



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

APPLICATION FOR SURFACE WATER USE PERMIT
 FOR EXISTING USE IN THE NA WAI EHA, MAUI, SURFACE
 WATER MANAGEMENT AREAS

FORM SWUPA-E (NA WAI EHA, MAUI)

For Official Use Only:

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT

2009 APR 23 PM 3:35

Event ID: 2215

SWUP NO. 23

For detailed instructions on filling out this application, refer to the attached instructions.

APPLICANT INFORMATION: Note: In accordance with §174C-51(1)(B), HRS, in the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit.

1. APPLICANT'S NAME Gary & Evelyn Brito		Applicant's Contact	2. SOURCE LANDOWNER'S NAME Wailuku Water Company LLC		Source Landowner's Contact Avery Chumbley
Applicant's Mailing Address, or Principal Place of Business 2160A Puuohala Road Wailuku, HI 96793			Source Landowner's Mailing Address, or Principal Place of Business 255 East Waiko Road Wailuku, HI 96793		
Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone	Source Landowner's Fax	Source Landowner's E-mail

EXISTING SOURCE INFORMATION

The following must be attached before this application is accepted as complete:

- Portion of 7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion locations and quad map name.
- Property Tax Map Key (TMK), showing stream or diversion location, and location of water use referenced to established property boundaries.
- Photograph(s) of the surface water diversion works and end use.

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Waihee/6022 Walehu/6023 Iao/6024 Walkapu/600t

4a. TMK OF STREAM DIVERSION LOCATION: 3 - 2 - 014 : 001
Zone Sector Plat Parcel

4b. TMK OF DITCH DIVERSION LOCATION: 3 - 3 - 002 : 029
Zone Sector Plat Parcel

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply.
 Pipe Pump Ditch/auwai Other Describe: See attached addendum
 Is the diverted water returned to the stream or ditch? Yes. No. If yes, how much water is returned? See attached addendum

6. FLOW MEASUREMENT INFORMATION:
 Does the stream diversion have a flowmeter with totalizer or other device to measure diverted amounts?
 Yes. Enter the installation date:
 Describe the device and enter measured amounts in Table 1.
 No. Explain how you are measuring flow to justify amounts shown in Table 1 in the space below
 See attached addendum

EXISTING USER INFORMATION

7. APPURTENANT RIGHT: Do you claim an appurtenant right for your water use? Yes No
 If yes, has the appurtenant right been established by the courts or the Commission? Yes No

8. END USER INFORMATION: Are you an end user on an existing water system? Yes No
 If yes, who is the operator of the water system? Wailuku Water Co.; Wailuku Country Estates Irrigation Co.

9. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use with the Commission?
 Yes. List the file reference name(s):
 No

10. STREAM DIVERSION WORKS PERMIT (SDWP):
 Have you ever been issued a SDWP by the Commission?
 Yes. List the permit number(s):
 No

NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) if necessary, further information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited, to any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.

11. APPLICANT Signature Evelyn L Brito Print Date 4-19-2009	12. SOURCE LANDOWNER Signature Print Date
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**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

**TABLE 1: 12-MONTH AVERAGE DAILY USE
Measured or Calculated Use of Water at the Source or End Use
As of the Effective Date of Designation, April 30, 2008**

MONTH / YEAR	AVERAGE DAILY USE FOR THE MONTH IN GALLONS PER DAY (GPD)	Check one item per box				OTHER Please describe
		METERED	ESTIMATED	ACTIVE BUT UNKNOWN	INACTIVE	
May 2007	7812	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	8310	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	10322	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	10322	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	11340	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	10648	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	7066	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	7632	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	5538	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	4646	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	7022	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	25616	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	116274	GPD				
AVERAGE DAILY USE (Average of the above)	9690	GPD				

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY
(Attach additional copies of Table 2 if necessary)

LAND USE CONSISTENCY					EFFICIENCY OF USE				
1. PURPOSE / WATER USE CATEGORY	2. USE TMK ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE LAND USE DISTRICT	4. CDUP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SMAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)	8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE	10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 3.
Uses that require potable (drinking) water									
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
TOTAL POTABLE USE						0	GPD		
Uses that do not require potable water									
AGRCP	3 - 3 - 002 : 029 Zone Sector Plat Parcel	URBAN	No	R-3	No	7890	No	0.022	See attached addendum
DOM	3 - 3 - 002 : 029 Zone Sector Plat Parcel	URBAN	No	R-3	No	600	No	0.197	See attached addendum
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
TOTAL NON-POTABLE USE						8490	GPD		
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						8490	GPD		
If total use requested is not equal to the total monthly average in Table 1, please explain. See attached addendum									
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. N/A									

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 3: IRRIGATION INFORMATION

List all crops as separate line items and include landscape and golf course irrigation, grown in the 12 months prior to April 30, 2008. Attach additional copies of Table 3 if necessary.

1. USE TAX MAP KEY (TMK) Attach map outlining area and photo.	2. CROP	3. TOTAL ACREAGE	4. NET IRRIGATED ACREAGE	5. BEGIN ROWTH PERIOD (Month)	6. END GROWTH PERIOD (Month)	7. IRRIGATION SYSTEM (Refer to instructions.)	8. IRRIGATION PRACTICE (Refer to instructions.)
3 - 3 - 002 : 029 <small>Zone Sector Plat Parcel</small>	Wetland kalo	0.248	0.022	Annual	Annual	Flood (taro)	Irrigate to capacity
3 - 3 - 002 : 029 <small>Zone Sector Plat Parcel</small>	Diversified Agriculture	0.248	0.197	Annual	Annual	Trickle, drip, other (hoses)	Irrigate to capacity
- - - - : <small>Zone Sector Plat Parcel</small>							
- - - - : <small>Zone Sector Plat Parcel</small>							
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**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 4: ALTERNATIVES ANALYSIS

	Potable Alternatives Attach additional sheets if necessary.	Non-Potable Alternatives Attach additional sheets if necessary.
Municipal sources	N/A	See attached addendum
Wastewater reuse	N/A	See attached addendum
Ditch system	N/A	See attached addendum
Desalinization	N/A	See attached addendum
Ground water	N/A	See attached addendum
Other (specify)	N/A	See attached addendum

PUBLIC INTEREST

§174C-2(c) states that: *The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

Explain below how the uses in your application are consistent with the public interest as described above. Attach additional sheets if necessary.

