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:

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COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 23 PM 4:49

Event ID: SWUP.2278.6 SWUP NO. 63

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
NOEL & KATHERINE TEXEIRA	Kathy Texeira	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
2239 Kahekili Hwy. 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]					

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) - 014 (Plat) : 001 (Parcel)

4b. TMK OF DITCH DIVERSION LOCATION: 3 (Zone) - 2 (Sector) - 007 (Plat) : 010 (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 addendum section titled "Box 5"

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

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 addendum section titled "Table 2, Box 10"

EXISTING USER INFORMATION

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

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

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

If yes, who is the operator of the water system? Wailuku Water Company

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): Texeira NS

☐ 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
Katherine M. Texeira Signature	Signature
Katherine M. Texeira 4/19/09 Print Date	Print Date

FILE ID: SWUP.2278.6
DOC ID: 3203

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	990	☐	☒	☐	☐	
June 2007	990	☐	☒	☐	☐	
July 2007	990	☐	☒	☐	☐	
August 2007	990	☐	☒	☐	☐	
September 2007	990	☐	☒	☐	☐	
October 2007	990	☐	☒	☐	☐	
November 2007	990	☐	☒	☐	☐	
December 2007	990	☐	☒	☐	☐	
January 2008	990	☐	☒	☐	☐	
February 2008	990	☐	☒	☐	☐	
March 2008	990	☐	☒	☐	☐	
April 2008	990	☐	☒	☐	☐	
SUM OF AVERAGE DAILY USE FOR THE MONTH	11880	GPD				
AVERAGE DAILY USE (Average of the above)	990	GPD				

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

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

LAND USE CONSISTENCY						EFFICIENCY OF USE			
1. PURPOSE / WATER USE CATEGORY	2. USE TMK ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE LAND USE DISTRICT	4. CDUP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SMAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)	8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE	10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 3.
Uses that require **potable** (drinking) water									
	___ - ___ - ___ : ___ (Zone Sector Plat Parcel)								
	___ - ___ - ___ : ___ (Zone Sector Plat Parcel)								
	___ - ___ - ___ : ___ (Zone Sector Plat Parcel)								
	___ - ___ - ___ : ___ (Zone Sector Plat Parcel)								
					TOTAL POTABLE USE	0	GPD		
Uses that **do not** require potable water									
DOM	3 - 2 - 007 : 010 (Zone Sector Plat Parcel)	AG	No	AG	No	990	No	.33 acres	See addendum section titled "Table 2, Box 10"
	___ - ___ - ___ : ___ (Zone Sector Plat Parcel)								
	___ - ___ - ___ : ___ (Zone Sector Plat Parcel)								
	___ - ___ - ___ : ___ (Zone Sector Plat Parcel)								
					TOTAL NON-POTABLE USE	990	GPD		
					TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	990	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 - 2 - 007 : 010 (Zone - Sector - Plat : Parcel)	Diversified Agriculture	.83	.33	Year Round	Year Round	Multiple Sprinklers; Other (simple hose)	Field Capacity
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							

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 addendum section titled "Table 4: Alternatives Analysis"
Wastewater reuse	N/A	See addendum section titled "Table 4: Alternatives Analysis"
Ditch system	N/A	See addendum section titled "Table 4: Alternatives Analysis"
Desalinization	N/A	See addendum section titled "Table 4: Alternatives Analysis"
Ground water	N/A	See addendum section titled "Table 4: Alternatives Analysis"
Other (specify)	N/A	See addendum section titled "Table 4: Alternatives Analysis"

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 af 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 addendum section titled "Table 4: Public Interest"

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 abtoin maximum beneficial use of the waters of the State for purposes such as domestic uses, oquaculture 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 balonce and scenic beauty, and the preservation ond enhancement of waters af the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

Addendum

Exhibits:

Appended hereto as Exhibit 1 is a copy of the 7.5 minute-series USGS topographic map with Waihe'e River and the stream diversions labeled. Exhibit 2 is a TMK map showing the location of our property, the location of the 'auwai diversion, and the area of our existing end uses. Exhibits 3a and 3b contain copies of photographs of the area of our existing use and `auwai. Exhibit 4 is described below.

Box 2: Source Landowner

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

Box 5: Stream Diversion

We are kuleana users along the kuleana `auwai that runs to the south of Waihe`e River. Water is diverted from Waihe`e River at the Waihe`e and Spreckels diversions (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 South Waihe`e kuleana `auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open `auwai on the south side of Waihe`e River. The water continues makai in the ditch and pipes until it passes adjacent to our property where we divert some water via a pump and pipe for our domestic purposes.

Box 7: Appurtenant Rights

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. There are three poalima on our land, and attached hereto as Exhibit 4 are true and correct copies of Māhele records for Land Commission Award No. 4389-B, Royal Patent No. 5404, and Land Commission Award No. 10550, Royal Patent No. 5329, including the testimony in support of the claims indicating the land was in kalo. This land has been in our family for several generations and we have no evidence, indication, or any other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

Table 2, Box 10: Justification for Requested Quantity

We estimated our existing domestic water use of 990 gallons per day, including our use of water for watering our yard and plants, by multiplying the 2002 State of Hawai`i Water System Standard of 3,000 gallons per acre by the amount of land on which we use kuleana water, or 0.33 acres (the total acreage of our land minus the footprint of our house and driveway

and the area on which we intend to grow grass for our goats, see concurrently filed SWUPA-N). Even though we are a small domestic user, we still are seeking a water use permit.

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 stream water, there is no potentially available alternative source that is economically practicable. We would effectively be denied our appurtenant right. 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. As long as I can remember, we have always used the `auwai water for our non-commercial gardening. 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, 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 to which we have an appurtenant right. 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 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 would be 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. 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 domestic uses, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." We are engaged in domestic, 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. The exercise of appurtenant rights is also a protected public trust purpose. Waiāhole I, 94 Haw. at 137 n.34, 9 P.3d at 449 n.34.

