



**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: **RM**
RESOURCE MANAGEMENT

2012 SEP 19 PM 2:09

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

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

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 Company (see also Waikapu Properties, LLC)

Surface Water Use Permit Application No.

2205 (see also 3471)

Mailing Address

P.O. Box 266, Puunene, HI 96784

Identify all Tax Map Keys (TMK) related to this objection:

(2) 3-6-04:006

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:

[Handwritten Signature]

Date:

19 September 2012

FILE ID: 5 WUP 2205.6 / SWUP 3471.6
DOC ID: 9981

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 (3471) AND HAWAIIAN COMMERCIAL AND SUGAR COMPANY (2205) RE TMK NO. (2) 3-6-04:006

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”), as owner (No. 3471), and Hawaiian Commercial and Sugar Company (“HC&S”) as lessee (No. 2205), have made duplicative claims for appurtenant rights on TMK parcel (2) 3-6-04:006, a 52.976-acre parcel (the “Property”). However, the appurtenant rights to a 10.688-acre portion of the Property were reserved by the Grantor in an earlier deed and thus extinguished. *See Reppun v. Board of Water Supply*, 65 Haw. 531, 552, 656 P.2d 57, 71 (1982) (holding that a deed that attempted to reserve appurtenant rights to the Grantor had the effect of extinguishing them). The Deed by and between Wailuku Sugar Company, as “Grantor,” and The Hawaii Tropical Plantation, as “Grantee,” recorded on March 24, 1983 in the Bureau of Conveyances at Book 16933 Page 469 (attached as Exhibit “1”) conveyed to The Hawaii Tropical Plantation a total of 69.794 acres, which included the 59.106-acre “Lot 3” (now TMK No. (2) 3-6-05:007, for which appurtenant rights are claimed by MTP Operating Company, LLC – *see* no. 2203), and the 10.688-acre “Lot 2,” which is now part of the Property. *See* Exhibit “A” to Ex. 1 at 1, and at Schedules A and B.

As to the property conveyed by the March 24, 1983 Deed, including “Lot 2,” Exhibit “A” thereto expressly **“except[s] 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[,]”** Exhibit “A” to Deed (Ex. 1), p. 7 (emphasis added), which water and water rights were reserved “unto the Grantor and its successors and assigns.” *Id.* at 6. By Reconveyance Deed by and between The Hawaii Tropical Plantation (“HTP”), as “Grantor” and Wailuku Agribusiness Co., Inc. (“WACI”), as “Grantee,” dated August 22, 1990 and recorded in the Bureau of Conveyances as Document No. 90-174768, attached as Exhibit “2,” HTP conveyed Lot 2, among others, to WACI, after an apparent subdivision and reconsolidation that increased the size of “Lot 2” to its current 52.976 acres. *See* Exhibit A to Exhibit “2,” at 1, and at Schedule B thereto. WACI conveyed “Lot 2,” TMK No. (2) 3-6-004:6 (the Property), among others, to WP’s grantor in 2004. Attached as Exhibit “3” is a copy of Schedule A to the March 24, 1983 Deed, highlighted to show the 59.106-acre “Lot 3” (now TMK No. (2) 3-6-05:007) and the 10.688-acre “Lot 2,” now part of the Property. Attached as Exhibit “4” is an enlarged portion of the TMK Map showing the outline of Property (TMK No. (2) 3-6-04:006) in green and the portion that was “Lot 2” in blue. As to that portion of

the Property, all appurtenant rights were reserved to WACI in the March 24, 1083 Deed and thus extinguished.

As to the remainder of the Property, OHA and the Community Groups note that the application's supporting documentation fails to establish any cultivation or water use on large portions of the Property at the time of the Māhele. No cultivation or water use is established for Grant 1844 to Joseph Sylva or Grant 3152 to Henry Cornwell, which account for almost all of the Property that was not included in "Lot 2" conveyed by the March 24, 1983 Deed. *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").

The Community Groups and OHA reserve the right to raise further objections if the objections above are not sufficient to refute the application's appurtenant rights claims.

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.

HC

RECORDATION REQUESTED BY:
83- 29905

83 MAY 21 P 2. 00

AFTER RECORDATION, RETURN TO:
Security Title Co.

