary Public, in and for said
State and County.

My commission expires: 7-13-08

EXHIBIT "A"

ITEM I:

All of that certain parcel of land (being all of the land described in and covered by a portion(s) of Apanas 1, 2 and 3 of Royal Patent Grant Number 1844 to Joseph Sylva; Royal Patent Grant Number 3152 to Henry Cornwell; Apana 2 of Royal Patent Number 498, Land Commission Award Number 236-I to C. Copp; Apanas 1-5 of Royal Patent Number 3124, Land Commission Award Number 2609 to Poepoe; Apana 6 of Royal Patent Number 4115, Land Commission Award Number 3224 to Oponui; Royal Patent Number 3135, Land Commission Award Number 3520 to Keawe; Apana 2 of Royal Patent Number 3151, Land Commission Award Number 3546 to Kupalii; Apana 1 of Royal Patent Number 3150, Land Commission Award Number 5551 to Keakua; Apana 2 of Royal Patent Number 4014, Land Commission Award Number 5774 to Kaai; and all of Royal Patent Grant Number 2109 to Joseph Enos; Royal Patent Grant Number 1704 to Oponui; Royal Patent Grant Number 1708 to Koa; Apana 1 and Apana 2 of Royal Patent Grant Number 1711 to Mohomoho; Apana 1 of Royal Patent Grant Number 1712 to Ihu; Apana 1 of Royal Patent Number 3138, Land Commission Award Number 2394 to Kaeha; Apana 1 of Royal Patent Number 4070, Land Commission Award Number 2499 to Ehunui; Royal Patent Number 3125, Land Commission Award Number 2522 to Makuakane; Apana 2 and Apana 4 of Royal Patent Number 4948, Land Commission Award Number 2577 to Hakiki; Apana 2 of Royal Patent Number 3140, Land Commission Award Number 3020 to Mataio; Apana 1 of Royal Patent Number 3155, Land Commission Award Number 3528 to Koa; Apana 3 of Royal Patent Number 3151, Land Commission Award Number 3546 to Kupalii, Apana 2 of Royal Patent Number 3150, Land Commission Award Number 5551 to Keakua; Apana 2 of Land Patent Number (None), Land Commission Award Number 6385 to Kamakaipoaa; Apana 2 of Land Patent Number (None), Land Commission Award Number 10460 to Nalei; Apana 1, Mahele 2, Apana 1, Mahele 3, Apanas 2 and 3, and Apana 4 of Royal Patent Number 3131, Land Commission Award Number 10481 to Napailoi; Apana 4 of Royal Patent Number 3136, Land Commission Award Number 3337 to Naanaa) situate, lying and being at Waikapu, District of Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-6-004-003, containing an area of 657.195 acres, more or less.

EXCEPTING AND EXCLUDING from the above:

(A) Royal Patent Grant Number 1704 to Oponui;

- (B) Royal Patent Grant Number 1708 to Koa;
- (C) Apanas 1 and 2, Royal Patent Grant Number 1711 to Mohomoho;
- (D) Apana 1, Royal Patent Grant Number 1712 to Ihu;
- (E) Apana 1, Royal Patent Number 4070, Land Commission Award Number 2499 to Ehunui;
- (F) Royal Patent Number 3125, Land Commission Award Number 2522 to Makuakane;
- (G) Apanas 2 and 4, Royal Patent Number 4948, Land Commission Award Number 2577 to Hakiki;
- (H) Apanas 1-5, Royal Patent Number 3124, Land Commission Award Number 2609 to Poepoe;
- (I) Apana 6, Royal Patent Number 4115, Land Commission Award Number 3224 to Opunui;
- (J) Royal Patent Number 3135, Land Commission Award Number 3520 to Keawe;
- (K) Apana 1, Royal Patent Number 3155, Land Commission Award Number 3528 to Koa;
- (L) Apanas 2 and 3, Royal Patent Number 3151, Land Commission Award Number 3546 to Kupalii;
- (M) Apanas 1 and 2, Royal Patent Number 3150, Land Commission Award Number 5551 to Keakua;
- (N) Apana 2, Royal Patent Number 3140, Land Commission Award Number 3020 to Mataio;
- (O) Apana 2, Royal Patent Number 4014, Land Commission Award Number 5774 to Kaai;
- (P) Apana 2, Land Patent Number (None), Land Commission Award Number 6385 to Kamakaipoaa;
- (Q) Apana 2, Land Patent Number (None), Land Commission Award Number 10460 to Nalei;

(R) Apana 1, Mahele 2, Apana 1, Mahele 3, Apanas 2 and 3, and Apana 4, Royal Patent Number 3131, Land Commission Award Number 10481 to Napailoi;

(S) Royal Patent Grant Number 2109 to Joseph Enos; and

(T) Apana 4, Royal Patent Number 3136, Land Commission Award Number 3337 to Naanaa.

