ORIGINAL

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 30 AM 8:46
SWUP NO. 79
Event ID: SWUP.2309.6

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
WILLIAM FREITAS (Lessee) ALFRED AYERS (Landowner)	William Freitas	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
2644 Kahekili Highway 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

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) - 003 (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

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

☐ 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. [redacted]
Signature: William Freitas	Signature: [signature]
Print: William Freitas	Print:
Date: 4/19/09	Date: 4/20/09

FILE ID: SWUP.2309.6
DOC ID: 3441

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	69,000	☐	☒	☐	☐	
June 2007	69,000	☐	☒	☐	☐	
July 2007	69,000	☐	☒	☐	☐	
August 2007	69,000	☐	☒	☐	☐	
September 2007	69,000	☐	☒	☐	☐	
October 2007	69,000	☐	☒	☐	☐	
November 2007	69,000	☐	☒	☐	☐	
December 2007	69,000	☐	☒	☐	☐	
January 2008	69,000	☐	☒	☐	☐	
February 2008	69,000	☐	☒	☐	☐	
March 2008	69,000	☐	☒	☐	☐	
April 2008	69,000	☐	☒	☐	☐	
SUM OF AVERAGE DAILY USE FOR THE MONTH	828,000	**GPD**				
AVERAGE DAILY USE (Average of the above)	69,000	**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	N/A	GPD		
Uses that do not require potable water									
AGRCP	3 - 2 - 003 : 010 Zone Sector Plat Parcel	RU	No	RU 0.5	No	33,000	No	0.11	See addendum
AGRCP	3 - 2 - 003 : 011 Zone Sector Plat Parcel	RU	No	RU 0.5	No	36,000	No	0.12	See addendum
	___ - ___ - ___ : ___ Zone Sector Plat Parcel								
	___ - ___ - ___ : ___ Zone Sector Plat Parcel								
					TOTAL NON-POTABLE USE	69,000	GPD		
					TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	69,000	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 - 003 : 010 (Zone - Sector - Plat : Parcel)	Wetland kalo	1.547	0.11	Annual	Annual	Flood (taro)	Field capacity
3 - 2 - 003 : 011 (Zone - Sector - Plat : Parcel)	Wetland kalo	2.5	0.12	Annual	Annual	Flood (taro)	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
Wastewater reuse	N/A	See addendum
Ditch system	N/A	See addendum
Desalinization	N/A	See addendum
Ground water	N/A	See addendum
Other (specify)	N/A	See addendum

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 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.ewrm@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/ewrm/, 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.*

Addendum

Attachments

Appended hereto as Exhibit 1 is a copy of the 7.5 minute-series USGS topographic map with the Waihe`e River and Waihe`e and Spreckels diversions diversion labeled. Exhibit 2 is a TMK map showing my property, the `auwai, and the area of use. Exhibit 3 contains copies of photographs of my area of existing use. Exhibits 4 & 5 are 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 4a: Stream Diversion Location

Although the `auwai that runs through our land currently receives water diverted from TMK No. 3-2-014:001, we would like the `auwai to resume receiving water directly from Waihe`e River at TMK No. 3-2-004:001, as it historically did.

Box 4 & 5: Instream Flow Standards

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

Box 5: Stream Diversion

We are kuleana users along the North Waihe`e Valley kuleana `auwai. 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 North Waihe`e Valley kuleana `auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open `auwai on the north side of Waihe`e River. The water travels in pipes and open ditches through Waihe`e valley and through our land. We currently access kuleana water directly from the `auwai to provide water for our 10,000 square feet of lo`i kalo. After the water flows through our lo`i kalo, it retums to Waihe`e River via an open ditch.

Box 7: Appurtenant Rights

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. In fact, we are restoring the ancient lo`i kalo that exist on the land. Attached hereto as Exhibits 4 & 5 are true and correct copies of Māhele records for Land Commission

Award No. 4405:Q, Royal Patent No. 5331 and Land Commission Award No. 4405:R, Royal Patent No. 6459, and testimony indicating the land was in kalo. 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 my existing water use for wetland kalo cultivation of 69,000 gallons per day by multiplying the amount of land on which we were growing wetland kalo on April 30, 2008 (0.23 acres) by 300,000 gallons, the average amount of water I understand is required to grow healthy wetland kalo.

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. Similarly, our traditional and customary right as Native Hawaiians is to cultivate kalo on our land in the traditional manner, not in some other manner using alternative, non-traditional sources, and this traditional and customary right is constitutionally protected.

Moreover, even if we did not have protected rights to stream water, there is no potentially available alternative source that is economically practicable. We cultivate kalo on our land for cultural and subsistence purposes. 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. Our appurtenant right and traditional and customary right to grow kalo on our land would effectively be denied. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights.

Municipal Sources. We do not have access to county water. Even if the Maui County Department of Water Supply were willing to provide municipal water for kalo cultivation by installing a large water meter, the cost of using municipal water for such purposes would be prohibitive. Additionally, water from the Maui County Department of Water Supply is chlorinated, which is detrimental and unsuitable for wetland kalo.

Wastewater reuse. Reusing wastewater is impracticable because we would still be required to pay for large volumes of flowing water for our kalo. As a small user engaged in traditional uses, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

Ditch system. We are seeking to use water from the existing `auwai that traditionally provided water to the lo`i on this land. Getting water from other ditch systems is not practicable.

First, the other ditch systems in Nā Wai 'Ehā do not consistently have enough water to support additional users. Second, we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user engaged in traditional uses, the cost of taking water from or constructing another ditch is not practicable.

Desalinization. Desalinization of brackish water is not a practicable alternative because we are not aware of any such plant having been built on Maui. According to the County's estimates, a plant is expected to be built in 2013 at the earliest.

Ground Water. Even if we were able to secure the permits necessary to drill a well and pump ground water for our uses, installing and operating such a well to provide flowing water for kalo cultivation would be unprecedented and extremely burdensome. As a small user engaged in traditional uses, we do not have the means to install and maintain such infrastructure.

Table 4: Public Interest

Our Existing Use is Consistent with the Public Interest

HRS § 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." The water we are requesting is for kalo cultivation. We grow kalo in traditional ways and use it for subsistence purposes. We are Native Hawaiians engaged in traditional agricultural practices, and our crops help maintain ecological balance and scenic beauty. As such, our existing use of stream water is consistent with the public interest.

