



**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.

<b>A. OBJECTOR</b>		
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 Moriwaki, 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>B. APPLICANT (As listed in the Public Notice)</b>		
NAME/COMPANY Wahi Ho'omalulu Limited Partnership		Surface Water Use Permit Application No. 2351
Mailing Address P.O. Box 351, Kula, HI 96790		
Identify all Tax Map Keys (TMK) related to this objection: (2) 3-3-02:001; (2) 3-3-02:026		
<b>C. REASON(S) FOR OBJECTION</b>		
<i>Select <u>all</u> that apply below. The objector has the burden of proof on all objections.</i>		
<input checked="" 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): See attached.		
<b>Supporting documentation / evidence must be provided on separate sheets.</b>		
<b>D. OBJECTOR SIGNATURE</b>		
<input checked="" 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.		
Print Name: Pamela W. Bunn Isaac Moriwake	Signature: 	Date: 19 September 2012

FILE ID: SWUP. 2351.6  
DOC ID: 9978

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 WAHI HO'OMALU LIMITED PARTNERSHIP (2351) RE TMK NOS. (2) 3-3-02:001 AND (2) 3-3-02:026

*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, ‘Āao, & 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.*

It is not clear the extent to which Wahi Ho`omalua Limited Partnership (“WHLP”) is claiming appurtenant rights with respect to TMK No. (2) 3-3-02:026 (“parcel 26”), which was referenced in SWUPA No. 2351 but not in the documentation submitted in support of its claim to appurtenant rights. Any water rights appurtenant to TMK (2) 3-3-02:026 were reserved to the Grantor, 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 Quitclaim Deed by which Wailuku Agribusiness Co., Inc. conveyed its interest in parcel 26 to WHLP, attached as Exhibit “1,” expressly “EXCEPT[S], RESERV[ES] AND GRANT[S], however, onto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property[.]” *Id.*, at 2.

With respect to TMK No. (2) 3-3-02:001, there is no evidence of cultivation or water use at the time of the Māhele except for several kuleana parcels along South Waiehu Stream. Not all of the kuleana parcels for which WHLP claims appurtenant rights, however, are owned by WHLP. For example, WHLP claims ownership of and appurtenant rights to LCA 3275-E:4 to Kaleo, but the County’s records show that kuleana parcel as TMK No. (2) 3-3-02:013, owned by Violet K. Mori, Sally K. Blaka, and the James Kaimikaua, Jr. Estate. See Exhibit 2 (enlargement of the relevant tax map), and Exhibit 3 (screen print from the County of Maui Real Property Tax Division’s website), p 1. Likewise, LCA No. 2468:1 to Keau, which WHLP claims ownership of and appurtenant rights to, appears from the County’s records to be TMK No. (2) 3-3-02:014, owned by Thomas and Clair Cerizo and their Trusts. *See* Exhibit 2; Exhibit 3, p. 2.

While these may be simple mistakes, given the importance of these rights and the impacts of an erroneous determination on the rights and interests of OHA and its beneficiaries and the Community Groups and their members and supporters in Nā Wai ‘Ehā surface water, this application warrants more careful scrutiny.



R-1212 STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
MAY 05, 2004 02:00 PM  
Doc No(s) 2004-090433



/s/ CARL T. WATANABE  
REGISTRAR OF CONVEYANCES

20 1/1 22

CONVEYANCE TAX: \$5.00

LAND COURT

REGULAR SYSTEM

Return By Mail  Pick-Up  To:

CARLSMITH BALL LLP  
One Main Plaza, Suite 400  
2200 Main Street, P.O. Box 1086  
Wailuku, Maui, Hawaii 96793-1086

Attention: Tom C. Leuteneker  
Telephone: (808) 242-4535

TITLE OF DOCUMENT:

QUITCLAIM DEED

PARTIES TO DOCUMENT:

GRANTOR: WAILUKU AGRIBUSINESS CO., INC.  
255 East Waiko Road  
Wailuku, Maui, Hawaii 96793

GRANTEE: WAHI HO'OMALU LIMITED PARTNERSHIP  
P.O. Box 351  
Kula, Maui, Hawaii 96790

TAX MAP KEY(S): (2) 3-3-002-26

(This document consists of 9 pages.)