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;

CONVEYANCE
HAWAII
TAX
500.00
RECEIVED
MAY 21 1983

EXHIBIT "1"

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 describe^d 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 R. Higgins
its VICE PRESIDENT
By Donald P. [unclear]
its and Secretary

16933 471

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 ¹⁵

PARCEL I

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. 3152 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. 371 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:

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

- 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. PAAKIKI and husband Z. PAAKIKI, 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:

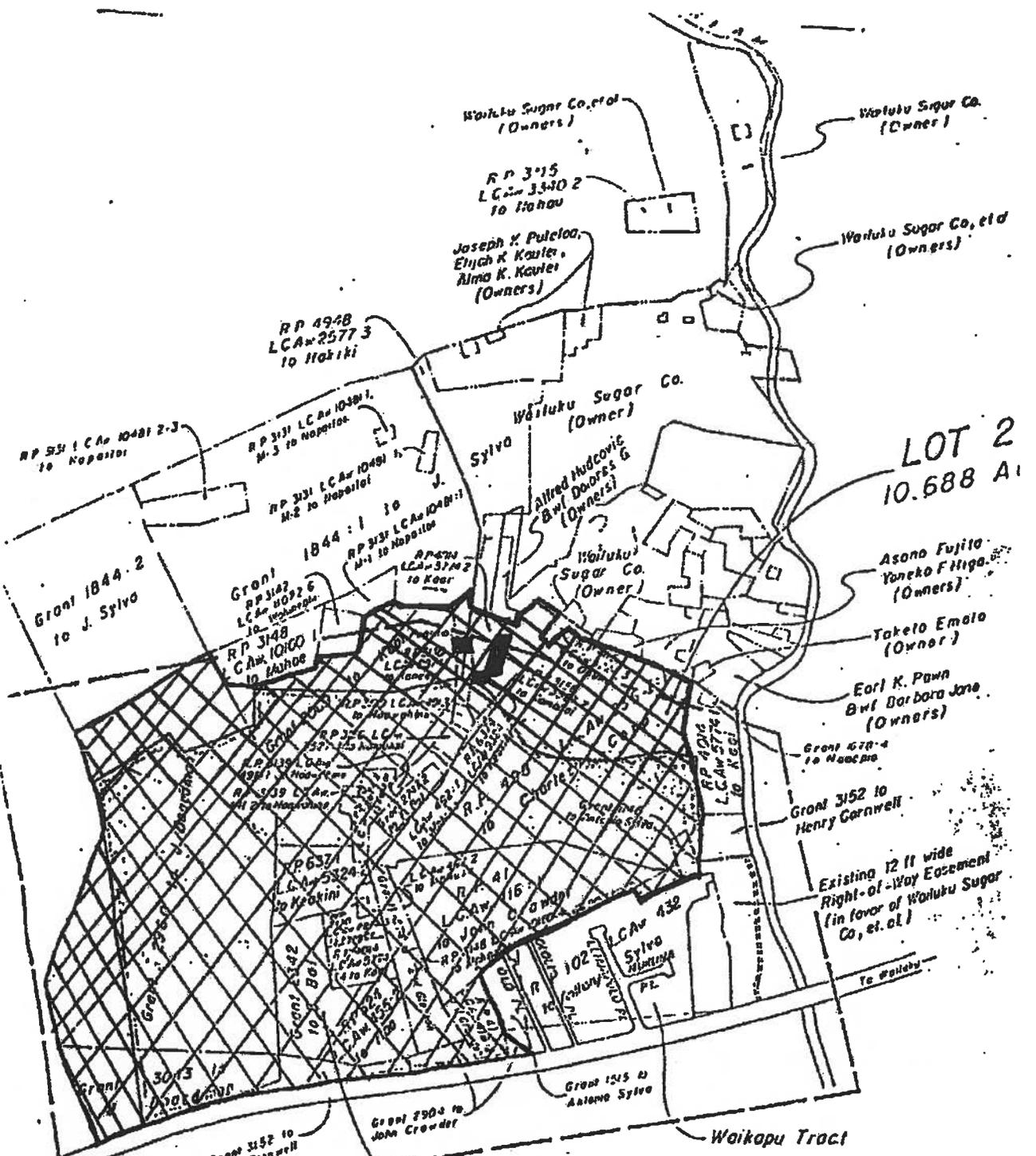
1. Reservation in favor of the State of Hawaii of all mineral and metallic mines in the following Awards and Grants:

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
-  - Property not included in this conveyance

