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

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

FORM SWUPA-E (NA WAI EHA, MAUI)

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

For Official Use Only:

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT

2009 APR 23 PM 4: 38

Event ID: SWUP. 2258.6 SWUP NO. 5C

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

1. APPLICANT'S NAME	Applicant's Contact	2. SOURCE LANDOWNER'S NAME	Source Landowner's Contact
Lawrence Miyahira; Jason Miyahira	Lawrence Miyahira, Jason Miyahira	Waiehu Aina, LLC	David & Donnalee Singer

Applicant's Mailing Address, or Principal Place of Business	Source Landowner's Mailing Address, or Principal Place of Business
PO Box 762 Wailuku, HI 96793	P.O. Box 3017 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]					

EXISTING SOURCE INFORMATION

The following must be attached before this application is accepted as complete:
- Portion of 7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion locations and quad map name.
- Property Tax Map Key (TMK), showing stream or diversion location, and location of water use referenced to established property boundaries.
- Photograph(s) of the surface water diversion works and end use.

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: ☐ Waihee/6022 ☒ Waiehu/6023 ☐ Iao/6024 ☐ Waikapu/6001

4a. TMK OF STREAM DIVERSION LOCATION: 3 (Zone) - 2 (Sector) - 017 (Plat) : 018 (Parcel)

4b. TMK OF DITCH DIVERSION LOCATION: 3 (Zone) - 3 (Sector) - 002 (Plat) : 009 (Parcel)

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply.

☒ Pipe ☐ Pump ☒ Ditch/auwai ☐ Other Describe: See Attachment A

Is the diverted water returned to the stream or ditch? ☒ Yes. ☐ No. If yes, how much water is returned? See attachment A

6. FLOW MEASUREMENT INFORMATION:

Does the stream diversion have a flowmeter with totalizer or other device to measure diverted amounts?

☐ Yes. Enter the Installation date:

Describe the device and enter measured amounts in Table 1.

☒ No. Explain how you are measuring flow to justify amounts shown in Table 1 in the space below

See attachment A

EXISTING USER INFORMATION

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

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

8. END USER INFORMATION: Are you an end user on an existing water system? ☒ Yes ☐ No

If yes, who is the operator of the water system? No "operator"

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

☒ Yes. List the file reference name(s): Yasunobu Miyahira, my father

☐ No

10. STREAM DIVERSION WORKS PERMIT (SDWP):

Have you ever been issued a SDWP by the Commission?

☐ Yes. List the permit number(s):

☒ No

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

11. APPLICANT	12. SOURCE LANDOWNER
Signature: [signature]	Signature:
Print: LAWRENCE MIYAHIRA	Print:
Date: 4/19/09	Date:

FILE ID: SWUP. 2258.6
DOC ID: 3263v

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

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

MONTH / YEAR	AVERAGE DAILY USE FOR THE MONTH IN GALLONS PER DAY (GPD)	Check one item per box				OTHER Please describe
		METERED	ESTIMATED	ACTIVE BUT UNKNOWN	INACTIVE	
May 2007	154,020	☐	☒	☐	☐	
June 2007	154,020	☐	☒	☐	☐	
July 2007	154,020	☐	☒	☐	☐	
August 2007	154,020	☐	☒	☐	☐	
September 2007	154,020	☐	☒	☐	☐	
October 2007	154,020	☐	☒	☐	☐	
November 2007	154,020	☐	☒	☐	☐	
December 2007	154,020	☐	☒	☐	☐	
January 2008	154,020	☐	☒	☐	☐	
February 2008	154,020	☐	☒	☐	☐	
March 2008	154,020	☐	☒	☐	☐	
April 2008	154,020	☐	☒	☐	☐	
SUM OF AVERAGE DAILY USE FOR THE MONTH	1,848,240	GPD				
AVERAGE DAILY USE (Average of the above)	154,020	GPD				

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

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

LAND USE CONSISTENCY						EFFICIENCY OF USE			
1. PURPOSE / WATER USE CATEGORY	2. USE TMK ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE LAND USE DISTRICT	4. CDUP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SMAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)	8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE	10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 3.
Uses that require **potable** (drinking) water									
	___ - ___ - ___ : ___ Zone Sector Plat Parcel								
	___ - ___ - ___ : ___ Zone Sector Plat Parcel								
	___ - ___ - ___ : ___ Zone Sector Plat Parcel								
	___ - ___ - ___ : ___ Zone Sector Plat Parcel								
					TOTAL POTABLE USE	0	GPO		
Uses that **do not** require potable water									
DOM	3 - 3 - 002 : 009 Zone Sector Plat Parcel	Rural	No	RU-0.5	No	3,600	No	1.2	See attachment A
AGRCP	3 - 3 - 002 : 009 Zone Sector Plat Parcel	Rural	No	RU-0.5	No	150,000	No	0.5	See attachment A
DOM	3 - 3 - 002 : 021 Zone Sector Plat Parcel	Rural	No	RU-0.5	No	180	No	0.06	See attachment A
DOM	3 - 3 - 002 : 010 Zone Sector Plat Parcel	Rural	No	RU-0.5	No	240	No	0.08	See attachment A
					TOTAL NON-POTABLE USE	154,020	GPD		
					TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	154,020	GPD		

If total use requested is not equal to the total monthly average in Table 1, please explain.
N/A

In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above.
N/A

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

TABLE 3: IRRIGATION INFORMATION

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

1. USE TAX MAP KEY (TMK) Attach map outlining area and photo.	2. CROP	3. TOTAL ACREAGE	4. NET IRRIGATED ACREAGE	5. BEGIN ROWTH PERIOD (Month)	6. END GROWTH PERIOD (Month)	7. IRRIGATION SYSTEM (Refer to instructions.)	8. IRRIGATION PRACTICE (Refer to instructions.)
3 - 3 - 002 : 009 (Zone Sector Plat Parcel)	Taro	2.0	0.5	Year Round	Year Round	Flood (Taro)	Irrigate to Field Capacity
3 - 3 - 002 : 009 (Zone Sector Plat Parcel)	Div Ag	2.0	1.2	Year Round	Year Round	Other--Hand water with hose	Irrigate to Field Capacity
3 - 3 - 002 : 021 (Zone Sector Plat Parcel)	Div Ag	0.06	0.06	Year Round	Year Round	Other--Hand water with hose	Irrigate to Field Capacity
3 - 3 - 002 : 010 (Zone Sector Plat Parcel)	Div Ag	0.08	0.08	Year Round	Year Round	Other--Hand water with hose	Irrigate to Field Capacity
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							

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

TABLE 4: ALTERNATIVES ANALYSIS

	Potable Alternatives Attach additional sheets if necessary.	**Non-Potable Alternatives** Attach additional sheets if necessary.
Municipal sources	N/A	See 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	N/A

PUBLIC INTEREST

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

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

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

INSTRUCTIONS FOR FILLING OUT *FORM SWUPA-E*

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

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

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

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

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

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

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

LINE BY LINE INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

APPLICANT INFORMATION

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

EXISTING SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Check the appropriate box for the hydrologic unit name and hydrologic code where the source is located. The "source" is the stream, ditch, or conduit from which water is diverted to the user. For information on hydrologic unit names and unit codes please refer to the *Surface-Water Hydrologic Unit: A Management Tool for Instream Flow Standards* report available on the CWRM website at: http://www.hawaii.gov/dlnr/cwrm/, or contact CWRM staff at (808) 587-0234. You may also contact CWRM toll-free from Maui at: 984-2400, ext. 70234.

4a. TMK OF STREAM DIVERSION LOCATION: Fill in the current Tax Map Key (TMK) number of the parcel where the stream diversion is located if applicable. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/

4b. TMK OF DITCH DIVERSION LOCATION: Fill in the current Tax Map Key (TMK) number of the parcel where the ditch diversion is located, if applicable.