**EXHIBIT "1"**

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Tax Key: (2) 3-3-002-26

Total No. of Pages: 8

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., successor in interest to Wailuku Sugar Company, a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Maui, Hawaii 96793, hereinafter called the "Grantor," for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by WAHI HO'OMALU LIMITED PARTNERSHIP, a Hawaii limited partnership, whose address is P. O. Box 351, Kula, Maui, Hawaii 96790, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does

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hereby give, grant, convey, release and forever quitclaim unto the said Grantee, as a tenant in severalty, 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; subject, however, to all encumbrances noted on said Exhibit "A".

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.

EXCEPTING, RESERVING AND GRANTING, FURTHER, unto Grantor, its successors and assigns forever, as appurtenant to the lands which are located adjacent or in the vicinity of said real property and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operation, the unrestricted right to engage in any type of farming operation, including, but not limited to, open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting, and all

other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration, and other nuisances to be discharged or emitted over and upon the said real property. Grantor, its successors and assigns, shall not be responsible or liable to Grantee, his heirs, personal representatives and assigns, for the consequences from the creation and discharge of such noxious emissions within the Federal and State environmental and agricultural laws and regulations, and Grantee, its successors and assigns, shall indemnify and hold Grantor, its successors and assigns, harmless from any liability or expense resulting from such claims arising from such nuisance whether made by Grantee or guests or other persons using the said real property.

TO HAVE AND TO HOLD the same, together with all buildings and other improvements, rights, easements, privileges and appurtenances thereon or thereunto belonging or in anywise appertaining or held and enjoyed therewith, unto the said Grantee, forever.

Grantee acknowledges that the said real property is without legal or physical access to any government road. Grantee shall be solely responsible for obtaining any access required by or convenient to Grantee.

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.

IN WITNESS WHEREOF, the Grantor and Grantee have executed these presents on this 23<sup>rd</sup> day of April, 2004.

APPROVED AS TO FORM:  
MANCINI, WELCH & GEIGER

By Peter A. Horovitz

WAILUKU AGRIBUSINESS CO., INC.

By

Its

By

Its

Successor in interest to Wailuku  
Sugar Company

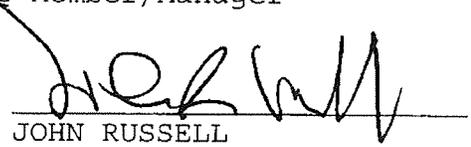
Grantor

WAHI HO'OMALU LIMITED PARTNERSHIP

By WAHI HO'OMALU LLC, a Hawaii  
limited liability company  
Its General Partner

By RUSSELL HALE LIMITED  
PARTNERSHIP, a Hawaii  
limited partnership  
Its Member/Manager

By

  
JOHN RUSSELL

Its General Partner

Grantee

STATE OF HAWAII )  
 ) SS.  
COUNTY OF ~~MAUI~~ HAWAII )

On this 13th day of April, 2004, before me personally appeared AVERY B. CHUMBLEY and BEVERLY Y. CRUDELE, 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 capacities shown, having been duly authorized to execute such instrument in such capacities.



l.s.

Print Name: Nora Rosario  
Notary Public, State of Hawaii.

My commission expires: 12-13-2006

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF MAUI                    )

On this 23 day of April, 2004, before me personally appeared JOHN RUSSELL, 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 capacities shown, having been duly authorized to execute such instrument in such capacities.



Print Name: Jessica R. Cambra  
Notary Public, State of Hawaii.

My commission expires: February 6, 2008

L.S.

EXHIBIT "A"

All of Grantor's right, title and interest in and to that parcel of land, situate at Waihee, Island and County of Maui, State of Hawaii, being all of L. C. Aw. 3456:4, containing an area of 0.750 acres, more or less, and identified on the Tax Maps of the Second Taxation Division as Tax Key (2) 3-3-02:26.

SUBJECT, FURTHER HOWEVER, to all encumbrances of record, if any, as of the date of recording of this instrument in the said Bureau of Conveyances.