Our Existing Use is a Protected Public Trust Purpose

Kalo cultivation by Native Hawaiians is a protected public trust purpose. In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 137, 9 P.3d 409, 449 (2000) ("Waiāhole I"); see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights); HRS § 174C-101(c) (specifically protecting the right to cultivate kalo on one's own kuleana). 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 Waihe`e River, our use supports other existing public trust purposes such as: (1) the maintenance of waters in their natural state; (2) resource protection; (3) water for domestic purposes; and (4) the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

Our 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 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, the water we have requested is for a "reasonable-beneficial use."

Exhibit 1: USGS Map

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

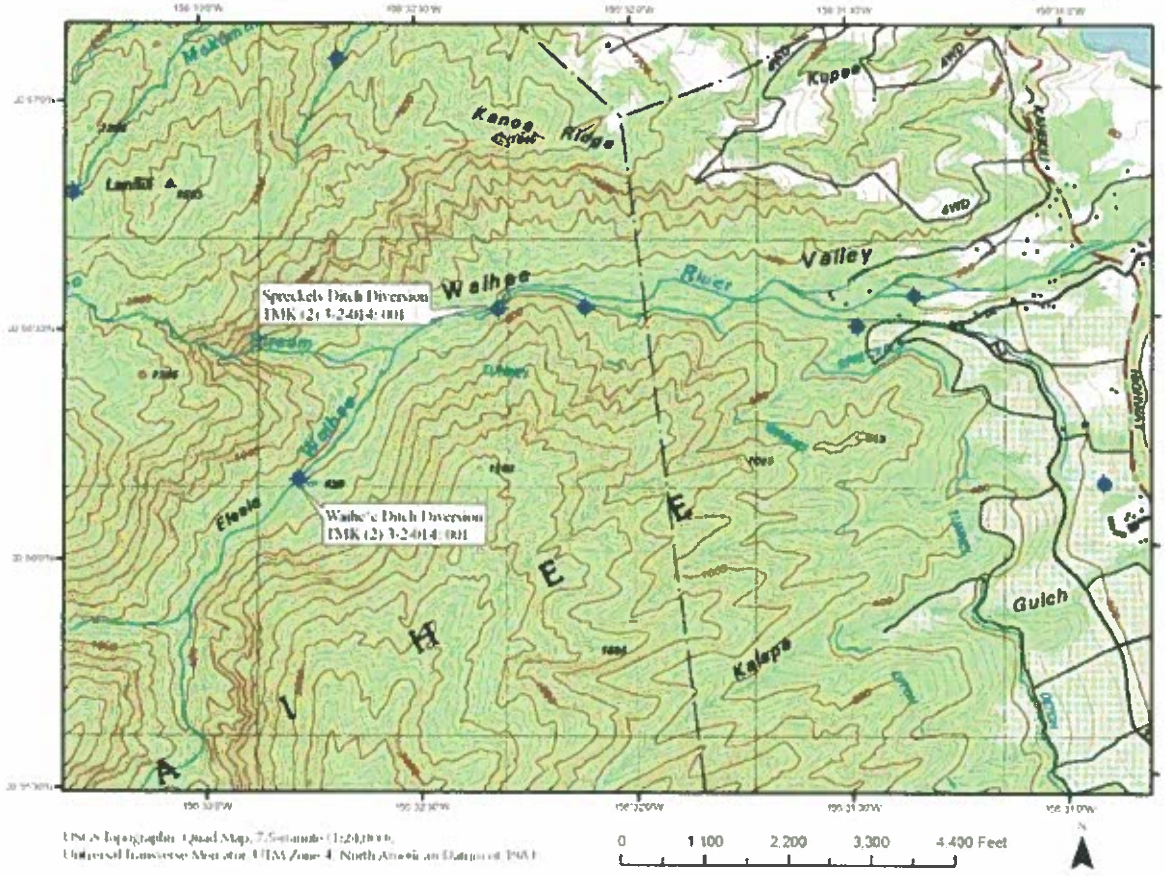


Exhibit 2: TMK map depicting the North Waihe`e Valley `auwai running through our land

