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

For Official Use Only:
RECEIVED
COMMISSION ON WATER RESOURCE MANAGEMENT
2009 APR 23 PM 4:47

FORM SWUPA-E (NA WAI EHA, MAUI)

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

Event ID: SWUP.2280.6 SWUP NO. 64

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
Thomas & Patricia Texeira; Denise Texeira	Thomas 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
205 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]					

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 (Section) - 014 (Plat) : 001 (Parcel)

4b. TMK OF DITCH DIVERSION LOCATION: 3 (Zone) - 2 (Section) - 005 (Plat) : 032 (Parcel)

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

☒ Pipe ☐ Pump ☒ Ditch/auwai ☐ Other Describe: see attached addendum

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

6. FLOW MEASUREMENT INFORMATION:

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

☐ Yes. Enter the installation date:

Describe the device and enter measured amounts in Table 1.

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

see attached addendum

EXISTING USER INFORMATION

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

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

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

If yes, who is the operator of the water system? Wailuku Water 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): Thomas Texeira

☐ 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
Thomas Signature	Signature
Thomas Texeira Print	Print
4/19/09 Date	Date

FILE ID: SWUP. 2280.C
DOC ID: 3285 ✓

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	4845	☐	☒	☐	☐	
June 2007	4845	☐	☒	☐	☐	
July 2007	4845	☐	☒	☐	☐	
August 2007	4845	☐	☒	☐	☐	
September 2007	4845	☐	☒	☐	☐	
October 2007	4845	☐	☒	☐	☐	
November 2007	4845	☐	☒	☐	☐	
December 2007	4845	☐	☒	☐	☐	
January 2008	4845	☐	☒	☐	☐	
February 2008	4845	☐	☒	☐	☐	
March 2008	4845	☐	☒	☐	☐	
April 2008	4845	☐	☒	☐	☐	
SUM OF AVERAGE DAILY USE FOR THE MONTH	58140	GPD				
AVERAGE DAILY USE (Average of the above)	4845	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 - 005 : 31 Zone Sector Plat Parcel	Ag	no	Ag	no	1473	no	0.491	see attached addendum
agraq	3 - 2 - 005 : 31 Zone Sector Plat Parcel	Ag	no	Ag	no	3240	no	0.09	see attached addendum
dom	3 - 2 - 005 : 32 Zone Sector Plat Parcel	Ag	no	Ag	no	132	no	0.044	see attached addendum
	___ - ___ - ___ : ___ Zone Sector Plat Parcel								
					TOTAL NON-POTABLE USE	4845	GPD		
					TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	4845	GPO		

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 - 005 : 31 (Zone Sector Plat Parcel)	diversified agriculture	0.607	0.491	year round	year round	trickle, drip; other (garden hose)	field capacity
3 - 2 - 005 : 32 (Zone Sector Plat Parcel)	diversified agriculture	0.057	0.044	year round	year round	trickle, drip	field capacity
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							
- - : (Zone Sector Plat Parcel)							
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- - : (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 attached addendum
Wastewater reuse	n/a	see attached addendum
Ditch system	n/a	see attached addendum
Desalinization	n/a	see attached addendum
Ground water	n/a	see attached addendum
Other (specify)	n/a	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 attached addendum

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

INSTRUCTIONS FOR FILLING OUT *FORM SWUPA-E*

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

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

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

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

a. Fill in the most recent application form.
b. Fill in every line on the application.
c. Enclose a check for the non-refundable filing fee of $25 payable to: Department of Land and Natural Resources.
d. Pay for the cost of publishing any required public notices related to your application.
e. Mark the source and end use locations on the appropriate USGS quad map and TMK map and attach to your application.
f. Attach photos showing your existing diversion, measuring device (if applicable) and end use areas.
g. Sign the application form. Both the applicant and the landowner of the source must sign the application form.
b. 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.*

Thomas Texiera
TMK Nos. 3-2-005-031; 032
Existing SWUPA

Addendum

Exhibits

Appended hereto as Exhibit A is a copy of the 7.5 minute-series USGS topographic map with the Waihe`e River and Spreckels and Waihe`e diversions labeled. Exhibit B is a TMK map showing the location of our property and the locations of our `auwai diversion and areas of proposed use. Exhibit C contains copies of photographs of our `auwai diversion. Exhibit D-1 through D-3 contain copies of photographs of our existing uses. Exhibit E 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 until it splits at the top of Waihe`e Valley Road. Some of the water goes down Waihe`e Valley Road in pipes and ditches, and some branches off toward our land. The `auwai runs adjacent to our property in an open ditch, where we divert some water via an open ditch at TMK 3-2-005:032. We have one intake for both parcels of family land (including my land at TMK No. 3-2-005:031 and my daughter Denise's land at TMK No. 3-2-005:032). We use pipes to water our lawn and other plants such as ti leaf, banana, papaya, crown flowers, heliconia, and plumeria, and we maintain a greenhouse with orchids, which we water with a hose. We maintain four koi ponds for aesthetic purposes, and we also maintain a garden where we grow vegetables for our subsistence, including string beans, squash, corn, pumpkin, eggplant. Any water that does not evaporate from our koi ponds or seep into the soil when we water your yard and plants leaves our land in a pipe and returns to the `auwai as it runs down Waihe`e Valley Road through pipes and open ditches.

Box 7: Appurtenant Rights

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848, as evidenced by Land Commission Award ("LCA") No. 4405:U apana 2, Royal Patent ("RP") No. 5990, and LCA No. 3721 and RP No. 6439, and the testimonies in support of these claims, true and correct copies of which are attached as Exhibit E. 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

I estimated our existing domestic water use of 1605 gallons per day, including our use of water for watering our yard and non-commercial garden (as described above), by multiplying the 2002 State of Hawai`i Water System Standard for Maui County of 3,000 gallons per acre by 0.535 acres, or the total acreage of our land minus the approximate square footage of our two homes and the size of our koi ponds. I estimated our existing water use for our koi ponds of 3240 gallons per day by multiplying the area of my koi ponds (0.09 acres) by 36,000 gallons per day, the water duty for aquaculture used in the Water Commission's 1992 Oahu Water Management Plan, provided to us by Robert Chong.