Said described parcel of land having been acquired by Wailuku Sugar Company, a Hawaii corporation, as follows:

1. By Deed of William H. Cornwell and F.W. MacFarlane, dated November 20, 1894, recorded in Liber 152 on Page 96;

2. By Deed of Polly Kalua, dated July 5, 1898, recorded in Liber 183 on Page 263;

3. By Deed of C. Brewer & Company, Ltd., a Hawaii corporation, dated July 19, 1899, recorded in Liber 198 on Page 148; and

4. By Reconveyance Deed of The Hawaii Tropical Plantation, a Hawaii limited partnership, dated August 22, 1990, recorded as Document No. 90-174768.

ITEM II:

All of that certain parcel of land (being all of the land described in and covered by a portion(s) of Apanas 1 and 2 of Royal Patent Grant Number 1844 to Joseph Sylva; Royal Patent Grant Number 3152 to Henry Cornwell; Royal Patent Grant Number 3043 to J. Boardman; Royal Patent Grant Number 2960 to J. Boardman; Apana 1 of Royal Patent Grant Number 2069 to Kaai; Apana 1 of Royal Patent Number 3130, Land Commission Award Number 8874 to Kaneae; Apana 1 of Royal Patent Number 498, Land Commission Award Number 236-I to C. Copp; Apana 2 of Royal Patent Number 4014, Land Commission Award Number 5774 to Kaai; and all of Apana 1 of Royal Patent Number 3148, Land Commission Award Number 10160 to Mahoe; Apana 6 of Royal Patent Number 3142, Land Commission Award Number 11022 to Wahinealii; Apana 1, Mahele 1 of Royal Patent Number 3131, Land Commission Award Number 10481 to Napailoi; Apana 3 of Royal Patent Number 6374, Land Commission Award Number 5324 to Keakini; and Apana 2 of Royal Patent Number 3156, Land Commission Award Number 3527 to Kamohai) situate, lying and being at Waikapu, District of

Wailuku, Island and County of Maui, State of Hawaii, bearing Tax Key designation (2) 3-6-004-006, containing an area of 52.976 acres, more or less.

EXCEPTING AND EXCLUDING from the above:

(A) Apana 2, Royal Patent Number 4014, Land Commission Award Number 5774 to Kaai;

(B) Apana 1, Mahele 1, Royal Patent Number 3131, Land Commission Award Number 10481 to Napailoi; and

(C) Apana 6, Royal Patent Number 3142, Land Commission Award 11022 to Wahinealii.

Said described parcel of land having been acquired by Wailuku Sugar Company, a Hawaii corporation, as follows:

1. By Deed of William H. Cornwell and F.W. MacFarlane, dated November 20, 1894, recorded in Liber 152 on Page 96;
2. By Deed of C. Brewer & Company, Ltd., a Hawaii corporation, dated July 19, 1899, recorded in Liber 198 on Page 148; and
3. By Reconveyance Deed of The Hawaii Tropical Plantation, a Hawaii limited partnership, dated August 22, 1990, recorded as Document No. 90-174768.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Any and all existing roadways, trails, easements, rights of way, flumes and irrigation ditches.
3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Exchange Deed dated June 23, 1924, recorded in Liber 740 on Page 134.

The foregoing includes, but is not limited to, matters relating to water rights, easements and other rights in Waihee Ditch in favor of Hawaiian Commercial and Sugar Company, now known as Alexander & Baldwin, Inc.

4. Grant to Maui Electric Company, Limited dated April 30, 1974, recorded in Liber 9921 on Page 1, granting a non-exclusive right and easement to build, construct, rebuild, reconstruct, repair, maintain and operate pole and wire line or lines, etc. for the transmission of electricity, along, across, over, through and upon Powerline Easements "E", "F", "6", and "7", more particularly described therein.

