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
2009 APR 23 PM 4: 10
SWUP.2229.6

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
STANLEY FAUSTINO		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
384 Waihe'e Valley 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: WAIHEE Hydrologic Unit Code: 6022

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 attachment A

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 4 : 0 1 3 (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:

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?
☒ Yes. How much water will be returned? See attachment A
☐ 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 attachment A

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

9. TOTAL QUANTITY OF WATER REQUESTED: 180,000 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): Faustino SJ ☐ 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
Stanley J. Faustino Signature	Signature
STANLEY FAUSTINO 4/4/09 Print Date	Print Date

FILE ID: SWUP. 2229.6
DOC ID: 3233

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 2 - Plat 0 0 4 : Parcel 0 1 3	Rural	☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No	AG	☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No	0.6	300,000	180,000	☐ Yes ☒ No	See attachment A
	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	180,000 13	GPD	
							TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	180,000 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 - 2 - 0 0 4 : 0 1 3 (Zone Sec Plat Parcel)	Wetland Taro	0.7	0.6	Annual	Annual	Flood (Taro)	Irrigate to Field Capacity
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (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 attachment A
Wastewater reuse	N/A	See attachment A
Ditch system	N/A	See attachment A
Desalinization	N/A	See attachment A
Ground water	N/A	See attachment A
Other (specify)	N/A	See attachment A

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 attachment A

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

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 22 t of the Hawaiian Homes Commission Act.
See attachment A

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.

APPLICATION FOR SURFACE WATER USE PERMIT
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 gallons 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 instructions 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

APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE

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 the 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 ground 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 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.*

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 Hawaiian 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.*

ATTACHMENT A

Exhibit 1:
A copy of the 7.5 minute-series USGS topographic map with the Waihe'e River and diversions labeled.

Exhibit 2:
Exhibit 2 is a TMK map showing the location of our property and the locations of our 'auwai diversion and area of proposed use.

Exhibits 3A and 3B:
Copies of photographs of our 'auwai diversion and area of proposed use.

Exhibits 4:
True and correct copies of Land Commission Award No. 4405-X to Mahoe II, Royal Patent No. 5319 to Mahoe II, and the testimony in support of Mahoe II's claim.

Supplemental Information for 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.

Supplemental Information for Box 4 and 5: Instream Flow Standards
There currently are no Instream Flow Standards for Nā Wai 'Ehā, and a petition to upwardly amend the Interim Instream Flow Standards is pending. There is sufficient water upstream of all diversions to accommodate my proposed use.

Box 6a:
Although our `auwai currently receives water diverted from TMK No. 3-2-014:001, we seek to resume diverting water to our `auwai directly from Waihe`e River at TMK No. 3-2-004:001, as we historically did.

Supplemental Information for Box 7A and 7B:
We are kuleana users along the North Waihe'e Valley kuleana 'auwai. The water formerly was diverted directly from Waihe`e River into our `auwai at TMK No. 3-2-004:001 (see attached photo). Now, water is diverted from Waihe'e River at the Waihe'e and Spreckels diversions (TMK No. 3-2-014:001) (see attached USGS topo map). All the water from the Spreckels diversion enters the Spreckels Ditch, as does some water from the Waihe'e diversion. The North Waihe'e Valley kuleana 'auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open 'auwai on the north side of Waihe'e River. The water continues makai in the ditch and pipes until it passes through our property where we divert some water via an open

ditch for our lo'i kalo. After flowing through our lo'i, all of the water except what evaporates is returned to the Waihe'e River via an open ditch.

Supplemental Information for Box 8:
See explanation for Table 1, Box 11, below.