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 pumps and hoses to water our plants and only use the water we need. Therefore, the water we use is a "reasonable-beneficial use."

Exhibit 1: USGS Map of Waihe'e River, Waihe'e and Spreckels Diversions.

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

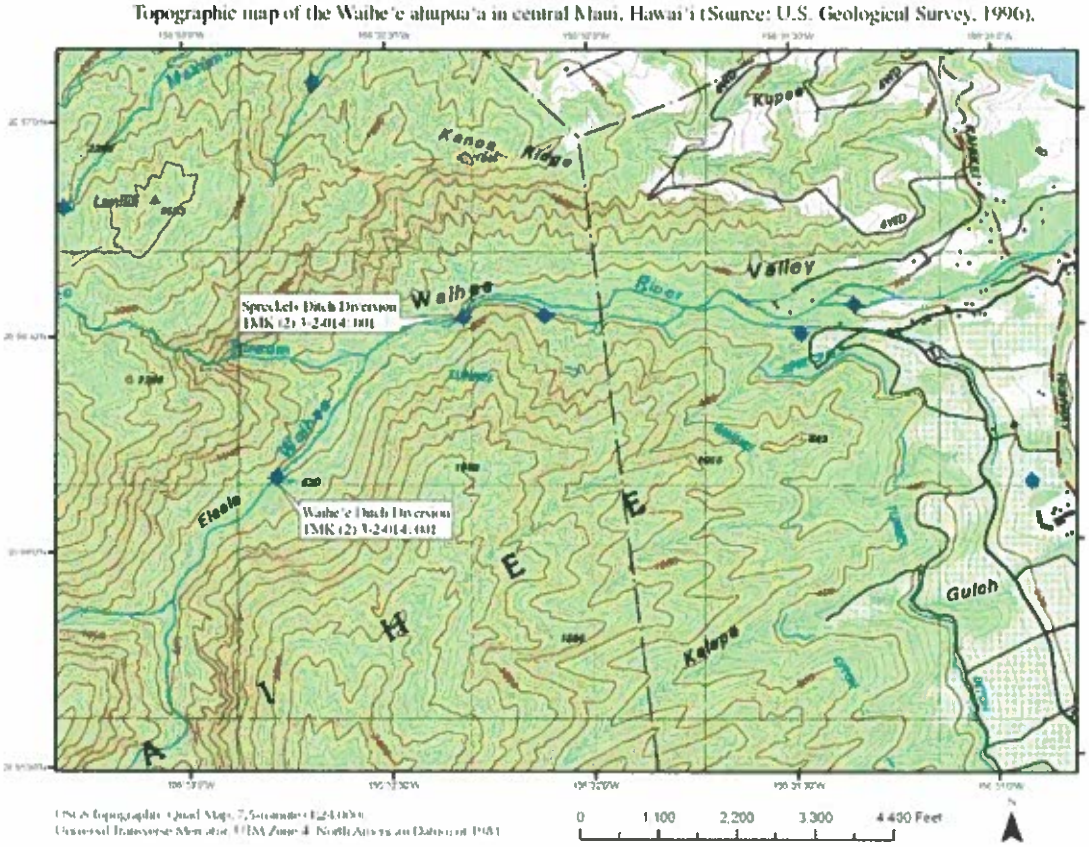


Exhibit 2: TMK map depicting the area of existing use shaded in grey and the `auwai drawn in with arrows depicting the flow of the `auwai. We currently use a pump to bring kuleana water to our land near the uppermost arrow.