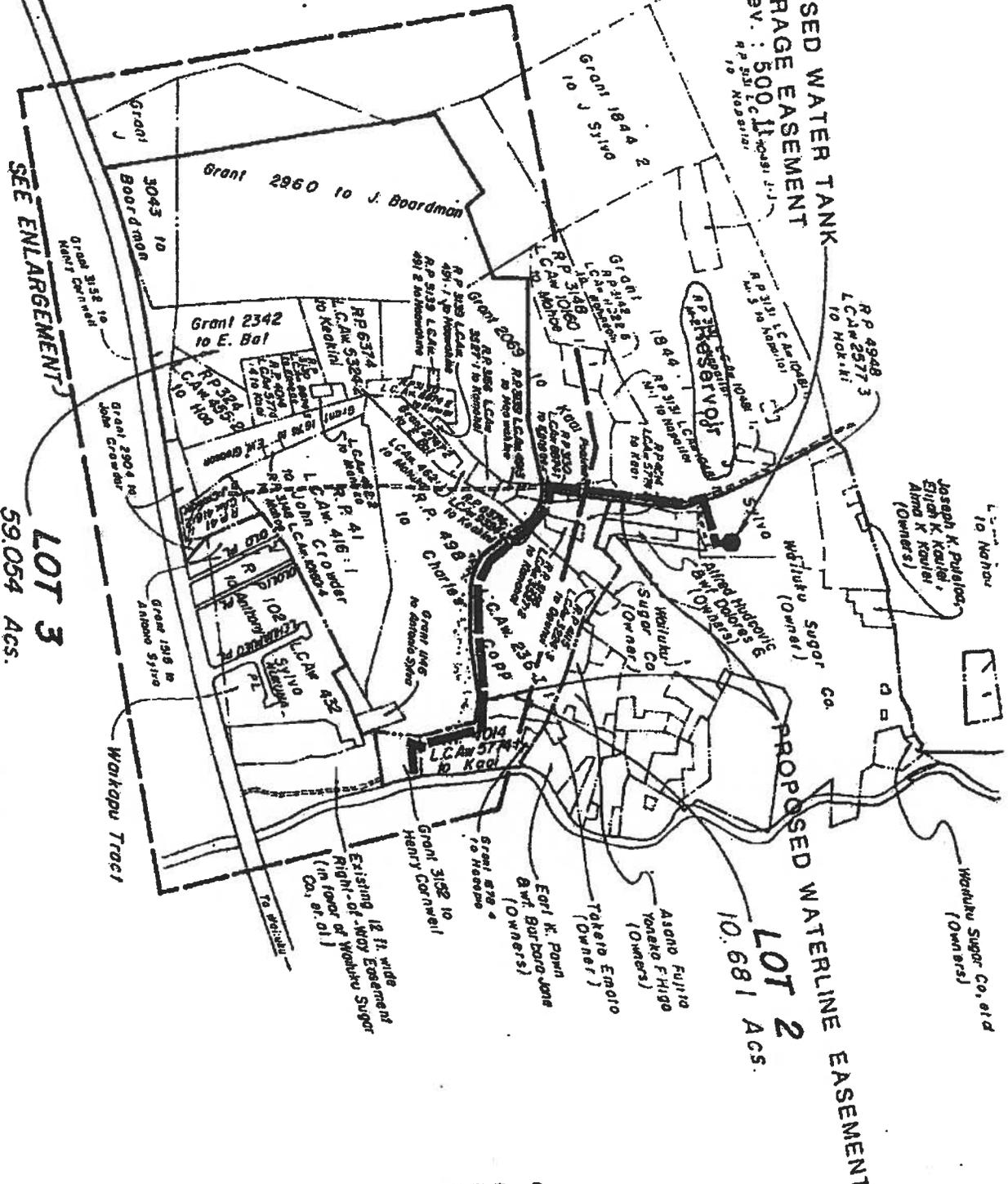
899.567 Acs.

PROPOSED WATER TANK
STORAGE EASEMENT
Elev. : 500 ft. (approx.)