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check the appropriate box(es). Is the diverted water returned to the stream or ditch? Check "Yes" or "No." If yes, enter the amount of water returned.
6. FLOW MEASUREMENT INFORMATION: Check "Yes" or "No". If you have a working flowmeter with a totalizer, answer "Yes" to this question, and fill in the date that the flowmeter was installed and any other information you may have (manufacturer, serial number, etc.). A totalizer directly measures the total use for the source (similar to a car's odometer). Otherwise, answer "No" and explain how stream diversion is measured or estimated to justify amounts requested in Table 1

EXISTING USER INFORMATION

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

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

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

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

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

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

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

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

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY

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

AGRICULTURE	
AGRAQ	Aquatic Plants & Animals
AGRCP	Crops & Processing
AGRLI	Livestock & Processing, and Pasture
AGRON	Ornamental & Nursery Plants
AGROTH	Other
DOMESTIC	
DOM	Single & Multi Low-Rise & High-Rise Household
DOMN	Domestic (Non-residential)
DOMNCB	Commercial Businesses
DOMNRI	Religious Institutions
DOMNHOS	Hospitals
DOMNHOT	Hotels
DOMNOB	Office buildings
DOMNOTH	Domestic Non-Residential – Other
DOMNSC	Schools
INDUSTRIAL	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
IRRIGATION	
IRRGC	Golf Course
IRRHM	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
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 is applied. There should only be one parcel for each line. Also, attach a TMK map(s) for the lots showing the boundaries of irrigated acreage, etc., as well as a photograph of the area of use.
3. STATE LAND USE DISTRICT: To find out the current Land Use District, contact the Land Use Commission at 587-3822.
4. CDUP REQUIRED: If a Conservation District Use Permit (CDUP) is required, enter either: "Yes" and the date the CDUP was approved if you have a CDUP applicable to this project; or "Yes" and "not acquired" in this box. If a CDUP is not required, enter "N" for no in this box. To check if your parcel is in the Conservation District, contact the Land Use Commission at 587-3822. If your parcel is in a Conservation District, contact the Department of Land and Natural Resources Office of Conservation and Coastal Lands at 587-0328 to find out if a CDUP is required.
5. COUNTY ZONING CODE: To find out the Zoning Code for your property, call Maui County Planning Department at 270-6279, or 270-7253
6. SMAP REQUIRED: If a Special Management Area Permit (SMAP) is required for this project, enter either: "Y" and the date SMAP was approved; or "Y" and "not acquired" in this box. If a SMAP is not required, enter "N" for no in this box. To find out if your property is in a Special Management Area and requires an SMAP, call Maui County Planning Department at 270-8205.
7. QUANTITY OF USE: Enter the quantity of use in gallons per day (GPD). Justification for the quantities requested may depend on your answers to items 8 and 9, and you should describe the justification in item 10.
8. SUBMETERED? (Y/N): If the specific use is submetered, enter "Y" for yes here. If it is not submetered, enter "N" for no. Submetering is specific to each line item.
9. UNITS OR ACREAGE: This is the value and category as the basis for calculating the duty. "Duty" is the amount of water used or requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling units, or number of people, or animals. Examples to fill in for this category are: 400 dwelling units, 500 people, 3.74 acres.
10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7: Explain how you are justifying the amount you are requesting. Attach additional sheets if necessary.

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

TABLE 3: IRRIGATION INFORMATION

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

1. USE TAX MAP KEY (TMK): Enter the parcel number where the crop is being grown. Attach a map outlining irrigated area(s) and photos.
2. CROP: Enter the crop type.
3. TOTAL ACREAGE: Enter the total acreage of the parcel listed.
4. NET IRRIGATED ACREAGE: Enter the acreage for the specific crop grown.
5. BEGIN GROWTH PERIOD (MONTH): This is the month of the start of the growth cycle. For perennial crops, list the 12th month prior to the date of designation.
6. END GROWTH PERIOD (MONTH): This is the month of the end of the growth cycle. For perennial crops, list the month of the date of designation.
7. IRRIGATION SYSTEM: Enter one of the following:

   - TRICKLE, DRIP
   - TRICKLE, SPRAY
   - MULTIPLE SPRINKLERS
   - SPRINKLER, CONTAINER NURSERY
   - SPRINKLER, LARGE GUNS
   - SEEPAGE, SUBIRRIGATION
   - CROWN FLOOD
   - FLOOD (TARO)
   - OTHER – Please describe.

8. IRRIGATION PRACTICE: Enter one of the following:

   - IRRIGATE TO FIELD CAPACITY
   - APPLY A FIXED DEPTH PER IRRIGATION
   - DEFICIT IRRIGATION
   - OTHER – Please describe.

TABLE 4: ALTERNATIVES ANALYSIS

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

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

PUBLIC INTEREST

Explain how the uses in your application are consistent with the public interest as described in §174C-2(c): *(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.*

ATTACHMENT A

Exhibit 1A:
A copy of the 7.5 minute-series USGS topographic map with the South Waiehu Stream and our 'auwai diversion labeled.

Exhibits 2A and 2B:
A TMK map showing the location of our property as well as a close-up of the property showing the locations of our 'auwai diversion and area of proposed use.

Exhibits 3A and 3C:
True and correct copies of photographs of our 'auwai diversion and area of existing use, accurately depicting these conditions on April 30, 2008.

Exhibit 4A:
True and correct copies of documents establishing that our land was in kalo at the time of the Māhele, including Land Commission Award No. 2572 to Naheana.

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, Waiehu Aina, LLC claims to be the source landowner.

Supplemental Information for Box 5: Stream Diversion
We use water from the kuleana 'auwai in the lower reaches of South Waiehu, which runs along the 'Īao side of South Waiehu Stream. See USGS map, attached as Exhibit 1A. The water that is diverted from the stream continues makai in open ditches and pipes until it passes our property where we divert some water by pipe and ditch for our lo'i kalo and other crops. See Photo Exhibits 3A to 3C. After flowing through our lo'i and irrigating our non-commercial garden and yard, water flows back into the 'auwai and into neighboring properties before returning to South Waiehu Stream, above the confluence of North and South Waiehu. The amount of water returned to the stream varies, depending on weather conditions, the amount of water consumed by our crops, etc.

Supplemental Information for Box 6:
See explanation for Table 2 Box 10, below.

Supplemental Information for Box 7: Appurtenant Rights
Our property (TMK: 3-3-02-09) has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. In fact, the majority of the stream water we currently use is for ancient lo'i kalo that we have restored, although we also use water for non-commercial

gardening and our yard on the remainder of TMK: 3-3-02-09, and our two poalima (TMKs: 3-3-02-(21) and 10)). Attached hereto as Exhibit 4A are true and correct copies of Māhele records, including Land Commission Award No. 2572 to Naheana, which is now TMK: 3-3-02-09. Based on our knowledge of the history of this kuleana and our family, 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.

In 2000, when we purchased the two poalima from Wailuku Agribusiness, we believe that they reserved the appurtenant rights. As a result, it appears that the appurtenant rights for TMKs: 3-3-02-21 and 3-3-02-10 may be extinguished, although we reserve the right to claim appurtenant rights in the future based on further information.

Table 2, Box 10: Justification for Requested Quantity
TMK: 3-3-02-09 is 3.38 acres total, but is divided into lot A and lot B. As the owner of lot A (2.0 acres), I am submitting this application for an existing water use permit for lot A only.

We estimated our existing water use for wetland kalo cultivation by multiplying the amount of land we had in wetland kalo cultivation on April 30, 2008 (0.5 acres) by 300,000 gallons, the average amount of water we understand is required to grow healthy wetland kalo, for a total of 150,000 gallons per day.

We estimated our existing domestic water use, by multiplying the 2002 State of Hawai'i Water System Standard for Maui County of 3,000 gallons per acre by 1.34 acres for a total of 4,020 gallons per day. The 1.34 acres includes: (1) 1.2 acres on TMK 3-3-02-09, which is currently in diversified agriculture and a small lawn (note: this amount excludes the 0.5 acres we have in wetland kalo cultivation and the approximate square footage of my house); (2) 0.06 acres for our poalima on TMK 3-3-02-21, which we currently use for non-commercial gardening; and (3) the 0.08. acres for my poalima on TMK 3-3-02-10, which is also used for non-commercial gardening.

Together, we estimate our existing water use for our wetland taro and non-commercial gardening as 154,020 gallons per day.

Table 4: Alternatives Analysis
Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative source of water. Our appurtenant right is for stream water, not to water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law.

Moreover, even if we did not have protected rights to water from the South Waiehu Stream, there is no potentially available alternative source that is economically practicable. 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 use economically impossible. We would effectively be denied our appurtenant right to grow kalo on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected right.

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. As long as I can remember, we have always used the 'auwai water for our non-commercial gardening and traditional crops. Requiring us to pay for municipal water instead would impose an unfair and impracticable cost on this use.

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 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 the existing uses on our system, including our own uses. 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 existing water user with appurtenant rights engaged in 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 non-commercial gardening, we do not have the means to install and maintain such infrastructure.