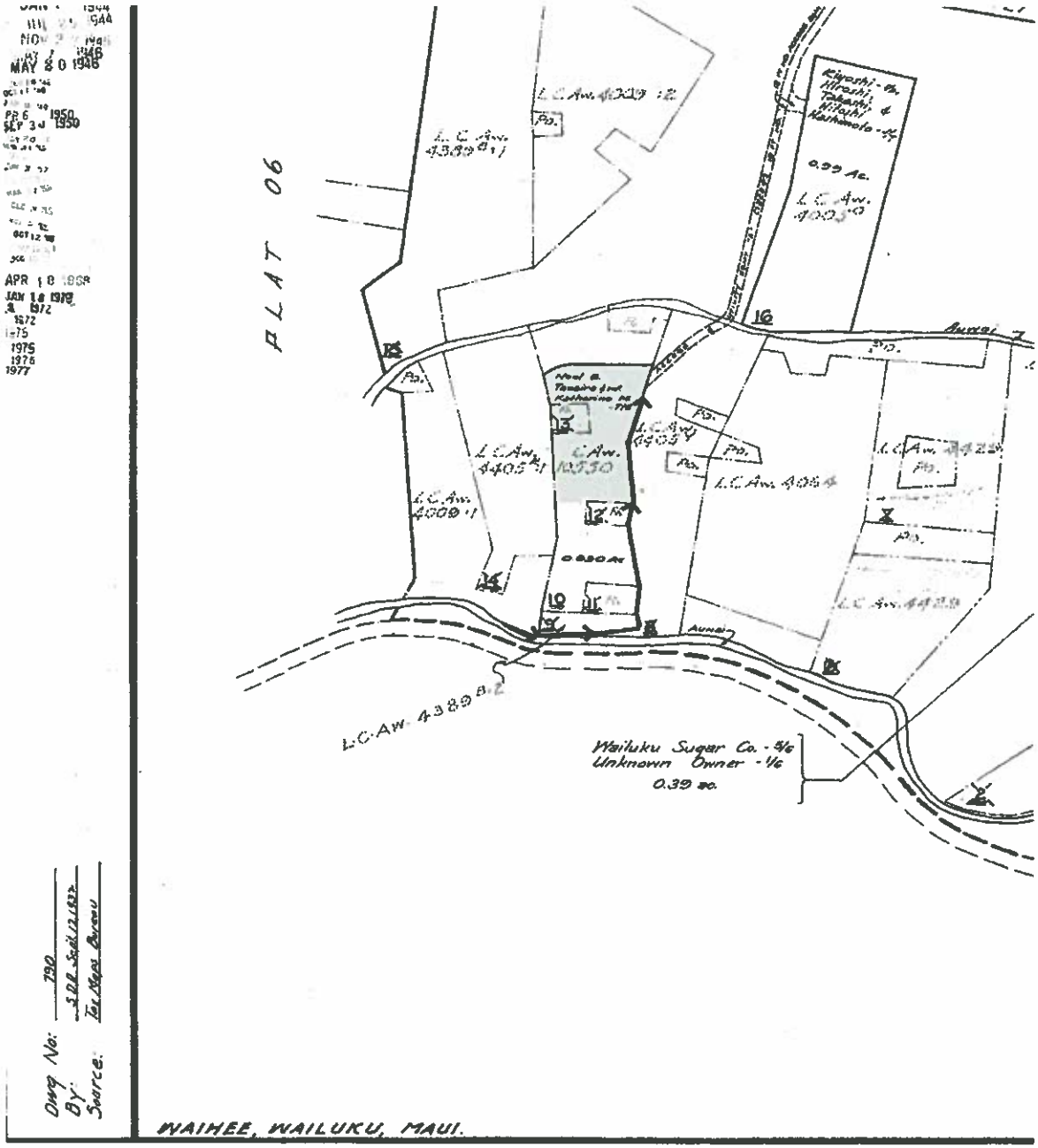
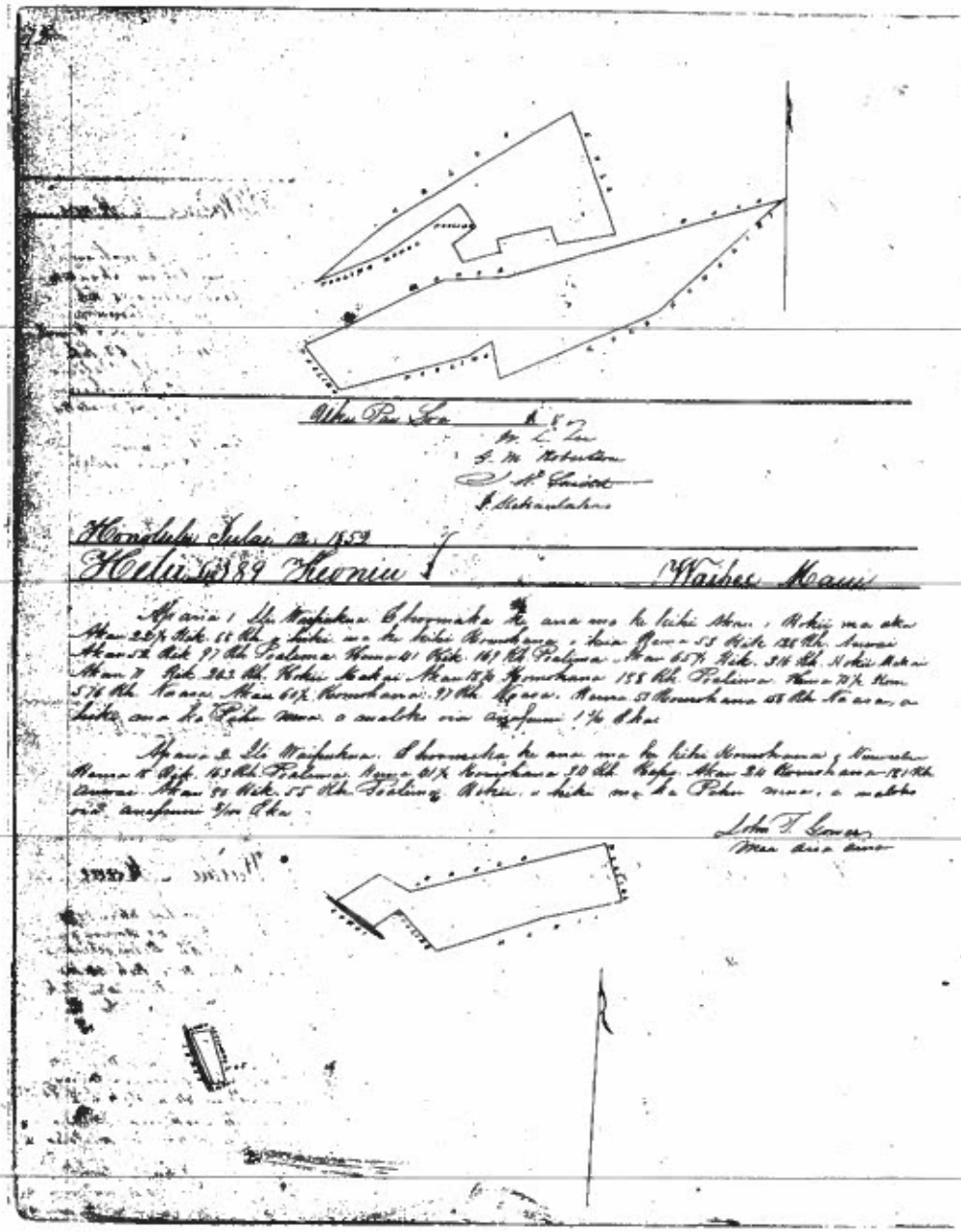