Said Grant was amended by instrument dated January 24, 1978, recorded in Liber 12720 on Page 351.

5. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Agreement dated _____, recorded in Liber 17877 on Page 754, by and between Wailuku Sugar Company, "WSCO", Hawaii Tropical Plantation, a limited partnership, "Developer", and County of Maui and the Department of Water Supply, "County".

6. Grant to Maui Electric Company, Limited and GTE Hawaiian Telephone Company Incorporated, now known as Verizon Hawaii Inc., dated January 5, 1987, recorded in Liber 20331 on Page 23, granting a nonexclusive right and easement to build, construct, rebuild, reconstruct, repair, maintain, operate and remove pole and wire lines, etc. for the transmission and distribution of electricity.

7. Unrecorded Water Agreement dated March 24, 1983, by and between Wailuku Sugar Company, a Hawaii corporation, as Seller, and the Hawaii Tropical Plantation, a Hawaii limited partnership, as Buyer.

8. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Deed dated August 22, 1990, recorded as Document No. 90-174768.

The foregoing includes, but is not limited to, matters relating to the reservations of easements appurtenant to Lot 3 (Tax Map Key 3-6-05:07) of the tract of land known as the Hawaii Tropical Plantation Subdivision.

9. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Subdivision Agreement (Agricultural Use) dated March 19, 1991, recorded as Document No. 91-067645, by and between Wailuku Agribusiness Co., Inc., a Hawaii corporation,

and Waikapu Mauka Partners, a Hawaii general partnership, "Owner" and the County of Maui, through its Department of Public Works, "Department".

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Subdivision Agreement (Large Lot) dated March 19, 1991, recorded as Document No. 91-067646, by and between Wailuku Agribusiness Co., Inc., a Hawaii corporation, "Agribusiness", and Waikapu Mauka Partners, a Hawaii general partnership, "WMP", and the County of Maui, "County".

11. Grant to Donna Ting and Allen Ting III, husband and wife, dated December 18, 2002, recorded as Document No. 2003-005885, granting a non-exclusive easement for vehicular and pedestrian ingress and egress and utility purposes over Easement "1", forty foot (40') wide, and a non-exclusive easement for vehicular and pedestrian ingress and egress over Easement "2", twenty foot (20') wide; subject to the provision to survey said easements as set forth therein.

12. AS TO ITEM I ONLY:

(A) Location of the boundary of Waikapu Stream and the effect, if any, upon the area of the land described herein, and the free flowage thereof.

(B) Reservoirs indicated on tax map.

(C) Non-exclusive right and easement to use for ingress and egress from and to the government highway appurtenant to Tax Keys (2) 3-6-004-005 and (2) 3-6-004-004.

(D) Grant to State of Hawaii, Director of Transportation, dated December 1, 1978, and recorded in Liber 13364 on Page 211, granting a non-exclusive easement to construct and maintain the lining of the Pohakea Stream Bridge structure, through, over and across Drainage Easement "A" (Revision 3), described therein, "Together with the right of ingress to and egress from said Easement Area, over and across the lands of the GRANTOR adjacent thereto".

(E) Grant to Waikapu Mauka Partners (Partners) dated June 17, 1988, recorded in Liber 22043 on Page 646, granting a non-exclusive easement to exercise Partners' rights (including access rights) as described in Water Delivery Agreement, etc., being a continuous system of water diversion,

transportation and storage mechanisms, including but not limited to ditches, pipes, tunnels, and reservoirs.

Said Easement was assigned to H.F.J. Mauka, Inc., by instrument dated October 27, 2000, recorded as Document No. 2000-152532.

(F) Grant to Maui Electric Company, Limited dated February 14, 1990, recorded as Document No. 90-054813, granting a non-exclusive right and easement to build, construct, reconstruct, repair, maintain and operate pole and wire line or lines, etc., for the transmission of electricity.

(G) Grant to Waikapu Mauka Partners dated December 27, 1990, recorded as Document No. 90-197491, granting a non-exclusive easement fifteen (15) feet wide to install water system.

