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

APPLICATION FOR SURFACE WATER USE PERMIT FOR *PROPOSED NEW USE* IN A DESIGNATED SURFACE WATER MANAGEMENT AREA

FORM SWUPA-N

☒ Application for New use
☐ Application to Modify SWUP No. _____

For Official Use Only:

RECEIVED
COMMISSION ON WATER RESOURCE MANAGEMENT
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For detailed instructions on filling out this application form completely, refer to the attached instructions sheet.
Incomplete applications will not be accepted for processing.

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 location and the quad map name.
- Property tax map showing the stream or diversion location and location of water use referenced to established property boundaries.
- Photograph(s) of the surface water source, diversion and end use, if applicable.

APPLICANT INFORMATION: NOTE: In accordance with HRS §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 be stated as a joint applicant for the water permit.*

1. APPLICANT'S NAME	Applicant's Contact	2. SOURCE LANDOWNER'S NAME	Source Landowner's Contact
GARY & EVELYN BRITO		WAILUKU WATER COMPANY LLC	Avery Chumbley

Applicant's Mailing Address, or Principal Place of Business	Source Landowner's Mailing Address, or Principal Place of Business
2160A Puuohala Road Wailuku, HI 96793	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
[redacted]			(808) 244-7079	(808) 242-7068	abc@aloha.net

SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT: Island: MAUI Hydrologic Unit: MULTIPLE Hydrologic Unit Code: MULTIPLE

4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT IF APPLICABLE: N/A

5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: ☐ Yes ☐ No

Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit:

See addendum

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 2 - 0 1 4 : 0 0 1 (Zone, Sec, Plat, Parcel)

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 2 - 0 0 2 : 0 2 9 (Zone, Sec, Plat, Parcel)

7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all that apply.

☒ Pipe ☐ Pump ☒ Ditch/auwai ☐ Other Describe: See addendum

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?

☐ Yes. How much water will be returned? See addendum

☒ No

8. PROPOSED FLOW MEASUREMENT INFORMATION:

Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts?

☐ Yes. List the manufacturer and describe the device . _____

☒ No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below.

See addendum

PROPOSED USE INFORMATION HRS §174C-51(4), (5), (6)

9. TOTAL QUANTITY OF WATER REQUESTED: 5,918 gallons per day. See Table 1, Item14.

10. PROPOSED USE: Check all that apply. See Table 1, Item 1.

☒ Agriculture ☐ Domestic ☐ Industrial
☐ Irrigation ☐ Military ☐ Municipal

11. LOCATION OF PROPOSED WATER USE: Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps. See Table 1, Item 2.

PROPOSED USER INFORMATION

12. APPURTENANT RIGHT: Do you claim an appurtenant right for your proposed water use? ☒ Yes ☐ No

If yes, has the appurtenant right been established by the courts or the Commission? ☐ Yes ☒ No

13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system?

☒ Yes. List the name of the system operator: Wailuku Water Company ☐ No

14. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use from the Commission?

☐ Yes. List the file reference name(s): ☒ No

15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from 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, additional 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.**

16. APPLICANT	17. SOURCE LANDOWNER
Evelyn L Brito Signature	Signature
Evelyn L Brito 4-19-2009 Print Date	Print Date

FILE ID: SWUP 2216-6
DOC ID: 3220

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY

(Attach additional copies of Table1 if necessary.)

LAND USE CONSISTENCY						EFFICIENCY OF USE				
1	2	3	4	5	6	7	8	9	10	11
PURPOSE / WATER USE CATEGORY	TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.	STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	SUB-METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 9. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 2.
Uses that require **potable** (drinking) water										
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
							TOTAL POTABLE USE	0 [12]	GPD	
Uses that **do not** require potable water										
AGRCP	Zone 3 - Sec 3 - Plat 0 0 2 : Parcel 0 2 9	URBAN	☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No	R-3	☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No	0.015 acres	394,500	5,918	☐ Yes ☒ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
							TOTAL NON POTABLE USE	5,918 [13]	GPD	
							TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	5,918 [14]	GPD	

15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(5) HRS

N/A

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 2: IRRIGATION INFORMATION

List all crops that will be grown as separate line items and include landscape and golf course irrigation.
Attach additional copies of Table 2 if necessary.

1	2	2	4	5	6	7	8
TMK OF PROPOSED LOCATION OF USE (Attach TMK map outlining area and photos for each proposed use.)	CROP	TOTAL ACREAGE	NET IRRIGATED ACREAGE	BEGIN GROWTH PERIOD (Month)	END GROWTH PERIOD (Month)	IRRIGATION SYSTEM (Refer to instructions.)	IRRIGATION PRACTICE (Refer to instructions.)
3 - 3 - 0 0 2 : 0 2 9 (Zone Sec Plat Parcel)	Wetland kalo	0.248 acres	0.015 acres	Annual	Annual	Flood (taro)	Irrigate to capacity
Zone Sec Plat Parcel							
Zone Sec Plat Parcel							
Zone Sec Plat Parcel							
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Zone Sec Plat Parcel							
Zone Sec Plat Parcel							

9. COMMENTS:

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS

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

C. **ADDITIONAL REQUIREMENTS:**

PUBLIC INTEREST Hawaii Revised Statutes §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.*

1. Explain below how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code above.
See addendum

2. Explain below how your proposed new use(s) will not interfere with any existing legal use(s).
See addendum

3. Explain below how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.
See addendum

APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE

INSTRUCTIONS

This application form is for **new surface water uses** or for a modification of a previously approved water use permit in designated surface water management areas. New surface water uses are proposed uses after the effective date of designation of the surface water management area. Please check the appropriate box.

Do not use this form for existing surface water use applications. Existing surface water uses are actual uses before the effective date of designation. Please use Form SWUPA-E for existing uses.

Most questions can be addressed by visiting our website at: www.hawaii.gov/dlnr/cwrm, or contacting us at 587-0234, or by email at: dlnr.cwrm@hawaii.gov. The current application forms are also available at: www.hawaii.gov/dlnr/cwrm/resources_permits.htm.