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 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. As long as I can remember, we have always used the `auwai water for our yard, gardening, and koi ponds. We formerly used the water for our lo`i kalo and all of our domestic needs, including drinking water. 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 (see concurrently filed SWUPA-N). 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 to provide flowing water for non-commercial gardening unprecedented and extremely burdensome. As a small user, 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 the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." We are Native Hawaiians engaged in subsistence agricultural practices on our land, 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 also a protected public trust purpose. Waiāhole I, 94 Haw. at 137 n.34, 9 P.3d at 449 n.34. Additionally, because much of the water we use is returned to the `auwai, our use supports other public trust purposes such as the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

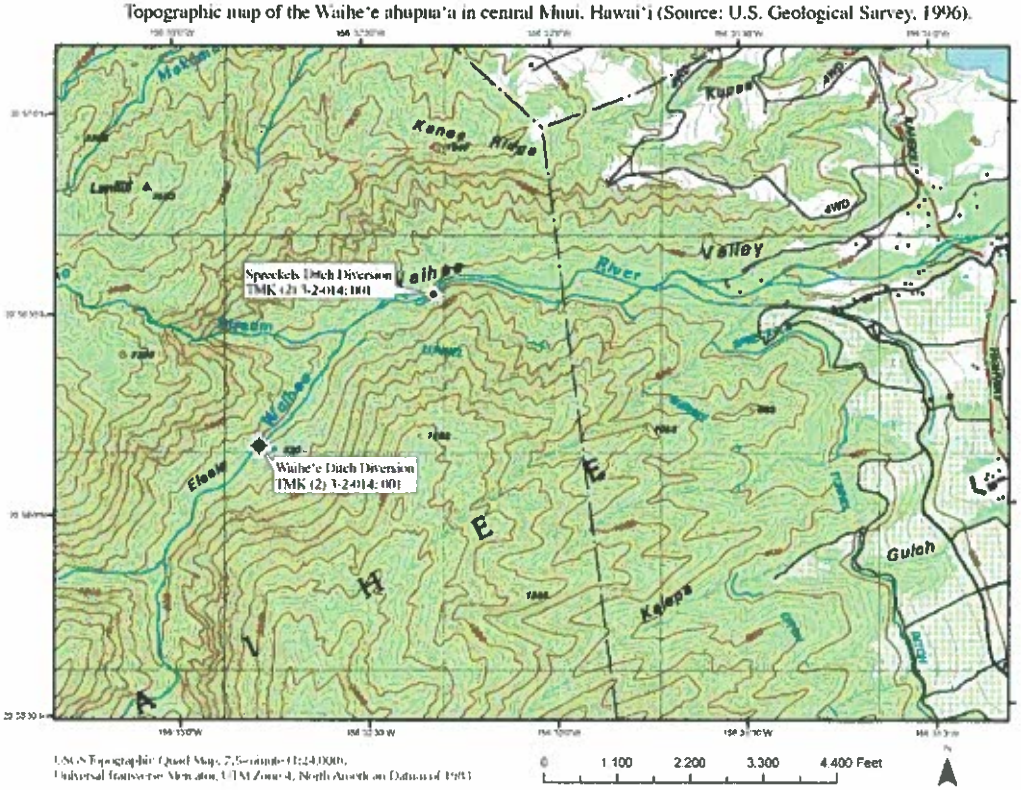
Our Existing Use is a "Reasonable-Beneficial Use"

"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 where appropriate to minimize water loss. Therefore, our use is "reasonable-beneficial."

Exhibit A:

USGS Map of Waihe`e River and Diversions

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



Thomas Texiera
TMK Nos. 3-2-005-031; 032
Existing SWUPA

Exhibit B:

TMK Map Depicting Our Diversion Point and End Uses

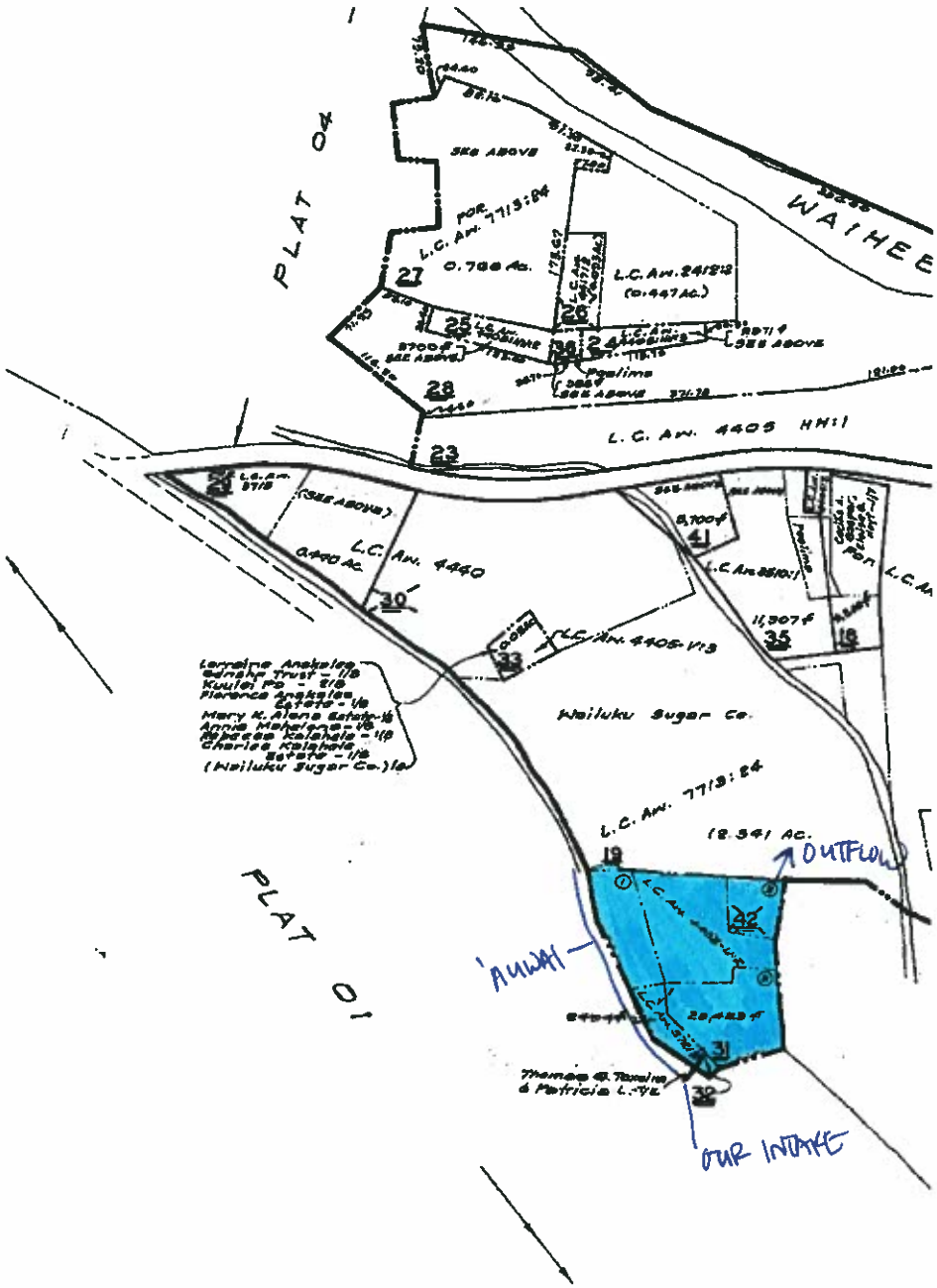


Exhibit C:

Photograph of `Auwai Diversion

This is a true and correct copy of a photo taken January 4, 2008 accurately depicting our diversion from the South Waihe`e kuleana `auwai.

Thomas Texiera
TMK Nos. 3-2-005-031; 032
Existing SWUPA

Exhibit D-1:

Photographs of End Uses:

This is a true and correct copy of a photo taken January 4, 2008 (above) and October 11, 2008 (below), accurately depicting a portion of our existing end uses, including our yard, koi ponds, banana trees, papaya, ti-leaf, mango, and other domestic plants.

Exhibit D-2:
Photographs of End Uses:

These are true and correct copies of photographs taken on or about October 11, 2008, accurately depicting a portion of our existing end uses, including our yard, flowers like heliconia and crown flower, and a portion of one of our koi ponds.

Thomas Texiera
TMK Nos. 3-2-005-031; 032
Existing SWUPA

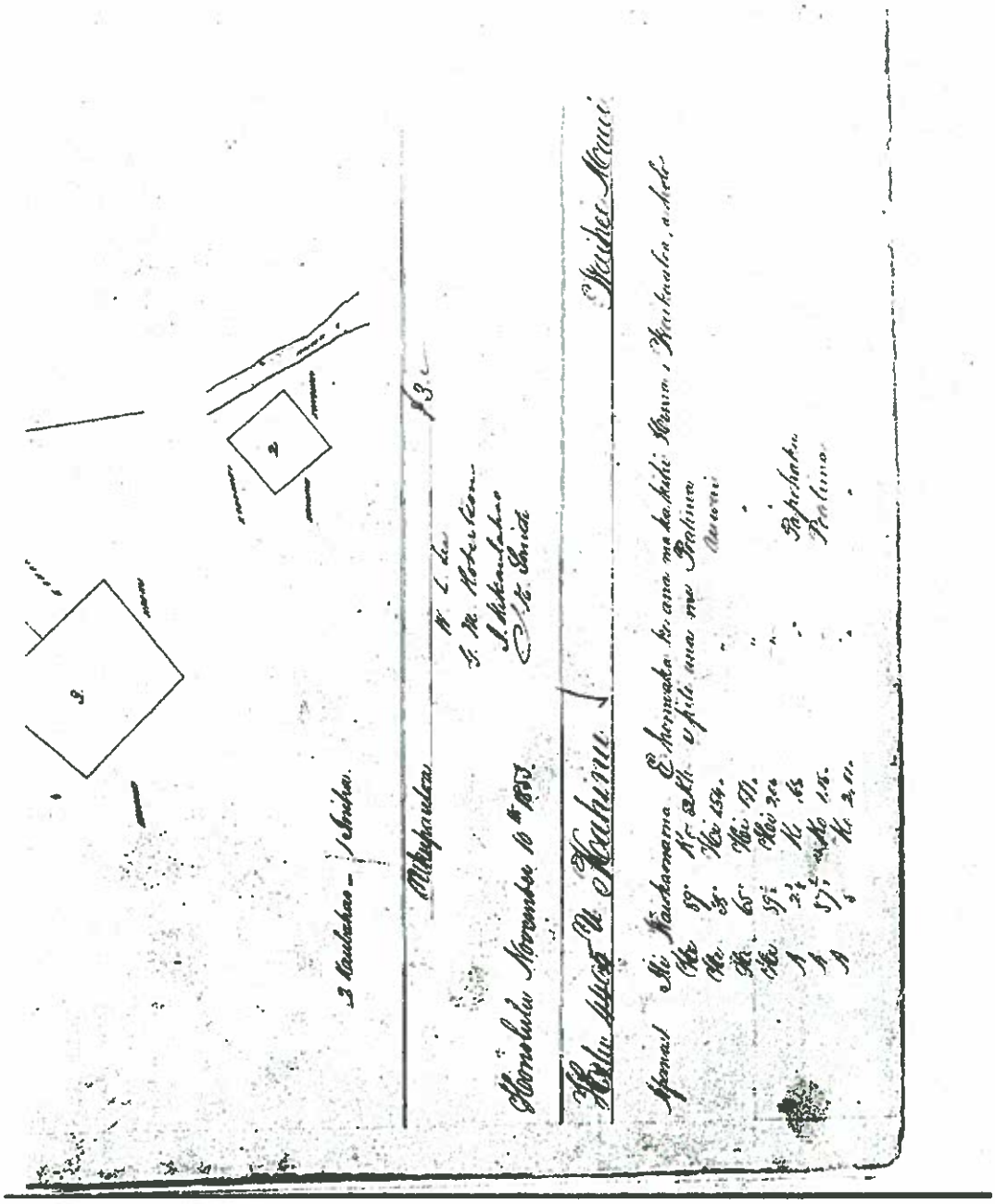
Exhibit D-3:

Photographs of End Uses:

These are true and correct copies of photographs taken on or about October 11, 2008, accurately depicting a portion of our existing end uses, including our orchid greenhouse (above) and a portion of our yard and flowers.