Supplemental Information for Box 12: Appurtenant Rights
Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. In fact, almost all of the stream water we currently use (see our concurrently filed SWUPA-E) is for ancient lo`i kalo that we have restored. Attached hereto as Exhibit 4A are true and correct copies of Māhele records for Land Commission Award No. 4405-X to Mahoe II, Royal Patent No. 5319 to Mahoe II, and the testimony in support of Mahoe II's claim. This land has been in our family continuously since 1947 and based on our knowledge of the history of this kuleana, 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
I estimated my proposed water use for wetland kalo cultivation by multiplying the amount of land I intend to cultivate in wetland kalo (0.6 acres) by 300,000 gallons, the average amount of water I understand is required to grow healthy wetland kalo.

Supplemental Information for 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 water from Waihe'e River, there is no potentially available alternative source that is economically practicable. We cultivate kalo 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, 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 ditch system, although we want to access water directly from the stream. 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, 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, we do not have the means to install and maintain such infrastructure.

Supplemental Information for Table 3, Section C: Additional Requirements

1) My proposed new use will maximize beneficial use and is in the public interest

Generally, "water use for diversified agriculture on land zoned for agriculture is consistent with the public interest." In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 162, 9 P.3d 409, 474 (2000) ("Waiāhole I"). Further, 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." The water we are requesting will be for kalo cultivation, which we will grow in the traditional way for subsistence purposes. 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. Waiāhole I, 94 Haw. at 137 & n.34, 9 P.3d at 449 & n.34; 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). Additionally, because most of the water we will use will be returned to Waihe'e River, our use supports other existing public trust purposes such as: (1) the maintenance of waters in their natural state; (2) resource protection; (3) water for domestic purposes; and (4) the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

Our Proposed Use Supports Beneficial Instream Uses
Because we will return much of the water we divert for kalo cultivation to Waihe'e River, our proposed use also supports beneficial instream uses such as: (1) the maintenance of fish and wildlife habitats; (2) outdoor recreational activities; (3) maintenance of ecosystems such as estuaries, wetlands, and stream vegetation; (4) aesthetic values such as waterfalls and scenic waterways; (5) maintenance of water quality; (6) the conveyance of irrigation and domestic water supplies to downstream points of diversion; and (7) the protection of traditional and customary Native Hawaiian rights. See HRS § 174C-3.

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 will also be "economic and efficient" because we will only use the amount we need. We will take steps to make our water use efficient. For instance, we will use pipes where appropriate to minimize water loss, and our farming practices will include the use of mulch to protect the soil from erosion and minimize the use of water. Therefore, the water we have requested is for a "reasonable-beneficial use."