REQUIREMENTS FOR A COMPLETE APPLICATION

1. Fill in the most recent application form. A current form is available at our web site or by contacting us at 587-0234.
2. Print in ink or type in the information on the application.
3. Fill in every item in the application form (page 1) and Tables 1, 2, and 3 as it relates to your proposed new use or permit modification.
4. Enclose a check for the non-refundable filing fee of $25 payable to: Department of Land and Natural Resources. Government agencies are not required to pay the filing fee.
5. Pay for the cost of publishing any required public notices related to your application. The current cost for publishing public notices is approximately $400.00. Commission staff will provide instructions later in the permit process regarding payment of these costs.
6. Mark the source and end use locations on the appropriate USGS quad map (scale 1:24,000) and property tax (TMK) map and attach these maps to your application.
7. Attach photos showing your existing diversion, measuring device(s) (if applicable) and end use areas.
8. Sign the application form in ink. Both the applicant and the landowner where the source is located must sign the application form.
9. Submit the original application and **15 copies** of the application form and all attachments (maps, photos and any other attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

ADDITIONAL REQUIREMENTS FOR A COMPLETED APPLICATION

Per Hawaii Revised Statutes §174C-49, the applicant must establish that the proposed new use of surface water:

1. Can be accommodated with the available water source.
2. Is a reasonable-beneficial use.*
3. Will not interfere with any existing legal use of water.
4. Is consistent with the public interest.**
5. Is consistent with state and county general plans and land use designations.
6. Is consistent with county land use plans and policies.
7. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.

*HRS §174C-3 of the State Water Code states: *"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.*

**HRS §174C-2(c) of the State Water Code 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.*

NOTE: Filling in the application from and Tables 1, 2, and 3 completely will address the requirements of HRS §174C-49.

LINE BY LINE INSTRUCTIONS ON APPLICATION

APPLICANT INFORMATION

In accordance with the Hawaii Water Code, both the applicant and the person who owns the property where the water source is located are required to apply for a water use permit. §174C-51(1)(B), HRS, states, *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: Fill in the information for the applicant. This should be the person who 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.

SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Enter the appropriate island, hydrologic unit name, and hydrologic code where the proposed source is located. The "source" is the stream 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.

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PROPOSED NEW USE

4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT: Provide Instream Flow Standard (IFS) for hydrologic unit if available.
5. CAN YOUR PROPOSED USE BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: Check "Yes" or "No". Explain how your proposed use(s) can be accommodated within the Instream Flow Standard (IFS) for the above hydrologic unit.

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: Fill in the Tax Map Key (TMK) number of the tax parcel where the stream diversion will be located. Each tax parcel is issued a TMK number by the county property tax office and is defined as follows: 1st digit = (Island code), 2nd digit = Zone, 3rd digit = Section, Digits 4-6 = Plat, Digits 7-10 = Parcel, e.g. (1) 1-1-001:001. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: Fill in the Tax Map Key (TMK) number of the parcel where the proposed ditch diversion will be located.

7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all the appropriate box(es).

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH? Check "Yes" or "No." If yes, enter the amount of water to be returned.

8. PROPOSED FLOW MEASUREMENT INFORMATION: Check "Yes" or "No". If yes, please describe the measuring device. A flowmeter with a totalizer will directly measure the total use for the source (similar to a car's odometer). If no, explain how stream diversion will be measured or estimated to justify amounts requested.

PROPOSED USE INFORMATION (HRS §174C-51(4), (5), (6))

9. TOTAL QUANTITY OF WATER REQUESTED: Enter the amount of water requested as galloos per day (GPD). Fill out Table 1 and enter the amount in Box 14, "Total Use Requested."
10. PROPOSED USE: Check all the boxes that apply for the proposed use. Refer to the instructioos for Table 1: Land Use Consistency/Efficiency of Use, Item 1: Purpose/Water Use Category below to determine which water use category to use.
11. LOCATION OF PROPOSED WATER USE: Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps and show the location of the proposed use.

PROPOSED USER INFORMATION

12. 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 proposed water use? Check "Yes" or "No."
    If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system? Check "Yes" or 'No." If yes, please list the name of the water system operator.
14. 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, list the name of the registrant(s).
15. 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."
16. APPLICANT: Sign and print your name, and date your application.
17. SOURCE LANDOWNER: Sign and print your name, and date your application. The landowner of the source shall be a 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)

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY OF USE

Provide information on all of the proposed uses you are applying for or seeking to modify. In the space provided below the table or on a separate sheet, explain whether there are any limitations (e.g., a contract or other legal agreement(s)) on your proposed water use(s), as required by §174C-51(5), HRS.

1. PURPOSE / WATER USE CATEGORY: For each proposed use, choose one of the categories listed below and enter the appropriate code in the space provided (e.g. AGRAQ, IRRIG, etc.)