Exhibit E:

Māhele
Documents



424

Hoe 77' Ko. 1.66 Kh: o fili ana me Kaikaalua
Hoe 24½ Hoi 1.64 . . Peelima
Hoe 77' Ko 60 . . .
A. 24½ Ko. 1.64 . . .
Hoe 77 Ko 50 . . Kaikaalua a hiki makahi i hoomaka i
Malekeo ma Anapuni 5/ire Eka

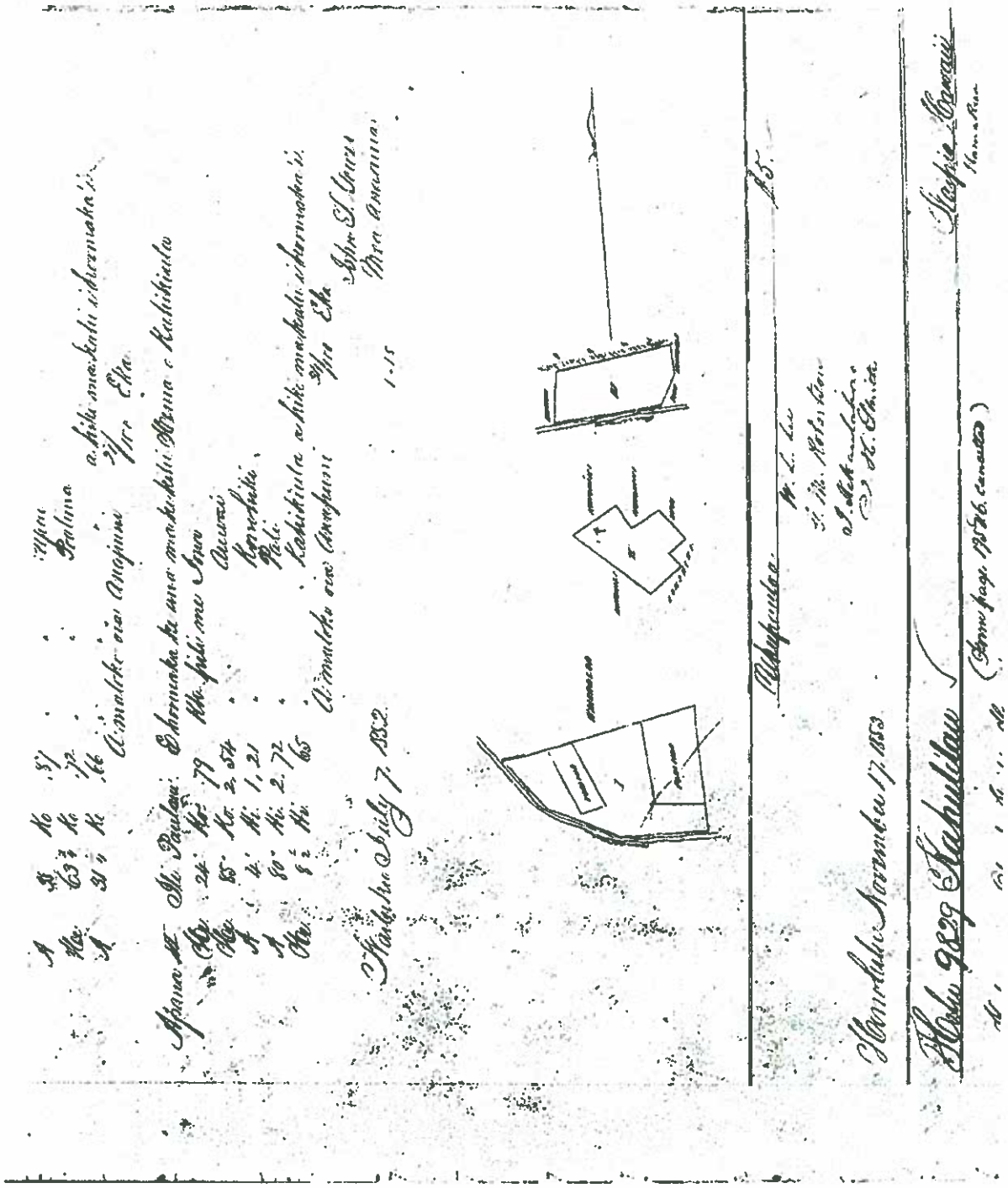
Apana I. Ili Kaiakonaona. E hoomaka ke ana mauka kihi Akau o kua;
Hoe 61½ Ko. 1.20 Kh. o fili me Kuehiki
Hoe 46' Hi 2.34 . . Kulo
A 47 Hi .91 . . Makaelo
A 36½ Ko .39 . . Peelima
A. 52½ Hi .50 . . Kuehiki
A 8 Ko .87 . . Apau
Hoe 63¾ Ko .72 . . Peelima
A 31½ Ko .66 . . a hiki makahi i hoomaka i
A. malekeo ma Anapuni 3/ire Eka

Apana II. Ili Paulau. E hoomaka ke ana mauka kihi Akau o Kahikinui
Hoe 24' Ko .79 Kh. fili me Ioua
Hoe 85' Ko 2.54 . . Auwai
A 4' Hi 1.21 . . Kuehiki
A 80' Hi 2.72 . . Pali
Hoe 8½ Hi .65 . . Kahikinui a hiki makahi i hoomaka i
A. malekeo ma Anapuni 3/ire Eka

John S. Ioua
Wm Auwina

Kailuku July 7, 1882

1-15



HELU 5990

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 kumu kuleana aina i ka olelo, he kuleana olelo ke ..... Kuleana Helu .....

..... **Ano Alodio** iloko o kahi olelola malalo.