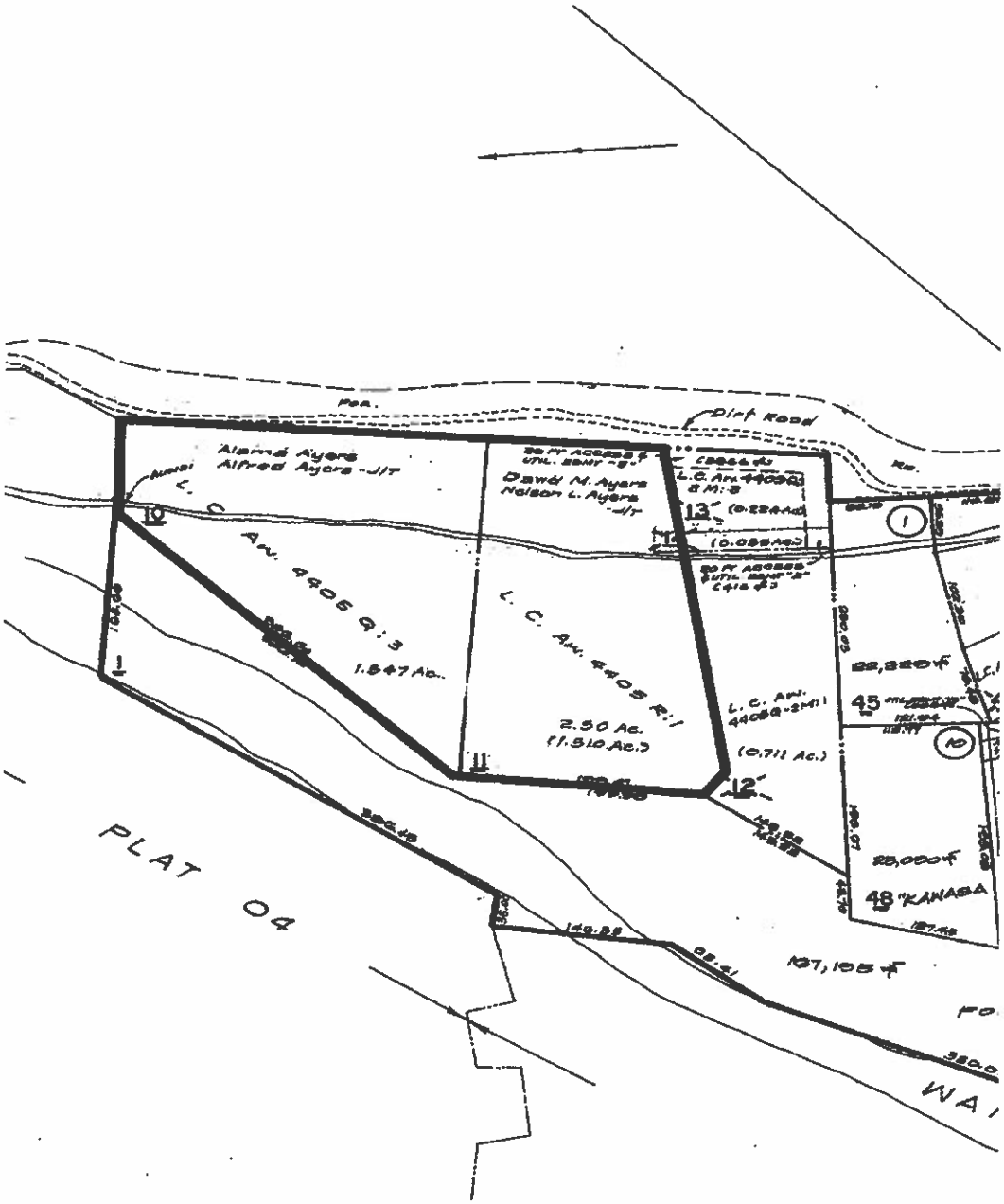
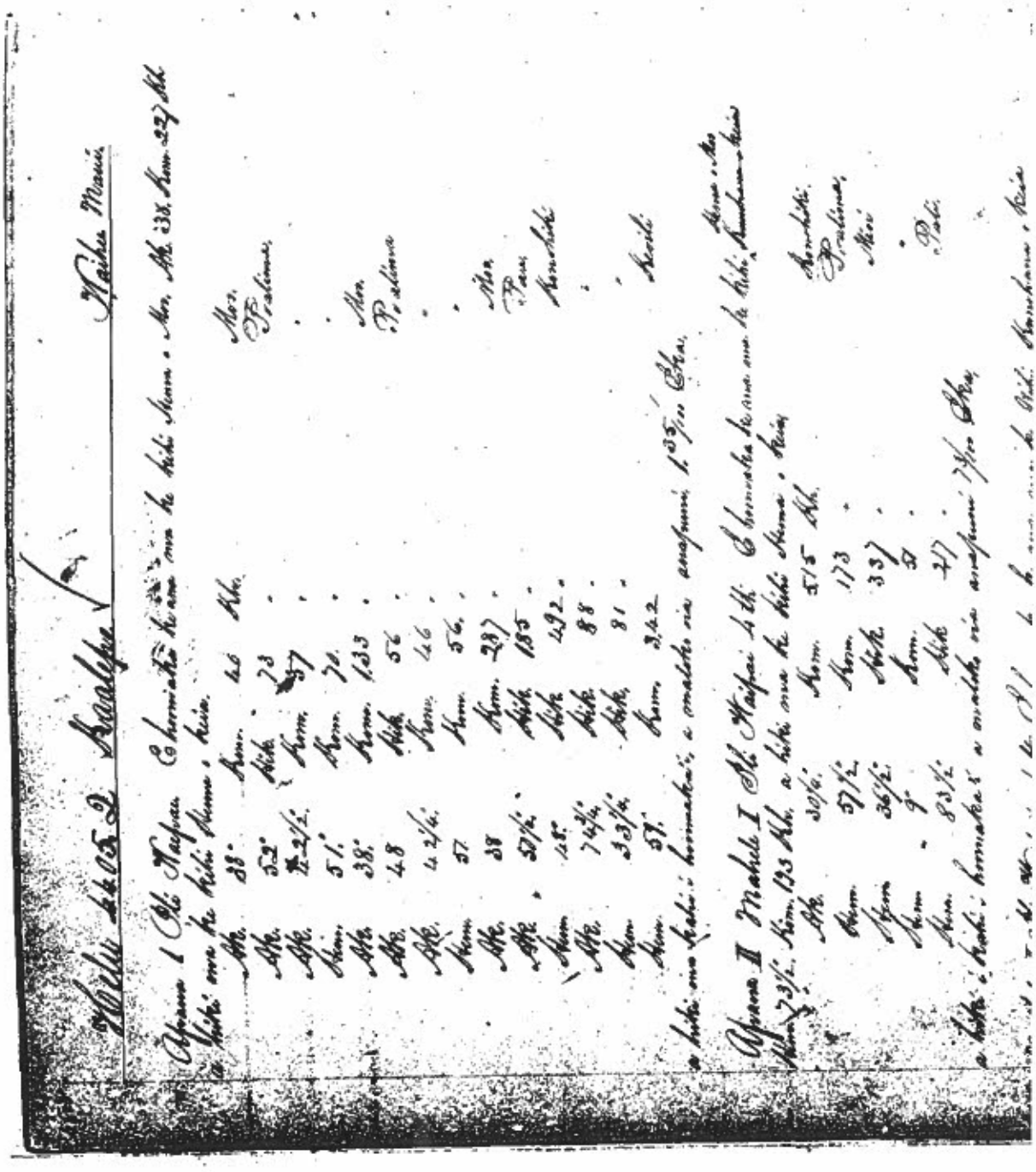


Exhibit 3: Photographs depicting `auwai and area of water use

Exhibit 4: Māhele records establishing our appurtenant rights for TMK No. 3-2-003:010 (Land Commission Award No. 4405Q, Royal Patent No. 5331)



457

Ukiu Pau Loa $ 6.
W. Lee
G. M. Robertson
A. K. Garrett
J. Kekaulahao

Honolulu Jan 4 1853.

Helu 4405 R. Mivi ✓ Waihu Maui

Apana 1 Ili Waepae. E hoomaka ke ana ma ke kihi Akau o keia, ke kihi Komohana o Kaalepo I

Hem.	36½	Hik.	1.32	Kh.	Kaalepo.
Hem.	56	Kom.	45.	"	Poalima.
Hem.	30	Hik.	40	"	"
Ak.	56	Hik.	45	"	"
Hem.	36.	Hik.	3,36	"	Kaalepo.
Hem.	9	Kom.	51	"	"
Hem.	66.	Kom.	3,03	"	Poalima
Ak.	24¼	Kom.	535	"	Kaalepo.
Ak.	66¾	Hik.	216	"	Papohaku.

a hiki ma kahi i hoomaka'i, a maloko ia anapuni 1.46/100 Eka.

