



**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 21 PM 1:22

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

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

Wailuku Water Company, LLC is the owner and operator of the private distribution system through which the Applicant receives surface water. Determination of Applicant's claim of an appurtenant right to water that is distributed through Wailuku Water Company, LLC's distribution system may impact the operation of the distribution system and will affect the property rights of Wailuku Water Company, LLC.

B. APPLICANT (As listed in the Public Notice)

NAME/COMPANY	Kimberly Lozano	Use Permit Application No.
Mailing Address	P.O. Box 2082 Wailuku, HI 96793 SWUPA# 2371	
Identify all Tax Map Keys (TMK) re	TMK: (2)3-4-036-001; (2)3-4-036-010	

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):

The claim must be reviewed in light of the following:

- Whether the claim properly characterized the source of the water for which the claim is asserted;
- Whether the rights claimed are subject to Public Utilities Commission Regulation; and
- Whether the rights have been extinguished.

See the attached sheets which expand on the objections and provide documentary support for the objection(s).

Supporting documentation / evidence must be provided on separate sheets.

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: Avery B. Chumbley, Authorized Representative	Signature: 	Date: September 18, 2012
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FILE# 3650-6
SWUPA# 2371-6
10126

Whether the Claim Properly Characterized The Source of Water

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

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

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

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

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

Rights Claimed May be Subject to Public Utilities Commission Regulation

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

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

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

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

Were Appurtenant Water Rights Extinguished

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

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

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

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

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



R-615 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
SEP 23, 2002 08:02 AM
Doc No(s) 2002-167674



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$10.00

7 11 22

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:
Paul R. Mancini, Esq.
Mancini, Welch & Geiger
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732

Tax Key: (2) 3-4-36-10

Total No. of Pages: 7

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC, a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, 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 ANDREW LOZANO, JR. and SHARON LOZANO, Co-Trustees of the unrecorded Lozano Family Trust dated April 4, 2001, with full power to purchase, sell, mortgage, dispose or otherwise hypothecate real property, whose

address is 1586 Willowbrook Drive, San Jose, California 95118-1650, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby give, grant, convey, release and forever quitclaim unto the said Grantee, as Co-Trustees aforesaid, their respective successors in trust and assigns, 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".

EXCEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property; 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 AND RESERVING, FURTHER, unto Grantor, its successors and assigns forever, as appurtenant to the lands which are located adjacent or in the vicinity of the Property and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, 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 Property. Grantor, its successors and assigns, shall not be responsible or liable to Grantee, its successors 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 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.

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 12th day of AUGUST, 2002.

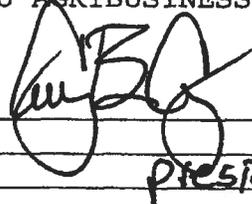
APPROVED AS TO FORM:
MANCINI, WELCH & GEIGER

By Peter A. Horovitz

WAILUKU AGRIBUSINESS CO., INC.

By

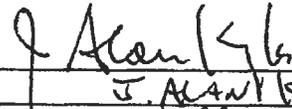
Its



AVERY B. Chumbley
president

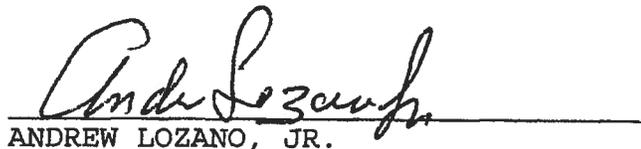
By

Its

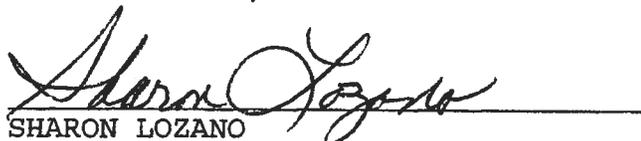


J. Alan Kyle
Chairman

Grantor



ANDREW LOZANO, JR.



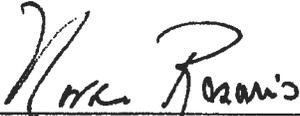
SHARON LOZANO

Co-Trustees of the unrecorded
Lozano Family Trust dated April 4,
2001

Grantee

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 12th day of August, 2002, before me appeared J. ALAN KUGLE and AVERY B. CHUMBLEY, to me personally known, who being by me duly sworn or affirmed, are the CHAIRMAN OF THE BOARD and PRESIDENT, 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.