Nolaila, ma keia Palapala Sila Nui, ke hoike aku nei o Kamehameha IV., ke Alii nui a ke Akua i hana lohemaikai i hoomoho ai maluna o ko Hawaii Pae Aina, i na kanaka a pau, i keia la nona iho, a no kona mau hope alii, na kaawi aku ola, ma ka **Ano Alodio** ia .....

I kela ..... wahi a pau kin ma .....

ma ke moku o ..... pae ae mokuna :

Apana 1 — Ki Waiwiamana

(Komoka) ma ke Kihi Kema, o Waikaalua ahala

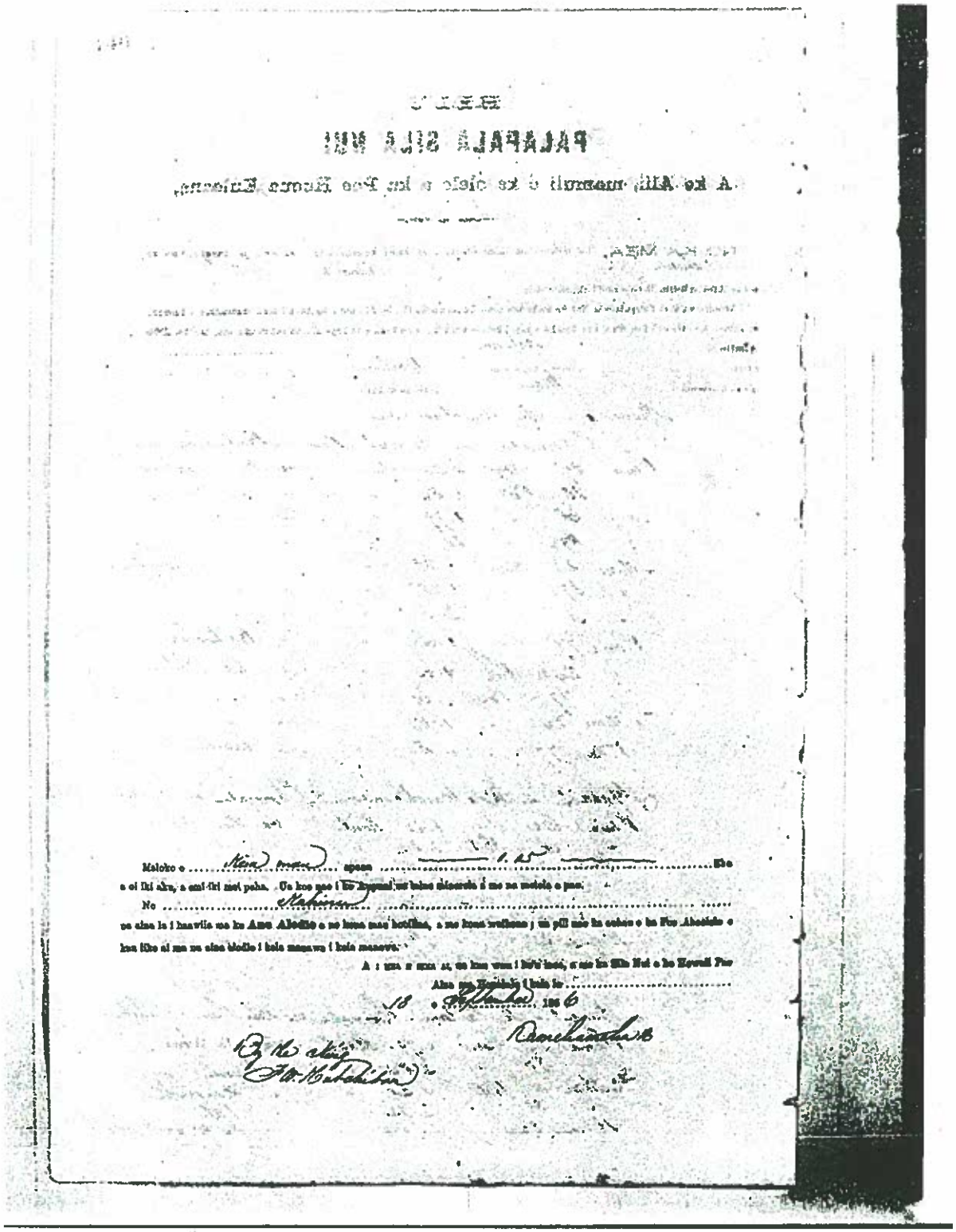
Kema 89 Akau 0.52 Kaul ma Ka Palima
" 38 Kiko 1.54 " " " Kuwai
" 65 " 1.79 " " " "
" 89½ " 2 — " " "
Mau 2½ Akau — 60 " " " Kapokaku
" 87½ " 1.15 " " " Palaina
" 5 " 2 — " " "
Kema 77 " 1.66 " " Waikaalua
" 24½ Kiko 1.64 " " Ka Palima
" 77 Kom — 60 " " " "
Mau 24½ " 1.64 " " " "
Kema 77 " — 50 " " Waikaalua
0.54 Ea