Apana I Ili Waihalulu. E hoomaka ke ana ma ke kihi Hema o keia e pili ana me ka pali.

Ak.	70½	Hik.	92	Kh.	Pali.
Ak.	20¼	Kom.	79	"	Poalima
Ak.	56¼	Hik.	66	"	"
Ak.	21¼	Kom.	33.	"	Poalima
Hem.	71	Kom.	1.66	"	Pali.
Hem.	24¼	Hik.	1.29	"	Konohiki.

HELU..... 5331

PALAPALA SILA NUI.

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

NO KA HEA, Ua hoohalo na Luna Hoona i na kumu kuleana nana i ka olelo, he kuleana oiaio ko Kuleana Hoia..... 4405

(Kaaleleo) me ke **Ano Alodio** iloko o kahi i olelois malalo.

Nolaila, ma keia Palapala Sila Nui, ka hoike aku nei o Kemehameha IV. ke Alii noi a ke Akua i kona lokomaikai i hoonoho ai maluna o ko Hawaii Pae Aina, i na kanaka a pau, i keia la nona iho, a no kona mau hope alii, ua kauoi aku ois ma ka **Ano Alodio** ia (Kaaleleo) (Waiehae)

i kela — (Maui) wahi a pau loa ma ponoi na mokuna,

ma ka mokupuni o

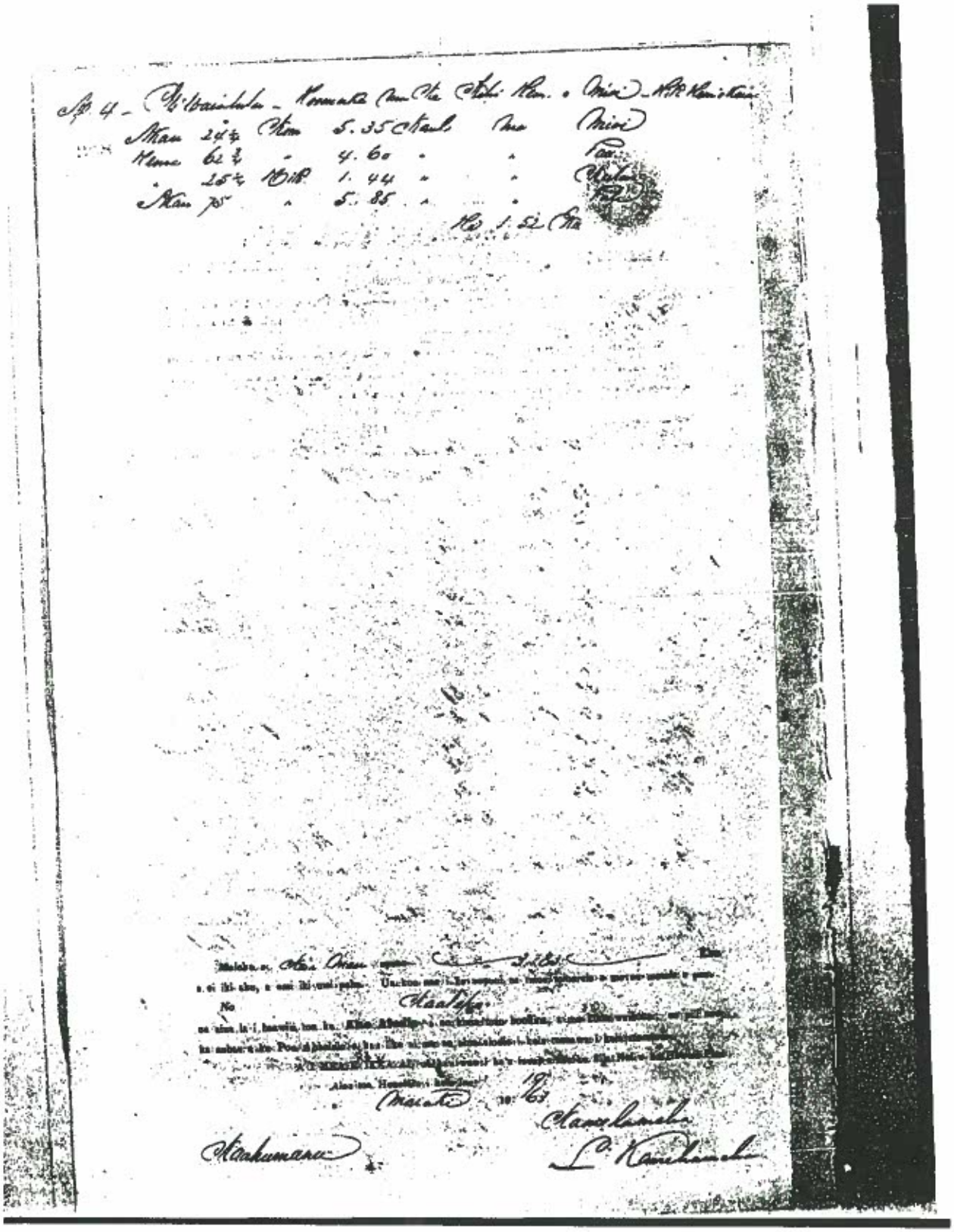
Apt. 1. Ili Waiehae — Kuauka ma ka Alihi Kem o Ano Ap. 38 ahm 22 R
a Kih ma ka Alihi Kema — o kah