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

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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
IRRPA	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 will be 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, check "Yes" and enter the date CDUP was approved if you have a CDUP applicable to this project; or check "Yes, not acquired". If a CDUP is not required, check "No." To find out 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 Na Wai Eha, contact Maui County Department of Planning at 270-6279 or 270-7253.
6. SMAP REQUIRED: If a Special Management Area Permit (SMAP) is required, check "Yes" and enter the date SMAP was approved if you have a SMAP applicable to this project; or check "Yes, not acquired". If a SMAP is not required, check "No." To find out if your parcel is in a Special Management Area and requires an SMAP, contact Maui County at 270-8205.
7. UNITS OR NET ACREAGE: This is the value and category as the basis for calculating the duty. "Duty" means the amount of water requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling unit, or number of people, or animals. Some examples of this category include: 400 dwelling units, 500 people, and 3.74 acres.
8. GPD/UNIT or GPD/ACRE (GPD=gallons per day): Enter the gallons per day or gallons per acre for each water use category listed in Column #1.
9. REQUESTED QUANTITY OF USE (GPD): Enter the requested quantity of use in gallons per day (GPD) at build out after all phases of your project have been completed. The build out amount may differ from the four-year cumulative projected demand if your build out date extends beyond the cumulative projected four-year demand.
10. SUBMETERED? Is there a second measuring device or meter for another user? Check "Yes" or "No" if the specific use will be submetered or not. Submetering is specific to each line item.
11. APPLICANT'S JUSTIFICATION FOR QUANTITY OF REQUESTED USE FOR ITEM #9: Explain how you are justifying the amount(s) you are requesting for Item #9. Attach additional copies of Table 1 if necessary to show how this number was calculated. For irrigation uses, fill in Table 2.
12. TOTAL POTABLE USE: Add the quantities listed in the column above for potable water and enter the total potable use in gallons per day (GPD) here.
13. TOTAL NON-POTABLE USE: Add the quantities listed in the column above for uses that do not require potable water and enter the total non-potable use in gallons per day (GPD) here.
14. TOTAL QUANTITY OF WATER REQUESTED: Add the requested amounts listed on Box 13 and Box 14 and enter the total requested amount of both potable and non-potable uses here.
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. HRS §174C-51(5)

TABLE 2: IRRIGATION INFORMATION

On Table 2, provide the information requested for all the crops you are proposing to grow, including landscape and golf course turf and plants. Enter only one crop and one parcel number (TMK) per line. For multiple crops, list each one as a separate line item. All proposed or modified irrigation uses you are applying for must be listed. Attach additional copies of Table 2, if necessary.

1. USE TAX MAP KEY (TMK): Enter the parcel number where the crop will be grown. Also attach a property tax map with an outline around the area(s) of proposed use(s) and a photograph of each area of the proposed use.
2. CROP: Enter the crop type.
3. TOTAL ACREAGE: Enter the total acreage of the parcel listed.
4. NET IRRIGATED ACREAGE: Enter the acreage that the specific crop will be grown.
5. BEGIN GROWTH PERIOD (MONTH): This is the month of the start of the growth cycle.
6. END GROWTH PERIOD (MONTH): This is the month of the end of the growth cycle.
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 in the space provided for Comments.

8. IRRIGATION PRACTICE: Enter one of the following:

IRRIGATE TO FIELD CAPACITY
APPLY A FIXED DEPTH PER IRRIGATION
DEFICIT IRRIGATION
OTHER - Please describe in the space provided for COMMENTS below.

TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS

A. ALTERNATIVES ANALYSIS: Please address each alternative and explain why they are or are not available for potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc. that are not already listed above.

B. ALTERNATIVES ANALYSIS: Please address each alternative and explain why they are or are not available for non-potable needs. Other alternatives on tbe last line may include stormwater reclamation, rainwater catchment, etc. that are not already listed above.

Surface water is defined in §174C-3, HRS 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 graund other than in contained waterbodies. Water from natural springs is surface water when it exits from the spring onto the earth's surface.*

C. ADDITIONAL REQUIREMENTS

1. Explain how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code below.

   Hawaii Revised Statutes §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 protectian 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.*

2. Explain how your proposed new use(s) will not interfere with any existing legal use(s).

3. Explain how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act. See below. To inquire about potential interference, you may contact the Department of Hawaiian Home Lands Planning Office at 586-3836.

   The State Water Code in §174C-101(a), HRS [Native Hawaiian water rights], states: *Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Howaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.*

Addendum

Attachments

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 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 area of proposed 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 3: Surface Water Hydrologic Unit

Hydrologic Unit & Codes: Waihee, 6022; Waiehu, 6023; Iao, 6024

Box 4 & 5: Instream Flow Standards

There currently are no Instream Flow Standards for Nā Wai `Ehā, and a petition to amend upwards the Interim Instream Flow Standards is pending. There is sufficient water upstream of all diversions to accommodate my proposed use.

Box 7(a&b): Proposed 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.

We will use water from our existing kuleana system to bring water to the additional lo`i kalo we intend to cultivate.

Box 12: 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 1, Box 11: Justification for Requested Quantity

We have estimated our existing use for wetland kalo in three lo`i kalo (about 0.02 acres) at about 7,890 gallons per day (see our concurrently filed SWUPA-E), which equates to about 394,500 gallons per acre per day. Based on this water duty, which we believe is the amount that we need to grow healthy kalo, we estimate that we will need about 5,918 additional gallons per day for the 0.015-acre lo`i kalo we intend to open.

Table 3, Box B: 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, although water is not available consistently and in sufficient amounts to support our uses, necessitating this new use application. Getting water from other ditch systems is not practicable. First, the other ditch systems in Nā Wai ʻEhā 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 3, Section C: Additional Requirements

1) My proposed new use(s) will maximize beneficial use(s) and are in the public interest

Our Proposed 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 proposed water we is for kalo cultivation. We grow kalo in traditional ways, and we seek to grow more for our subsistence. We are Native Hawaiians engaged in traditional agricultural practices, and our crops help maintain ecological balance and scenic beauty. As such, our proposed use of stream water is consistent with the public interest.

Our Proposed 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 Proposed 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 proposed 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. Therefore, our use is "reasonable-beneficial."