See attached addendum

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

INSTRUCTIONS FOR FILLING OUT FORM SWUPA-E

This application form is to be used for actual existing uses as of the effective date of designation, April 30, 2008, for the Na Wai Eha Surface Water Management Areas. Based on the State Water Code, Section 174C, Part IV Regulation of Water Use, a completed application must be filed with the Commission on Water Resource Management (CWRM) no later than April 30, 2009, to qualify as an existing use. Failure to meet the filing deadline may cause your application to be considered a new use and require you to file an Application for Surface Water Use Permit for New Use.

If you are applying for a new surface water use, which are proposed uses after the date of designation, please use the Application for Surface Water Use Permit for New Use, Form SWUPA-N.

Information about surface water management areas and the current application forms are available at our website: <http://www.hawaii.gov/dlnr/cwrm/>; by contacting the Stream Protection and Management Branch at 587-0234; or sending an email to: dlnr.cwrm@hawaii.gov.

REQUIREMENTS FOR A COMPLETE APPLICATION Information must be legible. Therefore, please type or clearly print all information in ink.

- a. Fill in the most recent application form.
- b. Fill in every line on the application.
- c. Enclose a check for the non-refundable filing fee of \$25 payable to: Department of Land and Natural Resources.
- d. Pay for the cost of publishing any required public notices related to your application.
- e. Mark the source and end use locations on the appropriate USGS quad map and TMK map and attach to your application.
- f. Attach photos showing your existing diversion, measuring device (if applicable) and end use areas.
- g. Sign the application form. Both the applicant and the landowner of the source must sign the application form.
- h. Submit one original and 15 copies of the application form; one original and 15 copies of the attachments (instructions, maps, photos and any additional attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

The applicant must establish that the existing use of water is a reasonable and beneficial use. According to §174C-3 of the State Water Code: *"Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest.*

Furthermore, public interest is described in §174C-2(c) of the State Water Code which states that: *(t)he state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

LINE BY LINE INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

APPLICANT INFORMATION

1. **APPLICANT'S NAME:** Fill in the information for the applicant. This should be the entity that will be responsible for all conditions of the water use permit.
2. **SOURCE LANDOWNER'S NAME:** Fill in the information for the landowner of the property where the existing surface water diversion works is located. Note: in accordance with §174C-51(1)(B), *In the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit.*

EXISTING SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Check the appropriate box for the hydrologic unit name and hydrologic code where the source is located. The "source" is the stream, ditch, or conduit from which water is diverted to the user. For information on hydrologic unit names and unit codes please refer to the *Surface-Water Hydrologic Unit: A Management Tool for Instream Flow Standards* report available on the CWRM website at: <http://www.hawaii.gov/dlnr/cwrm/>, or contact CWRM staff at (808) 587-0234. You may also contact CWRM toll-free from Maui at: 984-2400, ext. 70234.
- 4a. **TMK OF STREAM DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the stream diversion is located if applicable. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/
- 4b. **TMK OF DITCH DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the ditch diversion is located, if applicable.
5. **STREAM DIVERSION:** How is water diverted from the stream to your property? Check the appropriate box(es). Is the diverted water returned to the stream or ditch? Check "Yes" or "No." If yes, enter the amount of water returned.
6. **FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No". If you have a working flowmeter with a totalizer, answer "Yes" to this question, and fill in the date that the flowmeter was installed and any other information you may have (manufacturer, serial number, etc.). A totalizer directly measures the total use for the source (similar to a car's odometer). Otherwise, answer "No" and explain how stream diversion is measured or estimated to justify amounts requested in Table I

EXISTING USER INFORMATION

7. **APPURTENANT RIGHT:** An appurtenant water right is a legally recognized right to a specific amount of surface freshwater – usually from a stream – on the specific property that has that right. This right traces back to the first time the land was converted to fee simple title: i.e., the Great Mahele and the issuance of either a Land Commission Award or Royal Patent. The quantity of water under the appurtenant right is the amount that was being used on the land shortly before or at the time of the Mahele. Do you claim an appurtenant right for your water use? Check "Yes" or "No." If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
8. **END USER INFORMATION:** Are you an end user on an existing water system? Check "Yes" or "No". If yes, please list the name of the water system operator.
9. **REGISTRATION AND DECLARATION OF WATER USE:** Do you have a Registration and Declaration of Water Use from the Commission? Check "Yes" or "No". If yes, please list the name of the registrant(s).
10. **STREAM DIVERSION WORKS PERMIT (SDWP):** Have you ever been issued a SDWP by the Commission? If yes, please list the permit number(s). Otherwise, check "No."
11. **APPLICANT:** Please sign and print your name, and date your application.
12. **LANDOWNER:** Please sign and print your name, and date your application. The landowner shall be the joint applicant in the event the applicant is a lessee, licensee, developer, or any other person with a terminable interest or estate in the land which is the water source of the permitted water. §174C-51(1)(B)

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

TABLE 1: 12-MONTH AVERAGE DAILY USE - Measured or calculated use of water at the source or end use as of the effective date of designation, April 30, 2008.

Please fill out Table 1 to calculate your existing use as of the effective date of the designation, **April 30, 2008**, of the Na Wai Eha Surface Water Management Areas. The effective date of designation is the date of the publication of the public notice of the Commission designation action. The qualifying dates have been filled in for this application. Fill in as completely as possible.