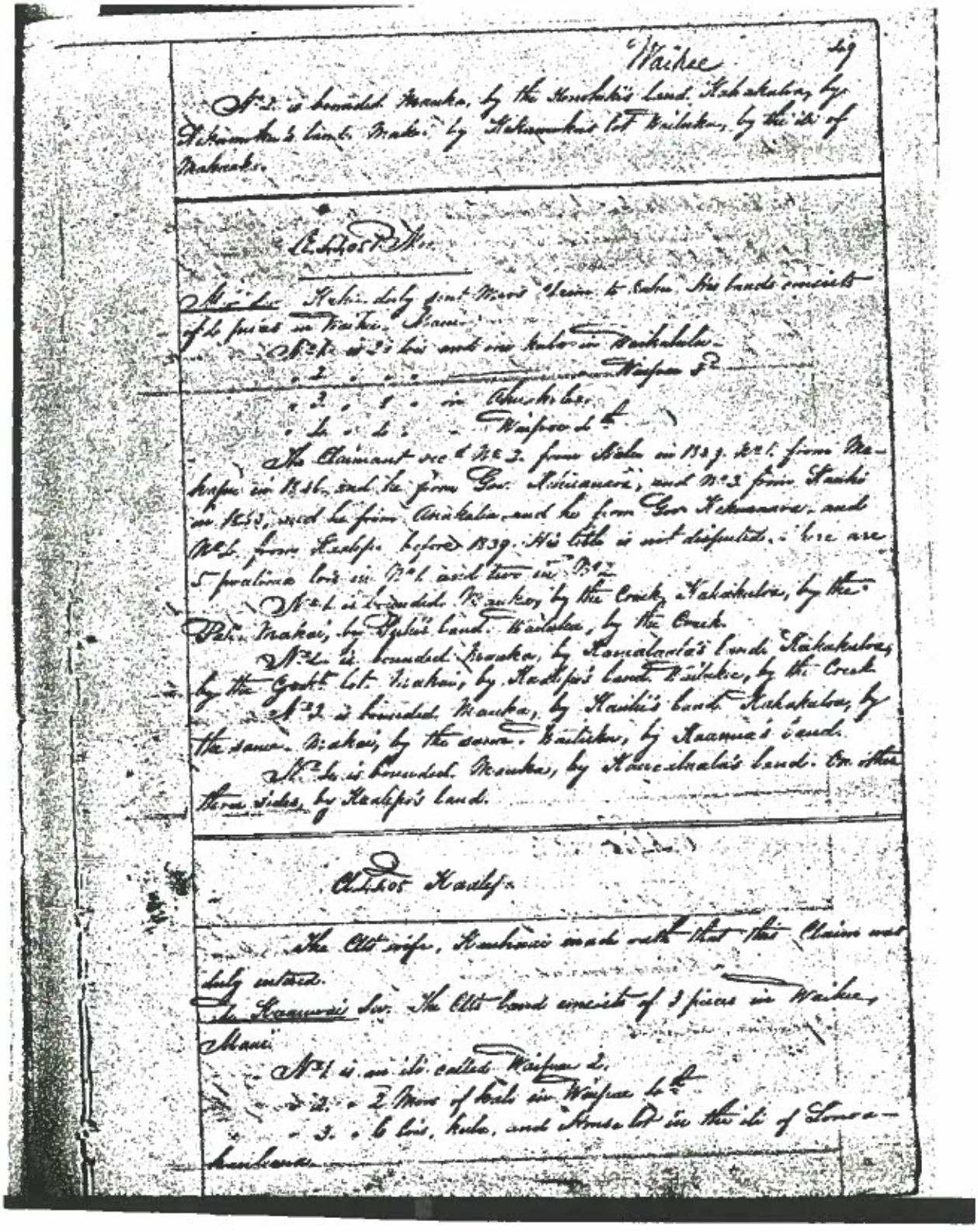
Mau	38 Kam	0.40	Aaul	ma ka		Poalima
"	52 Hik.	— 73	"	"		"
"	42½ Kam	— 51	"	"		"
Kema	51 "	— 70	"	"		Moo
Mau	38 "	1.33	"	"		Poalima
"	48 Hik.	— 56	"	"		"
"	42½ Kam	— 46	"	"		"
Kema	51 "	— 56	"	"		Moo
Mau	38 "	2.87	"	"		Pae
"	50½ Hik.	1.85	"	"		Kaaleleo
Kema	48 "	4.92	"	"		"
Mau	74¾ "	— 88	"	"		"
Kema	33¾ "	— 80	"	"		Aperil
"	59 Kam	3.42	"	"	Ke 1.35	Ka

Apt. 2 Ili Waiehae 4 — (Kahale) — Kuauka ma ka Alihi Kem o Moo
Kem. 73½ Kam. 1.93 Aaul kih Alihi Kem o Kau

Mau	30½ Kam	5.15	Aaul	ma		Kaaleleo
Kema	57½ "	1.73	"	"		Poalima
"	36½ Hik.	2.37	"	"		Aperil
"	9 Kam	— 55	"	"		"
"	83½ Hik.	2.17	"	"		Pae
				Kema 1.25		Ka

Apt. 3 Ili Waiehae 4 — (Kahale) — Kuauka ma ka Alihi Kem
Mau 30½ Kam 1.28 Aaul ma Kaaleleo
Kema 60½ " 1.87 " " Pae
" 36½ Hik. 1.38 " " Aperil
Mau 57½ " 1.73 " Ke 1.25 Poalima Ka





Waihee 49

No. 2 is bounded Mauka, by the Konohiki's land. Kahakalua, by Kekumoku's land. Makai by Kekumoku's lot Wailuku, by the ili of Makaaka.

Cl. 4,405 P. Moo

Moo Sw. Kahi duly sent Moo's claim to Kahu. His lands consists of 4 pieces in Waihee. Maui.

No. 1 is 2 lois and one kula in Waikalulu.
" 2 " " " Waipae 3d
" 3 " " in Ahuokoloa.
" 4 " " " Waipae 4th

The Claimant recd No. 2 from Kahu in 1839. No. 1 from Makapu in 1846, and he from Gov. Kekuanaoa, and No. 3 from Kauhi in 1853, and he from Anakalua, and he from Gov. Kekuanaoa, and No. 4 from Kaalipo before 1839. His title is not disputed. There are 5 pualima lois in No. 1 and two in No. 2.

No. 1 is bounded Mauka, by the Creek. Kahakalua, by the Path. Makai, by Puhi's land. Wailuku, by the Creek.

No. 2 is bounded Mauka, by Kamalaala's land. Kahakalua, by the Govt. lot. Makai, by Kaalipo's land. Wailuku, by the Creek.

No. 3 is bounded Mauka, by Kauhi's land. Kahakalua, by the same. Makai, by the same. Wailuku, by Kaauna's land.

No. 4 is bounded Mauka, by Kaucalaala's land. On other three sides, by Kaalipo's land.