2) Our proposed use(s) will not interfere with any existing legal use

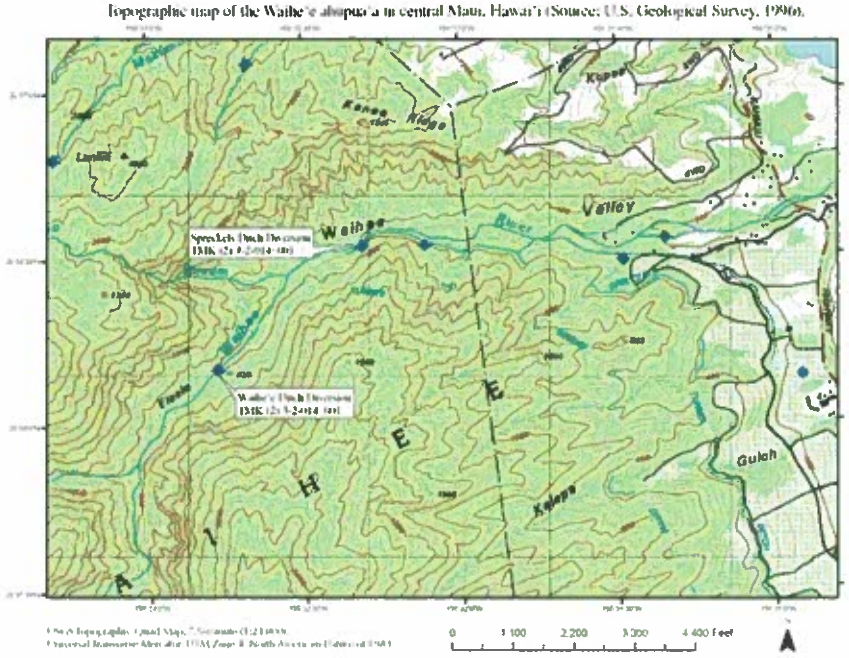
Our proposed use will not interfere with existing legal uses. As kuleana users and Native Hawaiians cultivating kalo on our land, we have first priority by law. We believe the flows of Nā Wai `Ehā streams are able to accommodate our new use.

3) Our proposed use(s) will not interfere with the rights of the Department of Hawaiian Home Lands

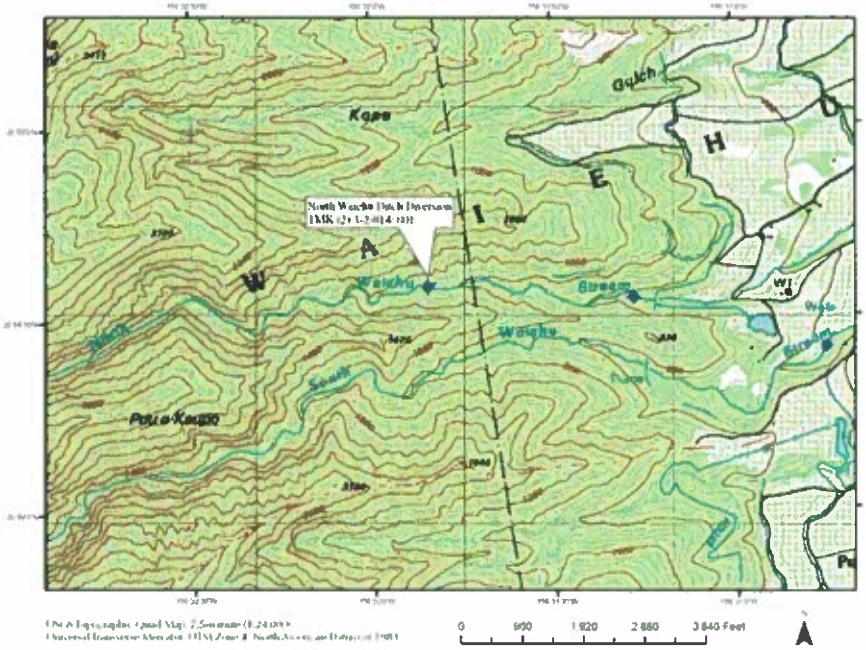
We are not aware of any DHHL lands using water from Nā Wai `Ehā streams. To the best of our knowledge, DHHL has not filed an application to use water from this source. While we are aware that DHHL has outstanding reservations for municipal water meters in Central Maui, our use will not interfere with those reservations, which are largely served by ground water sources.

EXHIBIT 1: USGS MAPS

Topographic map of the Waihe'e-Iao Valley in central Maui, Hawai'i (Source: U.S. Geological Survey, 1996).



Topographic map of the Waiehu-Iao Valley in central Maui, Hawai'i (Source: U.S. Geological Survey, 1996).



Topographic map of the 'Īao ahupua'a in central Maui, Hawai'i (Source: U.S. Geological Survey, 1996).