END OF EXHIBIT "A"

Tax Key: (2) 3-3-02:26

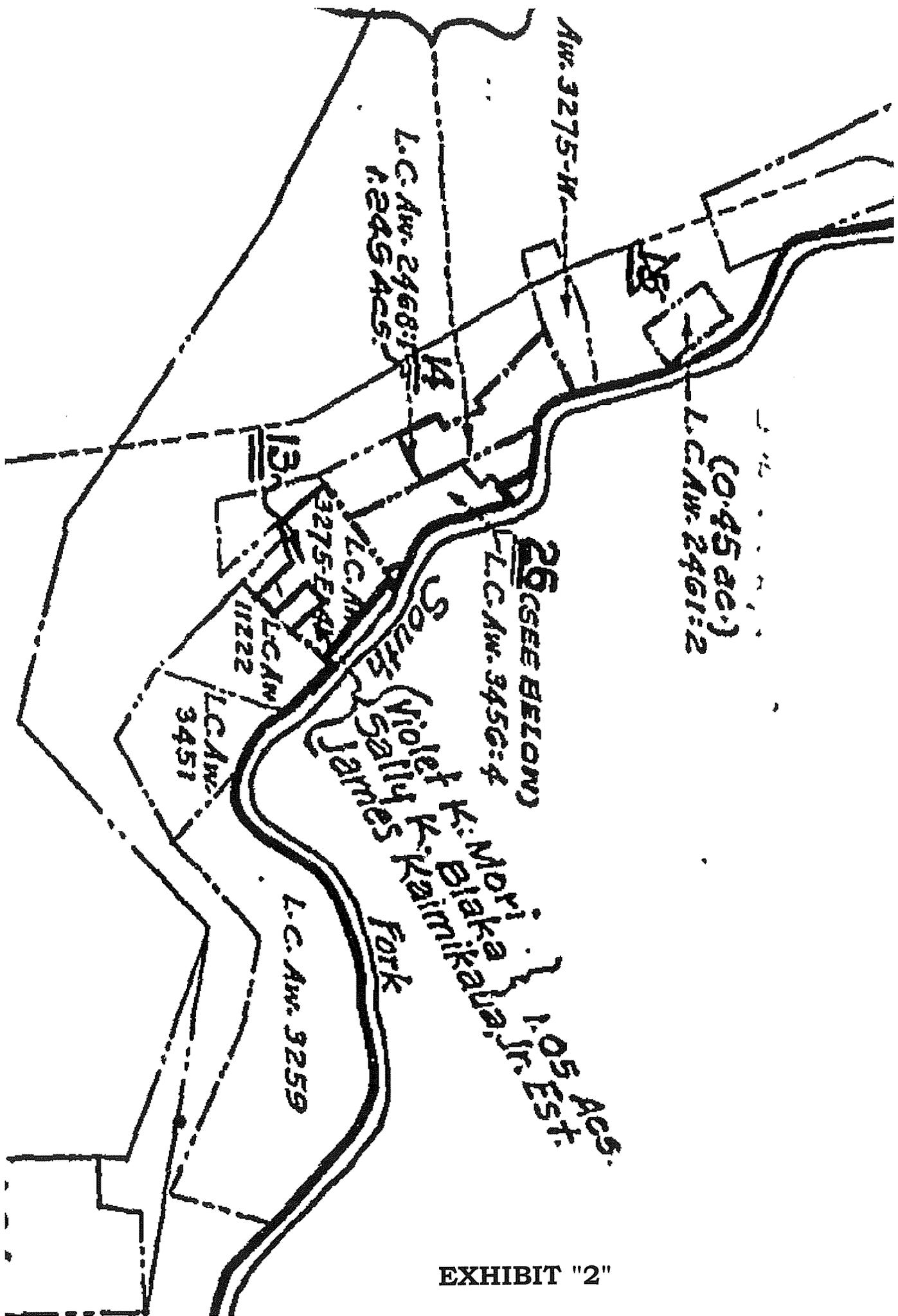
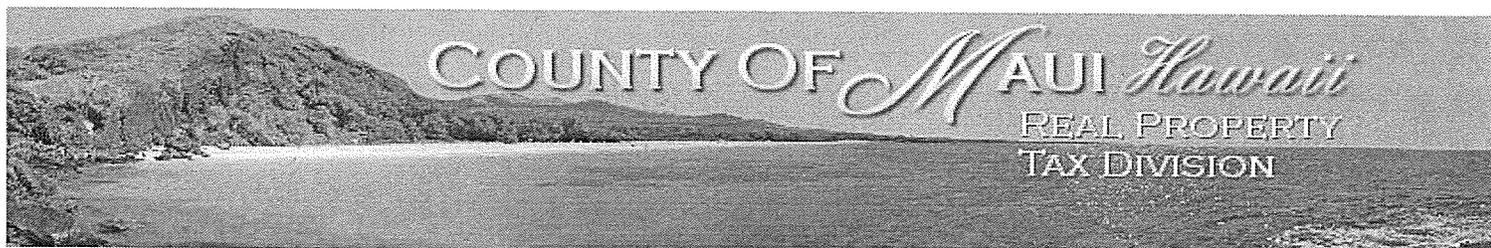