Table 4: Public Interest

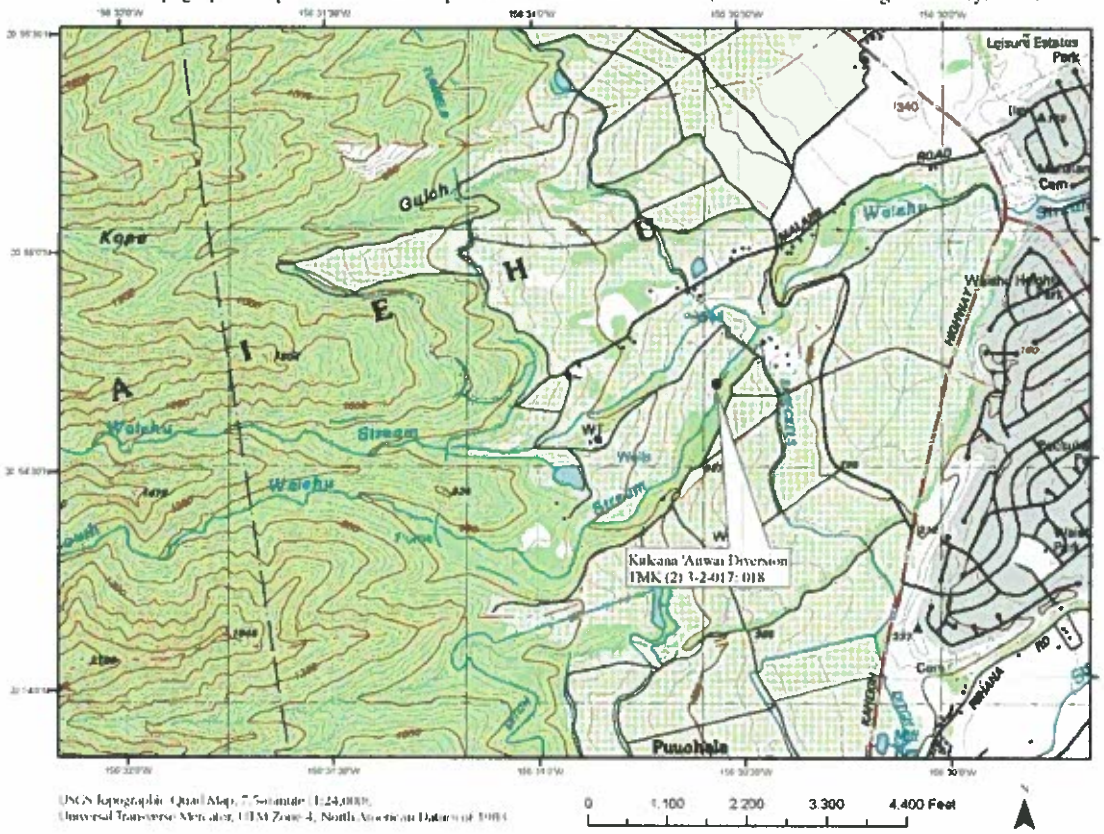
Our Existing Use is Consistent with the Public Interest
Our existing water use is predominantly for kalo cultivation. We grow kalo in traditional ways and use it for home consumption. HRS § 174C-2(c) provides that agriculture and the maintenance of proper ecological balance and scenic beauty are "in the public interest." We are engaged in traditional agricultural practices and our crops help maintain ecological balance and scenic beauty. As such, our existing use of stream water is consistent with the public interest.

Our Existing Use is a Protected Public Trust Purpose
The exercise of appurtenant rights is a protected public trust purpose. In re Waiāhole Ditch Combined Contested Case, 94 Haw. 97, 137 n.34, 9 P.3d 409, 449 n.34. In addition, much of the water we use is returned to South Waiehu Stream. In this way, our use also 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 Existing Use Supports Beneficial Instream Uses
Because we return much of the water we divert for kalo cultivation to South Waiehu Stream, our existing 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.

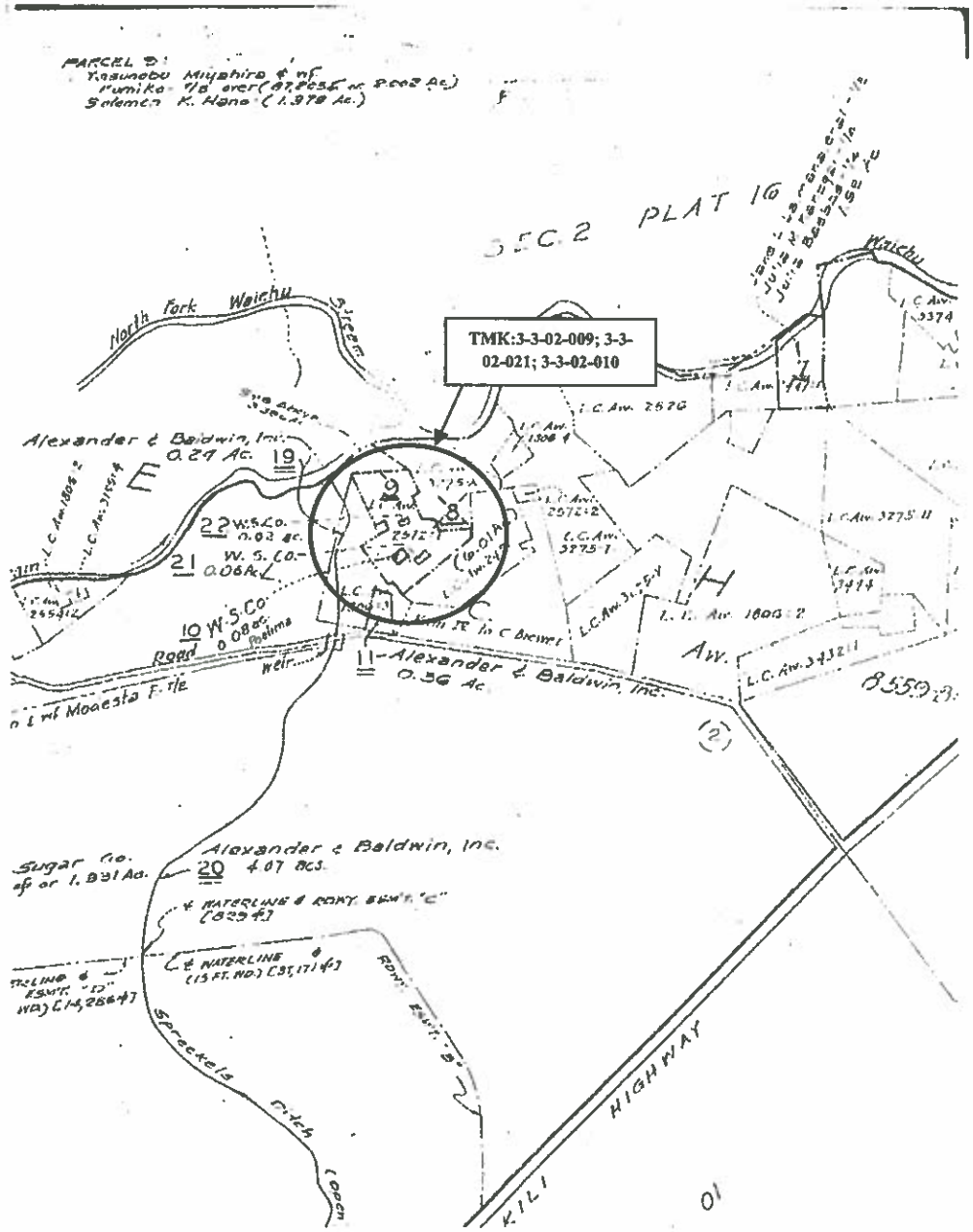
Our Existing Use is a "Reasonable-Beneficial Use"
"Reasonable-beneficial use" is defined as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and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