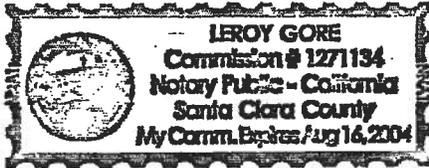
 *P.S.*

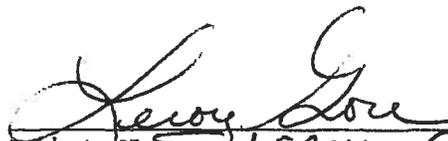
Name: Nora Rosario
Notary Public, State of Hawaii

My commission expires: 12-13-2002

STATE OF ~~HAWAII~~CALIFORNIA)
) SS.
COUNTY OF ~~MAUI~~SANTA CLARA)

On this 12th day of AUGUST, 2002, before me personally appeared ANDREW LOZANO, JR. and SHARON LOZANO, 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: LEROY GORE
Notary Public, State of Hawaii.

My commission expires: AUG 16, 2004

EXHIBIT "A"

A portion of that certain parcel of land situate at Wailuku, Island and County of Maui, State of Hawaii, identified as Tax Map Key (2) 3-4-36-10, and containing an area of approximately 8,728 square feet.

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

END OF EXHIBIT "A"

Tax Key: (2) 3-4-36-10

R-88

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

NOV 29, 2001 08:01 AM

Doc No(s) 2001-186151

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$60.00

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ()

MR & MRS ANDREW LOZANO
1586 WILLOWBROOK DR
SAN JOSE CA 95118-1650

TG: 712 312510-B
TGE: A1301406
MICHAEL I. NAGAI
Total Pages: 11

R/S

TITLE OF DOCUMENT:

QUITCLAIM DEED WITH EXCEPTIONS AND RESERVATIONS

PARTIES TO DOCUMENT:

GRANTOR: WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation

GRANTEE: ANDREW LOZANO, JR. and SHARON LOZANO,
Co-Trustees as hereinafter set forth
1586 Willowbrook Drive
San Jose, California 95118-1650

PROPERTY DESCRIPTION:

SEE EXHIBIT "A"

LIBER/PAGE/DOCUMENT NO.:

LAND COURT DOCUMENT NO.:

TRANSFER CERTIFICATE OF
TITLE NO(S).:

Tax Map Key Nos. (2) 3-4-036-001 por.

QUITCLAIM DEED WITH EXCEPTIONS AND RESERVATIONS

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, 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 ANDREW LOZANO, JR. and SHARON LOZANO, Co-Trustees of the unrecorded Lozano Family Trust dated April 4, 2001, whose address is 1586 Willowbrook Drive, San Jose, California 95118-1650, hereinafter called the "Grantee", receipt whereof is hereby acknowledged, does hereby RELEASE, REMISE and FOREVER QUITCLAIM, absolutely and in fee simple, all of Grantor's estate, right, title and interest in and to the real property described in Exhibit "A" hereto attached and expressly made a part hereof and as generally shown on the map attached hereto as Exhibit "B" and made a part hereof, unto Grantee IN TRUST, for the uses and purposes and with all of the powers set forth in said trust agreement, including without prejudice to the foregoing, full power and authority to sell, convey, exchange, mortgage, lease, which lease(s) shall be valid throughout their terms, including a term expiring after the trust terminates, pledge or otherwise deal with and dispose of said property according to the sole judgment and discretion of said Co-Trustees;

EXCEPTING AND RESERVING however, unto the Grantor, its successors and assigns, all water and water rights within or appurtenant to the granted premises, 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.

RESERVING AND EXCEPTING unto Grantor, its successors and assigns, forever, as appurtenant to the lands which are located adjacent to or in the vicinity of the granted premises and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns in agricultural operations, 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 granted premises. Grantor, its successors and assigns shall not be responsible or liable to

the Grantee, its successors and assigns, for the consequences from the creation and discharge of such noxious emissions within the Federal & State environmental and agricultural laws and regulations and Grantee, its successors and assigns, shall indemnify and hold Grantor harmless from any liability or expense resulting from such claims arising from such nuisance whether made by the Grantee, its successors and assigns, or guests or other persons using the granted premises.

Grantee is aware, understands and agrees that the real property described in Exhibit "A" is sold and hereby accepted by Grantee in its "AS IS" condition. Grantor makes no warranties, express or implied, with respect to said property or improvements (if any), including, but not limited to, the size of the property, any implied warranty of merchantability, habitability, workmanlike construction or fitness of said property for a particular purpose, compliance with or any other representation in regard to any building, health, zoning, land use or other applicable county, state or federal statute, ordinance, code, rule, regulation or other law, or the availability or condition of any electrical, water, gas, plumbing or sewage systems.

Grantee is aware and accepts that the property described in Exhibit "A" is not served by electric or telephone services or by private or County of Hawaii water or sewer systems. Grantee understands and accepts that it is Grantee's sole responsibility, at Grantee's sole cost, to connect to such services and systems. Grantee is advised to contact the State of Hawaii Department of Health, Wastewater Section regarding waste disposal (cesspool or septic) requirements.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof. 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.

This document may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this document and the several counterparts shall constitute one document to the same effect as though the signatures of all of the parties were upon the same document.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents this 8th day of November, 2001.