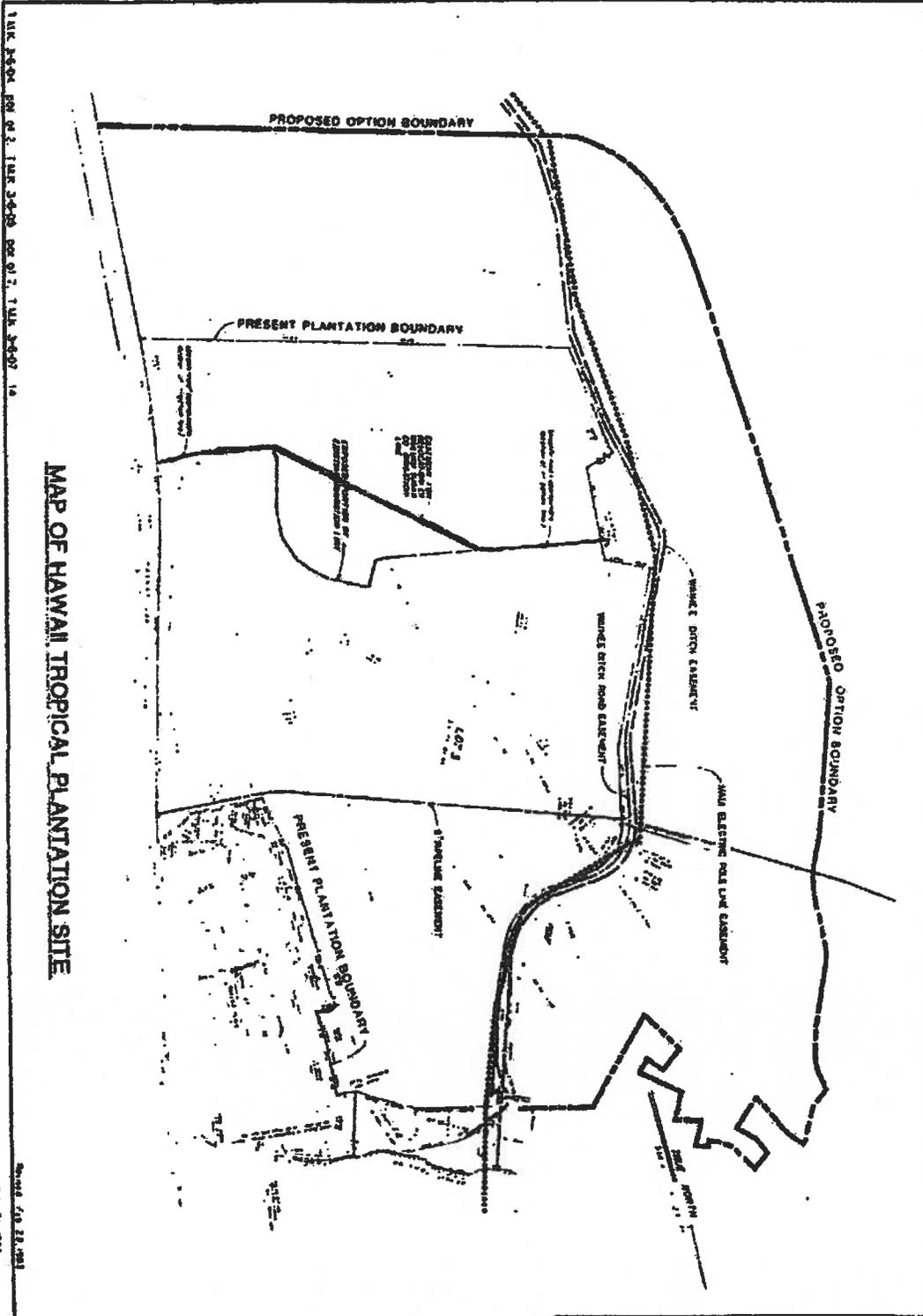
SEE ENLARGEMENT

LOT 3
59.054 Acs.

LOT 2
10.681 Acs.