The 12-month average is the average daily use^a of 12 months of consecutive use^b from the last month^c of the period.

- a. Average daily use. This is the average daily use for one month in gallons per day (GPD). To calculate this average, take the total use (in gallons) for the month, and divide this amount by the number of days in the month.
- b. 12 months of consecutive use. To calculate the average monthly withdrawal for 12 consecutive months of use, add the average daily use for all 12 months and divide that amount by 12.
- c. Last month. The last month of the period is the effective date of designation, April 30, 2008.

Check only one of the following boxes per row in Table 1:

- Metered – data is based on an operational meter with a totalizer.
- Estimated – data is based on some indirect measurement technique (e.g. measured flow rate multiplied by time of operation).
- Active but unknown – source is active, but there is no means to measure or estimate flow coming from source.
- Inactive – source was not pumped or diverted for the month.
- Other - describe how water use was measured or calculated in this box.

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY

- I. **PURPOSE / WATER USE CATEGORY:** Choose one of the following purpose or category codes listed below for each row in Table 2. There may be several purpose/categories on a single TMK, and each purpose or category must be listed in a separate row. Attach additional copies if necessary.

AGRICULTURE	
AGRAQ	Aquatic Plants & Animals
AGRCP	Crops & Processing
AGRLI	Livestock & Processing, and Pasture
AGRON	Ornamental & Nursery Plants
AGROTH	Other
DOMESTIC	
DOM	Single & Multi Low-Rise & High-Rise Household
DOMN	Domestic (Non-residential)
DOMNCB	Commercial Businesses
DOMNRI	Religious Institutions
DOMNHOS	Hospitals
DOMNHOT	Hotels
DOMNOB	Office buildings
DOMNOTH	Domestic Non-Residential – Other
DOMNSC	Schools
INDUSTRIAL	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
IRRIGATION	
IRRGC	Golf Course
IRRHM	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRSC	Schools
MILITARY	
MIL	Military
MUNICIPAL	
MUNCO	County
MUNPR	Privately owned and operated but defined as a public system by the Department of Health
MUNST	State

2. **USE TMK:** The Tax Map Key number of the parcel over which the water is applied. There should only be one parcel for each line. Also, attach a TMK map(s) for the lots showing the boundaries of irrigated acreage, etc., as well as a photograph of the area of use.
3. **STATE LAND USE DISTRICT:** To find out the current Land Use District, contact the Land Use Commission at 587-3822.
4. **CDUP REQUIRED:** If a Conservation District Use Permit (CDUP) is required, enter either: "Yes" and the date the CDUP was approved if you have a CDUP applicable to this project; or "Yes" and "not acquired" in this box. If a CDUP is not required, enter "N" for no in this box. To check if your parcel is in the Conservation District, contact the Land Use Commission at 587-3822. If your parcel is in a Conservation District, contact the Department of Land and Natural Resources Office of Conservation and Coastal Lands at 587-0328 to find out if a CDUP is required.
5. **COUNTY ZONING CODE:** To find out the Zoning Code for your property, call Maui County Planning Department at 270-6279, or 270-7253.
6. **SMAP REQUIRED:** If a Special Management Area Permit (SMAP) is required for this project, enter either: "Y" and the date SMAP was approved; or "Y" and "not acquired" in this box. If a SMAP is not required, enter "N" for no in this box. To find out if your property is in a Special Management Area and requires an SMAP, call Maui County Planning Department at 270-8205.
7. **QUANTITY OF USE:** Enter the quantity of use in gallons per day (GPD). Justification for the quantities requested may depend on your answers to items 8 and 9, and you should describe the justification in item 10.
8. **SUBMETERED? (Y/N):** If the specific use is submetered, enter "Y" for yes here. If it is not submetered, enter "N" for no. Submetering is specific to each line item.
9. **UNITS OR ACREAGE:** This is the value and category as the basis for calculating the duty. "Duty" is the amount of water used or requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling units, or number of people, or animals. Examples to fill in for this category are: 400 dwelling units, 500 people, 3.74 acres.
10. **APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7:** Explain how you are justifying the amount you are requesting. Attach additional sheets if necessary.

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

TABLE 3: IRRIGATION INFORMATION

If you have grown crops in the year prior to the date of designation, please list all the crops (including landscape and golf course irrigation) that you have grown. Enter a single crop and single TMK per line. If you have multiple crops, list them all as separate line items. Attach additional copies of Table 3 if necessary.

1. USE TAX MAP KEY (TMK): Enter the parcel number where the crop is being grown. Attach a map outlining irrigated area(s) and photos.
2. CROP: Enter the crop type.
3. TOTAL ACREAGE: Enter the total acreage of the parcel listed.
4. NET IRRIGATED ACREAGE: Enter the acreage for the specific crop grown.
5. BEGIN GROWTH PERIOD (MONTH): This is the month of the start of the growth cycle. For perennial crops, list the 12th month prior to the date of designation.
6. END GROWTH PERIOD (MONTH): This is the month of the end of the growth cycle. For perennial crops, list the month of the date of designation.
7. IRRIGATION SYSTEM: Enter one of the following:
 - TRICKLE, DRIP
 - TRICKLE, SPRAY
 - MULTIPLE SPRINKLERS
 - SPRINKLER, CONTAINER NURSERY
 - SPRINKLER, LARGE GUNS
 - SEEPAGE, SUBIRRIGATION
 - CROWN FLOOD
 - FLOOD (TARO)
 - OTHER – Please describe.
8. IRRIGATION PRACTICE: Enter one of the following:
 - IRRIGATE TO FIELD CAPACITY
 - APPLY A FIXED DEPTH PER IRRIGATION
 - DEFICIT IRRIGATION
 - OTHER – Please describe.