GRANTOR:

WAILUKU AGRIBUSINESS CO., INC.

By W K Tallett
[Type name:] W. K. Tallett
[Type office:] Its Vice President

By Beverly Y. Crudele
[Type name:] Beverly Y. Crudele
[Type office:] Its Secretary

GRANTEE:

ANDREW LOZANO, JR., and

SHARON LOZANO,

Co-Trustees of the unrecorded Lozano Family Trust dated April 4, 2001

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents this _____ day of _____, 2001.

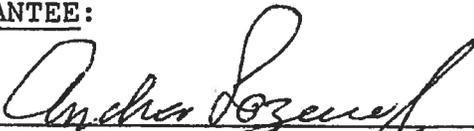
GRANTOR:

WAILUKU AGRIBUSINESS CO., INC.

By _____
[Type name:] _____
[Type office:] Its _____

By _____
[Type name:] _____
[Type office:] Its _____

GRANTEE:



ANDREW LOZANO, JR., and *his*

SHARON LOZANO,

Co-Trustees of the unrecorded Lozano Family Trust dated April 4, 2001

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents this _____ day of _____, 2001.

GRANTOR:

WAILUKU AGRIBUSINESS CO., INC.

By _____
[Type name:] _____
[Type office:] Its _____

By _____
[Type name:] _____
[Type office:] Its _____

GRANTEE:

ANDREW LOZANO, JR., and

Sharon Lozano 11/17/01

SHARON LOZANO,

Co-Trustees of the unrecorded Lozano Family Trust dated April 4, 2001

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 8th day of November, 2001, before me appeared W. K. Tallett and Beverly Y. Crudele, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Secretary, respectively, of WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, and that the instrument was signed in 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.
Type or print name: Nora Rosario
Notary Public, State of Hawaii.

My commission expires 12-13-2002

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

On this 16th day of November, 2001, before me personally appeared ANDREW LOZANO, JR., 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.

Edgar N. Nakama

Type or print name: Edgar N. Nakama
Notary Public, State of Hawaii.

My commission expires JUN 17 2004



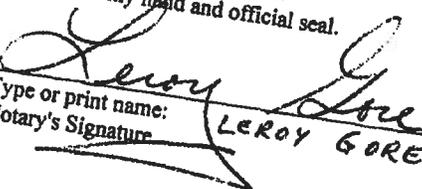
STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA) SS.
)



On NOVEMBER 17, 2001 before me, LEROY GORE

~~personally known to me~~ personally appeared SHARON LOZANO, ~~personally known to me~~ proved to me on the basis of satisfactory evidence) to be the person(~~s~~) whose name(~~s~~) were subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.


Type or print name: LEROY GORE
Notary's Signature

Portions R.P. 6066, L.C.Aw. 2458 to Kawaiohia,
R.P. 6397, L.C.Aw. 2434 to Kahooke and Poalima 34
Umieiu, Waiiauniki, Wailuku, Maui, Hawaii

ALL OF THAT CERTAIN PARCEL OF LAND known as portions of Royal Patent 6066, Land Commission Award 2458 to Kawaiohia, Royal Patent 6397, Land Commission Award 2434 to Kahooke and Poalima 34, situate at Umieiu, Waiiauniki, Wailuku, Island and County of Maui, state of Hawaii and more particularly described as follows:

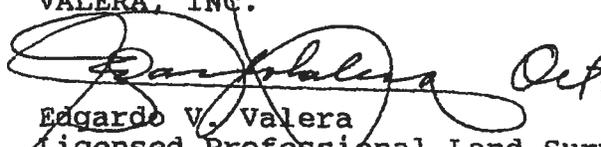
BEGINNING at a 1/2 inch pipe at the northernmost corner of this parcel of land and at the south side of Mokuhau Road, the coordinates of said point of beginning being