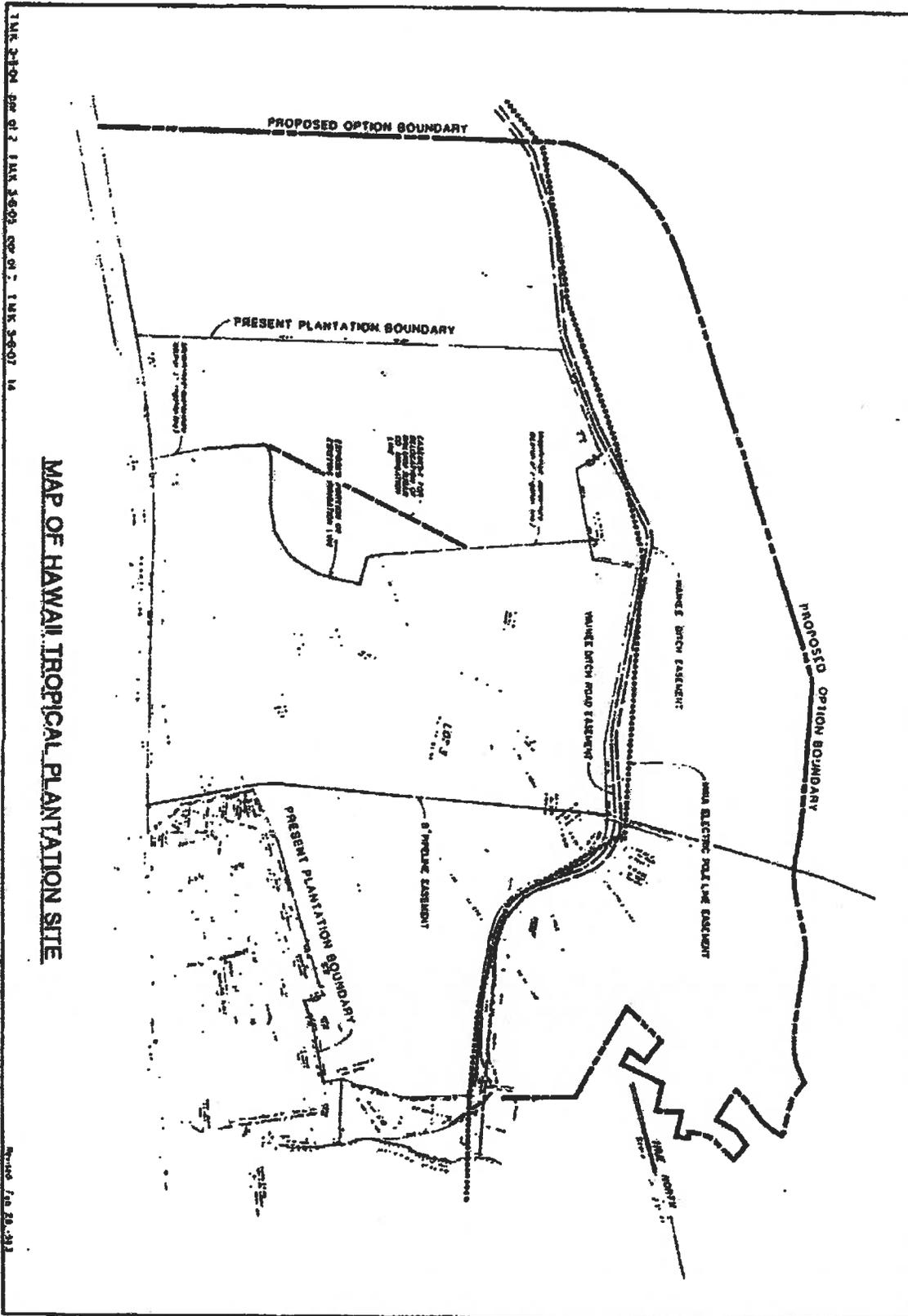
SCHEDULE D



MAP OF HAWAII TROPICAL PLANTATION SITE

THESE MAPS ARE OF THE SAME SCALE AS THE MAPS OF THE TROPICAL PLANTATION SITE

SCALE 1/4" = 100'



THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, LAND DIVISION

Revised 7/20/2011
448 24 2011

CONVEYANCE TAX \$10.00
NOV 13 1981

90 174768
NOV 13 09 08 01

S. FUJISAWA, REGISTRAR

LAND COURT SYSTEM REGULAR SYSTEM
Return by Mail () Pickup (✓) To: TGA 101572 B
C. BREWER PROPERTIES INC.
827 FORT STREET
Honolulu, HI 96813

RECONVEYANCE DEED

KNOW ALL MEN BY THESE PRESENTS:

That THE HAWAII TROPICAL PLANTATION, a Hawaii limited partnership, of Honolulu, Hawaii, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, does hereby remise, release and forever quitclaim unto WAILUKU AGRIBUSINESS, CO., INC., a Hawaii corporation, with principal place of business at Wailuku, Maui, Hawaii, hereinafter called the "Grantee", and its successors and assigns, all of the Grantor's estate, right, title and interest in and to:

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;

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns, forever.

GRANTOR covenants with Grantee, its successors and assigns, that Grantor has not made or suffered any lien or encumbrance on the premises, other than those listed on Exhibit A, during the period Grantor has held the premises.

EXHIBIT "2"

IN WITNESS WHEREOF, the Grantor has executed these presents this 22nd day of August, 1990.

THE HAWAII TROPICAL PLANTATION

By Its general partners

WAILUKU PLANTATIONS, INC.

By Kathleen J. Oshiro
Its

SECRETARY

By [Signature]
Its

Vice President

TOYAMA MAUI PLANTATION, INC.

By [Signature]
Its

TREASURER

Grantor

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

On this 22nd day of August, 1990, before me appeared KATHLEEN F. OSHIRO and J. S. ANDRASICK, to me personally known, who, being by me duly sworn, did say that they are Secretary and President, respectively, of WAILUKU PLANTATIONS, INC., a Hawaii corporation, a general partner of THE HAWAII TROPICAL PLANTATION, a registered Hawaii limited partnership; 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 KATHLEEN F. OSHIRO and J. S. ANDRASICK acknowledged such instrument to be the free act and deed of such partnership.

Stephanie A. Marques L.S.
Notary Public, State of Hawaii
My commission expires: 2/10/92

STATE OF HAWAII

and CITY AND COUNTY OF HONOLULU } ^{Hawaii}) SS:

On this 14 day of August, 1990,
before me appeared Keijiro Sumachi, to me personally
known, who, being by me duly sworn, did say that he is
Treasurer of TOYAMA MAUI PLANTATION, INC.,
a Hawaii corporation, a general partner of THE HAWAII TROPICAL
PLANTATION, a registered Hawaii limited partnership; 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 Keijiro Sumachi
acknowledged such instrument to be the free act and deed of such
partnership.

William L. San
Notary Public, State of Hawaii

My commission expires: Nov. 17, 1990

29662/013190

All of the following parcels of land of the Hawaii Tropical Plantation Subdivision at Wailuku, Island and County of Maui, State of Hawaii:

Lot 1, area 858 acres, more or less, including Tax Map Key 3-6-04:02;

Lot 2, area 52.976 acres, more or less, being Tax Map Key 3-6-04:06; and

Lot 4, area 2.628 acres, more or less, being Tax Map Key 3-6-05:68.

Portions of such land having been acquired by Deed dated March 24, 1983, recorded in the Bureau of Conveyances in Book 16933 at Page 469.