TABLE 4: ALTERNATIVES ANALYSIS

Please address every alternative listed in Table 4 and whether or not they are available, for both potable and non-potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc.

Surface water is defined in §174C-3 as both contained surface water - that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to state jurisdiction - and diffused surface water - that is, water occurring upon the surface of the ground other than in contained waterbodies. Water from natural springs is surface water when it exits from the spring onto the earth's surface.

PUBLIC INTEREST

Explain how the uses in your application are consistent with the public interest as described in §174C-2(c): *(i) the state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

Addendum

Exhibits:

Appended hereto as Exhibit 1 are 7.5 minute-series USGS topographic maps indicating the diversion points for Waihe`e River, North Waiehu Stream, and `Īao Stream. Exhibit 2 is a TMK map showing the location of our property with the diversion point and area of existing end use marked. Exhibit 3 is a diagram of our kuleana water system and areas of end use. Exhibit 4 contains copies of photographs of our `auwai diversion and areas of existing use. Exhibit 5 is described below.

Box 2: Source Landowner

Not applicable pursuant to HRS § 174C-51(1)(B), because applicant does not have a terminable interest in the land which is the source of the permitted water. According to the Water Commission's records, which have not been verified, Wailuku Water Company claims to be the source landowner.

Box 5: Stream Diversion

We are kuleana users along a kuleana `auwai that runs through Pu`uohala, which are kuleana lands and a former plantation camp that sits in the middle of Wailuku Country Estates, a 184-lot luxury subdivision. We formerly accessed our kuleana water from an open ditch `auwai, until Wailuku Agribusiness sold the land surrounding us and Wailuku Country Estates subdivision was developed. Now we receive our kuleana water from Wailuku Country Estates' irrigation system, which receives water from the Waihe`e Ditch. The Water Delivery Agreement between Wailuku Agribusiness and Wailuku Country Estates Irrigation Company subjects the Irrigation Company's usage of stream water to the availability and priority use by Wailuku's kuleana obligations.

It is our understanding that Wailuku Country Estate's irrigation system receives water from Waihe`e Ditch, to the north of `Īao Stream, at a point just downstream of where the `Īao-Maniania Ditch drains into the Waihe`e Ditch. The water in Waihe`e Ditch at that point is a mixture of water from Waihe`e River, North Waiehu Stream, and `Īao Stream. Water is diverted from Waihe`e River by Waihe`e Ditch at the Waihe`e diversion (see attached USGS topo map). Water diverted from North Waiehu Stream enters the Waihe`e Ditch through the North Waiehu Ditch (see attached USGS topo map). Water is diverted from `Īao Stream (see attached USGS topo map) and enters the Waihe`e Ditch via the `Īao-Maniania Ditch.

As depicted in the diagram and photographs attached as Exhibits 3 and 4, respectively, the pipe that brings us kuleana water from the irrigation system enters the kuleana land from the Wailuku Country Estates park on our parcel (TMK No. 3-3-002:029) and splits into three separate pipes. In addition, there is a valve on the main line that we can open to bring water directly into our top lo`i kalo, which then flows through two additional lo`i. The water that flows through our lo`i kalo that does not evaporate or seep into the soil flows through a pipe under the Wailuku Country Estates park and into a culvert on the northern side of the park.

Two of the pipes from the main intake run down the northern border of our property, and we access water from one of those pipes for our lo`i kalo and other domestic plants via hose bibs. The other pipe that runs along our northern border goes to our neighbor Kenneth Mendoza's house (TMK No. 3-3-002:025).

The third pipe from the main intake runs along the back (western) border of our property and we access some water from it for our garden, yard, and other domestic plants via pipes and hoses. The remaining water in the pipe continues to Evelyn's brother, Valentine Haleakala's property (TMK No. 3-3-002:003). He uses some of the water for his yard and domestic plants and the remaining water in the pipe flows to the front of our homes, where we access some water for our plants via a hose bib.

Box 7: Appurtenant Rights

At the time of the Māhele, our land was granted to Po`oli`ili`i by Land Commission Award No. 3387 and Royal Patent No. 6065. These documents and the testimony in support of the claims, which indicate the land was in kalo, are attached hereto as Exhibit 5. This land has been in our `ohana since time immemorial, and we have no evidence, indication, or any other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

Table 2, Box 10: Justification for Requested Quantity

Wailuku Country Estate's Irrigation Company meters the kuleana water it provides to us and our two neighbors (Evelyn's brother Valentine Haleakala and Kenneth Mendoza). Of this amount (provided in Table 1), we estimated our existing domestic water use, including our use of water outside our home for watering our yard and non-commercial garden, by applying the 2002 State of Hawai`i Water System Standard for Maui County of 600 gallons per single family home. In addition, we have estimated our existing use for wetland kalo in three lo`i kalo (about 0.02 acres) at about 7890 gallons per day, the amount remaining after accounting for the domestic uses of three households.

Table 4: Alternatives Analysis

Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative source of water. Our appurtenant right is for stream water, not to water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law. Similarly, our traditional and customary right as Native Hawaiians is to cultivate kalo on our land in the traditional manner, not in some other manner using alternative, non-traditional sources, and this traditional and customary right is constitutionally protected.

Moreover, even if we did not have protected rights to stream water, there is no potentially available alternative source that is economically practicable. We cultivate kalo and grow crops on our land for cultural and subsistence purposes; the kalo we grow feeds our `ohana and is

shared with neighbors and community members. An alternative water source that would require us to pay for the volumes of constantly flowing water in our lo'i necessary to keep temperatures cool and support healthy kalo would make our practice economically impossible. We would effectively be denied our appurtenant right and traditional and customary right to grow kalo on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights.