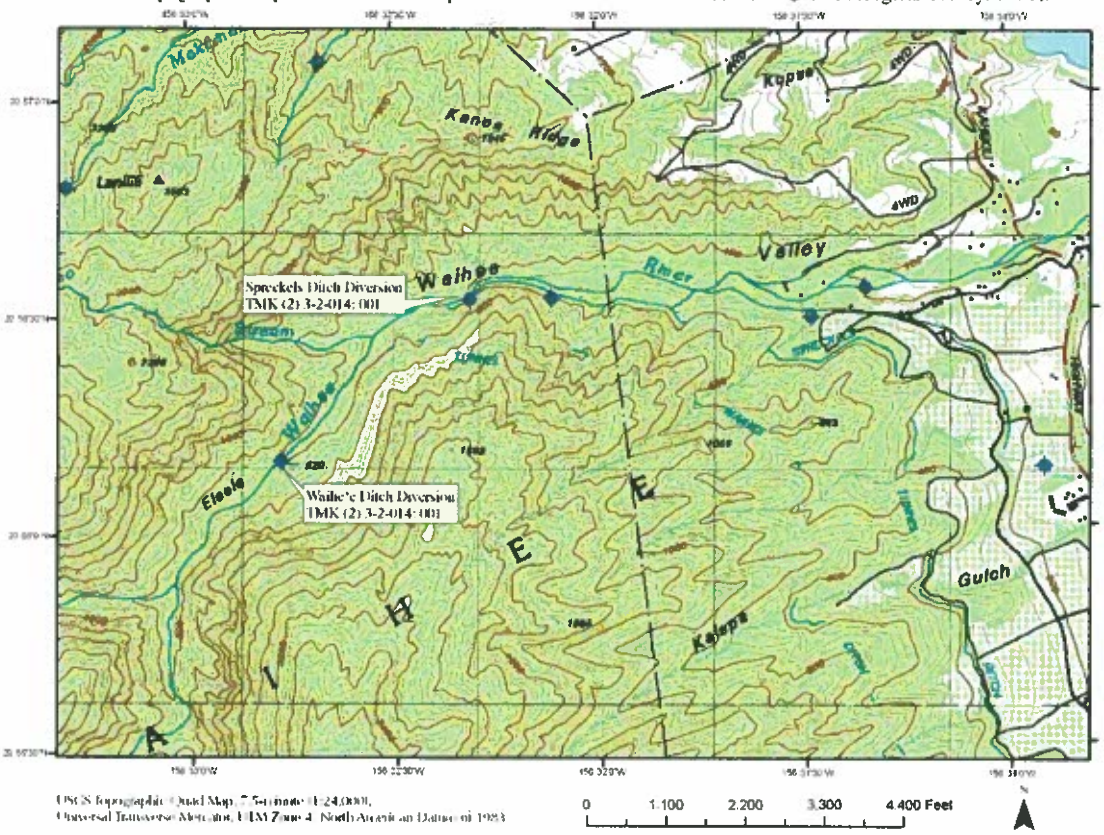
2) Our proposed use(s) will not interfere with any existing legal use

Our proposed use will not interfere with existing legal uses. As kuleana users, we have first priority by law. We believe the flow of Waihe'e River is able to accommodate our new use, however, see seek to access water through our `auwai directly from the stream, not from Wailuku Water Company's ditch. As mentioned above, most of the water we will use will go back to Waihe'e River. Thus, our use will not interfere with other existing legal uses because it will not result in a large net loss of water from the stream and larger ecosystem.

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 Waihe'e River. 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. Instead, our proposed use will actually help to protect DHHL's rights because the vast majority of the water that we have requested will be returned to the stream, and if it remains in the stream, it will recharge the aquifer, protecting the health of the aquifer system for DHHL's present and future ground water uses.

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



7.5 minute-series USGS topographic map with the Waihe'e River and the Waihe'e and Spreckels Ditch Diversions.