RESERVING, HOWEVER, the following easements appurtenant to Lot 3 (tax map key 3-6-05:07) of the tract of land known as the Hawaii Tropical Plantation Subdivision:

1. A perpetual easement and right:

a. To install, replace, maintain, repair and use a waste water pipeline from the western boundary of Lot 3 marked in red on Schedule A attached hereto to the settling pond shaded in red on said Schedule A, together with the non-exclusive right of ingress thereto and egress therefrom over the land described above, and

b. To discharge waste water from Lot 3 into said settling pond, the exact location of the waste water pipeline easement to be designated by the Grantor, subject to the approval of the Grantee, which approval shall not be unreasonably withheld.

This easement is subject to the condition that expert advice acceptable to Grantee and to the Hawaii Sugar Planter's Association confirms that such discharge would not be harmful to Grantee's sugar production or interfere with the efficiency of Grantee's irrigation system.

2. 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 Grantee's adjoining land,

EXHIBIT A

2966a/013190

the exact location of the water pipeline easements and the water storage tank easement to be designated by the Grantor (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 Grantee, which approval shall not be unreasonably withheld.

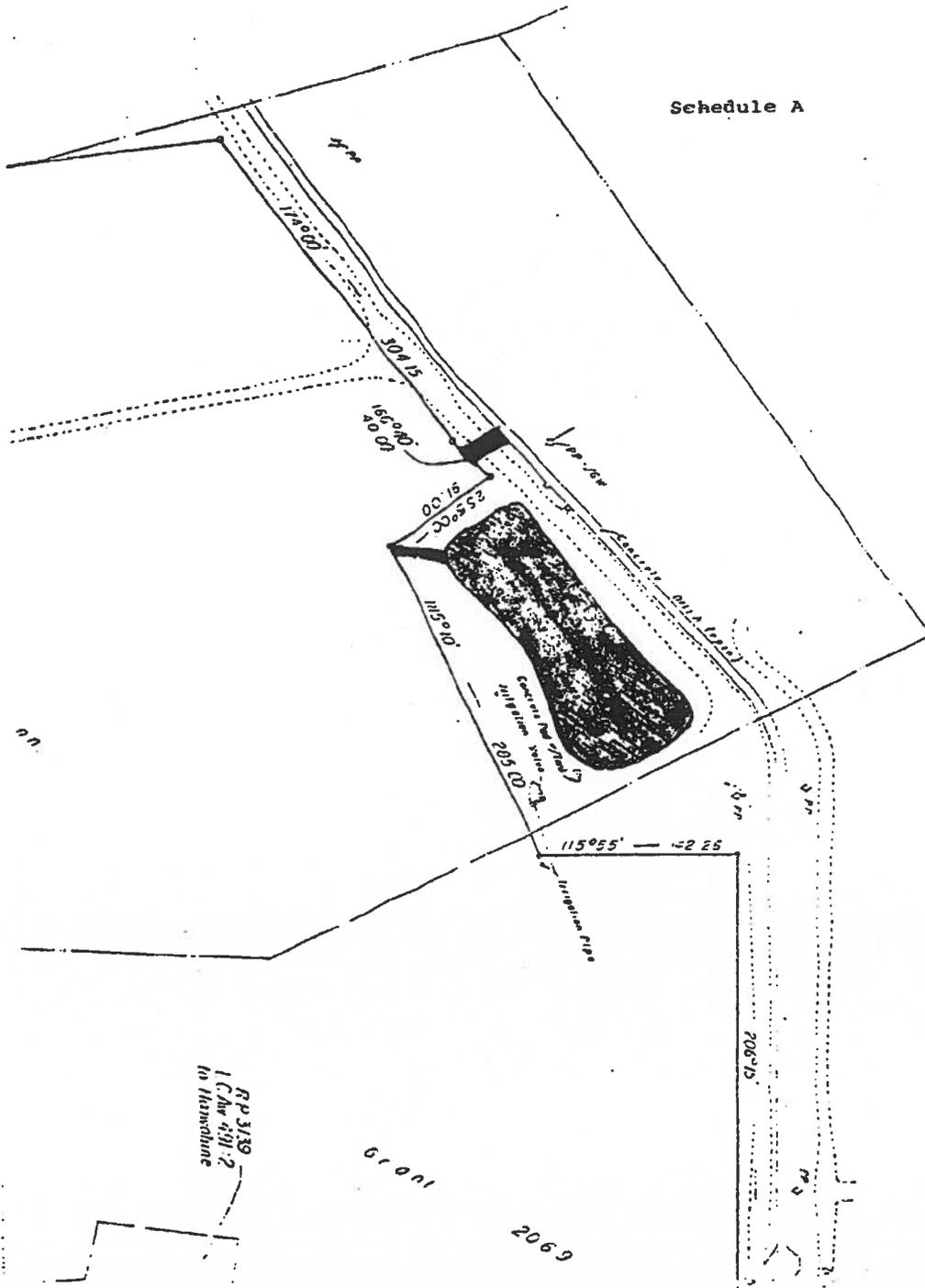
3. A perpetual non-exclusive easement for roadway purposes, for maintenance and agricultural support, but not for the movement of visitors except to the extent approved by Grantee, over and across the existing dirt road within the property herein conveyed commencing at Honoapiilani Highway, thence running along the southern boundary of Lot 3, thence between Waihee Ditch and the western boundary of Lot 3, with Grantee having the right to realign, but not materially relocate, said road.