Municipal Sources. Our domestic water service is a typical residential service and does not have the capacity to deliver the volumes of water we require. Even if the Maui County Department of Water Supply were willing to provide municipal water for kalo cultivation by installing a larger water meter, the cost of using municipal water for such purposes would be prohibitive. Additionally, water from the Maui County Department of Water Supply is chlorinated, which is detrimental and unsuitable for wetland kalo.

Wastewater reuse. Reusing wastewater is impracticable because we would still be required to pay for large volumes of flowing water. As a small user engaged in traditional uses and non-commercial gardening, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

Ditch system. We are currently using water from an existing 'auwai that historically brought kuleana water to our land. Getting water from other ditch systems is not practicable. First, the other ditch systems in Nā Wai 'Ehā do not consistently have enough water to support additional users. Second, we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user engaged in traditional uses and non-commercial gardening, the cost of taking water from or constructing another ditch is not practicable.

Desalinization. Desalinization of brackish water is not a practicable alternative because we are not aware of any such plant having been built on Maui. According to the County's estimates, a plant is expected to be built in 2013 at the earliest.

Ground Water. Even if we were able to secure the permits necessary to drill a well and pump ground water for our uses, installing and operating such a well to provide flowing water for kalo cultivation would be unprecedented and extremely burdensome. As a small user engaged in traditional uses and non-commercial gardening, we do not have the means to install and maintain such infrastructure.

Table 4: Public Interest

Our Existing Use is Consistent with the Public Interest

HRS § 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." Our existing water use is predominantly for kalo cultivation. We grow kalo

in traditional ways and use it for home, ceremonial, and educational purposes. We also grow several varieties of fruits and vegetables. We are Native Hawaiians engaged in traditional agricultural practices, and our crops help maintain ecological balance and scenic beauty. As such, our existing use of stream water is consistent with the public interest.

Our Existing Use is a Protected Public Trust Purpose

Kalo cultivation by Native Hawaiians and the exercise of appurtenant rights are also protected public trust purposes. In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 137 & n.34, 9 P.3d 409, 449 & n.34 (2000) ("Waiāhole I"); see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights); HRS § 174C-101(c) (specifically protecting the right to cultivate kalo on one's own kuleana).

Our Existing Use is a "Reasonable-Beneficial Use"

"Reasonable-beneficial use" is defined as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest." HRS § 174C-3. As indicated, our existing use of stream water is consistent with state and county land use plans and the public interest. It is also "economic and efficient" because we only use the amount we need. We take steps to make our water use efficient. For instance, we use pipes where appropriate to minimize water loss, and our farming practices include the use of mulch to protect the soil from erosion and minimize the use of water. Therefore, our use is "reasonable-beneficial."