(H) Grant to Maui Electric Company, Limited dated November 1, 1995, recorded as Document No. 95-161279, granting a perpetual right and easement to build, construct, reconstruct, repair, maintain and operate pole and wire lines, etc., for the transmission of electricity.

(I) Grant to GTE Hawaiian Telephone Company Incorporated, now known as Verizon Hawaii, Inc., dated June 29, 2000, recorded as Document No. 2000-096702, granting a perpetual right and easement to build, construct, reconstruct, rebuild, repair, maintain and operate underground lines, etc., for the transmission and distribution of communication and control circuits.

(J) Easement "A" (40 feet wide, area 1.239 acres) for roadway and utility purposes, as shown on survey map prepared by Warren S. Unemori, Registered Professional Land Surveyor, dated November 30, 1988, revised July 14, 1989 and September 5, 1989.

(K) Easement "B" (60 feet wide, area 1.887 acres) for roadway and utility purposes, as shown on survey map prepared by Warren S. Unemori, Registered Professional Land Surveyor, dated November 30, 1988, revised July 14, 1989 and September 5, 1989.

(L) Easement "C" (60 feet wide, area 2.929 acres) for roadway and utility purposes, as shown on survey map prepared by Warren S. Unemori, Registered Professional Land

Surveyor, dated November 30, 1988, revised July 14, 1989 and September 5, 1989.

(M) Easement "D" (40 feet wide, area 1.716 acres) for roadway and utility purposes, as shown on survey map prepared by Warren S. Unemori, Registered Professional Land Surveyor, dated November 30, 1988, revised July 14, 1989 and September 5, 1989.

(N) Easement "E" (40 feet wide, area 1.441 acres) for roadway and utility purposes, as shown on survey map prepared by Warren S. Unemori, Registered Professional Land Surveyor, dated November 30, 1988, revised July 14, 1989 and September 5, 1989.

(O) Restricted vehicle access, as shown on survey map prepared by Warren S. Unemori, Registered Professional Land Surveyor, dated November 30, 1988, revised July 14, 1989 and September 5, 1989.

(P) AS TO EASEMENT "A":

Easement for roadway and utility purposes in favor of Pohakulepo Recycling, by instrument dated June 28, 1997, recorded as Document No. 97-084472.

(Q) AS TO EASEMENT "B":

Easement for roadway and utility purposes in favor of Waikapu Mauka Partners, by instrument dated February 21, 1992, recorded as Document No. 92-061321.

(R) AS TO EASEMENT "C":

Easement for roadway and utility purposes in favor of Waikapu Mauka Partners, by instrument dated February 21, 1992, recorded as Document No. 92-061321.

(S) AS TO EASEMENT "D":

Easement for roadway and utility purposes in favor of Waikapu Mauka Partners, by instrument dated February 21, 1992, recorded as Document No. 92-061321.

(T) AS TO EASEMENT "E":

Easement for roadway and utility purposes in favor of Pohakulepo Recycling, by instrument dated June 28, 1997, recorded as Document No. 97-084472.

(U) "Partial interest in the following sources of title have been conveyed to Wailuku Sugar Company, now known as Wailuku Agribusiness Co., Inc.:

- (1) Royal Patent Grant Number 1704 to Opunui;
- (2) Royal Patent Grant Number 1708 to Koa;
- (3) Apanas 1 and 2, Royal Patent Grant Number 1711 to Mohomoho;
- (4) Apana 1, Royal Patent Grant Number 1712 to Ihu;
- (5) Apana 1, Royal Patent Number 4070, Land Commission Award Number 2499 to Ehunui;
- (6) Royal Patent Number 3125, Land Commission Award Number 2522 to Makuakane;
- (7) Apanas 2 and 4, Royal Patent Number 4948, Land Commission Award Number 2577 to Hakiki;
- (8) Apanas 1-5, Royal Patent Number 3124, Land Commission Award Number 2609 to Poepoe;
- (9) Apana 6, Royal Patent Number 4115, Land Commission Award Number 3224 to Opunui;
- (10) Royal Patent Number 3135, Land Commission Award Number 3520 to Keawe;
- (11) Apana 1, Royal Patent Number 3155, Land Commission Award Number 3528 to Koa;
- (12) Apanas 2 and 3, Royal Patent Number 3151, Land Commission Award Number 3546 to Kupalii;

