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:
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COMMISSION ON WATER RESOURCE MANAGEMENT
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SWUP NO. 82

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
CHARLENE E. KANA JACOB H. KANA SR.	CHARLENE E. KANA	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
P.O. BOX 292 WAILUKU, HI 96793	225 EAST WAIKO ROAD WAILUKU, HI 96793

Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone	Source Landowner's Fax	Source Landowner's E-mail
[redacted]					

EXISTING SOURCE INFORMATION

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

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

4a. TMK OF STREAM DIVERSION LOCATION: 3 (Zone) - 2 (Sector) - 014 (Plat) : 001 (Parcel)

4b. TMK OF DITCH DIVERSION LOCATION: 3 (Zone) - 2 (Sector) - 006 (Plat) : 004 (Parcel)

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

☒ Pipe ☐ Pump ☒ Ditch/euwai ☐ Other Describe:

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

6. FLOW MEASUREMENT INFORMATION:

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

☐ Yes. Enter the installation date:

Describe the device and enter measured amounts in Table 1.

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

See attachment A

EXISTING USER INFORMATION

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

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

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

If yes, who is the operator of the water system? 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): Chang-, C; Kahalehau, R

☐ 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
Jacob Kana Sr. Charlene E. Kana Signature	Signature
CHARLENE E. KANA Jacob Kana 4/4/09 Print Date	Print Date

FILE ID:
DOC ID:

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	25,200	☐	☒	☐	☐	
June 2007	25,200	☐	☒	☐	☐	
July 2007	25,200	☐	☒	☐	☐	
August 2007	25,200	☐	☒	☐	☐	
September 2007	25,200	☐	☒	☐	☐	
October 2007	25,200	☐	☒	☐	☐	
November 2007	25,200	☐	☒	☐	☐	
December 2007	25,200	☐	☒	☐	☐	
January 2008	25,200	☐	☒	☐	☐	
February 2008	25,200	☐	☒	☐	☐	
March 2008	25,200	☐	☒	☐	☐	
April 2008	25,200	☐	☒	☐	☐	
SUM OF AVERAGE DAILY USE FOR THE MONTH	302,400	**GPD**				
AVERAGE DAILY USE (Average of the above)	25,200	**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)								
	___ - ___ - ___ : ___								
	___ - ___ - ___ : ___								
	___ - ___ - ___ : ___								
					TOTAL POTABLE USE	N/A	GPD		
Uses that **do not** require potable water									
AGRCP	3 - 2 - 006 : 001	AG	No	AG	No	18,900	No	0.063 acres	See Attachment A
AGRCP	3 - 2 - 006 : 018	AG	No	AG	No	6,300	No	0.021 acres	See Attachment A
	___ - ___ - ___ : ___								
	___ - ___ - ___ : ___								
					TOTAL NON-POTABLE USE	25,200	GPD		
					TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	25,200	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 t2 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 - 006 : 001 (Zone - Sector - Plat : Parcel)	Wetland Taro	0.32 acres	0.063 acres	Year round	Year round	Flood (Taro)	Field Capacity
3 - 2 - 006 : 018 (Zone - Sector - Plat : Parcel)	Wetland Taro	1.25 acres	0.021 acres	Year round	Year round	Flood (Taro)	Field Capacity
Zone - Sector - Plat : Parcel							
Zone - Sector - Plat : Parcel							
Zone - Sector - Plat : Parcel							
Zone - Sector - Plat : Parcel							
Zone - Sector - Plat : Parcel							
Zone - Sector - Plat : Parcel							
Zone - Sector - Plat : Parcel							
Zone - Sector - Plat : Parcel							

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

TABLE 4: ALTERNATIVES ANALYSIS

	Potable Alternatives Attach additional sheets if necessary.	**Non-Potable Alternatives** Attach additional sheets if necessary.
Municipal sources	N/A	See Attachment A
Wastewater reuse	N/A	See Attachment A
Ditch system	N/A	See Attachment A
Desalinization	N/A	See Attachment A
Ground water	N/A	See Attachment A
Other (specify)	N/A	See Attachment A

PUBLIC INTEREST

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

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

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

INSTRUCTIONS FOR FILLING OUT *FORM SWUPA-E*

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

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

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

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

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

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

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

LINE BY LINE INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

APPLICANT INFORMATION

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

EXISTING SOURCE INFORMATION

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

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

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

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check the appropriate box(es). Is the diverted water returned to the stream or ditch? Check "Yes" or "No." If yes, enter the amount of water returned.