EXHIBIT 1: USGS MAPS

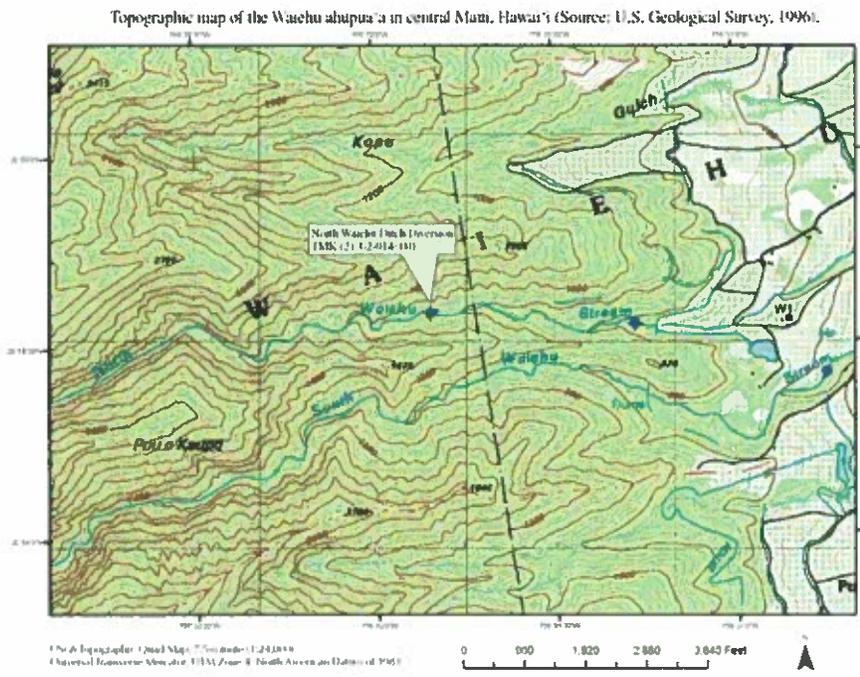


EXHIBIT 2: TMK map depicting our property and the `auwai intake point

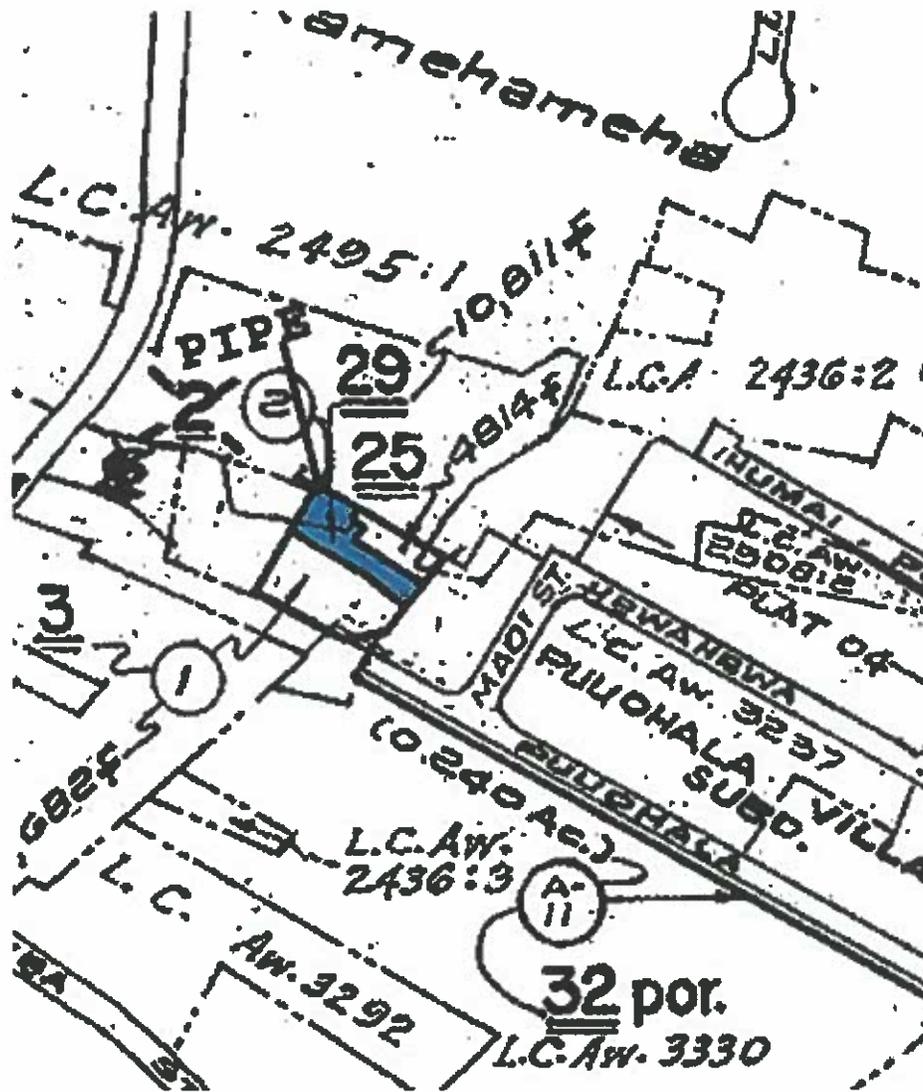


EXHIBIT 4: PHOTOGRAPHS



These photographs were taken on January 31, 2009 and accurately depict the meter on our kuleana pipe (top photo) and the main pipe splitting at TMK No. 3-3-002:029 to the three kuleana users (bottom photo).



The photograph below was taken on January 31, 2009 and accurately depicts the uppermost of our three lo'i kalo. The kuleana water for us and our neighbors splits at the corner of our land at the top of the photo. We can also open a valve directly into our lo'i.



The photograph below was taken on January 31, 2009 and accurately depicts one of our three lo'i kalo and some of our ti plants.



The photograph below was taken on January 31, 2009 and accurately depicts our domestic garden with some dryland kalo, chives, carrots, sweet potato, beans, and other vegetables and herbs for our consumption.



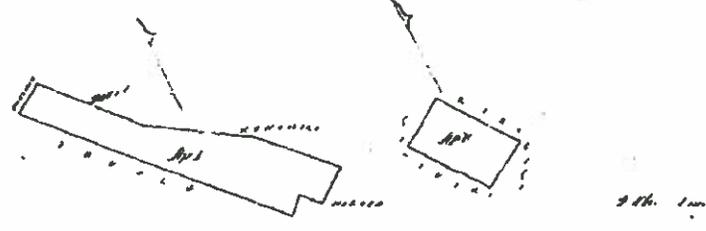
**EXHIBIT 5: DOCUMENTATION ESTABLISHING
 APPURTENANT
 RIGHTS**

Ho. 5477. Kaulanaka ✓ 1853

Apunui 1 *Kole ma ka hō: Iepelohu*
Cehauaka ma ka hō: Ekehu
 Hk 62' K. 230' *Sh. ma ka hō: Iepelohu*
 Hk 55' K. 230' *Sh. ma ka hō: Iepelohu*
 Hk 63' K. 232' *Sh. ma ka hō: Iepelohu*
 K. 52' H. 80' *Sh. ma ka hō: Iepelohu*
 K. 63' H. 63' *Sh. ma ka hō: Iepelohu*
 Hk 60' K. 41' *Sh. ma ka hō: Iepelohu*
 K. 44' H. 47' *Sh. ma ka hō: Iepelohu*
 Hk 47' K. 73' *Sh. ma ka hō: Iepelohu*

Apunui 2 *Iepelohu* *Cehauaka ma ka hō: Iepelohu*
 K. 63' H. 125' *Sh. ma ka hō: Iepelohu*
 K. 57' H. 125' *Sh. ma ka hō: Iepelohu*
 Hk 73' K. 125' *Sh. ma ka hō: Iepelohu*
 Hk 57' K. 125' *Sh. ma ka hō: Iepelohu*

Kaulanaka *Apunui 22 1853* *© Dirby Mounainui*



Uluapala ✓ S.F. 11
H. ma ka hō: Iepelohu
Sh. ma ka hō: Iepelohu
I. Mounainui
© H. Brito