EXHIBIT 1

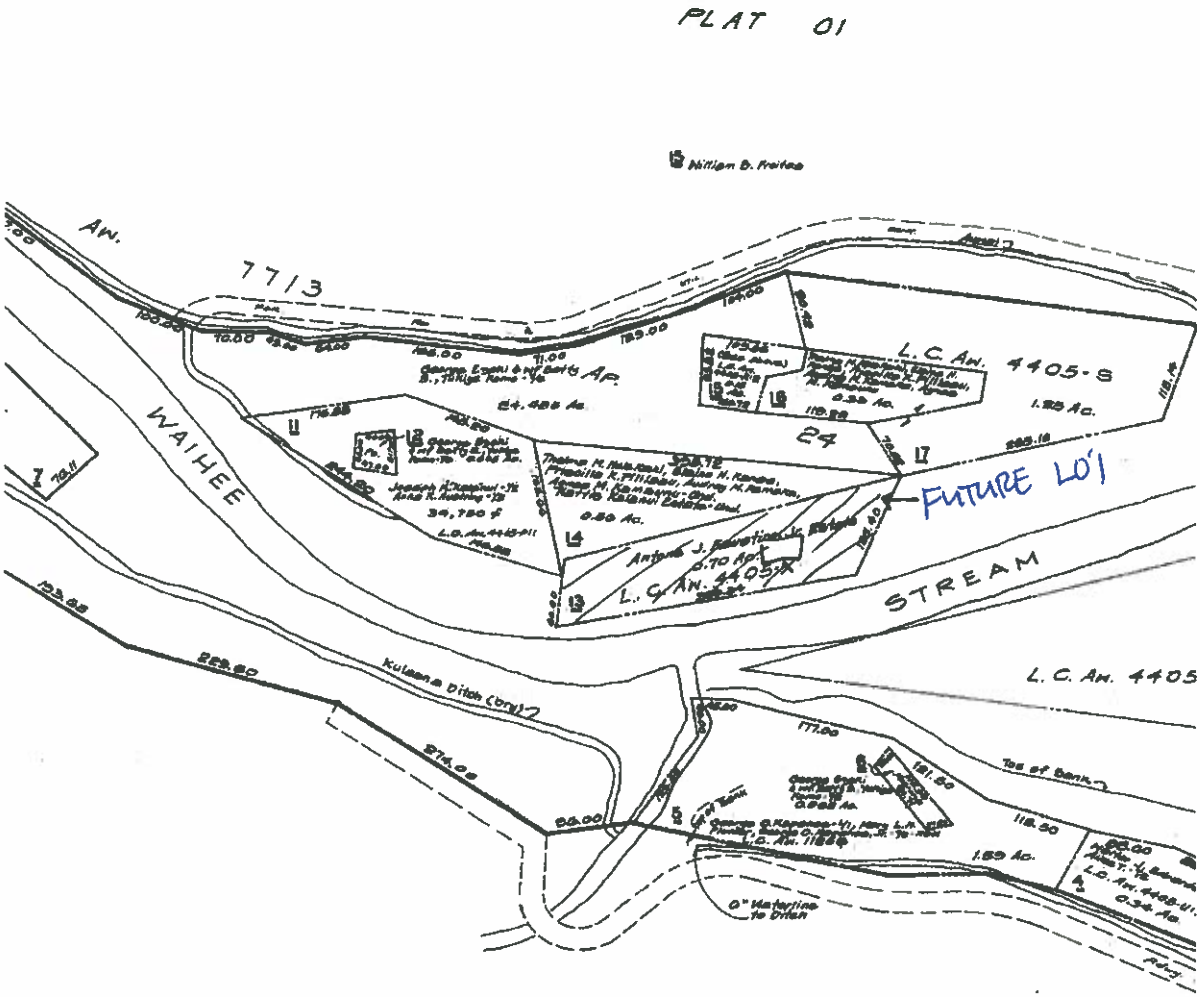

PLAT 01
William B. Freitas
AW.
7713
WAIHEE
STREAM
L. C. AW. 4405-S
24
FUTURE LO'I
L. C. AW. 4405-X
L. C. AW. 4405
Kulaana Ditch (Dry)
Toe of Bank
0" Waterline to Ditch

EXHIBIT 2

The above photo depicts the former intake to North Waihe`e `auwai (middle left) directly from Waihe`e River at TMK No. 3-2-004:001

The above photo depicts our intake from the Waihe`e North `auwai on our land at TMK No. 3-2-004-013