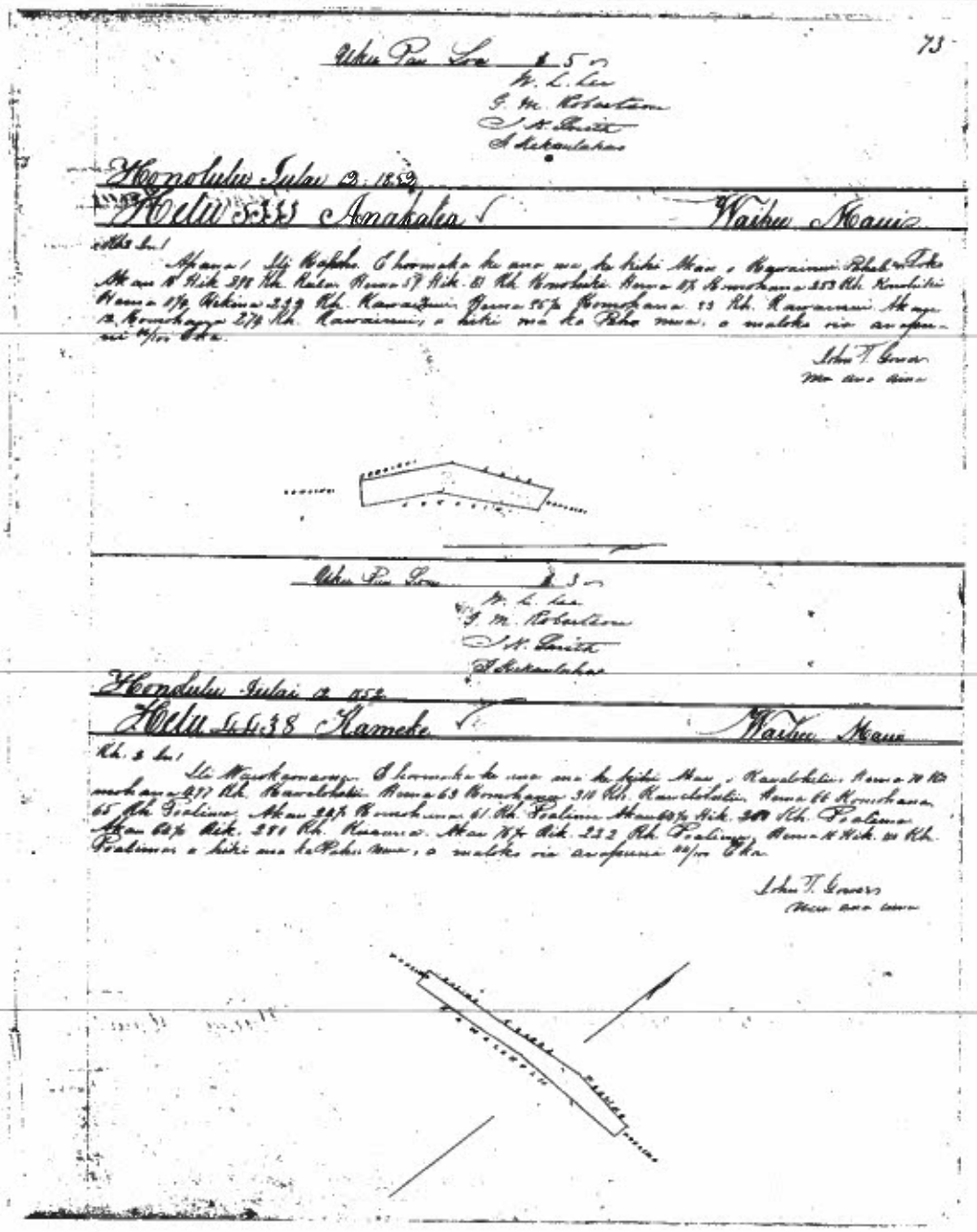