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

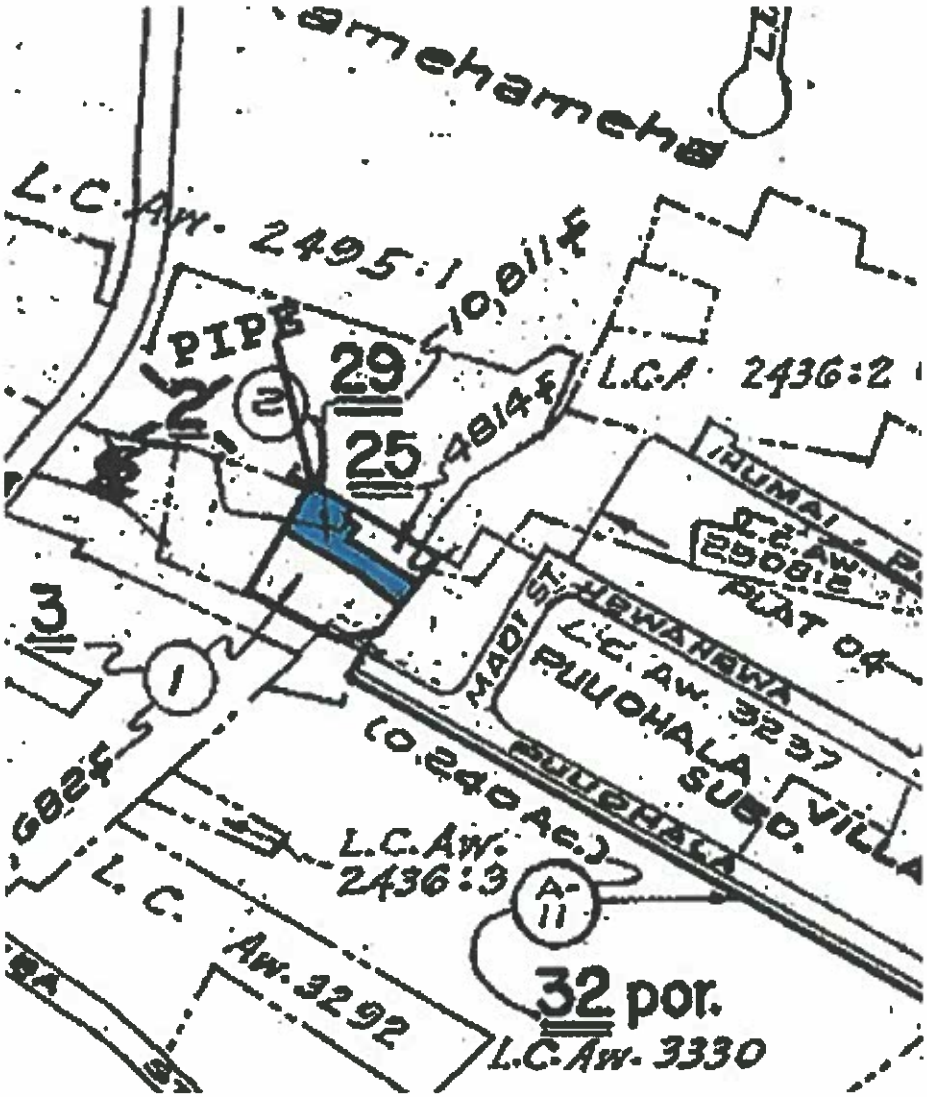


EXHIBIT 3: Diagram depicting our property in relation to our two neighbors, our kuleana water system, and our areas of end use.