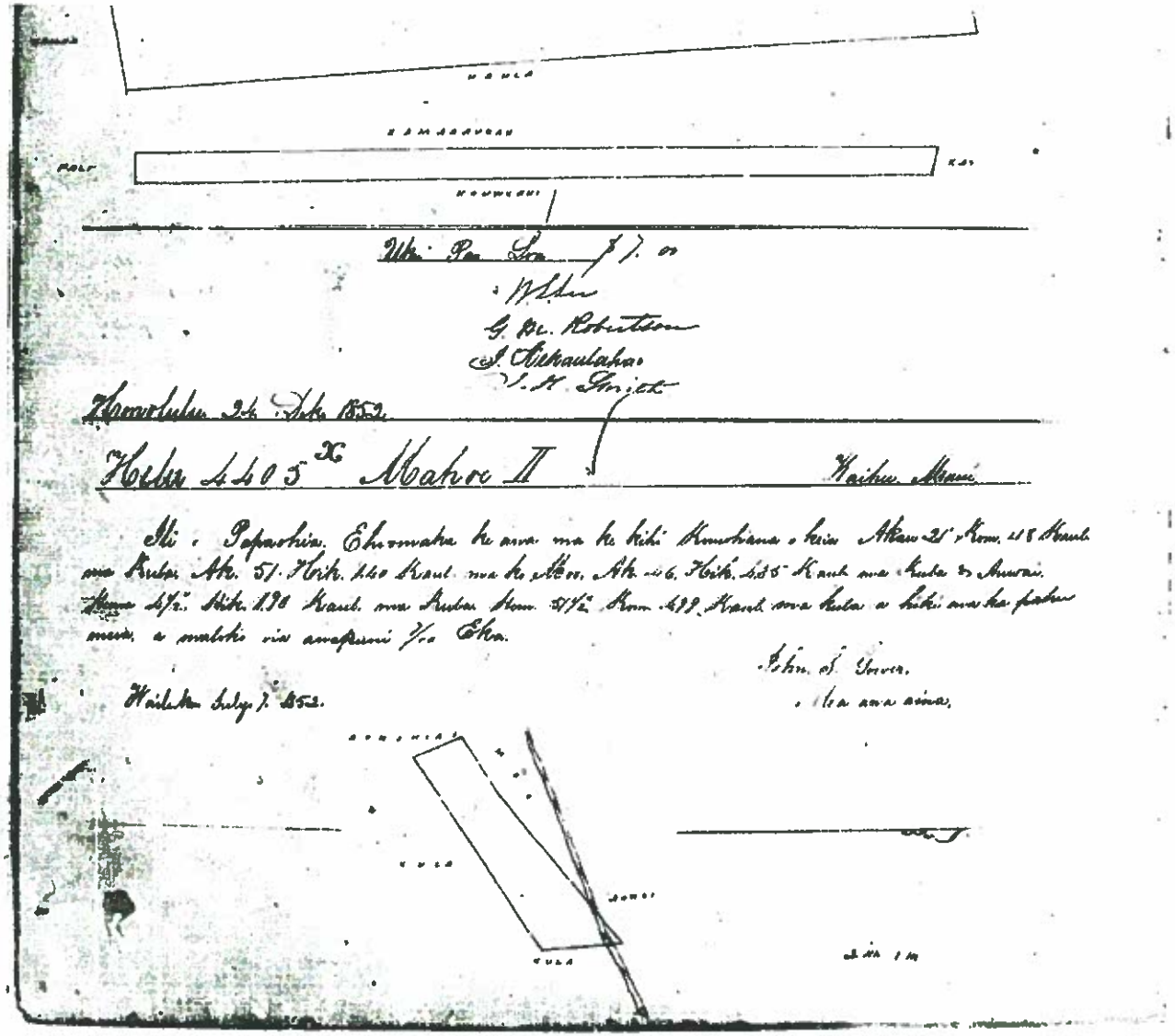
EXHIBIT 3A

The above photo depicts a portion of the proposed new use area

The above photo depicts a portion of the proposed new use area with existing lo'i in foreground.

EXHIBIT 3B

EXHIBIT 4



Ulu Pa Loa $7.00
W. Luther
G. W. Robertson
J. Kekaulahao
V. A. Grigoli

Honolulu 24 July 1852.

Helu 4405 X Mahoe II — Waihee Maui

Ili . Papachia. Ehuwaka he aina ma ke kihi Kuahiwa o keia Akea 21 Kom. 18 Kaul. ma Kuloa Ak. 51 Hik. 140 Kaul. ma ke Akea. Ak. 46 Hik. 435 Kaul ma Kuloa o Auwai. Akea 4½ Hik. 190 Kaul. ma Kuloa Akea 4½ Kom. 499 Kaul ma Kuloa a hiki ma ke pahu mua. a malaki ia ameinui 7/8 Eka.