Exhibit 3a: Photographs of end uses. Attached are true and correct copies of photos taken on or about October 26, 2008, depicting some of our end uses, including heliconia, ti leaf, and a portion of our yard (top photo) and plumeria (bottom photo).

Exhibit 3b: Photograph of end uses. Attached is a true and correct copy of a photo taken on or about October 26, 2008, depicting some of our end uses, including ti leaf, and a portion of the `auwai as it travels adjacent to our land.

Exhibit 4: Attached are Māhele Documents that establish our property's appurtenant rights.





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HELU 5404

PALAPALA SILA NUI.

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

NO KA MEA, Ua hoohalo na Luna Hoona i na kuna kuleana aina i ka olelo, ho kuleana oiaio ko Kuleana Helu ..... 4389 B
ma ke **Ano Aloalo** Hoko o kahi i olelola malalo.

Nolaila, ma keia Palapala Sila Nui, ke hoike aku nei o Kamehameha IV. ke Alii nui o ke Akua i kona inkomaikai i hoonoho ai maluna o ko Hawaii Pae Aina, i na kanaka a pau, i keia la mana iho, a no kona mau hope alii, ua haawii aku oia ma ke **Ano Aloalo** ia i kela wahi a pau loa ma ~~ka mokupuni o~~ ponai ~~ea moluna,~~

Apana 1. Ili Waipuhia
Kuemaka ma ka Kihi Mua. Kooko Manka Ak. 32½ Hik.
83 Kaul hik. Aina o Kair

Kuina	53°	Hik	1.28 Kaul	ma	ka	Auwai
Mai	52	"	97	"	"	Pohaku
Kuina	40°	"	1.69	"	"	"
Mai	65½	"	3.16	"	"	Kooko Manka
Mai	70°	"	2.43	"	"	"
Mai	18½	Aina	1.88	"	"	Pohaku
Kuina	70½	"	5.70	"	"	Ch. Nanon
Mai	60½	"	97	"	"	"
Kuina	55°	"	1.56	"	"	" " ma ka Pohaku kua