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



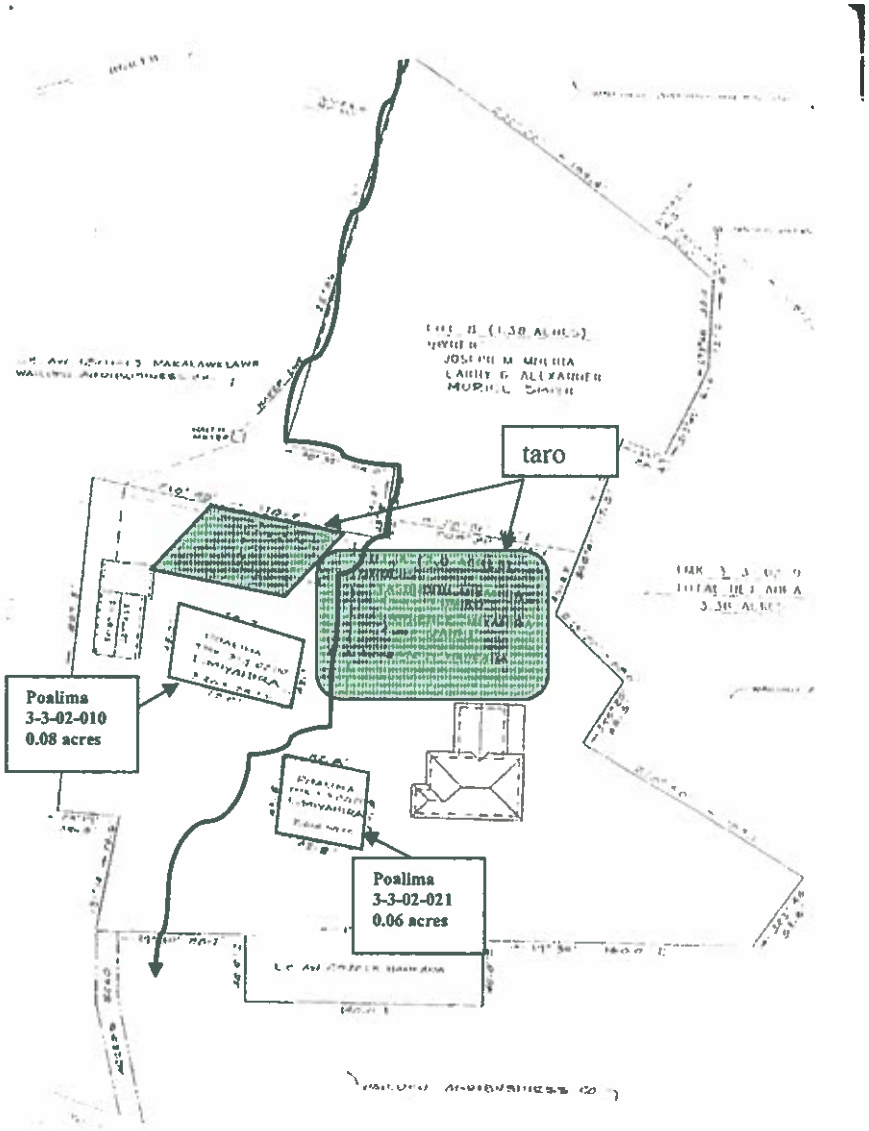
7.5 minute-series USGS Wailuku Quad topographic map with the South Waiehu Stream and our 'auwai diversion labeled.

EXHIBIT 1A



Map showing the locations of TMKs: 3-3-02-009; 3-3-02-021; 3-3-02-010

EXHIBIT 2A



Map showing the `auwai flowing through our property (TMK 3-3-02-009) as well as the location of our taro patches. With the exception of our house, the remainder of TMK 3-3-02-009 and our two poalima (TMKs 3-3-02-21 and 3-3-02-010) are used for noncommercial gardening and our yard. This drawing is approximate, and not to scale.

EXHIBIT 2B

Photo above: Intake from South Waiehu Stream for the Spreckels' Ditch and our `auwai

Photo below: Cement-lined `auwai from South Waiehu intake to TMK: 3-3-02-009

EXHIBIT 3A

Photo above: Intake for our property from the South Waiehu kuleana 'auwai

Photo below: Existing use (lo'i kalo) for TMK: 3-3-02-009

EXHIBIT 3B

Photo of existing lo'i kalo on TMK: 3-3-02-009

EXHIBIT 3C

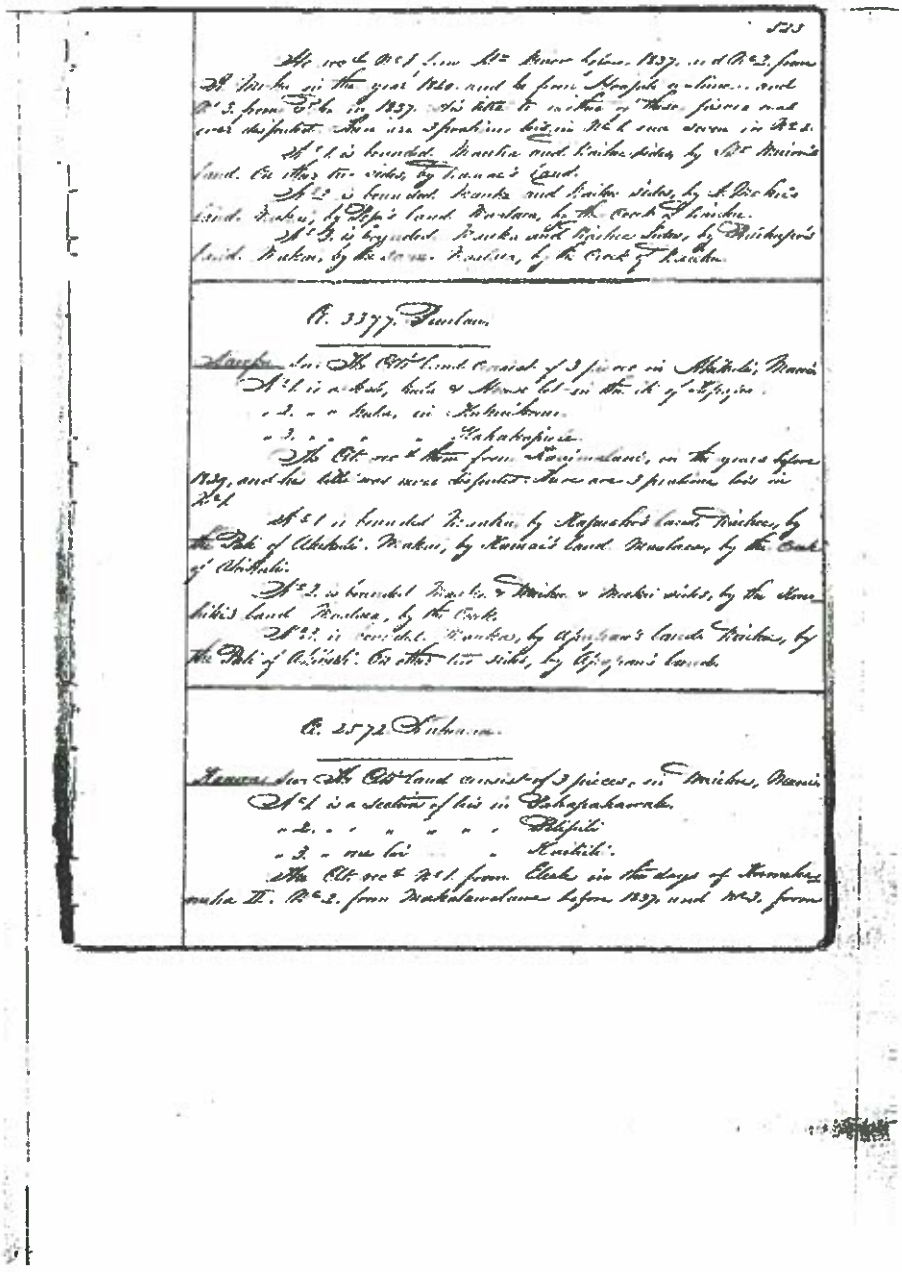


EXHIBIT 4A (1 of 7)