John S. Grover.
Ka ana aina.

Wailuku July 7. 1852.

444

Uku Pan Lon # 6

G. M. Robertson
J. H. Smith
J. Kikuulahai

Honolulu Dec. 24 1852

Hilu 8946 Kaala

Waikelu, Kolokai

Apana 1 Kalo Ili o Makaluahau. Ehumaka ana ma ke kihi Hema Kamaka a ia aina a o holo ana, Hik. 73½, Hik. 20.05 Kaul ma ke Kaula Kaila, Hik. 24½, Kom. 26½ Kaul ma Pali, Hem. 73½, Kom. 20.00 Kaula ma ke Kanalu, Hem. 24½, Hik. 21½ Kaul ma ke Kailua, a hiki i kahi i hoomaka ia, ma ia apana 4 Eka, 113 anana.
2 Hakuau maloko o kia Kiaana.

Apana 2. Ehumaka ana ma ke kihi Hikina Akau na aina o pili ana me ke Kamakaukau, a o holo ana, Hem. 32½, Hik. 41½ Kaul ma ke Kai alaila, Hem. 43½, Kom. 31.20 Kaul ma ke Kauwaui, Hik. 46½, Kom. 116 Kaul ma ke Pali, Hem. 43½, Hik. 41.20 Kaul ma ke Kamakaukau a hiki i kahi i hoomaka ia, ma ia apana 4 Eka 113 anana.

Sepatemaba 1 1852

E. H. Meyer Surveyor

9

HELU.....5319

PALAPALA SILA NUI.

A KE ALII, MAMULI O KA OLELO A KA POE HUONA KULEANA.

NO KA BEA, Ua hoohole ua Luna Huona i ne kumu kuleana sina i ka olelo, ke kuleana nuio ko Maher 2 Kuleana Helu.....4405 ma ke Ano Aledio iloko o kahi i olelua malalo.

Nolaila, ma kaia Palapala Sila Nui, ke hoiko aku nei o Kamehameha IV, ke Alii nui a ke Akua i kona lokomaikai i hoonoho ai maluna o ko Hawaii Pae Aina, i ne kanaka a pau, i keia la nona iho, a no kona man hopo alii, ua hawai aku oia ma ke Ano Aledio ia Maher i kela wahi a pau loa ma Waihee ma ka mokupuni o (Maui), ponai na mokuna,

St. Papaoka

Namaka ma Ke Kihi-Kiam. a hole

Maha	21°	Kiam	1. 18	Kaul	ma	Kula
"	50°	Kiu	1. 40	"	"	Mos
"	46	"	4. 35	"	"	Kula & Nawai
Hana	4½	"	1. 90	"	"	Kula
Hana	50½	Kiam	4. 99	"	"	"
				Ke	Vino	Ka

Maloko o Kaia apana 7/100 Eko
a oi iki aku, a emi iki mai paha. Ua koe nae i ke [illegible] ma mana [illegible] a me na [illegible] a pau.
No Makoe 2
na [illegible] i [illegible] ma ka Ana Aiodio a ua kona mau hoolina, a me kona waihona; ua pili nae
ka [illegible] a ka Poe Aheahea e kau like ai me na aina aiodio i kela [illegible] i kaia [illegible].
A I REA E IKEA AI, ua kau wau i ko'u [illegible], a me ka [illegible] Nui o ke Hawaii Poe
Aina ma Honolulu i kela la
a (Maraki) [illegible] 19

Kamehameha

Kaahumanu

Kamehameha

COPIED AT THE HAWAII STATE ARCHIVES

52

The Claimant received it from Pu before 1839. His title was never disputed up to his death in 1846 after his claim was sent in and his wife Kamaka has possessed the land since. He left 3 children. There are two pralima lots in it.