Hik 1.30 Ka

Apana 2 — Kuemaka ma ka Kihi Aina o Niniwaha

Kuina	18°	Hik	1.63 Kaul	ma	ka	Pohaku
Kuina	42½	Aina	54 "	"	ka	Kapa
Mai	24°	"	1.81 "	"	ka	Auwai
Mai	20°	Hik	55 "	"	"	Pohaku Kooko

ma ka Pohaku kua Ka Pae Ka

Maloko o [illegible] apana — 1.38 — Eke
a oi iki aku, a emi iki mai puha. Ua koe nae i ka supuni na mine minerela a me na metela e pau.
No [illegible]
ua aina la i haawiia me ka **Ano Aladio** a no kona mau hooilina, a me kona waihona; ua pili one
ka suhau a ka Poe Ahaolelo a kau like ai me na aina alodiosi-kela manawe i keia manawa.
A I MEA E IKEA AI, ua kae wan i ko'u inoa, a me ka Sila Nui a ko Hawaii Pae
Aina ma Honolulu i keia la 27
Augate 18 63
[illegible]
[illegible]
[illegible]

167

Kakeniu 4389 B. Waihu Jan. 3 1848

M Aloha maikai lea oukou e ka poe Kanohano na Luna Hoona Kuleana aina o ko Kawaii Pae aina. Ke hai aku nei au i kou Kuleana aina, aia ma ka aina ma Waipuka 48 loi, ma ka moo hookahi 12, he 36 loi me na moo 3 o Eleeliko mai ka mea nona mai kou wahi loi. Loaa mai i keia manawa, aia kou mau loi ma ka Hikina. Ke ola nui no kou mau hoike.

Na Kakeniu.

Pahoa 4389 C. Eia keia mea hai aku

M i ke Kuleana o Pahoa. Aloha maikai oukou na Luna Hoona Kuleana. Ke hai aku aku nei au i kou Kuleana loi, aia ma ka aina o Waiaolohe. No Punui mai kou, a no Kaauwai mai ko Punui aina

Nau na Pahoa

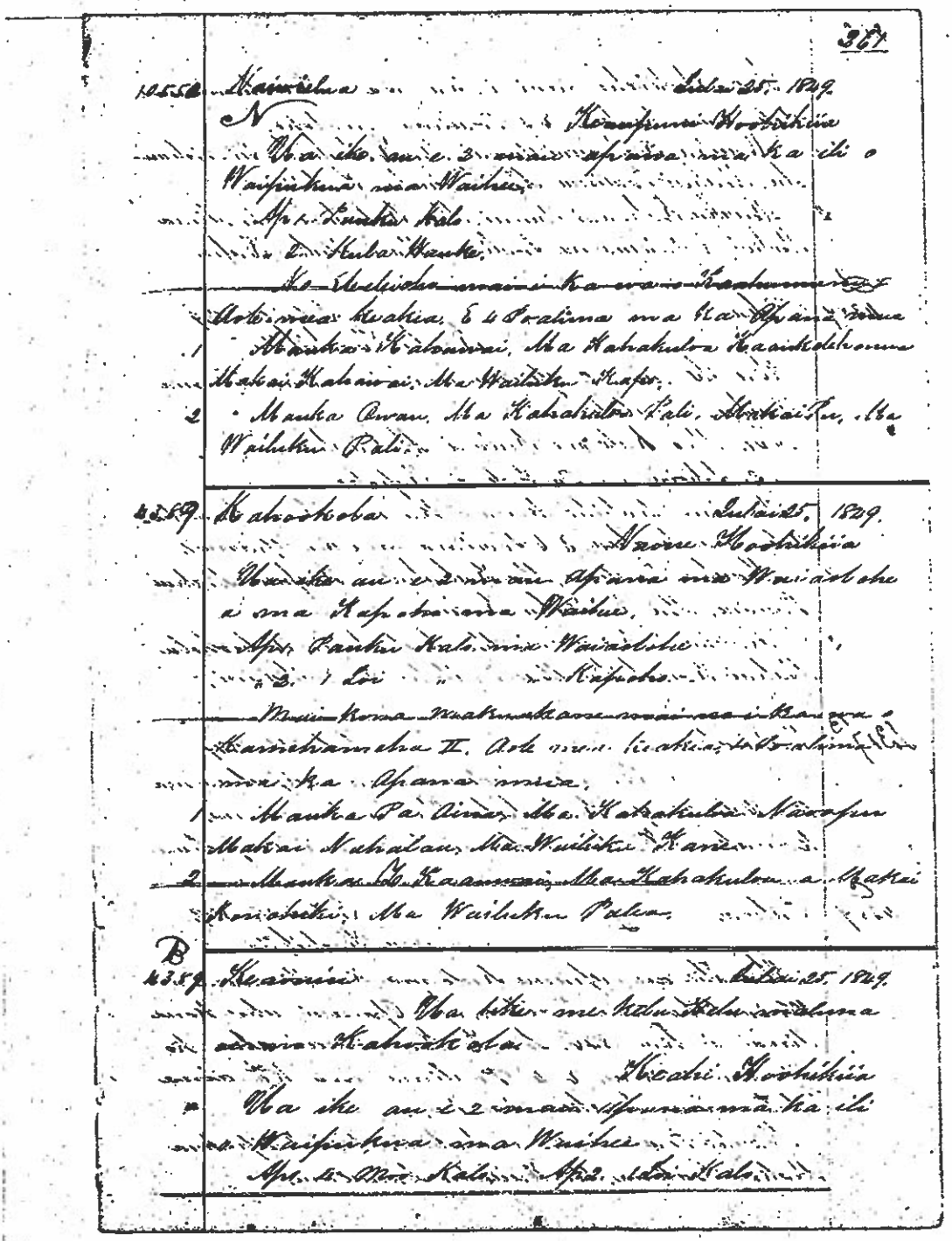
Palea 4389 D Aloha maikai oukou e na Luna Hoona Kuleana. Owau o Palea Ke hai aku nei au i kou Kuleana aina, aia ma ka aina o Makaaka, oia kou moo aina, mai ka moo aina e pili ana i ke Kahawai, a i ka punone iloko, oia moo aina 36 loi, he kula waiho wale ke Kahi