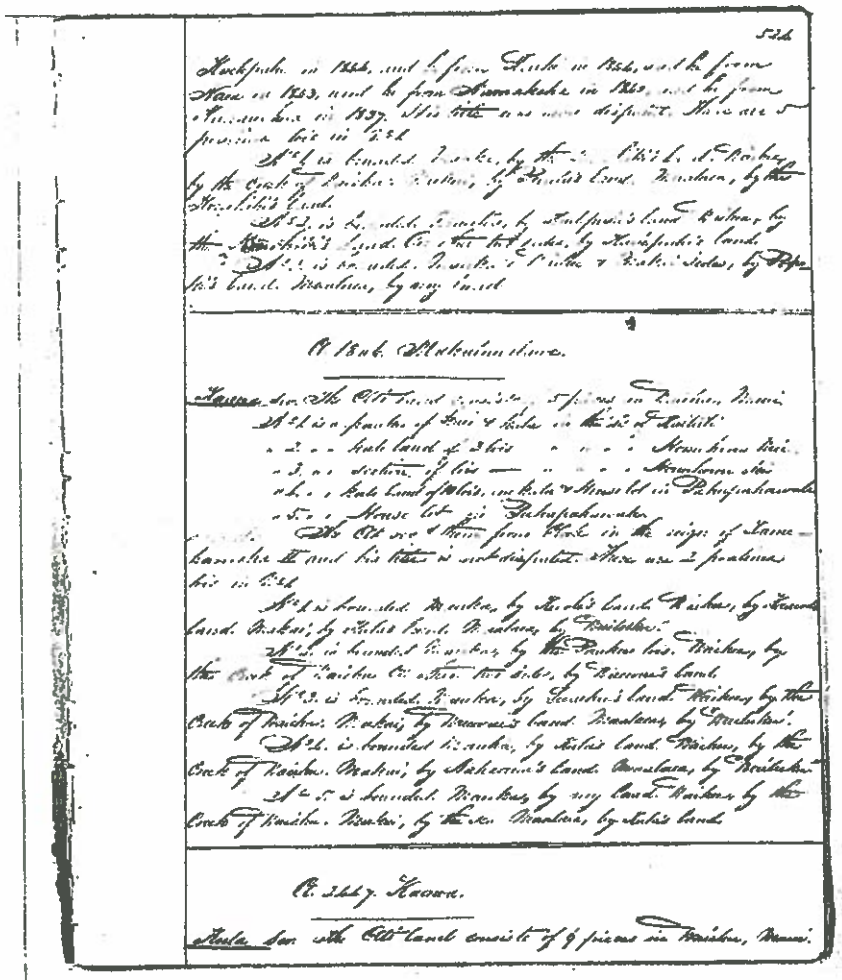
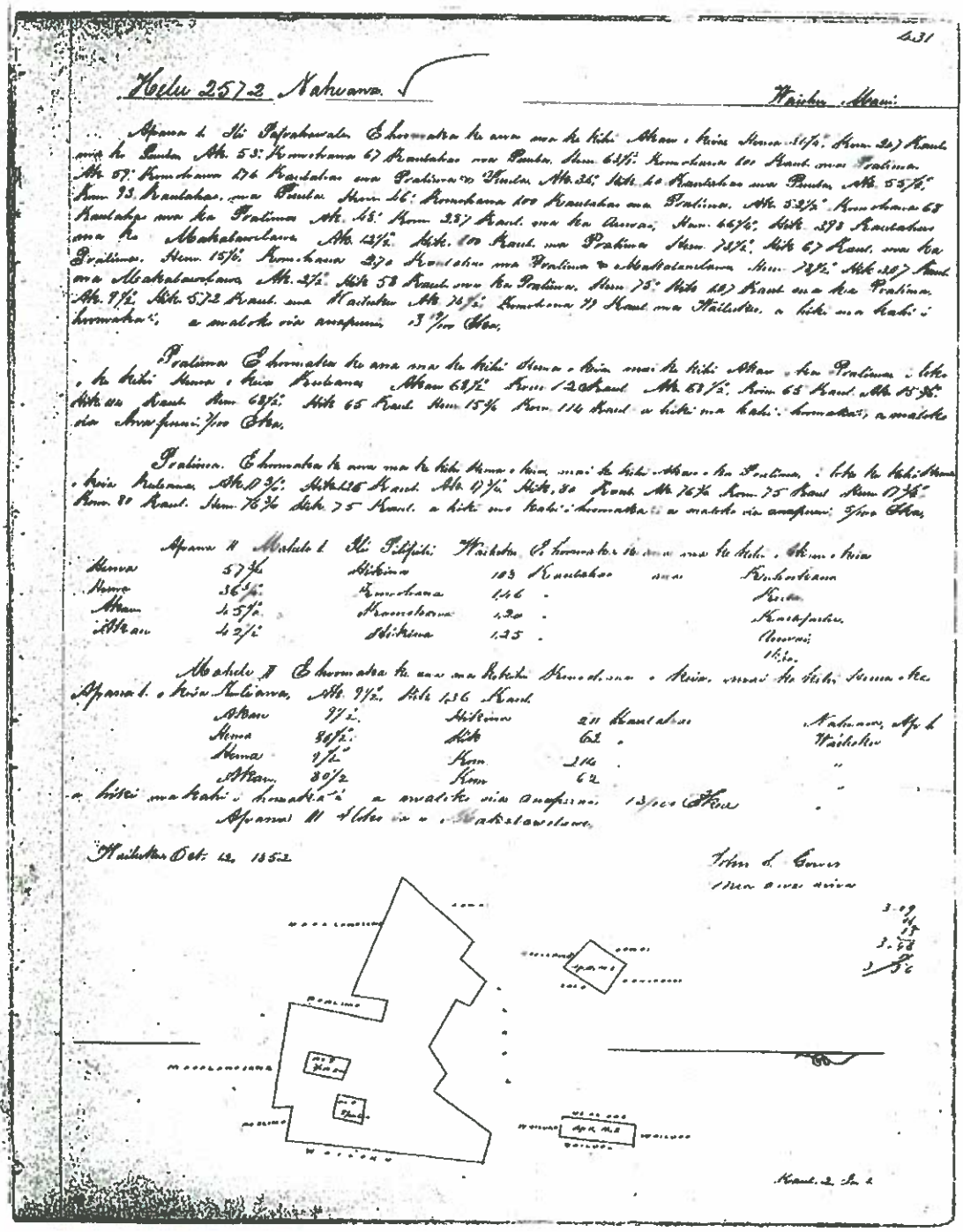


EXHIBIT 4A (2 of 7)



431

Helu 2572 Nahuawa

Waiehu Maui

Apana 1 Ki Papahawahi Ehumaka ka awa ma ka kihi Akau o kuia Hema 51¼ Kum 24 Kaul ma ka Puka Ak. 55 Kumokuna 67 Kaulahao ma Puka Hem 63½ Kumokuna 100 Kaul ma Pralima Ak 57 Kumokuna 176 Kaulahao ma Pralima o Puka Ak 35 Kihi 40 Kaulahao ma Puka Ak 55½ Hem 93 Kaulahao ma Puka Hem 56 Kumokuna 100 Kaulahao ma Pralima Ak 52½ Kumokuna 68 Kaulahao ma ka Pralima Ak 55 Kum 257 Kaul ma ka Auwai Hem 66½ Kihi 293 Kaulahao ma ka Makakaualana Ak 12½ Kihi 100 Kaul ma Pralima Hem 74½ Kihi 67 Kaul ma ka Pralima Hem 15½ Kumokuna 270 Kaulahao ma Pralima o Makakaualana Hem 78½ Kihi 207 Kaul ma ka Makakaualana Ak 27½ Kihi 58 Kaul ma ka Pralima Hem 75 Kihi 107 Kaul ma ka Pralima Ak 9½ Kihi 572 Kaul ma Waiehu Ak 76½ Kumokuna 79 Kaul ma Waiehu, a hiki ma kahi i hemaha, a malohi via anapuni 3 pio Aka.

Pralima Ehumaha ka ana ma ka kihi Hema o kuia mai ka kihi Akau o ka Pralima i loko o ka kihi Hema o kuia Kulana Akau 63½ Kum 120 Kaul Ak 53½ Kum 65 Kaul Ak 15½ Kihi 40 Kaul Hem 68½ Kihi 65 Kaul Hem 15½ Kum 114 Kaul a hiki ma kahi hemaha, a malohi via Anapuni 3 pio Aka.

Pralima Ehumaha ka ana ma ka kihi Hema o kuia mai ka kihi Akau o ka Pralima i loko ka kihi Hema o kuia Kulana Ak 10½ Kihi 125 Kaul Ak 11½ Kihi 30 Kaul Ak 76½ Kum 75 Kaul Hem 17½ Kum 80 Kaul Hem 76½ Kihi 75 Kaul a hiki ma kahi hemaha a malohi via anapuni 3 pio Aka.