6. FLOW MEASUREMENT INFORMATION: Check "Yes" or "No". If you have a working flowmeter with a totalizer, answer "Yes" to this question, and fill in the date that the flowmeter was installed and any other information you may have (manufacturer, serial number, etc.). A totalizer directly measures the total use for the source (similar to a car's odometer). Otherwise, answer "No" and explain how stream diversion is measured or estimated to justify amounts requested in Table 1

EXISTING USER INFORMATION

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

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

TABLE 1: 12-MONTH AVERAGE DAILY USE - Measured or calculated use of water at the source or end use as of the effective date of desigoation, 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 io gallons per day (GPD). To calculate this average, take the total use (in gallons) for the mooth, 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 tbe 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.
- Ioactive – source was not pumped or diverted for the month.
- Other - describe how water use was measured or calculated io 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 Tablc 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 linc. 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 io 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: Eoter the quantity of use in gallons per day (GPD). Justification for the quantities requested may depend on your answers to items 8 and 9, aod 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. Submeteriog 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 io 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.*

As Kanaka Maoli, Hawai`i's native people, we proclaim our inherent sovereignty and question whether the State of Hawai`i has jurisdiction to regulate our water uses. In an abundance of caution, we are filing this Water Use Permit Application to protect our rights and interests as Kanaka Maoli and as kuleana water users.

ATTACHMENTS

This Water Use Permit Application incorporates the following attachments:

Attachment A – Supplemental Responses

Attachment B – TMK Map

Attachment C – Photographs

Attachment D – Documentation Establishing Appurtenant Rights

Attachment E – 7.5-minute series (1:24,000) USGS Topographic Map showing Waihe`e River, with the Waihe`e Ditch Diversion and Spreckels Ditch Diversion labeled.

NOTE: Because our existing use of water as of April 30, 2008 was limited by the lack of availability of sufficient water, our use on that date was less than we used previously, and less than we plan to use in the future if water is restored. Accordingly, we are submitting, together with this Application, a Surface Water Use Permit Application for a New Use, so that we can restore to cultivation lo`i kalo on our kuleana that are currently (and were as of April 30, 2008) fallow due to lack of water.

ATTACHMENT A

SUPPLEMENTAL RESPONSES

Box 2 (and 12): Source Landowner

Not applicable pursuant to HRS § 174C-51(1)(B), because we do 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, LLC claims to be the source landowner.

Box 5: Stream Diversion

We are existing 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 USGS Topographical Map, Attachment E). 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 `auwai, until it reaches our neighbor Cordell Chang's property (TMK 3-2-006:004). Although our property used to have its own intake, when Wailuku Agribusiness converted to macadamia nuts, it changed our intake so that we now share a single 3" pipe with Cordell; this significantly limits the amount of water available for both of our uses. The 3" pipe brings water from the `auwai to our land, where we use it for our lo`i kalo. After flowing through our lo`i, nearly all of the water returns to the kuleana `auwai makai of our property from the southeastern-most corner of our parcel. The amount of water flowing into our lo`i and the amount that flows out and is returned to the `auwai both depend on the flow in the South Waihe`e kuleana `auwai, which fluctuates. The amount that flows out also depends, in part, on daily climatic conditions. Since the South Waihe`e kuleana `auwai also runs past our property, we would like to take our water directly from the `auwai on TMK 3-2-006:018 and plan to do so once we receive a water use permit.