Ho. 3387. Iepelohu ✓ 1854

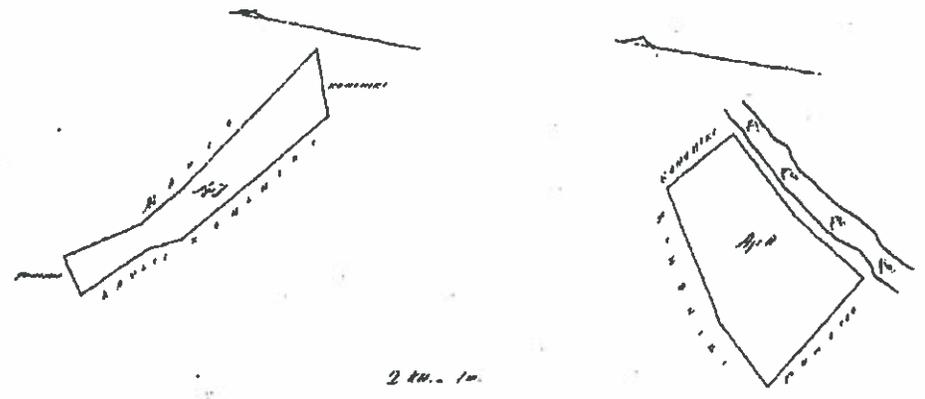
I. Mounainui *Cehauaka ma ka hō: Iepelohu*
 Hk 70' K. 237' *Sh. ma ka hō: Iepelohu*
 Hk 15' K. 237' *Sh. ma ka hō: Iepelohu*
 Hk 70' K. 177' *Sh. ma ka hō: Iepelohu*
 Hk 177' K. 83' *Sh. ma ka hō: Iepelohu*
 Hk 63' K. 235' *Sh. ma ka hō: Iepelohu*
 Hk 241' K. 242' *Sh. ma ka hō: Iepelohu*
 Hk 66' K. 63' *Sh. ma ka hō: Iepelohu*
 Hk 30' K. 303' *Sh. ma ka hō: Iepelohu*

Kaulanaka *Apunui 17 1853* *© Dirby Mounainui*

Ki	47'	Ki	172'	Ho. ma ke Kauhā
Ki	36'	Ki	78'	Keolu
Ki	52'	Ki	61'	
M	15'	Ki	15'	
M	5'	Ki	125'	
M	30'	Ki	175'	a hiki ma ke hiki ma 1/2 Ck

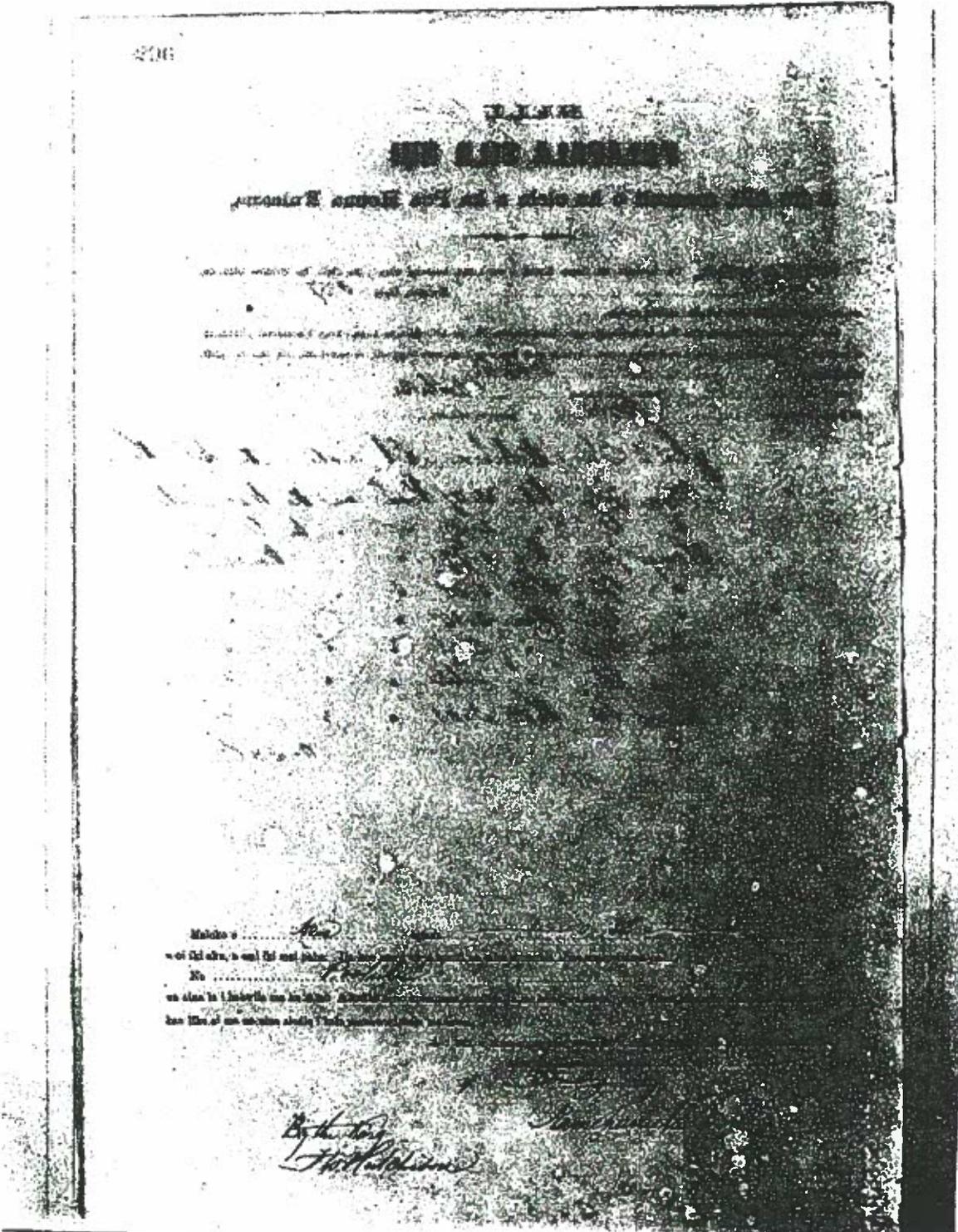
M	15'	Ki	324'	Ho. ma ke Kauhā
Ki	12'	Ki	11'	
Ki	12'	Ki	11'	Keolu
M	31'	Ki	31'	Keolu
M	12'	Ki	12'	
M	15'	Ki	15'	Keolu a hiki ma ke hiki ma 1/2 Ck

Keolu Keolu 13 1843
 C. D. By



Ukupauna
 W. L. Lee
 G. M. Robinson
 S. P. Kaula
 S. H. Lee, etc.