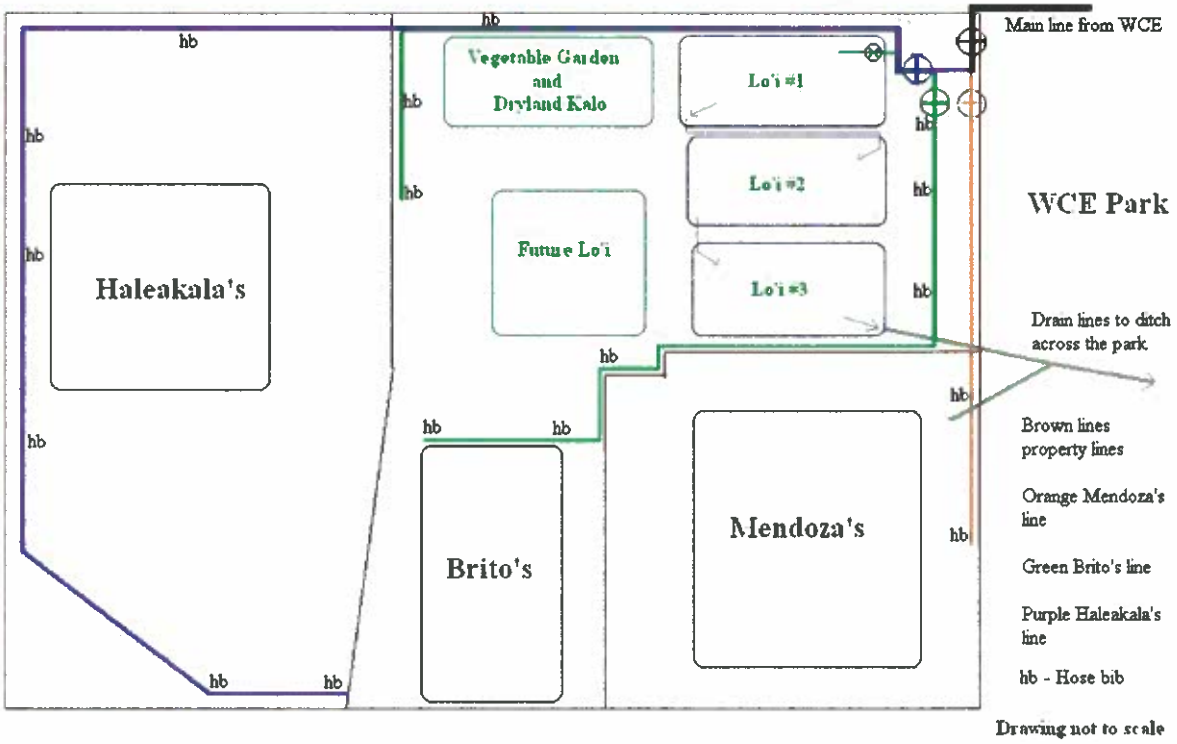


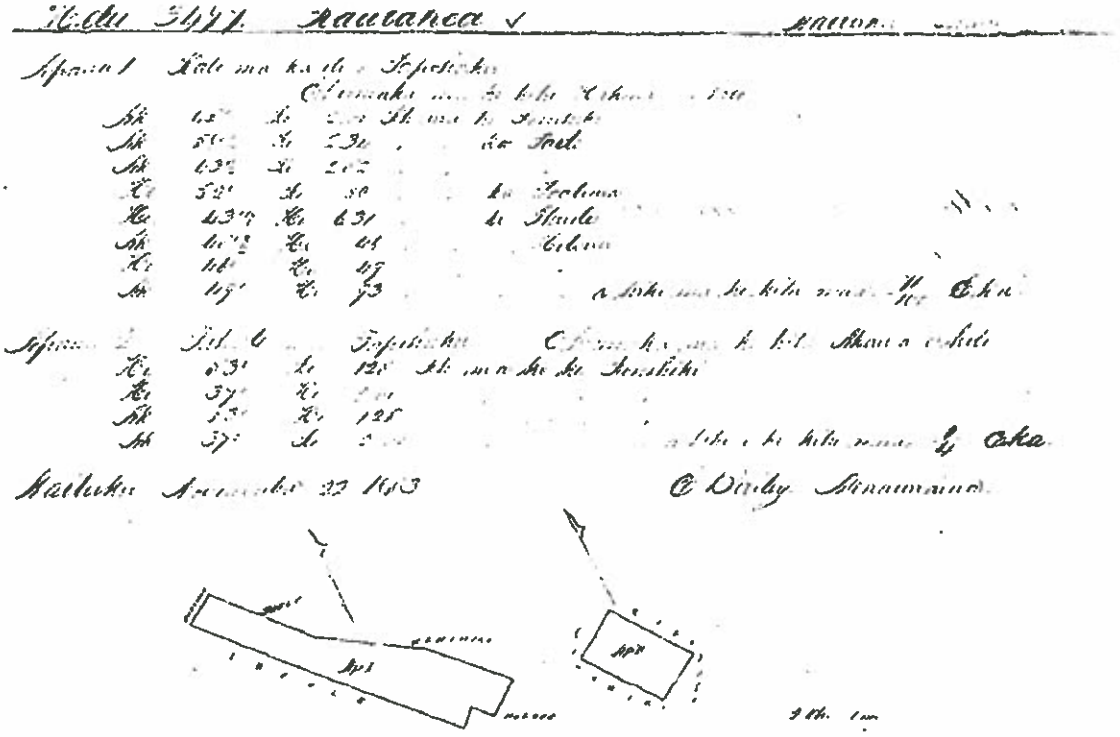
EXHIBIT 4: PHOTOGRAPHS

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 our area of proposed use. When we have access to enough kuleana water, we will replace the grass and plants in this area with lo`i kalo.