(13) Apanas 1 and 2, Royal Patent Number 3150, Land Commission Award Number 5551 to Keakua;

(14) Apana 2, Royal Patent Number 3140, Land Commission Award Number 3020 to Mataio;

(15) Apana 2, Royal Patent Number 4014, Land Commission Award Number 5774 to Kaai;

(16) Apana 2, Land Patent Number (None), Land Commission Award Number 6385 to Kamakaipoaa;

(17) Apana 2, Land Patent Number (None), Land Commission Award Number 10460 to Nalei;

(18) Apana 1, Mahele 2, Apana 1, Mahele 3, Apanas 2 and 3, and Apana 4, Royal Patent Number 3131, Land Commission Award Number 10481 to Napailoi;

(19) Royal Patent Grant Number 2109 to Joseph Enos; and

(20) Apana 4, Royal Patent Number 3136, Land Commission Award Number 3337 to Naanaa."

(V) Grant To Clayton Shigeto Suzuki, Trustee of the Clayton Shigeto Suzuki Revocable Trust dated June 5, 1984, as amended, and Linda Michie Kadosahi, Trustee of the Linda Michie Kadosahi Revocable Living Trust dated July 5, 1984, as amended, dated March 18, 2003, recorded as Document No. 2003-081212, granting a perpetual, nonexclusive easement for waterline and utility purposes over and across an "Easement Area" being a ten foot (10') wide area as shown on Exhibit "A" attached thereto.

13. AS TO ITEM II ONLY:

(A) "Partial interest in the following sources of title have been conveyed to Wailuku Sugar Company, now known as Wailuku Agribusiness Co., Inc.:

(1) Apana 2, Royal Patent Number 4014, Land Commission Award Number 5774 to Kaai;

(2) Apana 1, Mahele 1, Royal Patent Number 3131, Land Commission Award Number 10481 to Napailoi; and

(3) Apana 6, Royal Patent Number 3142, Land Commission Award Number 11022 to Wahinealii."

(B) Grant to Clayton Shigeto Suzuki, Trustee of the Clayton Shigeto Suzuki Revocable Trust dated June 5, 1984, as amended, and Linda Michie Kadosahi, Trustee of the Linda Michie Kadosahi Revocable Living Trust dated July 5, 1984, as amended, dated March 18, 2003, recorded as Document No. 2003-081211, granting a perpetual, nonexclusive easement for access and utility purposes over and across an "Easement Area" being a twelve foot (12') wide area approximately shown on Exhibit "A" attached thereto.

(C) Grant to Hawaii Land & Farming Company, Inc. dated August 27, 2003, recorded as Document No. 2003-268499, granting a perpetual, nonexclusive easement for access and utility purposes over and across an "Easement Area" being a twenty foot (20') wide area shown on Exhibit "A" attached thereto.

14. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in Declaration of Covenants, Conditions, Easements, Reservations and Restrictions between Grantor and Grantee dated DEC 03 2004, and recorded in the said Bureau of Conveyances as Document No. _____.

15. Matters arising out of, including any access and utility rights in favor of the excluded parcel of land(s) located within the subject land described herein.

16. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

17. Any unrecorded leases and matters arising from or affecting the same.

18. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.

Note: A current survey, with metes and bounds description, should be made of said premises.

19. Claims arising out of the failure to convey the land described herein together with an easement or right of access.

20. Water rights, claims or title to water, whether or not shown by the public records.

END OF EXHIBIT "A"

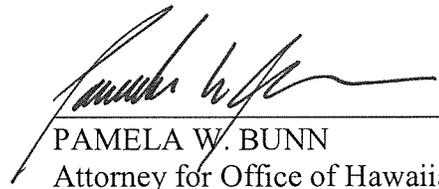
Tax Key: (2) 3-6-004: 003, 006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the *Objection to an Appurtenant Rights Claim* to be served on the following Applicant by U.S. mail, postage prepaid (as indicated below) to its respective address:

Hawaiian Commercial & Sugar Company
P.O. Box 266
Puunene, HI 96784

DATED: Honolulu, Hawai'i, September 19, 2012.



PAMELA W. BUNN
Attorney for Office of Hawaiian Affairs