Apana 11 Mahele 1 Ki Papipili Waiehu Ehumaha ka ana ma ka kihi o Akau o kuia

Hema	57½	Hikiana	103	Kaulahao ana	Kuhonkana
Hema	36½	Kumokuna	146	.	Kuia
Akau	45½	Kumokuna	120	.	Kaaapuhu
Akau	42½	Hikiana	135	.	Auwai
					1 pio

Mahele 7 Ehumaha ka ana ma ka kihi Hema o kuia mai ka kihi Hema o ka Apana 1 o kuia Kulana Ak 9½ Kihi 136 Kaul

Akau	97½	Hikiana	211 Kaulahao	Nahuawa, Apana 1
Hema	80½	Kihi	62 .	Waiehu
Hema	9½	Kum	214 .	"
Akau	80½	Kum	62	"

a hiki ma kahi hemaha a malohi via anapuni 13 pio Aka

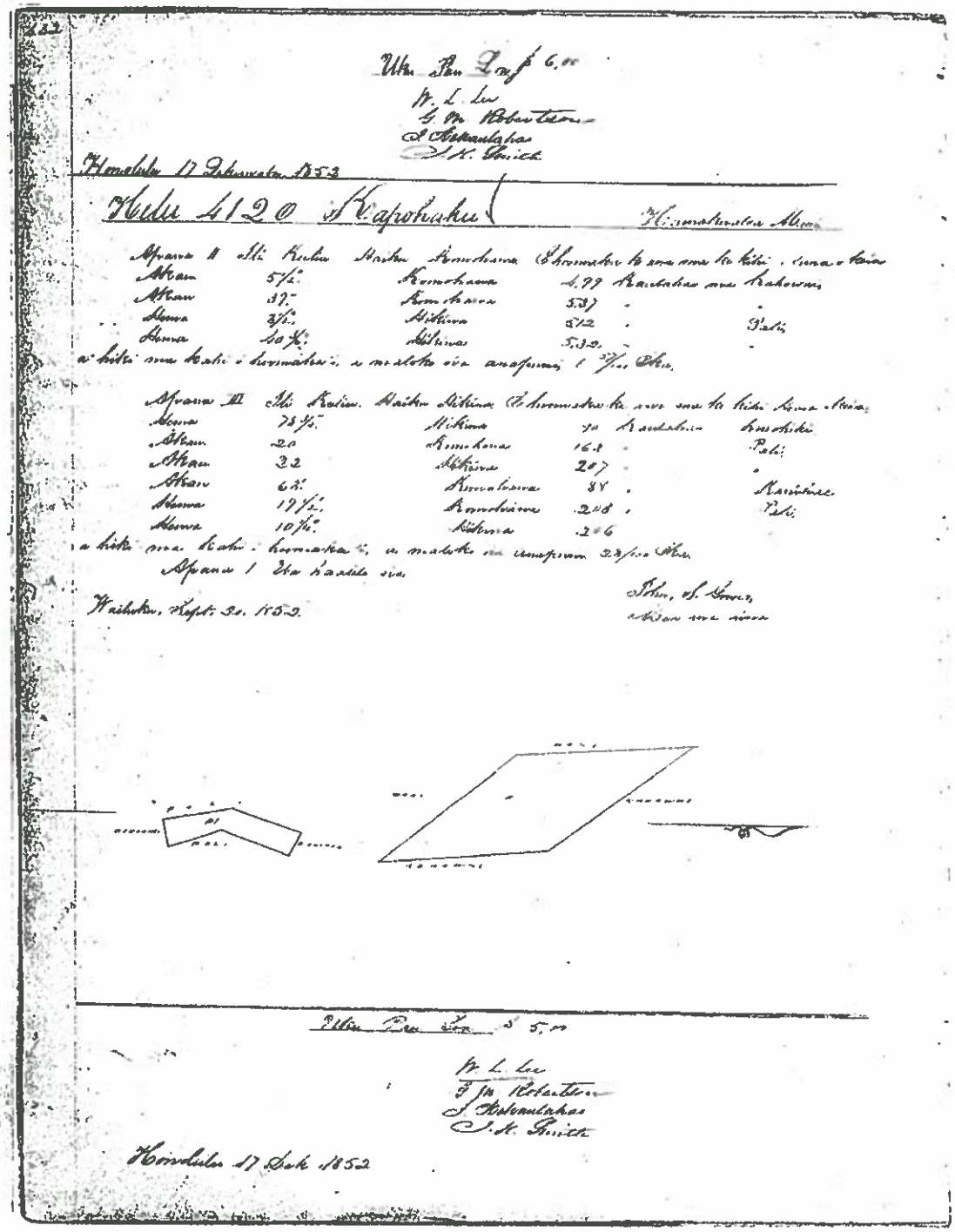
Apana 11 Ulehi ka a Makakaualana

Waiehu Oct 12 1882

John S. Green
Mea ana aina

Kaul 2 Ia 2

EXHIBIT 4A (3 of 7)



Uku Pau Dos $ 6.00

W. L. Lee
G. M. Robertson
J. Kekaulahas
J. H. Smith

Honolulu 17 Dekemaka 1852

Helu 4120 Kapohaku

Hamakualoa Mo

Apana II Ili Kuliu Haiku Komohana (Ehoomaka ke awa ma ke kihi, uma o kaia

Akau	5½	Komohana	4.99	Kaulahao ma kahowai	
Akau	37	Komohana	5.37	"	"
Hema	3½	Hikina	5.12	"	Pali
Hema	40½	Hikina	5.32	"	"

a hiki ma kahi i hoomaka ia, a maloko ia anapuni 1 57/100 Eka.

Apana III Ili Kuliu Haiku Hikina (Ehoomaka ke awa ma ke kihi Hema Akau

Hema	78½	Hikina	90	Kaulahao	Kuohiki
Akau	20	Komohana	163	"	Pali
Akau	22	Hikina	207	"	"
Akau	63	Komohana	88	"	Kauiwae
Hema	19½	Komohana	208	"	Pali
Hema	10½	Hikina	206		

a hiki ma kahi i hoomaka ia, a maloko ia anapuni 28/100 Eka.

Apana I Ua haalele ia.

Waikuku, Sept. 20. 1852.

John, S. Gower,
Aiwa ma aiwa

Uku Pau Dos $ 5.00

W. L. Lee
G. M. Robertson
J. Kekaulahas
J. H. Smith

Honolulu 17 Dek 1852

EXHIBIT 4A (4 of 7)

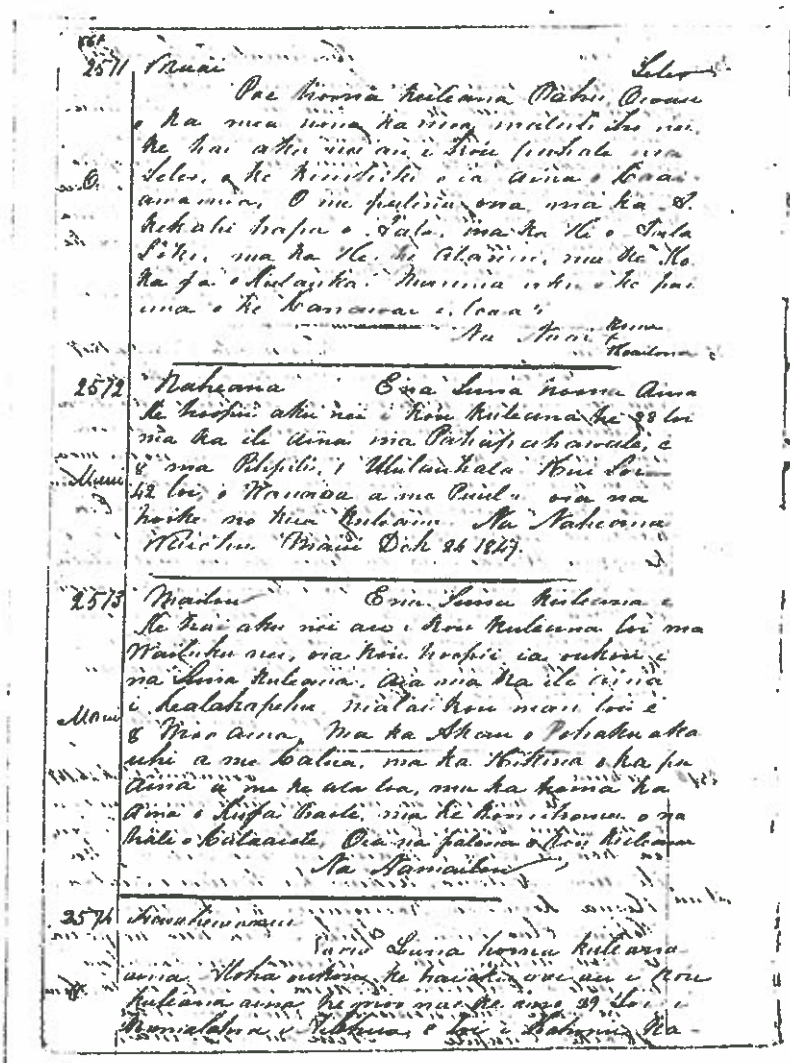


EXHIBIT 4A (5 of 7)