4. A perpetual easement for an irrigation pipeline from the Waihee Ditch to the western boundary of Lot 3 in the area marked in green on plan attached hereto as Schedule A, together with the non-exclusive right of ingress thereto and egress therefrom over the land hereby conveyed.

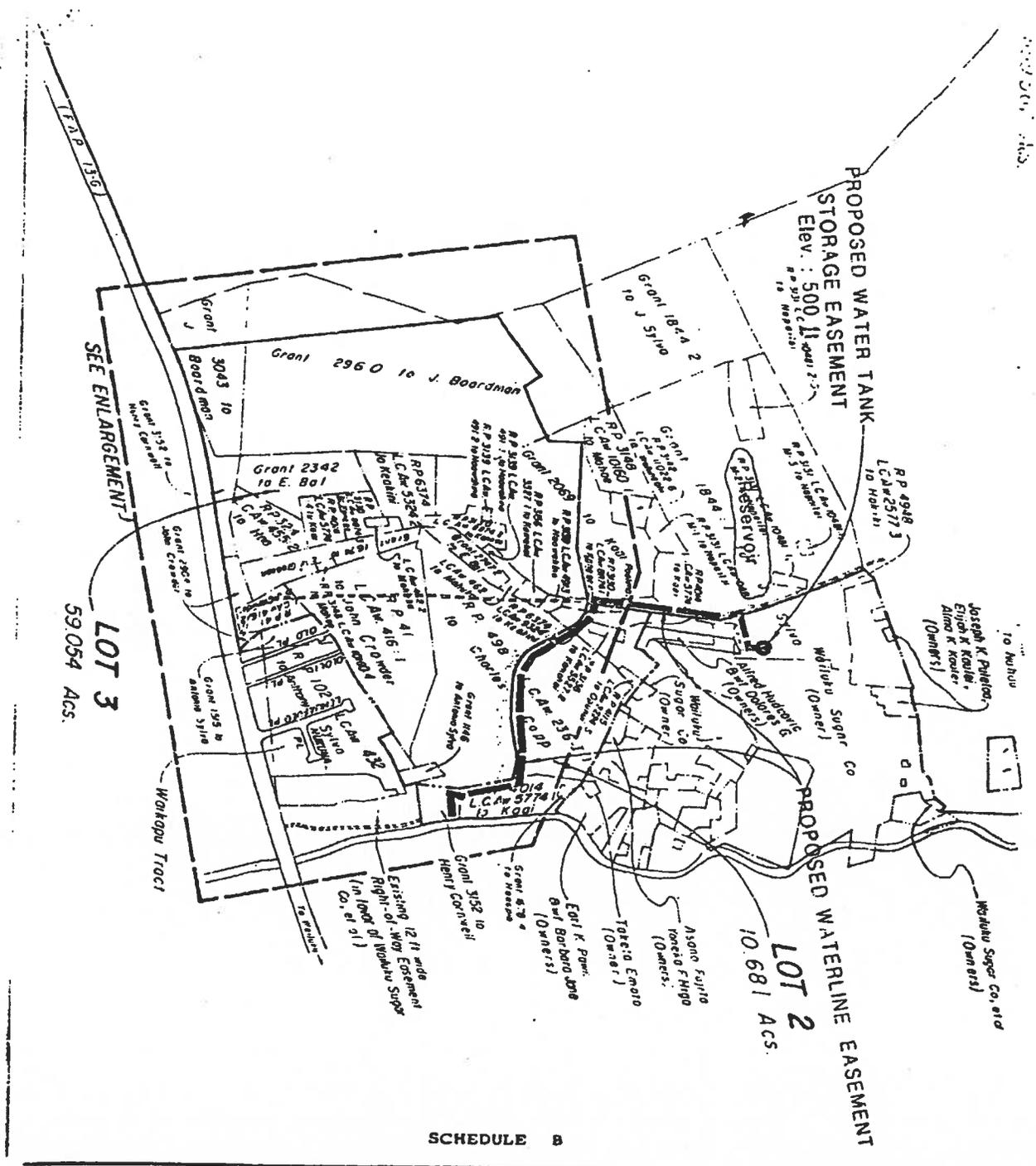
The easements described in paragraph 2(a) shall be exclusive easements. The easements described in paragraphs 1, 2(b) and 4 shall be non-exclusive, and Grantee shall have the right to use the easement areas for purposes which do not interfere with Grantor's use of the easements, but Grantee shall not grant easements to third parties in the easement areas unless Grantee shall require the third party to agree for the benefit of Grantor not to interfere with Grantor's use of the easements.