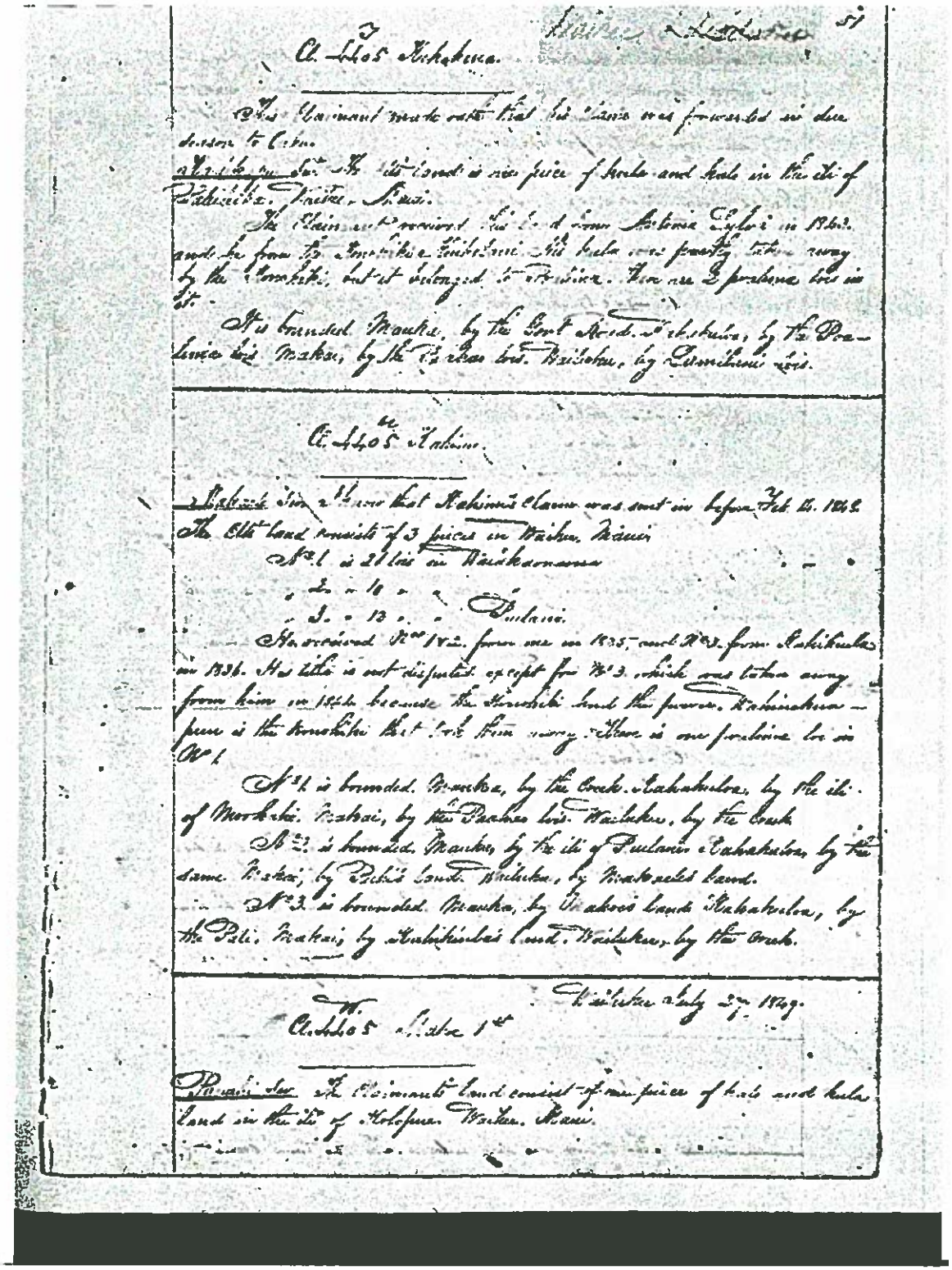
Apana 2 — Ki Waiwiamana — (Komoka) ma ke Kihi Mau

Kema 6½ Akau 1.20 Kaul ma Ka Komohiki
" 46 Kiko 2.34 " " " Kula
Mau 47 " — 97 " " Ka Waikaalua
" 52½ Akau — 39 " " Ka Palima
" 52½ Kiko — 50 " " Ka Komohiki
" 48 Akau — 87 " " " Uhai
Kema 49½ " — 72 " " Ka Palima
Mau 49½ " — 66 " " "
0.27 Ea

Apana 3 — Ki Paulani — Komoka ma Kihi Kema, o Kahikiala

Kema 24 Akau 0.79 Kaul ma Ka Ama
" 85 " 2.54 " " Kuwai
Mau 4 Kiko 1.21 " " Komohiki
" 80 " 2.72 " " Pai
Kema 82 " — 65 " " Ka Kahikiala
0.54 Ea





Waikee [illegible] 51

Cl. 4405 Kahakuna.

This Claimant made oath that his claim was forwarded in due season to Oahu.

Maikoa Sur. The Elts land is one piece of kula and kula in the ili of Pahikiha. Waikee. Maui.

The Claimant received this land from Antonia Lylai in 1843. and he from the Konohiki Kuihelani. His kula was partly taken away by the Konohiki, but it belonged to Poalima. There are 2 poalima lots in it.

It is bounded. Mauka, by the Govt Road. Kahakuloa, by the Poalima lots. Makai, by the Paahao lots. Wailuku, by Lumiliani lots.

Cl. 4405 Kahimi.

Makaele Sur. I know that Kahimi's claim was sent in before Feb 14. 1848. The Elts land consists of 3 pieces in Waikee. Maui.

No. 1 is 21 lots in Waikaonama
" 2 " 18 " "
" 3 " 13 " " Puelani.

He received No. 1 & 2 from me in 1835, and No. 3 from Kahikuela in 1836. His title is not disputed except for No. 3 which was taken away from him in 1844 because the Konohiki had the power. Kahinakuapuu is the Konohiki that took them away. There is one poalima lot in No. 1.

No. 1 is bounded. Mauka, by the Creek. Kahakuloa, by the ili of Moohaki. Makai, by the Paahao lots. Wailuku, by the Creek.

No. 2 is bounded. Mauka, by the ili of Puelani. Kahakuloa, by the same. Makai, by Pahi's land. Wailuku, by Makaele's land.

No. 3 is bounded. Mauka, by Makoe's land. Kahakuloa, by the Pali. Makai, by Kahikuela's land. Wailuku, by the Creek.

Wailuku July 27. 1849.

Cl. 4405 Makoe 1st

Panahi Sur. The Claimants land consist of one piece of kala and kula land in the ili of Kolopua. Waikee. Maui.

[redacted]

Claimant sworn Kekahi had written this claim before 1848.
Kaaikapu sworn He has seen 1 taro section and pasture at Palailaiha ili at Waihee. Land from Atoni (animal officer) in 1843. Atoni's land from Kauihelani.
2 Paolimas in this section, no objection.

Mauka	Trail
Kahakuloa	Poalima
Makai	Prisoners' patch
Wailuku	Lumilani

No. 4405 U Kahinu July 26, 1849

Makaele sworn Kekahio had documented befors Feb. 1848. Kahinu has three sections in ilis of Waihee.