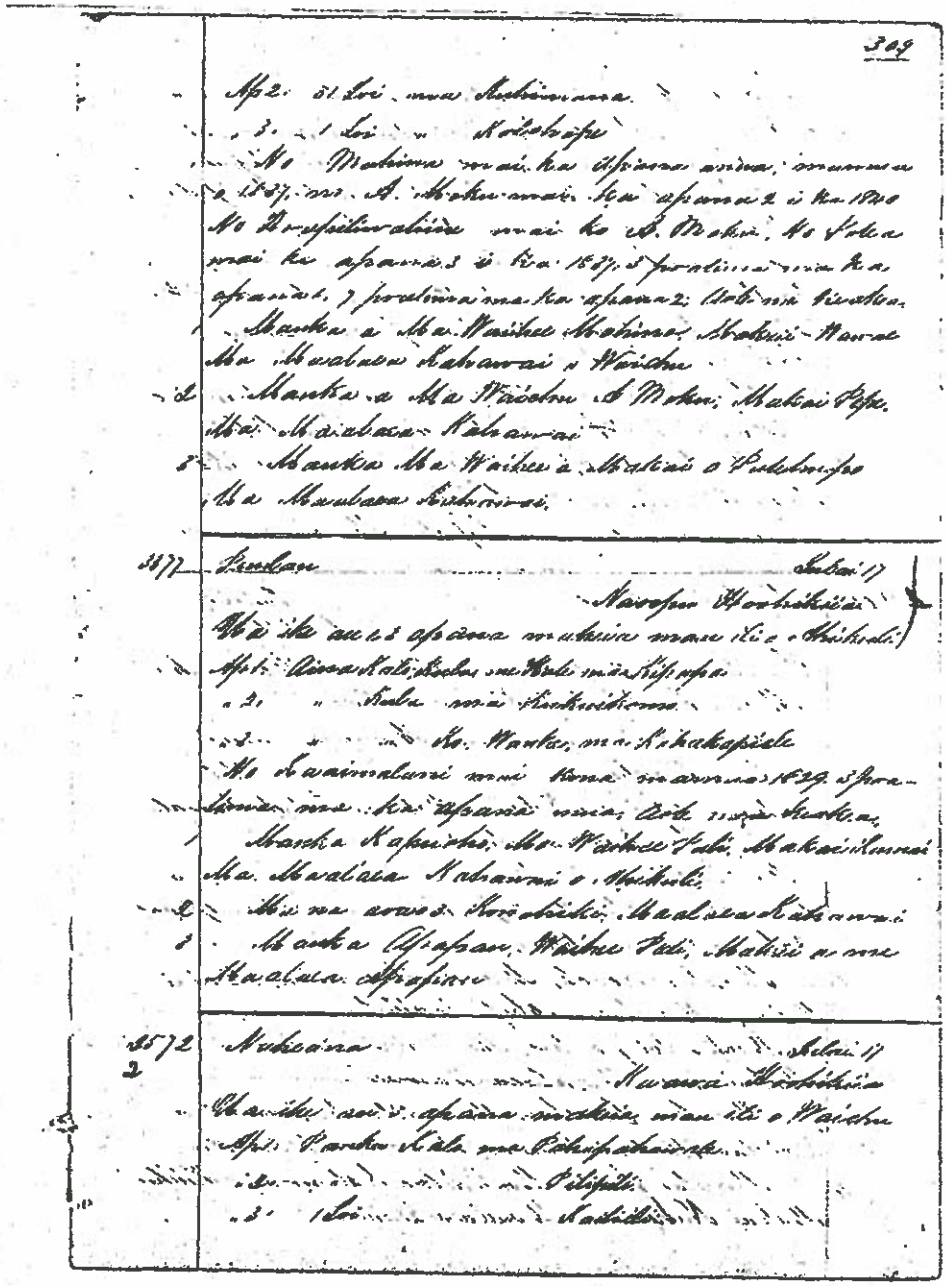


EXHIBIT 4A (6 of 7)