EXHIBIT 5: DOCUMENTATION ESTABLISHING APPURTENANT RIGHTS

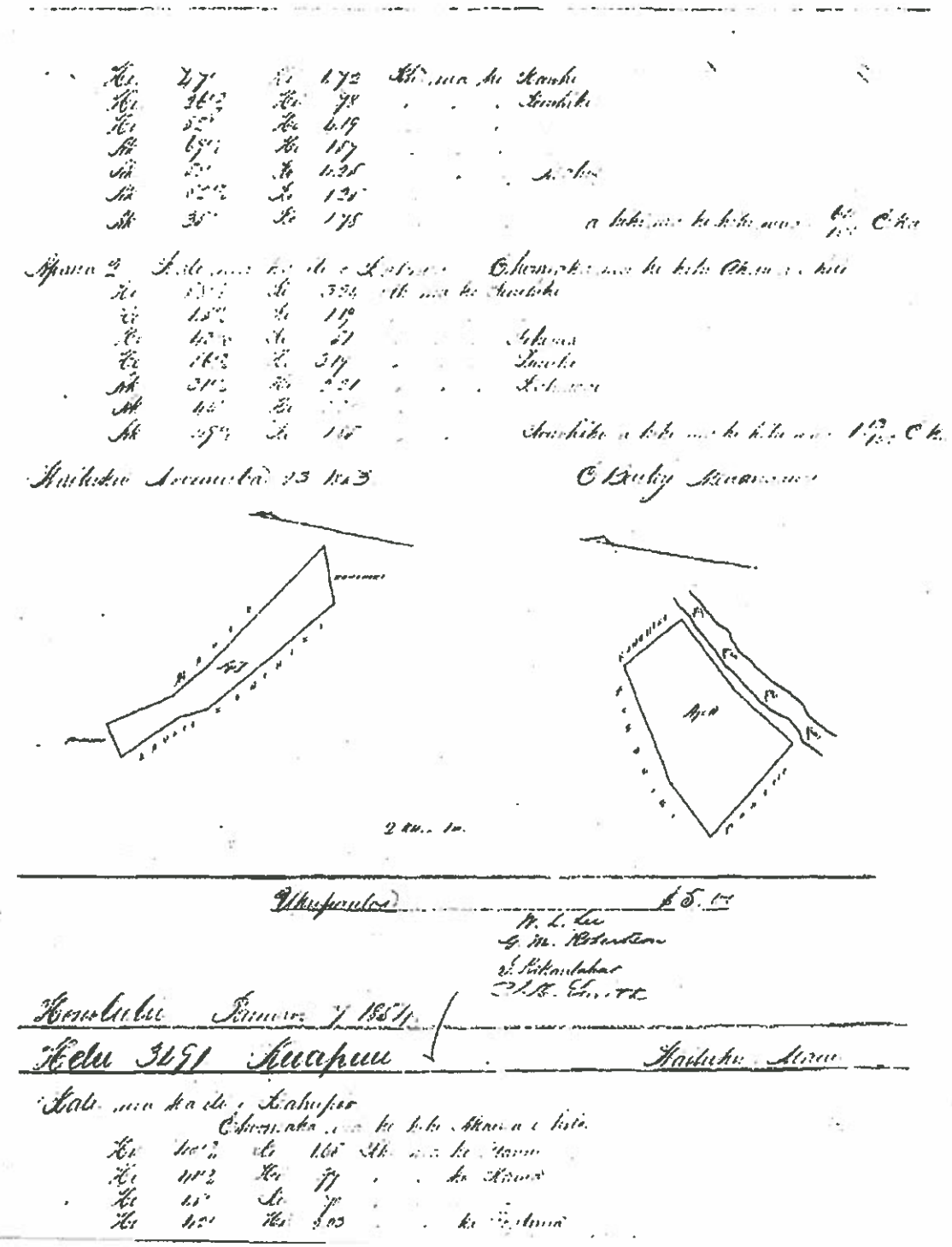
Helu 3497 Kauanea ✓

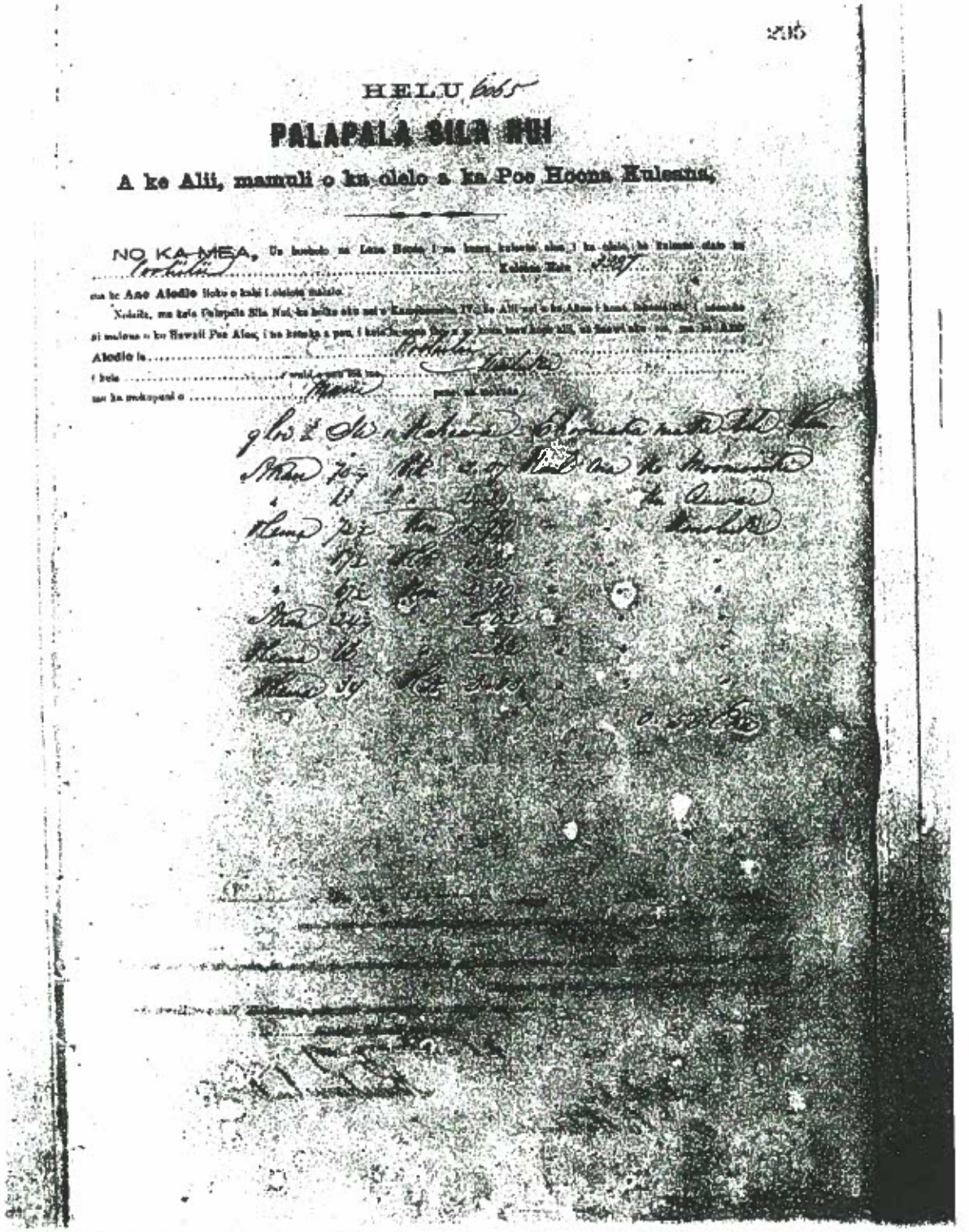


Honolulu January 7 1854

Helu 3387 Poolilii ✓

Honolulu December 17 1853





HELU 6065

PALAPALA SILA NUI

A ke Alii, mamuli o ka olelo a ka Poe Hoona Kuleana,

NO KA MEA, Ua hoohelo na Luna Hoona i na kuma kuleana aina i ka olelo, ke kuleana olelo ka Poohiliu Kuleana Helu 3207

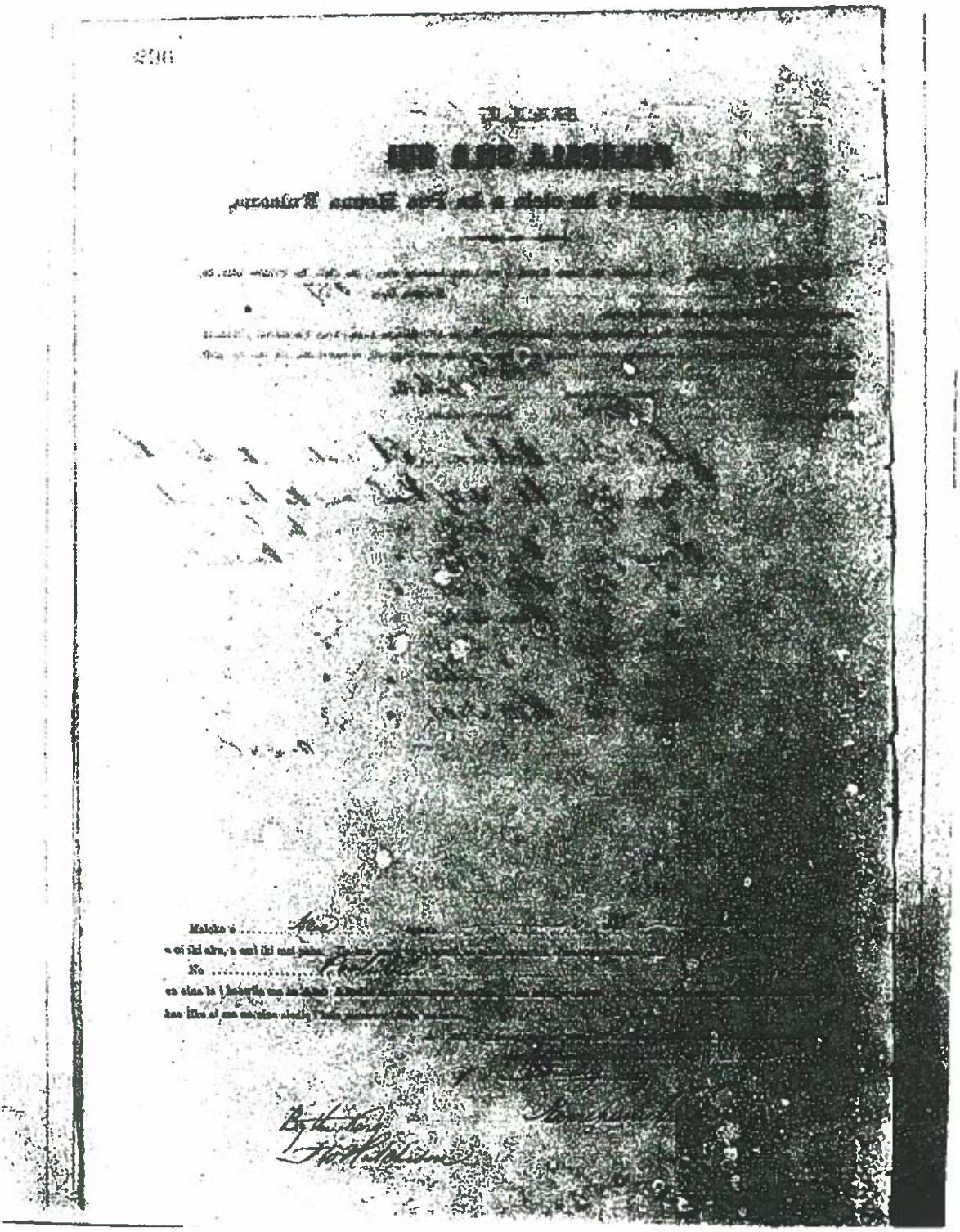
ma ke Ano Aiodio iloko o kahi i olelolo malalo.