Na Palea

4389 E Wahalea Aloha oukou na Luna Hoona Kuleana. Ke hai aku nei au i kou

M. Kuleana, Owau o Wahalea, he mau loi 14, aia ma ka aina o Waipukua. No Kapo kou, a no Kahuna ko Kapo, aia kou mau loi ma ka Akau

Na Wahalea

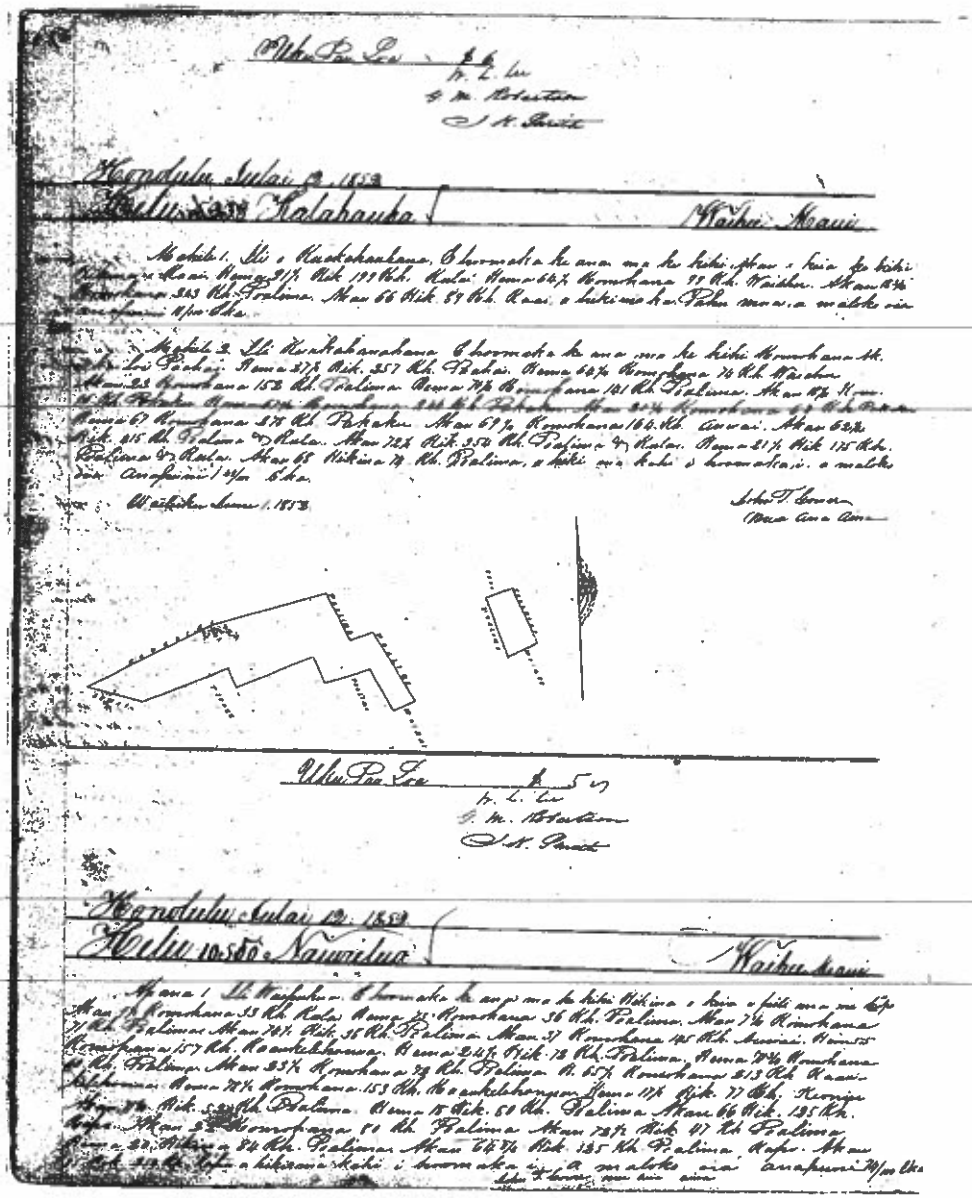


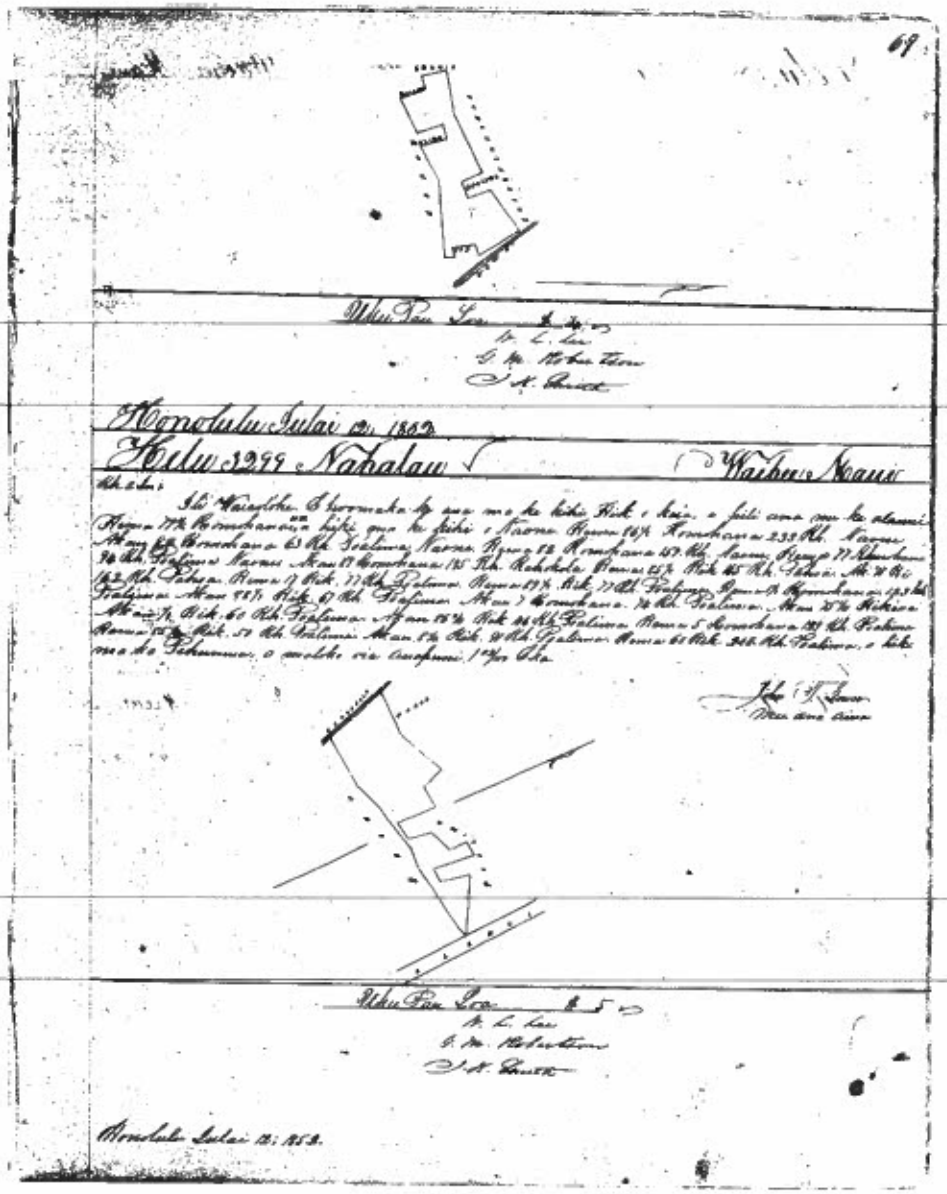
367

10550 Naiwiehua Julai 25. 1849.
N Keaupuni Hoohikiia
Ua ike au e 3 mau apana ma ka ili o Waipukua ma Waihee.
Ap. 1 Pauku Kalo
2 Kuba Wauke.
~~Ko Meleioha mai i ka wa o Kaahumanu~~
Aole mea keakea, E 4 Poalima ma ka Apana mua
1 Mauka Kahauwai, Ma Kahakuloa Kaaukolehonua Makai Kahawai, Ma Wailuku Kapo.
2 Mauka Owau, Ma Kahakuloa Pali, Makai Pu, Ma Wailuku Pali.

4389 Kahookoba Julai 25. 1849.
Naone Hoohikiia
Ua ike au e 2 mau Apana ma Waiaolohe a ma Kapoho ma Waihee.
Ap. 1 Pauku Kalo ma Waiaolohe
2. 1 Loi " " Kapoho.
~~Mai kona wakuakane mai no i ka wa o~~ Kamehameha II. Aole mea keakea, 4 Poalima ma ka Apana mua.
1 Mauka Pa Aina, Ma Kahakuloa Naoopu Makai Nahalau, Ma Wailuku Kane.
2 Mauka Ka Kaauwai, Ma Kahakuloa a Makai Konohiki, Ma Wailuku Palea.

B
4389 Keaouiu Julai 25. 1849.
Ua like me kelu Kelu maluna aenu Kahookoba
Keahi Hoohikiia
Ua ike au e 2 mau Apana ma ka ili o Waipukua ma Waihee
Ap. 1 Mo Kalo Ap. 2. 1 Loi Kalo





HELU.....5229

PALAPALA SILA NUI.

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

NO KA MEA, Ua hoohalo na Luna Hoona ; na kumu kuleana eiea i ka olelo, he kuleana oiaio ko Naiwiehua me ke **Ano Aloalo** iloko o kahi i oleloia mahalo. Kuleana Helu..... 10500 (Error – fifth 10500 correct number – See award book 7. Page 65.)

Nolaila, ma keia Palapala Sila Nui, ke hoike aku oei o Kamehameha IV, ke'Alii nui o ke Aina i kona lokomaikai i hoonoho ai maluna o ko Hawaii Pae Aina, i na kanaka a pau, i kela la nona iho, e so kona mau hope alii, ua haawi aku oia ma ke **Ano Aloalo** ia Naiwiehua i kela wahi e pau loa me Waihee ma ka makaainana o Maui penei na makana,

M. Waihuka

	Poomaka	ma	Ke	Kihi	Kik. e hili me	Kapo.
Mau	9½	Aina	0.	33	Waul	ma Ke Kala
Hana	73	"	—	36	"	" Poalima
Mau	7¼	"	—	71	"	" " "
"	74½	Kik.	—	38	"	" " "
"	37	Aina	1.	45	"	" Kauai
Hana	55	"	1.	57	"	" Haanelehonua
"	24½	Kik.	—	72	"	" Poalima
"	71¼	Aina	—	60	"	" "
Mau	23½	"	—	72	"	" "
Hana	65½	"	2.	13	"	" Haanelehonua
"	78½	"	1.	53	"	" "
"	17½	Kik.	—	77	"	" Hemiu
Mau	71¼	"	—	52	"	" Poalima
Hana	18	"	—	80	"	" "
Mau	66	"	1.	25	"	" Kapo
"	22	Aina	—	80	"	" Poalima
"	72½	Kik.	—	47	"	" "
Hana	20	"	—	84	"	" "
Mau	64½	"	1.	25	"	" Kapo
"	85	"	2.	54	"	" "