Cl. 4,405 Kaalipo

The Clt's wife, Kauhuai made oath that this Claim was duly entered.

Ka Kaauwai Sw. The Clt's land consists of 3 pieces in Waihee, Maui.

No. 1 is an ili called Waipae 2.
" 2 " 2 Moos of kalo in Waipae 4th
" 3 " 6 lois, kula, and House lot in the ili of Lonoa-kauhana.

No. 4405 P Moo (cont.)

Section 4 - 4 Taro patches at Waipae 4

Mauka	Kanealaala
Kahakuloa, makai, wailuku	Kaalepo

Section 2 from Nalu in 1839. ?Section 1 from Makapuu in 1846. Section 3 from Kauhi in 1843. Kauhi's interest from Anakalea. Sections 4 from Kaalepo, before 1839, no objections. 5 Poalimas in section, 1,2, poalimas in section 2.

No. 4405 Q Kaalepo July 26, 1849

Pawaaai sworn He has known - Kekahio had written before 1848. Z. Kaauwai sworn He has seen definitely 1 section in Waipae 2 ili of Waihee, he has not seen the other two sections.

Section 1 - Ili of Waipae 2

Mauka	Moo
Kahakuloa	Land fence
Makai	Kawahalea
Wailuku	Stream

Section 2 - 2 Moo's in Waipae 4

Mauka	Mioi
Kahakuloa	Land fence
Makai	Kanealaala
Wailuku	Stream

Section 3 - 6 patches, pasture and house in Lonoakaulana

Mauka	Waihalulu ili
Kahakuloa	Land fence
Makai	Mioi
Wailuku	Stream

All sections from Kaauwai in 1829. 2 Poalimas in first section, no objection.

No. 4405 R Mioi July 26, 1849

Claimant sworn Kekahio wrote (claim) before 1848. Paweai sworn He has seen 2 sections in the ilis of Waihee.

Section 1 - Ili of Waipae

Mauka	Lonoakaulana ili
Kahakuloa	Land fence
Makai	Kaalepo
Wailuku	Stream

Section 2 - 8 patches at Waihalulu

Mauka, Kahakuloa	Moo
Makai	Puhi
Wailuku	Moo

First section from Z, Kaauwai in 1829. Section 2 from Makapuu in 1846. Makapuu's land from M Kekuanaoa. No objections. 2 Poalimas in first section, none in section 2.

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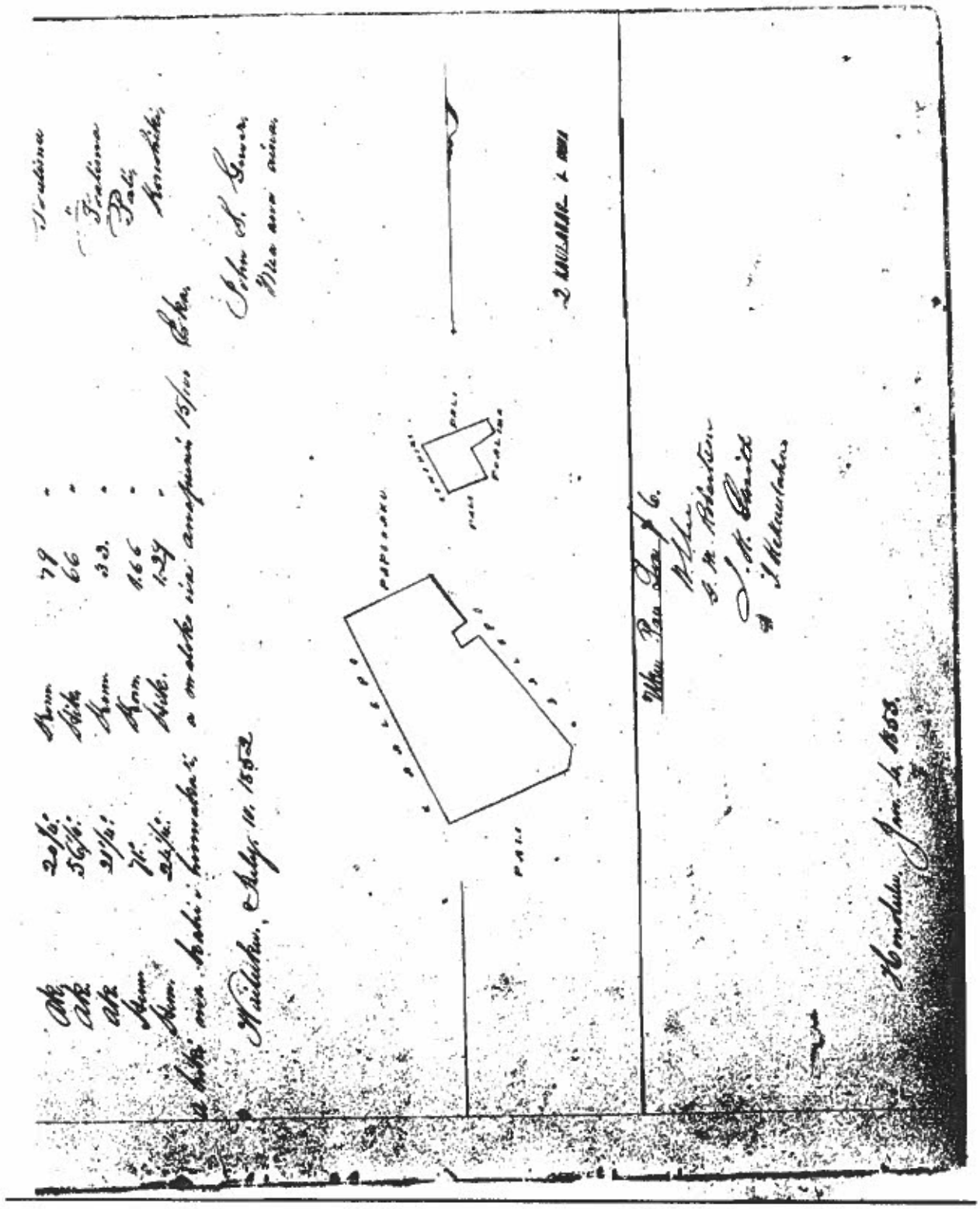
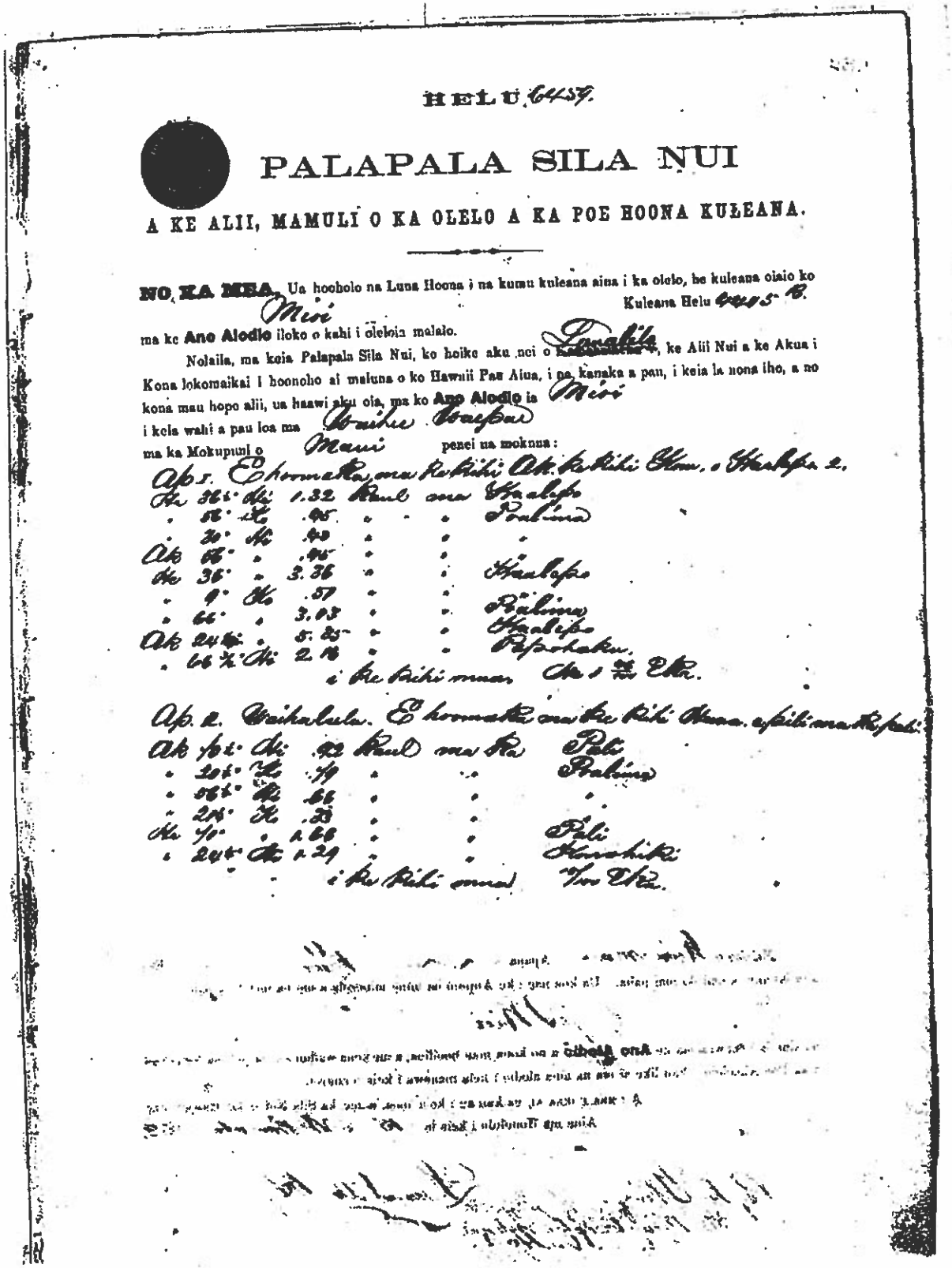
No. 4405 S Puhi July 26, 1849