Noiaila, ma kela Palapala Sila Nui, ke hoike aku nei o Kamehameha IV, ke Alii nei o ke Aina i hana [illegible] i [illegible] ai malaua o ko Hawaii Poe Aina, i na kanaka a pau, i kela [illegible] ke Ano Aiodio ia Poohiliu

i kela [illegible] Wailuku

ma ka mokupuni o Maui [illegible]

[illegible]



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Cl. 3294 C Shuele

The Claimant made oath that Nahale the Queen Auhau of Kailuku wrote out his claim and that it was sent in to the Commission in January 1848.

Hoolana Sev. The Cts land consists of an Moo of Kalo land in the ili of Papahaku Kailuku Maui.

The Claimant received it from D. Kaauwai in 1855 and he from Gov. Namakeha, and his title has never been disputed.

It is bounded Mauka, by D. Kaauwai's land Kaiaea, by Kaua's land Makai, by Kailahua's & my land Maalaea, by the King's Eka.

Cl. 3295 D Kalui

The Claimant made oath that Nalaipuleho wrote out and sent in his claim in December 1847.

Hoolana Sev. The Cts land consists of two pieces in Kailuku Maui.

No 1 is a Moo of Kalo land in Papahaku

" 2 " 2 lots " " " Kapalaalaea

The Claimant received No 1 from Kalapa in the year 1846 and he from D. Kaauwai, and he from Gov. Namakeha, and No 2 from Naai in 1843, and he from Kalawaiahoiwa in Adva times. His title is not disputed.

No 1 is bounded Mauka and all sides by D. Kaauwai's land.

No 2 is bounded Mauka, by Kuapuai's land Kaiaea, by Lonaea's land Makai, by Naai's land Maalaea, by Pahea's land.

Cl. 3387 Pastulia

Hoomoiki Sev. The Cts land is 9 lots in the ili of Kahuwa, Wailuku Maui.

He received them from me in 1852 and I from Kalama the Queen. His title has never been disputed.

It is bounded Mauka, by Kaluaroshi an ili Kaiaea, by

Waikuku [illegible]

the same. Makai, by the sea of Waikuku. Maalaea, by the sea of Pohakuku [illegible].

C. 2470 Kaihuanui.

[illegible] Sir. The [illegible] land consists of three pieces in the district of Waikuku, Maui.

No. 1 [illegible] in Hakuula [illegible]

[illegible]

[illegible]

The Claimant received No. 1 & 2 from [illegible] in 1838 and No. 3 from Maukila before 1839 and his title has not been disputed except to No. 1 & 2. Kaimuu put in claim for them in 1846 and took them away. The Claimant was constitution and did not go to the province, because the Governor [illegible] exempted such officers from such work, and therefore Kaimuu took these pieces away in 1846. The Claimant died in 1848 and his wife Hina is his heir in connection with his [illegible].

No. 1 is bounded Mauka and Waikuku sides, by Puau's land, Makai, by Kanui's land Maalaea, by the Pili.

No. 2 is bounded Mauka and Waikuku sides, by my land. Makai, by Pepe's land Maalaea, by the Pili.

No. 3 is bounded Mauka and all sides, by Maukila's land.

Waikuku, July [illegible] 1849.

Commenced hearing the claims of Waikuku.

C. 2353 [illegible]

Maili Sir. I know the lands [illegible] claimed. They are four pieces in Kaha, Maui. They are as follows:

No. 1 is a Potato Patch in the [illegible] of Waiakua.

" 2 " " " " " Maopio.

" 3 " " Sweet Potato Patch " " "

" 4 " an Irish potato patch " " " Kaiaiuu.

The Claimant received No. 1 from Kaiahua in 1837, No. 2 & 3 from Kaahumanu I in 1831 or 1832. and No. 4 from Maikaalua in the year 1841 and he from the King. His title was never disputed.

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No. 3382 - Pa Page 68

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 iss a hala tree. Farewell to the Land Commissioners.
Wailuku, 11 Jan. 1848 PAELE

No. 3384 - Piohia Page 69

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. Thatiis 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 - Pooliilii

My 9 lo'i are at Kahewa, this is the total of my lo'is Page 70

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

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