Box 6: Flow Measurement Information

Our existing water use is not gauged. We estimated our existing water use for wetland kalo cultivation by multiplying the 0.084 acres we had in wetland kalo cultivation on April 30, 2008 (which is substantially less than the acreage we previously had in kalo cultivation, because we have had to reduce the acreage due to water limitations) by 300,000 gallons per acre per day, which we understand be the amount of water required to grow healthy kalo.

Box 7: Appurtenant Right

Our property has an appurtenant right to water because it was in kalo cultivation at the time of the Māhele of 1848. In fact, the stream water we currently use is for ancient lo`i kalo

that we have restored. Appended to this application as ATTACHMENT D are true and correct copies of Land Commission Award 3963 and Royal Patent No. 6457, along with the testimony indicating that the land was in kalo at the time of the Māhele. We have no evidence, indication, or other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

Table 1: 12-Month Average Daily Use

See supplemental response for Box 6.

Table 2: Land Use Consistency/Efficiency

Boxes 3 & 5 – Our application is for an existing use of water on land zoned agricultural. The cultivation of traditional Native Hawaiian crops, including kalo, is consistent with state and county general plans and land use designations. Additionally, this use is consistent with county land use plans and general policies.

Box 10 – See supplemental response for Box 6.

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 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; the kalo we grow feeds our `ohana and is shared with neighbors and community members. An alternative water source that would require us to pay for the volumes of constantly flowing water in our lo`i necessary to keep temperatures cool and support healthy kalo would make our kalo cultivation economically impossible. We would effectively be denied our appurtenant right and traditional and customary right to grow kalo on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights.

Municipal Sources – Our domestic water service is a typical residential service and may not have the capacity to deliver the volumes of water we require. Even if the Maui County Department of Water Supply were willing to provide municipal water for kalo cultivation and install a larger water meter, the cost of using municipal water for such purposes would be

prohibitive. Additionally, water from the Maui County Department of Water Supply is chlorinated, which is detrimental and unsuitable for wetland kalo.

Wastewater reuse – Reusing wastewater is impracticable because we would still be required to pay for large volumes of flowing water. As small users engaged in a traditional, non-commercial use, 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 that passes near our land, and have had to reduce our kalo cultivation because currently water is not available consistently and in sufficient amounts to support the existing uses on our system, including our own use. Getting water from other ditch systems is not practicable. The other ditch systems in Nā Wai 'Ehā currently do not consistently have enough water to support additional users. Moreover, there is no other ditch that passes near our kuleana land and we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As small users engaged in a traditional, non-commercial use, 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 small users engaged in a traditional, non-commercial use, 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

We are Native Hawaiians exercising out appurtenant and traditional and customary rights to cultivate kalo in the traditional manner on our kuleana land in ancient lo`i that we restored, and our lo`i help maintain ecological balance and scenic beauty. Pursuant to HRS § 174C-2(c), the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." As such, our existing use of stream water is consistent with the public interest.