Moo sworn He has known - Kekahio had written (claim) before 1848. He has seen 1 taro section and pasture in Waihalulu ili of Waihee. Puhi's land from Makapuu in 1846. Makapuu's interest from (M.K.). No objection, 3 poalimas in there.

Mauka	Mioi
Kahakuloa	Stream/Pa
Makai	Lonoakaulana ili
Wailuku	Stream

Exhibit 5: Māhele records establishing our appurtenant rights for TMK No. 3-2-003:011 (Land Commission Award No. 4405-R, Royal Patent No. 6459)


Honolulu, Jan. 4, 1855.



HELU 6459.

PALAPALA SILA NUI

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

NO KA MEA. Ua hooholo na Luna Hoona i na kumu kuleana aina i ka olelo, he kuleana oiaio ko Miri Kuleana Helu 4445 B.

ma ke **Ano Alodio** iloko o kahi i oleloia malalo.

Nolaila, ma keia Palapala Sila Nui, ko hoike aku nei o Lunalilo, ke Alii Nui a ke Akua i Kona lokomaikai i hoonoho ai maluna o ko Hawaii Pae Aina, i na kanaka a pau, i keia la nona iho, a no kona mau hopo alii, ua haawi aku oia, ma ko **Ano Alodio** ia Miri

i keia wahi a pau loa ma Waihee Waepae

ma ka Mokupuni o Maui penei ua mokuna:

Ap. 1. E hoomaka ma ke kihi Ak. ke kihi Kom. o Haalepo 2.