Schedule A

LVI 1
899.509 Acres

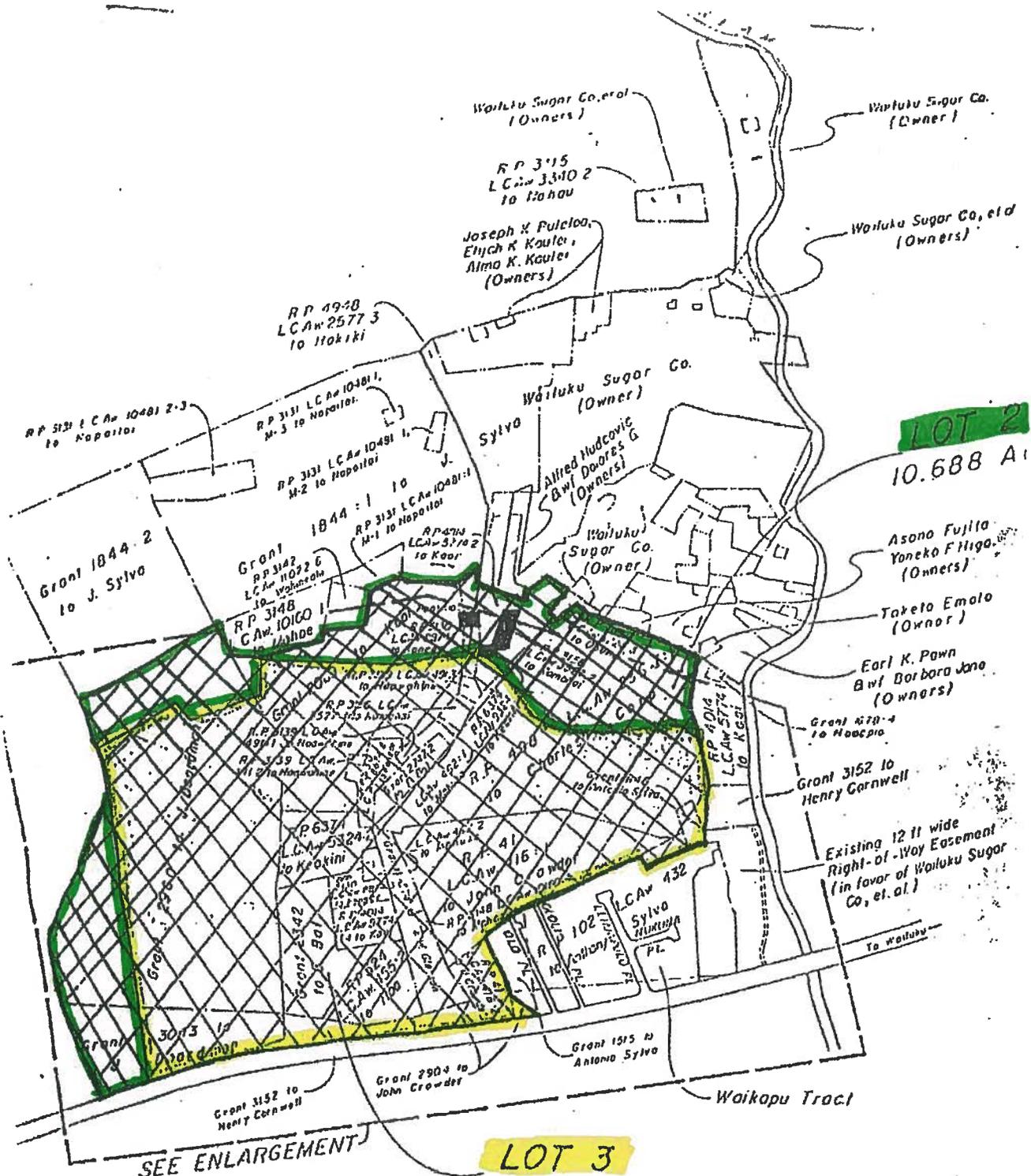


RECORDER'S MEMO: Legibility of Writing, Typing or Printing UNSATISFACTORY in this Document when received.



SCHEDULE B

RECORDER'S MEMO: Legibility of Writing, Typing or Printing UNSATISFACTORY
 This Document when received.



SCHEDULE A

-  - Property included in this conveyance
-  - Property not included in this conveyance

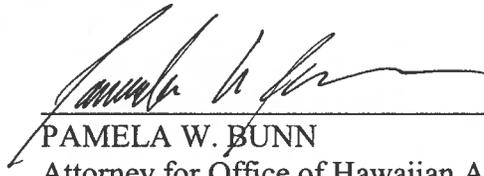
EXHIBIT "3"

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