Ke 74/100 Ea

Maloko o Keia apana 74/100 Eha
e oi iki aku, a emi iki mai paha. Ua koe nae i ke aupuni na mine minerele a me na metele a pau.
No Naiwielua
ua aina la i haawiia ma ke **Ano Aledio** a no kona mau booline, a me kona waikona; na pili nae
ka auhau a ka Poe Ahaolelo e kau like ai ma na aina aledio i keia manawa i keia manawa.
A I MEA E IKEA AI, ua kau wau i ke'a inoa, a me ka Siia Nui o ko Hawaii Pae
Aina ma Honolulu i keia la
o Marati 19 68 19

Kamehameha

Kaahumanu

L. Kamehameha

10532 Naslulo

Auhea oukou e na Luna Hoona kuleana aina, kuleana pahale, kuleana loi, kuleana Moo aina, kuleana kula, Eia kou mau loi 5. eia kou mau Moo 4. Owau no me ka Mahalo a me ke aloha

Na Naslulo

10534 Nailiili Lahaina 3 Feb 1848

Aloha oukou na Luna Hoona kuleaana uma. Ke hoopii aku nei au i kou mau kuleana pahale loi ma Puako, elima loi, eono Moo ma Puako,

Aia kekahi ma Kapili, eha loi. Eia ke ano. Na makahiki $350 oia kou mau kuleana malalo. Kaua

Na Nailiili

10550 Naiwielua Waihee 23 Jan 1847

Auhea oukou na Luna Hoona kuleana, na makaainaana a me ke Aupuni, aia mai kou mau loi he 36 me kahi kula, a huipu 37. Aloha oukou me ka Mahalo

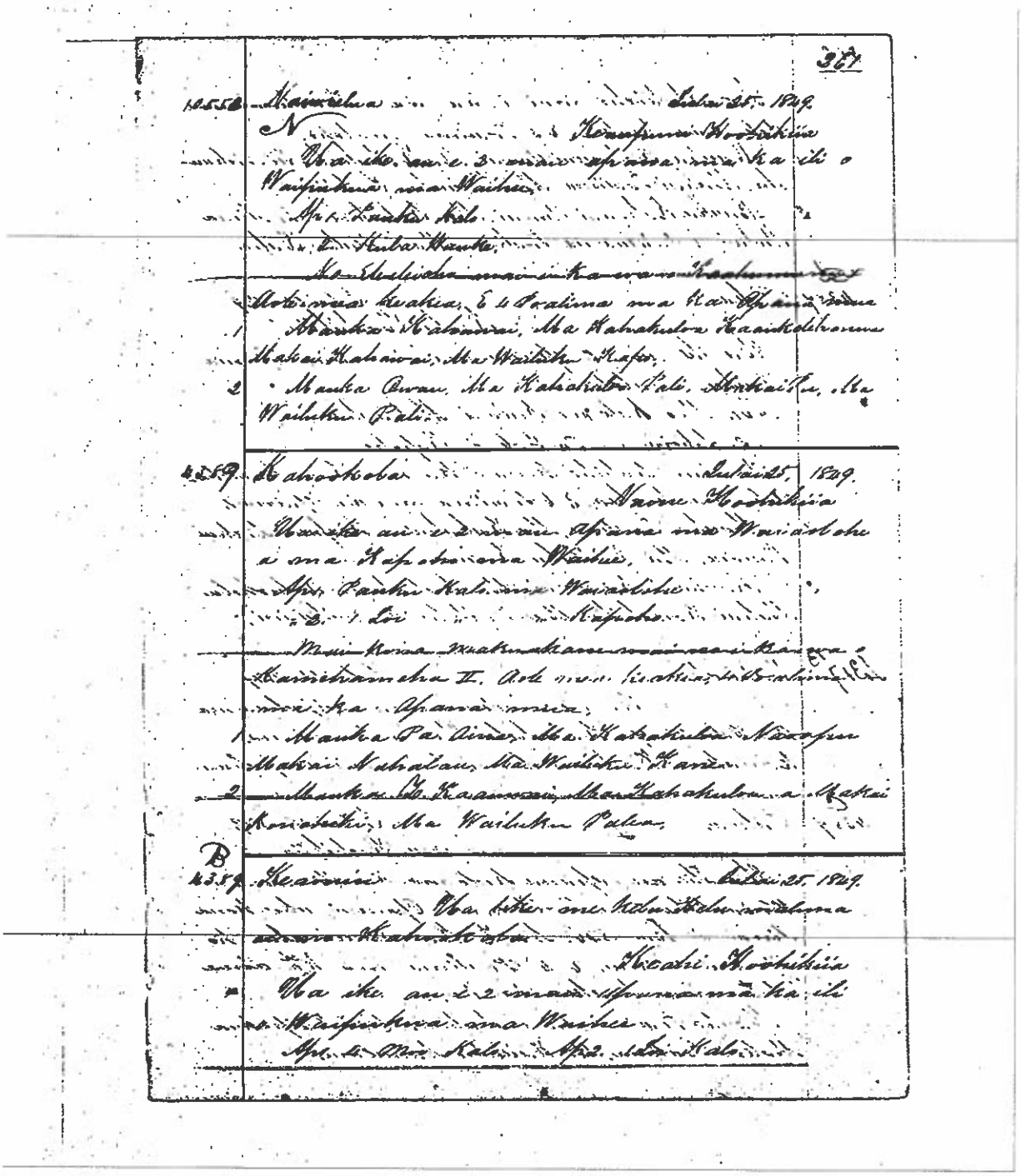
Na Naiwielua

10551 Namakahiki Waihee 28 Jan 1848

He umi loi ia oia iho la ano, o ka noho una ka paha i ke Aupuni, Waihee me ka Mahalo

Na Namakahiki

10551B Kasas

Aia kou mau wahi loi he 22 me kahi kahuahale me kahi kula, huipu 24.

Na Kasas