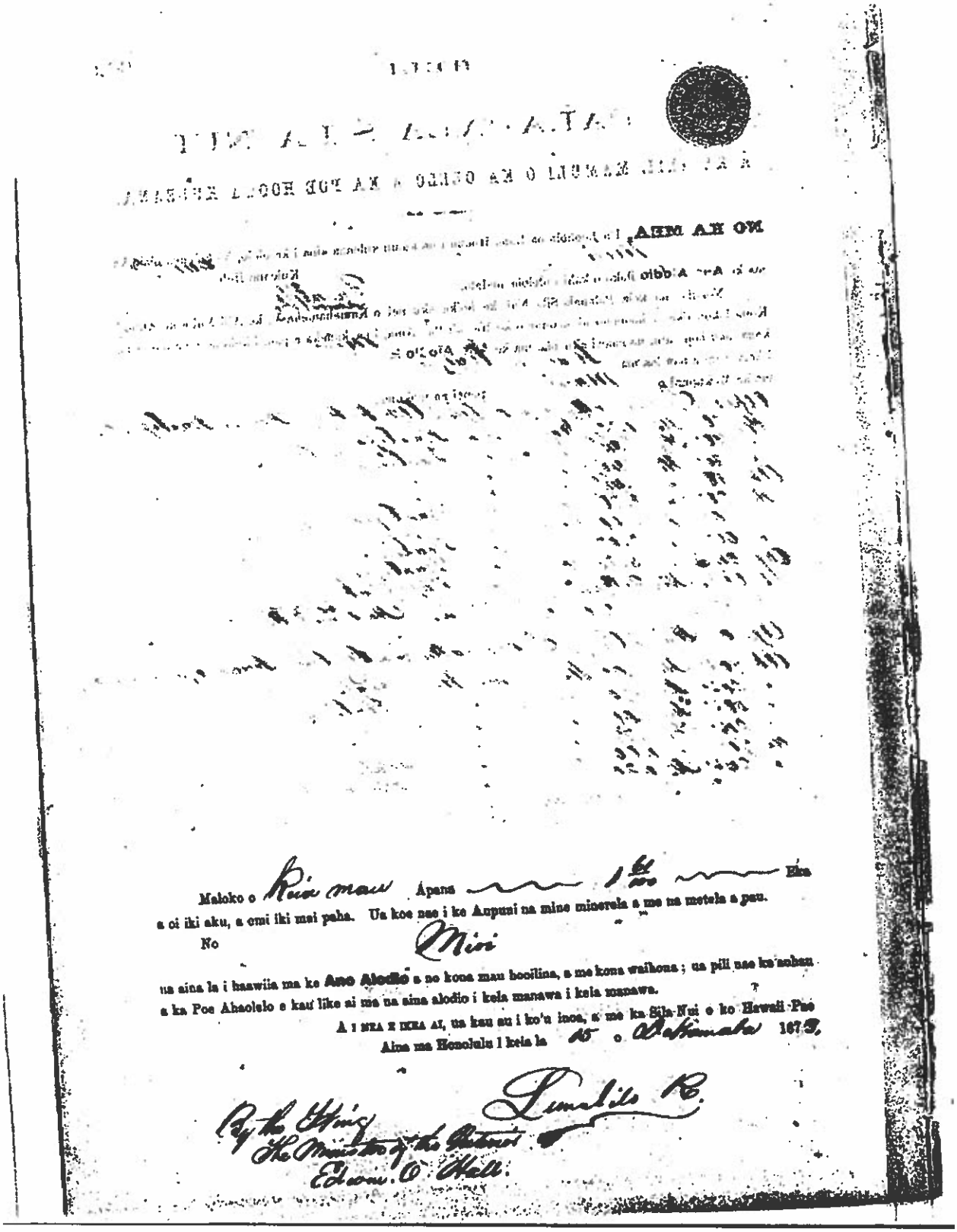
He	36½°	Hi	1.32	Kaul ma	Haalepo
"	56°	Ko	.45	" "	Poalima
"	30°	Hi	.40	" "	"
Ak	56°	"	.45	" "	"
He	36°	"	3.36	" "	Haalepo
"	9°	Ko	.57	" "	"
"	66°	"	3.03	" "	Poalima
Ak	24½°	"	5.35	" "	Haalepo
"	66½°	Hi	2.16	" "	Papohaku.

i ke kihi muas He 1 [illegible] Eka.

Ap. 2. Waihalula. E hoomaka ma ke kihi Hana. e pili ma ke pali.

Ak	70½°	Hi	.92	Kaul ma ka	Pali
"	20½°	Ko	.79	" "	Poalima
"	56½°	Hi	.66	" "	"
"	21½°	Ko	.33	" "	"
He	70°	"	1.66	" "	Pali
"	24½°	Hi	1.29	" "	Honohiki

i ke kihi muas 7/100 Eka.



Maloko o Kiia mau Apana 1 61/100 Eka

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

No Mioi

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

A I NEA 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 15 o Dekemaba 1873.

Lunalilo R.

By the King
The Minister of the Interior
Edwin O. Hall.

No. 4405 P Moo (oont.)

Section 4 - 4 Taro patches at Waipae 4

Mauka	Kanealaala
Kahakuloa, makai, wailuku	Kaalepo

Section 2 from Nalu in 1839. ?Section 1 from Makapuu in 1846. Section 3 from Kauhi in 1843. Kauhi's interest from Anakalea. Sections 4 from Kaalepo, before 1839, no objections. 5 Poalimas in section, 1,2, poalimas in section 2.

No. 4405 Q Kaalepo July 26, 1849

Pawaaai sworn He has known - Kekahio had written before 1848. Z. Kaauwai sworn He has seen definitely 1 section in Waipae 2 ili of Waihee, he has not seen the other two sections.

Section 1 - Ili of Waipae 2

Mauka	Moo
Kahakuloa	Land fenoe
Makai	Kawahalea
Wailuku	Stream

Section 2 - 2 Moo's in Waipae 4

Mauka	Mioi
Kahakuloa	Land fence
Makai	Kanealaala
Wailuku	Stream

Section 3 - 6 patches, pasture and house in Lonoakaulana

Mauka	Waihalulu ili
Kahakuloa	Land fence
Makai	Mioi
Wailuku	Stream

All sections from Kaauwai in 1829. 2 Poalimas in first section, no objection.

No. 4405 R Mioi July 26, 1849

Claimant sworn Kekahio wrote (claim) before 1848. Pawaai sworn He has seen 2 sections in the ilis of Waihee.

Section 1 - Ili of Waipae

Mauka	Lonoakaulana ili
Kahakuloa	Land fance
Makai	Kaalepo
Wailuku	Stream

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Section 2 - 8 patches at Waihalulu

Mauka, Kahakuloa	Moo
Makai	Puhi
Wailuku	Moo

First section from Z, Kaauwai in 1829. Section 2 from Makapuu in 1846. Makapuu's land from M Kekuanaoa. No objections. 2 Poalimas in first section, none in section 2.

No. 4405 S Puhi July 26, 1849

Moo sworn He has known - Kekahio had written (claim) before 1848. He has seen 1 taro section and pasture in Waihalulu ili of Waihee. Puhi's land from Makapuu in 1846. Makapuu's interest from (H.K.). No objection, 3 poalimas in there.

Mauka	Mioi
Kahakuloa	Stream/Pa
Makai	Lonoakaulana ili
Wailuku	Stream