Section 1 21 patches at Waiakaonaona

Mauka	Big ditch
Kahakuloa	Mookahi ili
Makai	Prison
Wailuku	Big ditch

Section 2 - 10 patches at Waiakaonaona

Mauka and Kahakuloa	Paulani ili
Makai	Puhi
Wailuku	Makaele

Section 3 -13 patches at Paulani

Mauka	Mahoe
Kahakuloa	Pali
Makai	Kahikiula's land
Wailuku	Big ditch

First two sections at Waiakaonaona from Makaele in 1835. *Section 3 from Page 288
Kahikiula in 1836. Wahinekuapuu has taken section 3 without just cause.
1 Poalima in the first section.

No. 4405 W Mahoe SEE No. 3887 B July 27, 1849 Wailuku

Pauahi sworn Kekahio wrote (the claim) before 1848. Pauahi has seen 1 taro section and pasture in Kolopue ili of Waihee. Mahoe's land from Pu before 1839. No objection. Mahoe died in 1846, Kamaka, his wife and three children are heirs.
2 Poalima's in this land section

Mauka	Stream
Kahakuloa	Napukaha
Makai	Makaaka ili
Wailuku	Napukaeha

Wahalua July 27, 1849

Laupahulu sworn Kekahio wrote (claim) before 1848. Laupahulu has seen 3 sections in the ilis of Waihee. This land had been Wahalani's land before 1839. No objection, 3 poalimas in the first section.

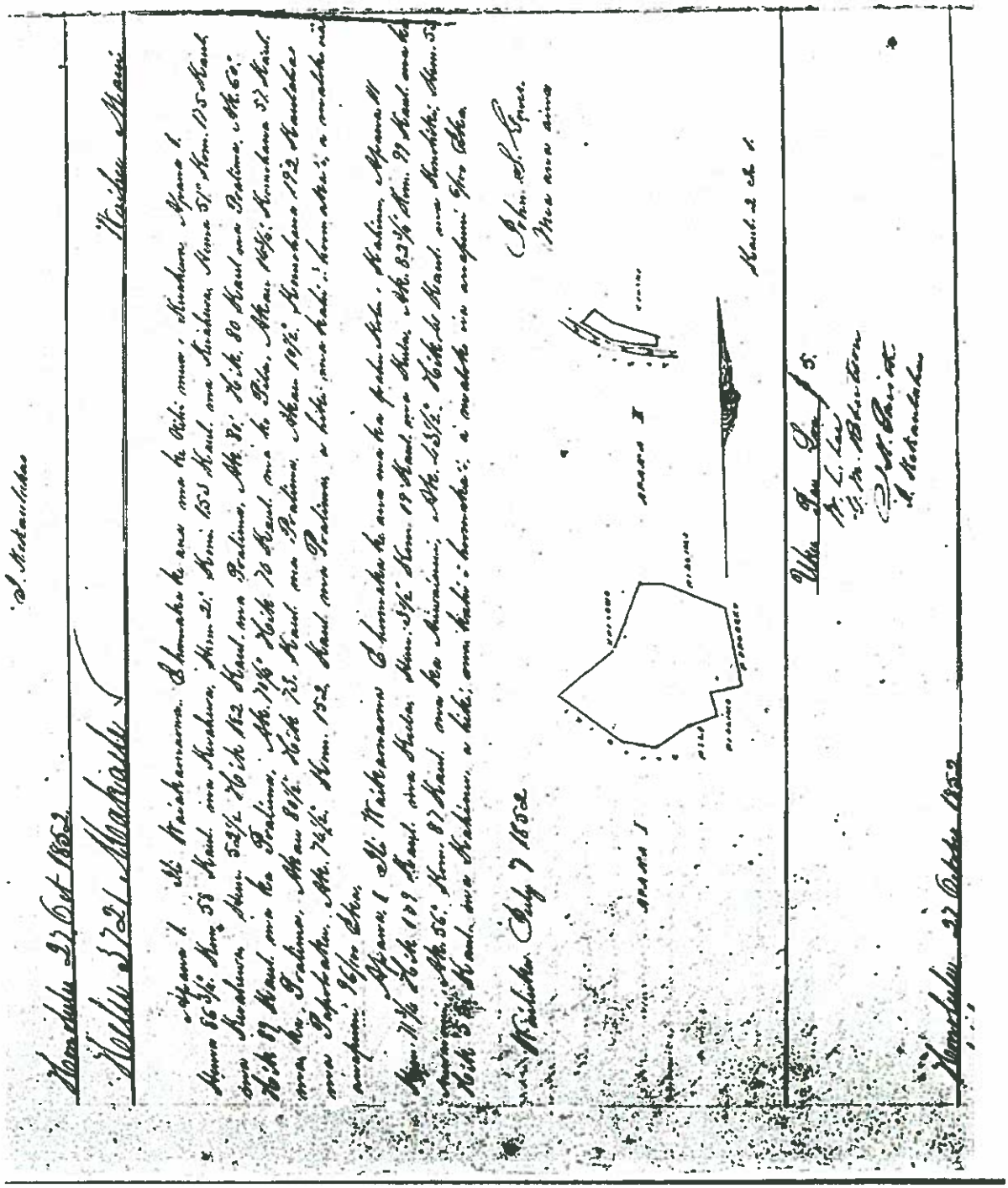
Section 1 - Taro pauku in Papaina ili

Mauka	Akihewa	Page 289
Kahakuloa and makai	Koiahi ili	
Wailuku	Kawaa's land	

Section 2 - Potato patch in Koiahi ili
This section has been included with section 1

Section 3 - 2 patches and house lot at Paulani

Mauka, Kahakuloa, makai	Keino's land
Wailuku	Stream



HELU 6439.

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 kumu kuleana aina i ka olelo, ha kuleana oiaio ko Makaele Kuleana Holu 3/4
ma ke **Ano Alodio** iloko o kahi i oleloia malalo.