EXHIBIT "2"



<a href="#">Recent Sales in Neighborhood</a> <a href="#">Recent Sales in Area</a>	<a href="#">Previous Parcel</a>	<a href="#">Next Parcel</a>	<a href="#">Return to Main Search Page</a>	<a href="#">Maui Home</a>
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Owner and Parcel Information			
<b>Owner Name</b>	KAIMIKAUA, JAMES JR ESTATE Fee Owner BLAKA, SALLY K Fee Owner KAIMIKAUA, CARL G K MORI, VIOLET K Fee Owner <a href="#">Show All Owners and Addresses</a>	<b>Today's Date</b>	September 19, 2012
<b>Mailing Address</b>		<b>Parcel Number</b>	330020130000
<b>Location Address</b>	0 WAIEHU		
<b>Property Type</b>	AGRICULTURAL	<b>Parcel Map</b>	<a href="#">Show Parcel Map</a>
<b>Neighborhood Code</b>	3321-5	<b>Land Area</b>	1.05 Acres
<b>Legal Information</b>		<b>Parcel Note</b>	

		Assessment Information		Show Historical Assessments				
Year	Tax Class	Market Land Value	Agricultural Land Value	Assessed Land Value	Building Value	Total Assessed Value	Total Exemption Value	Total Net Taxable Value
2012	AGRICULTURAL	\$ 83,100	\$ 0	\$ 83,100	\$ 0	\$ 83,100	\$ 0	\$ 83,100

Current Tax Bill Information			2012 Tax Payments			Show Historical Taxes			
Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due
2012-1	Real Property Tax	08/20/2012	\$ 249.30	\$ 0.00	\$ 249.30	\$ 24.93	\$ 2.74	\$ 0.00	\$ 276.97
2012-2	Real Property Tax	02/20/2013	\$ 249.30	\$ 0.00	\$ 249.30	\$ 0.00	\$ 0.00	\$ 0.00	\$ 249.30

Tax bill is computed to 09/30/2012

Improvement Information
No improvement information available for this parcel.

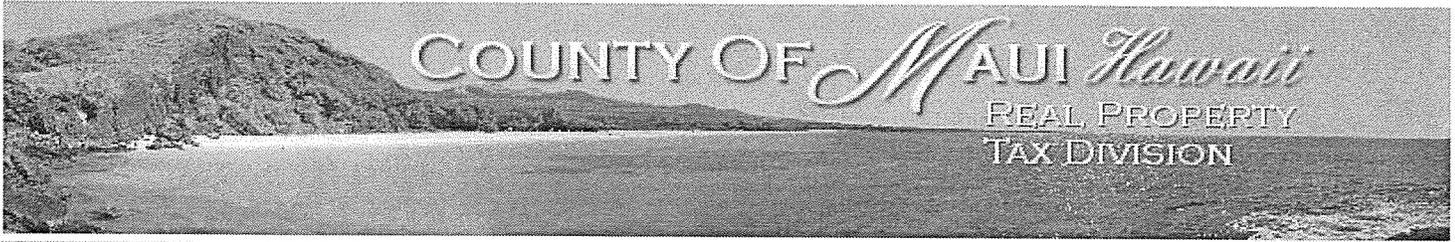
Accessory Information		
Description	Year Built	Dimensions/Units
No accessory information associated with this parcel.		