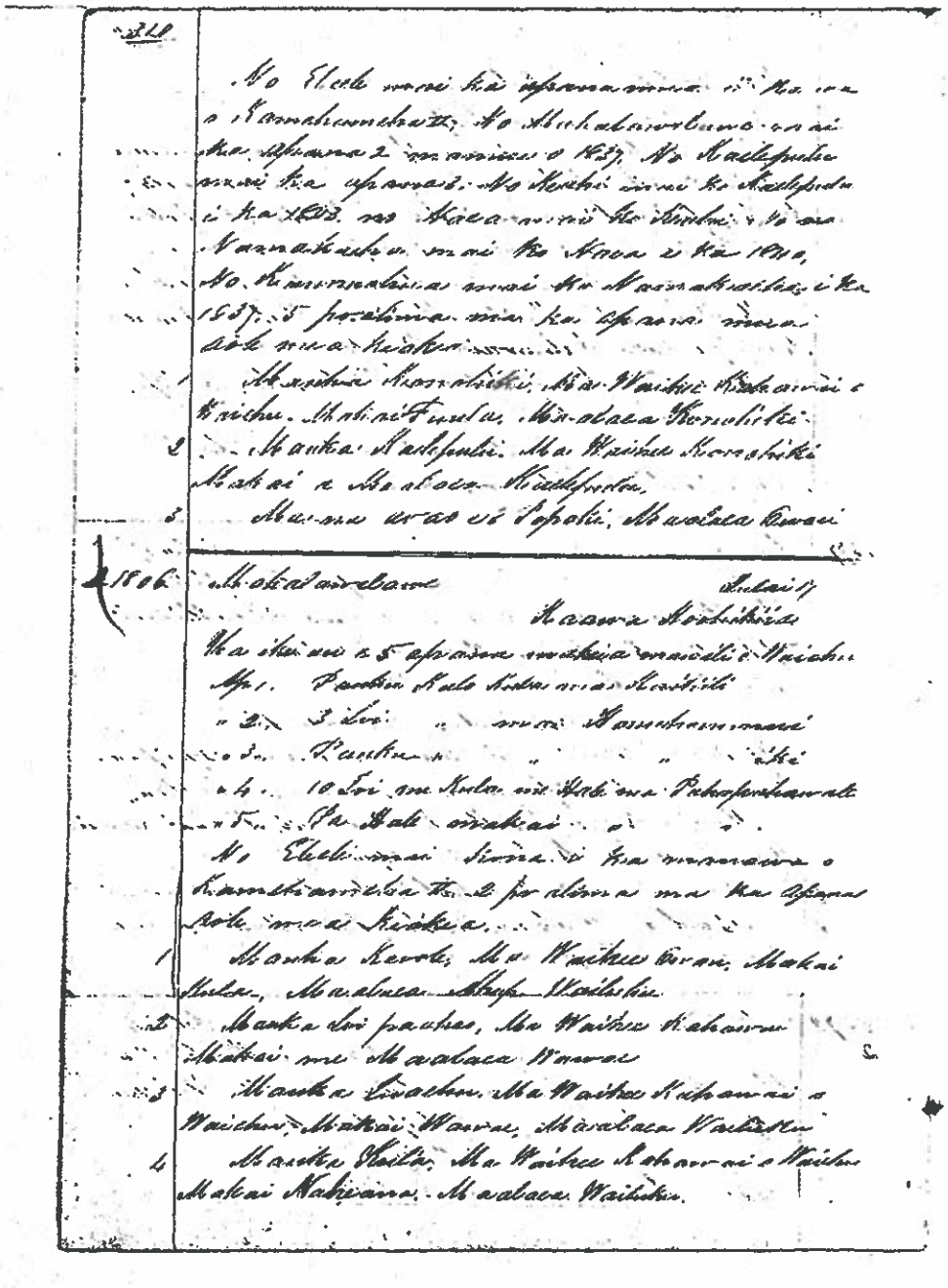
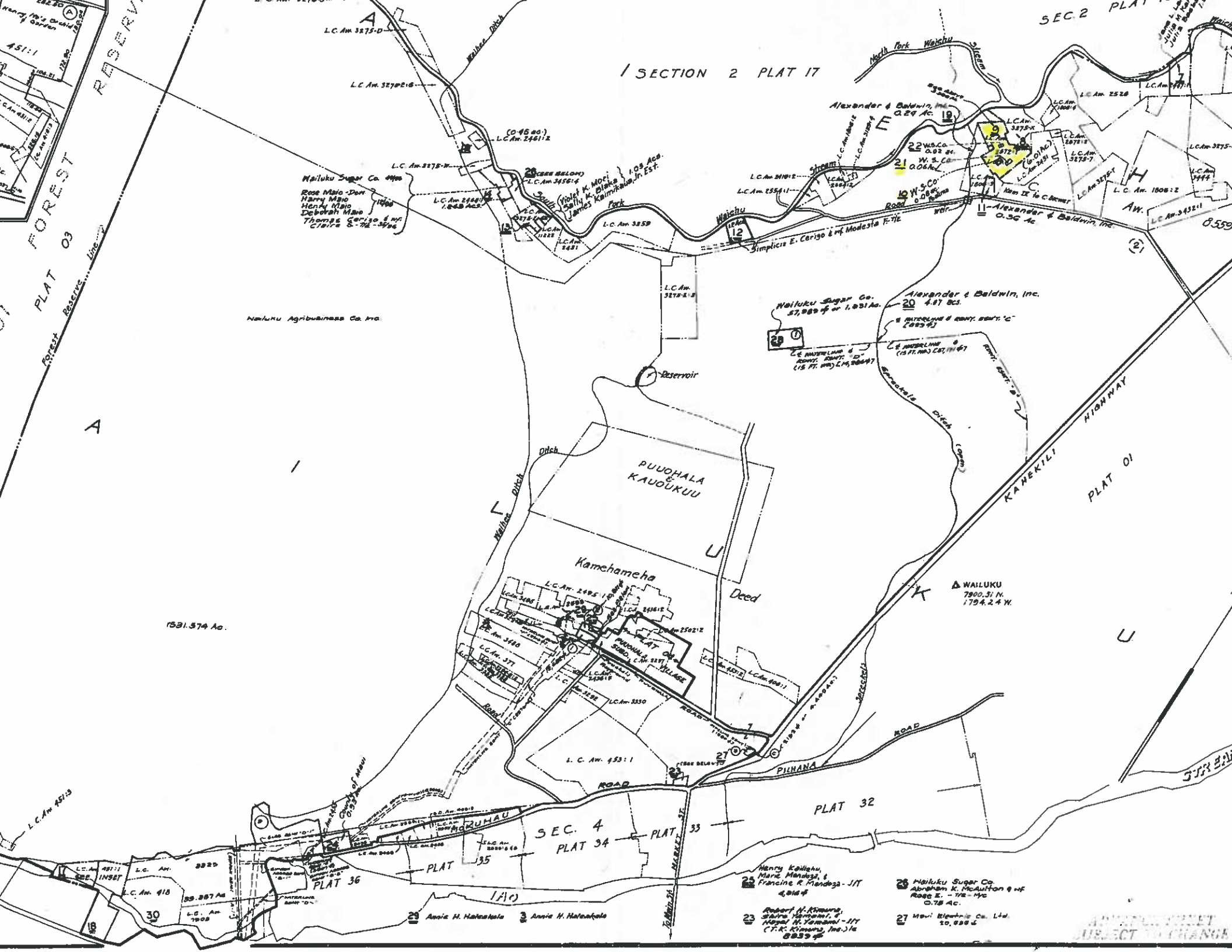
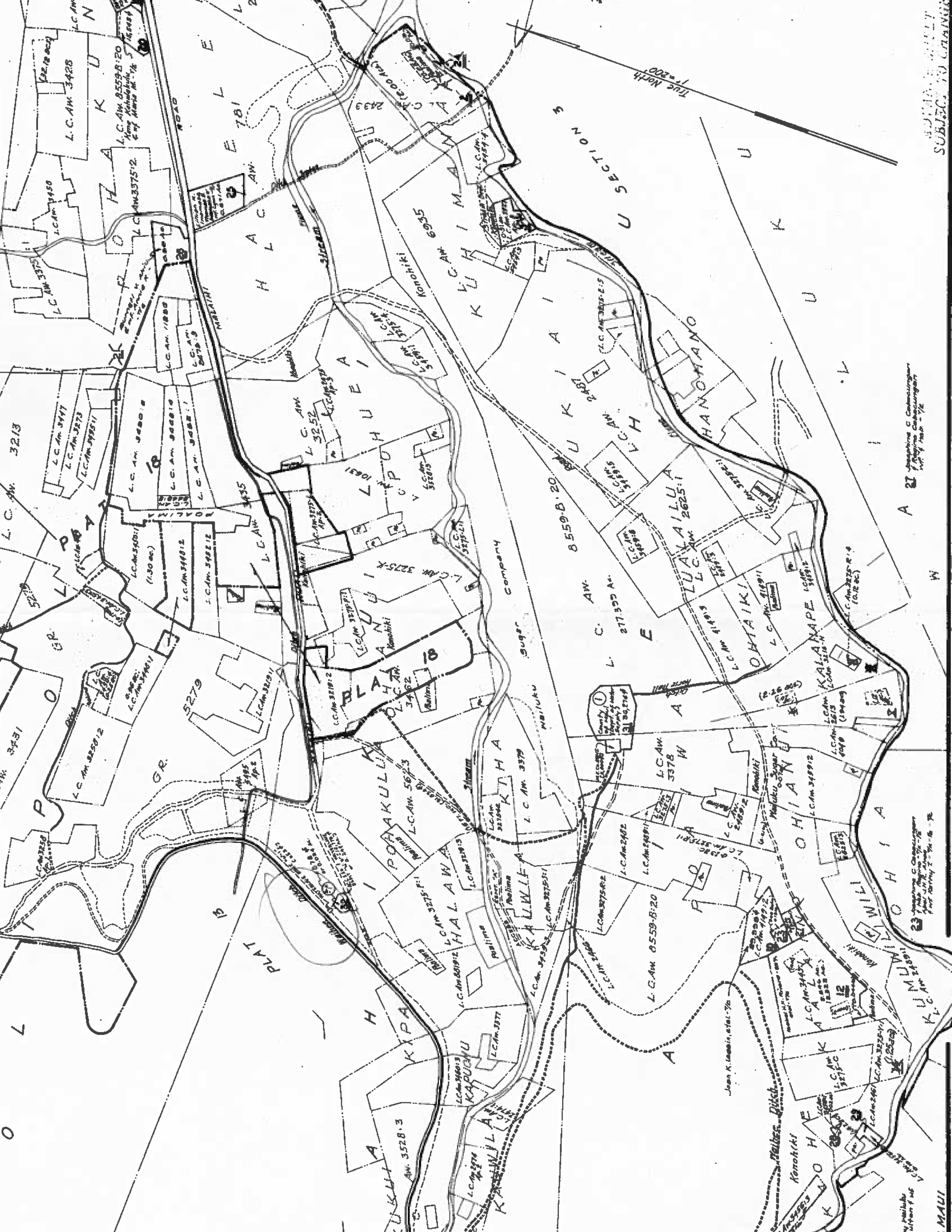


EXHIBIT 4A (7 of 7)



SECTION 2 PLAT 17
SEC. 2
PLAT 03
FOREST RESERVE
Forest Reserve Line
Wailuku Agribusiness Co. Inc.
Wailuku Sugar Co.
Rose Maio-Dow
Harry Maio
Henry Maio
Deborah Maio
Thomas Cerizo & wf.
Violet K. Mori
Sally K. Blaka
James Kaimikaua, Jr. Est.
Alexander & Baldwin, Inc.
Simplicia E. Cerizo & wf. Modesta F. T/E
Reservoir
PUUOHALA & KAUOUKUU
Kamehameha
Deed
Waihee Ditch
Spreckels Ditch
KAHEKILI HIGHWAY
PLAT 01
WAILUKU
7900.31 N.
1794.24 W.
1531.574 Ac.
L. C. Aw. 453:1
PILHANA ROAD
MOKUHAU ROAD
SEC. 4
PLAT 34
PLAT 33
PLAT 32
PLAT 35
PLAT 36
Henry Kailiehu, Marie Mendoza, & Francine R. Mendoza - J/T
Robert N. Kimura, Shiro Yamami, & Hazel H. Yamami - J/T (T.K. Kimura, Inc.) Ic
Wailuku Sugar Co.
Abraham K. McAulton & wf
Rose E. - T/E - M/C
0.78 Ac.
Maui Electric Co. Ltd.
Annie H. Haleakala


True North
1" = 200'
SECTION 3
L.C. Aw. 3428
L.C. Aw. 8559-B:20
L.C. Aw. 3375:2
L.C. Aw. 3450
Konohiki 6935
L.C. Aw. 3252
L.C. Aw. 3275-K
L.C. Aw. 3213
L.C. Aw. 3447
L.C. Aw. 3273
PLAT 18
POALIMA
L.C. Aw. 3258:2
5279
3431
PLAT 13
L.C. Aw. 5623
L.C. Aw. 3462
L.C. Aw. 3378
L.C. Aw. 2402
L.C. Aw. 3379
8559-B:20
277.399 Ac.
L.C. Aw. 2625:1
L.C. Aw. 2481
L.C. Aw. 2613
L.C. Aw. 3528:3
L.C. Aw. 8559-B:20
Sugar Company
Wailuku Sugar Co.
Konohiki
Paalima
KAPUOHU
HALAWA
MAUI
SUBJECT TO CHANGE