It is bounded Mauka by the Creek, Kahakuloa by Napukahai's land, Makai by the sand, Hilla of Kahaka, Waikuku by Nipuekah land.

V

C. 4405 Kahalua.

Papahiku Sw. The Ots land consists of 3 pieces in Waihe. Maui.

No 1 is a section of lots in Papaina.

" 2 " " hula land. Kiaiku.

" 3 " 2 lots in the ili of Paulani.

The Claimant received them in olden times before 1839, and has possessed them in peace ever since. There are 3 pralima lots in No 1.

No 1 is bounded Mauka by Akibawa's land, Kahakuloa by the ili of Kiaiki, Makai by the sand.

No 2 is bounded by the first piece and is included in its boundaries.

No 3 is bounded Mauka by Kuiwa's land, Kahakuloa by the same, Makai by the same, Waikuku by the Creek.

X

C. 4405 Makoe 3rd

The Claimant made the necessary oath.

Kalima Sw. The Ots land consists of one piece of kalo and hula in the ili of Papachia, Waihe. Maui.

The Claimant received it from Puhe in 1846, and he from Kaaiwai in 1839. His title is not disputed.

It is bounded Mauka by the Creek, Kahakuloa by Waikahulu's ili, on other two sides by the Creek.

Y

C. 4405 Kaja

Makahia Sw. This claim was duly entered. The Ots land consist of 2

No. 4405 X Mahoe 2 July 27 1849 COPIED AT THE HAWAII STATE ARCHIVES

Mahoe 2 sworn He hae known and has heard Kekahio had written (olaim) before 1848. Kahinu sworn He has seen 1 taro seotion in the whole ili of Papaohi in Waihee. Land from Puhi in 1846, Puhi's land from Z. Kaauwai in 1829, no objection.

Mauka	Stream
Kahakuloa	Waihalulu ili
Makai and Wailuku	Stream

No. 4405 Y Kapo July 27, 1849

Maluhia sworn He has known Kekahio had written (claim(before 1848. He has also seen 1 taro seotion in that section and 2 moo's with 36 patches in Waipukua ili of Waihee. Kapi's land from Kahune in 1844, kahune's land from Kuakamauna. No objeotion, 2 Poalimas there.

Mauka	Land fence
Kahakuloa	Naiuielua
Makai	Stream
Wailuku	Kawaa's land

No 4405 Z Kamakaheana (W) July 27, 1849

Claimant sworn Kekahio wrote (claim) before 1848. Nuhi sworn He has seen 2 sections in the ilis of Waihee. Land from Z. Kaauwai, no objection. Page 290

Section 1 - Taro moo, pasture and house at Kanaele 3

Mauka	Kanaele 4 ili
Kahakuloa	Kanaele 6 ili
Makai	Kanaele 2 ili
Wailuku	Stream

Section2 - 1 Taro patch at Kanaele 6
Surrounded on all sides by Kamaika's boundaries.

No 9583 Hale July 27, 1849

Claimant sworn Napela had written Hale's claim. Kupanihi sworn He has seen 5 sectiona in these ilis of Waihee. All seotions in Ohia from Kuihelani in 1843. Seotion 5 from Lumilani in 1847. 2 Poalimas in section 2. 3 Poalimas in section 3m and 2 Poalimas in section 4.

Section 1- House lot at Ohia

Mauka	Waiaukuu ili
Kahakuloa	Pali
Makai, Wailuku	Stream.

Section 2 -

Mauka	Poalima
Kahakuloa	Napela
Makai	Kaakina
Wailuku	Stream

Seotion 3 - Taro moo at Ohia

Mauka	Poalima
Kahakuloa	Pali
Makai	Poalima
Wailuku	Stream

Section 4 - Taro pauku at Ohia

Mauka	Keoili
Kahakuloa	Pali
Makai	Poalima
Wailuku	Stream