Nolaila, ma keia Palapala Sila Nui, ke hoiko aku nel o ~~Kamehameha V~~ Lunalilo, ko Alii Nui a ke Akua i Kona lokomaikai i hoonoho ai maluna o ko Hawaii Pae Aina, i ~~ma~~ kanaka a pau, i koia la noaa iho, a no kona mau hope alii, ua haawi aku oia, ma ke **Ano Alodio** ia Makaele
i kela wahi a pau loa ma Waiakamaona Waihee
ma ka Mokupuni o Maui peuel na mokuna:

Ap. 1. E hoomaka keana ma Kekehinua o Huaheua Ap. 1.

Ke	86½°	Ko	.58	Kaul	ma Huaheua
"	21°	"	1.53	"	"
"	50°	"	1.75	"	"
"	52½°	Ki	1.82	"	" Poalima
Ak	80°	"	.80	"	"
"	60°	"	.89	"	"
"	70½°	"	.70	"	" Pila
"	14½°	Ko	.57	"	" Poalima
"	80½°	Ki	.73	"	"
"	10½°	Ko	1.92	"	" Popohaka
"	74½°	"	1.52	"	" Poalima

a hiki ma kahi i hoomakai. 2/10 Eka.

Ap. 2. E hoomaka ke ana ma ka pahu Ekolu o Hala Ap. 2.

Ke	71½°	Ki	1.09	Kaul	Hula
"	8½°	Ko	.19	"	
Ak	82½°	"	.99	"	Ainaimi
"	68°	"	.87	"	
"	43½°	Ki	.40	"	Honoliki
Ke	53°	"	.55	"	Hahiu

a hiki ma kahi i hoomaka. 2/10 Eka.

Malaho ... Ua koe nao i ke Aupuni na mute minerela a me na metelo a pau.

ua aina la i haawiia ma ke **Ano Alodio** a no kona mau hooilina, a me kona waihoua; ua pili nao ke anhau a ka Poe Ahaolelo e kau like ai ma na aina alodio i kela manawa i keia manawa.

A I MEA E IKEA AI, ua kau au i ko'u inoa, a me ka Sila Nui o ko Hawaii Pae Aina ma Honolulu i keia la 26 o Ianuari 1875.

1.02

Maloko o Reia mau Apana 1.12 Eka

a oi iki aku, a emi iki mai paha. Ua koe nae i ke Aupuni na mine minerela a me na melela a pau.

No Mu Rade

na aina la i baawiia ma ke **Ano Alodio** a no kona mau hooilina, a me kona waihona; na pili nae ka auhau a ka Poe Abaolelo e kau like ai ma na aina alodio i kela manawa i keia manawa.

A I MEA E IKEA AI, ua kau au i ko'u inoa, a me ka Sila Nui o ko Hawaii Pae Aina ma Honolula i keia la 16 o Augato 188.

Lunalilo R.

By the Minister of the Interior
Edwin O. Hall.

411

Cl. 3477. Hakuna.

Puuikui. Sw. I know the lands of the Clt. It is one piece of kalo land in the ili of Ahuena Kailuku Maui.

The Clt. rec^d it from Wahinemaku in 1832, and his title has never been disputed but there are 6 proaliona lois in it.

It is bounded. Mauka, by Halawaiahonu's land. Kailua, by the Govt. school House. Makai, by the ili of Kapalua. Maalaea, by Halawaiahonu's land.

Cl. 3722. Moanalua.

Pupuka. Sw. I know the lands of the Clt. They consist of 2 pieces of kalo land in the ili of Lamalii, Kailuku, Maui.

No. 1 is a kalo land of one Roo.

" 2 " " " " " "

The Clt. rec^d them from his parents in the days of Kamehameha III. about 1838, and his title has never been disputed. There is one proaliona lei in No. 1.

No. 1 is bounded. Mauka, by my land. Kailua, by the Creek of Kailuku. Makai, by the ili of Lamalii. Maalaea, by the Govt. Land or King's.

No. 2 is bounded in with No. 1 which joins it.

Cl. 2481. Kabanahua. I.

Kaikaiahu. I know the land of the Clt. It is one piece of kalo & kula land, in the ili of Aikaka Kailuku. Maui.

The Clt. rec^d it from my father in the days of Kamehameha II. and her title has never been disputed. There is one proaliona lei in it.

It is bounded. Mauka, by Palea an ili. Kailua, by Naiai's Kahula & my land. Makai, by my land. Maalaea, by the Govt. Fence.

Copied at Hawaii State Archives

Page 117

Moomuku in Honokowai on Maui
Paleloha in Waikapu
Alamihi at Lahaina, from Hoapili in 1835
This is under Kekuanaoa: Kumuniu, Puloa, Kamuku -- three 'Ili at Keauhou under Kekuanaoa.
These are the lands which were dispossessed by Kekuanaoa without asking me and without any trial for dispossession: Keauhou, Honokua, Kahikapa, Honokowai. Those are the lands which were dispossessed without my hearing of the reason. I also petition for my house lot at Ukumehame. I am, respectfully,

DAVIDA MALO

No. 3718 - Iona Waihee, Dec. 29, 1847

'Ili of Paulaui, 13 lo'i, 1 kula, which I received from Kahikiula. Paulaui, 3 lo'i which were from Keino. It is finished.

IONA

No. 3718B - Kamakaulii Page 118

'Ili of Waipae, 6 lo'i which I received from Kaikinohopono.
Holile, 2 lo'i which I received from Hoauaepuu.
Kapuna, 3 lo'i which I received from Huki, two kula.
Waihee, Dec. 29, 1847

KAMAKAULII

No. 3718 - Maikaaloa /Included in 3718 - Iona/

'Ili of Mookahi, 47 lo'i which I received from Kaaui
Kalepelepe, 17 lo'i which I received from Kuihelani.
Waihee, Dec. 29, 1847

MAIKAALOA

No. 3721 - Makaele Dec. 28, 1847

Claim Letter. My 12 lo'i were from Keea, /also/ one kula, two hala clumps, a house lot and one coconut tree.
Waihee, Maui

MAKAELE

No. 3722 - Moanalua

Letter claiming kula and lo'i in Wailuku.
I, Moanalua, hereby state that I have 93 lo'i at Lamalii. The right was acquired as follows: The former konohiki, Newa, left, and Kailihiwa gave me the land. The lo'is are bounded on the north by the stream, on the east