Keolu Keolu 13 1843
 Keolu 3291 Keolu
 Keolu ma ke hiki ma Keolu
 Keolu 100' Keolu 160' Keolu ma ke hiki ma
 Keolu 110' Keolu 77' Keolu ma ke hiki ma
 Keolu 11' Keolu 77' Keolu ma ke hiki ma
 Keolu 110' Keolu 100' Keolu ma ke hiki ma



Ct. 3294 c Shuck

The Claimant made out the first Shuck. The Surveyor's map of his claim was sent out for claim and that it was sent in to the Commission in January 1868.

His title is from the old land consists of an acre of half land in the title of Papeete, & also land from

The Claimant received it from T. Karama in 1865, and he from Gov. Amakohi, and his title is not disputed.

It is bounded to the north by T. Karama's land, to the south by Gov. Amakohi's land, to the east by the King's land, to the west by the King's land.

Ct. 3294 d Shuck

The Claimant made out the first Shuck. The Surveyor's map of his claim was sent out for claim in December 1867.

His title is from the old land consists of two pieces in the title of Papeete.

It is a piece of half land in the title of Papeete.

The Claimant received it from T. Karama in the year 1866 and he from T. Karama, and he from Gov. Amakohi, and the title is not disputed.

It is bounded to the north and all sides by T. Karama's land.

It is bounded to the north by the King's land, to the south by the King's land, to the east by the King's land, to the west by the King's land.

Ct. 3387 Pahlia

The Claimant made out the first Shuck. The Surveyor's map of his claim was sent out for claim in the year 1868.

He received them from one in 1868 and from another in 1869. His title is not disputed.

It is bounded to the north by the King's land, to the south by the King's land, to the east by the King's land, to the west by the King's land.

Copied at Hawaii State Archives

Copied at Hawaii State Archives

Wai'anae

the same, that is, by trust of Wai'anae, situated by the side of Pihikaha
 Kukuihu.

C. 2670 Wai'anae

G. L. Linnard, Sr. The 1st land consists of three pieces in the district of
 Wai'anae, to-wit:

1st. 1/2 acre in Wai'anae
 2d. 1/2 acre in Wai'anae
 3d. 1/2 acre in Wai'anae

The claimant received 1st 1/2 from Linnard in 1841 and 1/2
 from Linnard before 1839 and his title has not been disputed except
 to 1842. Linnard put in claim for them in 1856 and took them
 away. In Linnard's case a condition need not be to the former, be-
 cause the condition is a condition which appears from each work, and
 therefore Linnard took these pieces away. But with Linnard's title in 1856
 and his title since is his title in connection with his title.

- 1st is bounded. Maaka and Wai'anae sides, by Linnard's land, Maaka by
 Linnard's land, Wai'anae by the title.
- 2d is bounded. Maaka and Wai'anae sides, by my land. Maaka by
 Linnard's land, Wai'anae by the title.
- 3d is bounded. Maaka and Wai'anae sides, by Linnard's land.

Wai'anae, July 21, 1859.

Commenced hearing the claims of Wai'anae.

C. 2353 Linnard

Wai'anae. I know the lands to-wit: 1st, are four pieces in the
 Wai'anae. They are as follows:

- 1st. 1/2 acre in the language of Wai'anae.
- 2d. 1/2 acre in the language of Wai'anae.
- 3d. 1/2 acre in the language of Wai'anae.
- 4th. an Irish potato patch in the language of Wai'anae.

The claimant received 1st from Linnard in 1847, 2d and 3d
 from Linnard in 1841 or 1842, and 4th from Wai'anae in
 the year 1861 and he from the title. His title was never disputed.

No. 3382 - Pa

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Hear ye, ye Land Commissioners: I hereby state that I have 30 lo'i at Iao, makai. I, Pa, whose claim this is, have 18 lo'i at Kuupaa, a total of 32 /sic/. Those are my claims which are stated respectfully to you, the Land Commissioners.
Wailuku, Jan. 4, 1848

PA

No. 3383 - Paele

Greetings to the Land Commissioners: I hereby state that I have 22 lo'i at Pohakea and a kula. Pohakea adjoins with Kapohaku. There is a hala tree. Farewell to the Land Commissioners.
Wailuku, 11 Jan. 1848

PAELE

No. 3384 - Piohia

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Greetings to the Land Commissioners: I hereby petition for my claim at Laie, with 3 lo'i, in Pauniu, with 1 lo'i, in Papohaku, with 14 lo'i. That is my claim. There is also a small kula. It is finished. Farewell to the Land Commissioners.
Wailuku, 5 Jan. 1848

PIOHIA

No. 3385 - Pahoa

I hereby tell of my lo'is. At Kahewa are 16 lo'i, and 3 dry lo'i, a kula and a hill. In Ahuena are 6 lo'i, a kula, a watercourse and a hill. Those are my claims. Farewell to the Land Commissioners.
Wailuku, Jan. 10, 1848

PAHOA

No. 3386 - Pehuino

Greetings to the Land Commissioners: I, Pehuino, of Paukukalo, here by state to the Honorable Land Commissioners, that I have 23 lo'i. At Kapaaloa, 3 lo'i at Pauniu, 1 lo'i at Holu, 1 lo'i. That is my claim for cultivated lo'i land. There is a house and a kula outside which is my claim. Farewell to the Land Commissioners.
Wailuku, 4 Jan. 1848

PEHUINO

No. 3387 - Poolilili

My 9 lo'i are at Kahewa, this is the total of my lo'is

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which are occupied, that is it. A respectful farewell.
Wailuku, Jan. 6, 1848

POOLILILI