Sales Information						
Sale Date	Price	Instrument #	Instrument Type	Document Type	Land Court #	Land Court Cert
No sales information associated with this parcel.						

Permit Information			
Date	Permit Number	Reason	Permit Amount
No permit information associated with this parcel.			

<a href="#">Recent Sales in Neighborhood</a> <a href="#">Recent Sales in Area</a>	<a href="#">Previous Parcel</a>	<a href="#">Next Parcel</a>	<a href="#">Return to Main Search Page</a>	<a href="#">Maui Home</a>
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The Maui County Tax Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. Website Updated: September 15, 2012



**COUNTY OF MAUI Hawaii**  
**REAL PROPERTY TAX DIVISION**

<a href="#">Recent Sales in Neighborhood</a> <a href="#">Recent Sales in Area</a>	<a href="#">Previous Parcel</a>	<a href="#">Next Parcel</a>	<a href="#">Return to Main Search Page</a>	<a href="#">Maui Home</a>
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Owner and Parcel Information			
<b>Owner Name</b>	CERIZO, THOMAS Fee Owner CERIZO, CLAIR M TRUST Fee Owner CERIZO, CLAIRE M Fee Owner CERIZO, THOMAS TRUST Fee Owner <a href="#">Show All Owners and Addresses</a>	<b>Today's Date</b>	September 19, 2012
<b>Mailing Address</b>		<b>Parcel Number</b>	330020140000
<b>Location Address</b>	0 WAIIEHU		
<b>Property Type</b>	AGRICULTURAL	<b>Parcel Map</b>	<a href="#">Show Parcel Map</a>
<b>Neighborhood Code</b>	3321-5	<b>Land Area</b>	1.245 Acres
<b>Legal Information</b>		<b>Parcel Note</b>	

Assessment Information <a href="#">Show Historical Assessments</a>								
Year	Tax Class	Market Land Value	Agricultural Land Value	Assessed Land Value	Building Value	Total Assessed Value	Total Exemption Value	Total Net Taxable Value
2012	AGRICULTURAL	\$ 183,000	\$ 0	\$ 183,000	\$ 19,200	\$ 202,200	\$ 0	\$ 202,200

Current Tax Bill Information <a href="#">2012 Tax Payments</a> <a href="#">Show Historical Taxes</a>									
Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due
2012-2	Real Property Tax	02/20/2013	\$ 606.60	\$ 0.00	\$ 606.60	\$ 0.00	\$ 0.00	\$ 0.00	\$ 606.60
Tax bill is computed to 09/30/2012									

Improvement Information					
Class	Style	Year Built	Eff Year Built	Living Area	Construction Type
AGRICULTURAL	Contemporary	1939		360	Frame
Heating/Cooling	Exterior Wall	Bedrooms/Full Bath/Half Bath	Roof Material	Fireplace	Sketch
NONE	REDWOOD/CEDAR	2/1/0	SHAKES		<a href="#">Sketch Building 1</a>

Accessory Information		
Description	Year Built	Dimensions/Units
No accessory information associated with this parcel.		

Sales Information						
Sale Date	Price	Instrument #	Instrument Type	Document Type	Land Court #	Land Court Cert
04/07/2006	\$ 0		Route slip	Marriage		
05/19/2004	\$ 10,000	04-130640	Fee conveyance	Quitclaim deed		
05/05/1994	\$ 0	9400090282	Fee conveyance			
04/06/1992	\$ 0	0000000000				

Permit Information			
Date	Permit Number	Reason	Permit Amount
No permit information associated with this parcel.			

<a href="#">Recent Sales in Neighborhood</a> <a href="#">Recent Sales in Area</a>	<a href="#">Previous Parcel</a>	<a href="#">Next Parcel</a>	<a href="#">Return to Main Search Page</a>	<a href="#">Maui Home</a>
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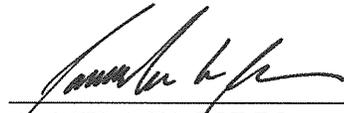
The Maui County Tax Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. Website Updated: September 15, 2012

**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:

Wahi Ho`omalu Limited Partnership  
P.O. Box 351  
Kula, HI 96790

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



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PAMELA W. BUNN  
Attorney for Office of Hawaiian Affairs