North 2,953.49 feet
West 5,178.52 feet

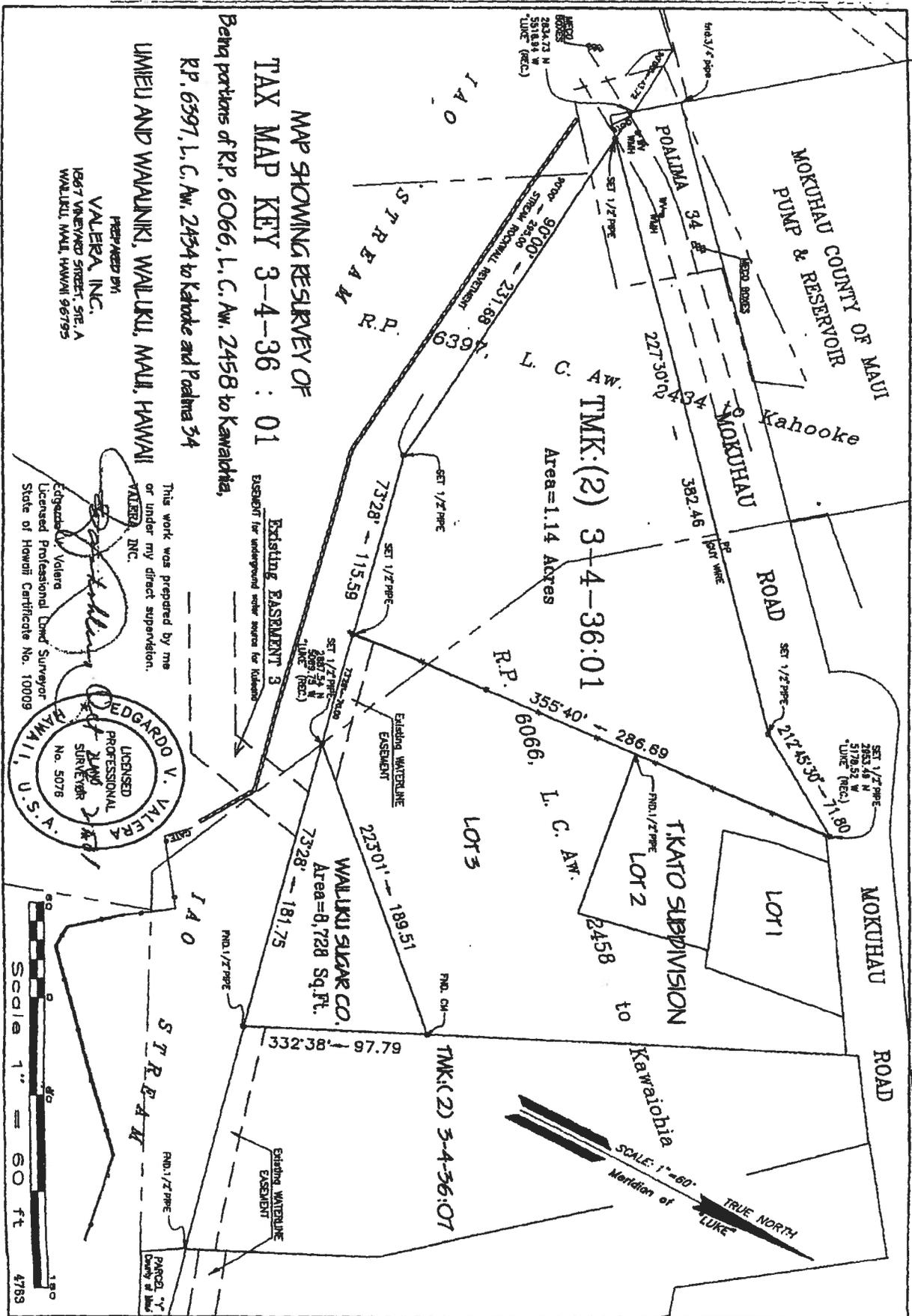
referred to Government Survey Triangulation Station "LUKE" and running by azimuths measured clockwise from true South (meridian of said "LUKE"); thence,

1. 355° 40' 286.69 feet along Lots 2 and 3 of T. Kato Subdivision to a 1/2 inch pipe; thence,
2. 73° 28' 115.59 feet along Parcel A of Iao Stream Land Transfer Map (LUCA File No. 3.1037) to a 1/2 inch pipe; thence,
3. 90° 00' 231.68 feet along the same to a 1/2 inch pipe; thence,
4. 227° 30' 382.46 feet along Mokuhau Road to a 1/2 inch pipe; thence,
5. 212° 45' 30" 71.80 feet along the same to the point of beginning and containing an area of 1.14 acres, more or less.

This work was prepared by me,
or under my direct supervision.
VALERA, INC.


Edgardo V. Valera
Licensed Professional Land Surveyor No. 5078
State of Hawaii Certificate No. 5078
End of description.
4763#1





**MAP SHOWING RESERVEY OF
TAX MAP KEY 3-4-36 : 01**

Being portions of R.P. 6066, L.C. Av. 2458 to Kawaloaia,
R.P. 6397, L.C. Av. 2454 to Kahooke and Poalina 34

LIMITED AND WALUKU, WALUKU, MAUI, HAWAII

PREPARED BY
VALERA INC.
1867 VENEWARD STREET, 5TH FLOOR
WAILUKU, MAUI, HAWAII 96755

This work was prepared by me
or under my direct supervision.
EDGARDO V. VALERA
INC.

Edgardo V. Valera
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 10009

EDGARDO V. VALERA
LICENSED
PROFESSIONAL
SURVEYOR
No. 5076
HAWAII, U.S.A.

Scale 1" = 60 ft

180
90
0
90
180

4783

EXHIBIT "B"