Our Existing Use is a Protected Public Trust Purpose

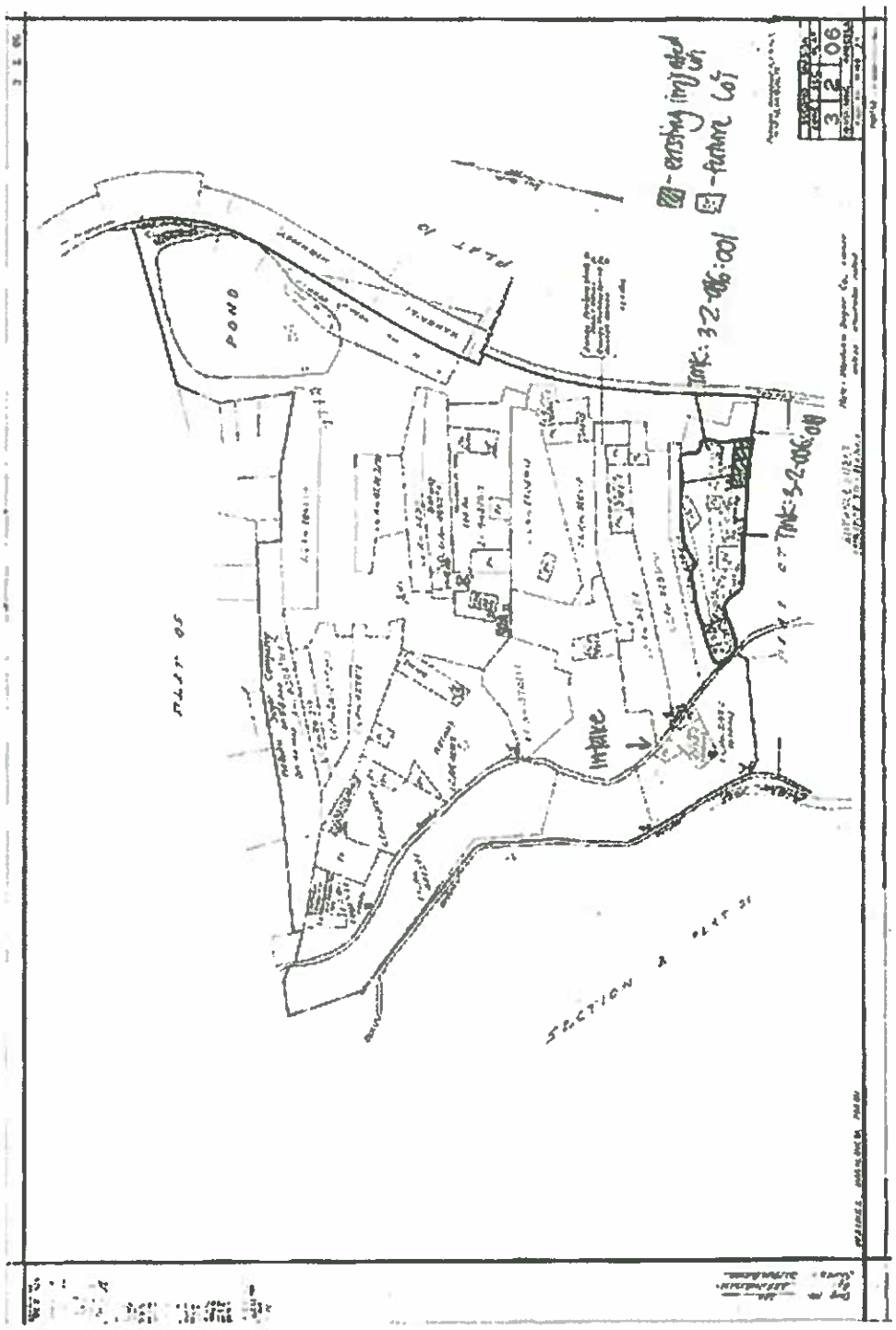
Kalo cultivation by Native Hawaiians is also a protected public trust purpose. In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 137, 9 P.3d 409, 449 (2000) ("Waiāhole I"); see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights); HRS § 174C-101(c) (specifically protecting the right to cultivate kalo on one's own kuleana). Additionally, because much of the water we use is returned to the `auwai our use

supports other existing public trust purposes such as: water for domestic purposes and 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.

ATTACHMENT B: TMK MAP



This is a true and correct copy of TMK No. 3-2-006: 001 and TMK No. 3-2-006: 018.
Our end uses are approximate, and are not drawn to scale.

ATTACHMENT C: PHOTOGRAPHS

This is a true and correct photograph taken on October 12, 2008 that accurately depicts the conditions of the 'auwai that feeds the pipe that provides water to the Kana property.

This is a true and correct photograph taken on October 12, 2008 that accurately depicts the conditions of the intake from the 'auwai, which feeds the pipe that provides water to the Kana property.

This is a true and correct photograph taken on October 12, 2008 that accurately depicts the conditions of the pipe and water that feeds the existing lo'i. The water flows from the first lo'i to the next three lo'i and returns to the 'auwai on the property's south-easternmost corner.

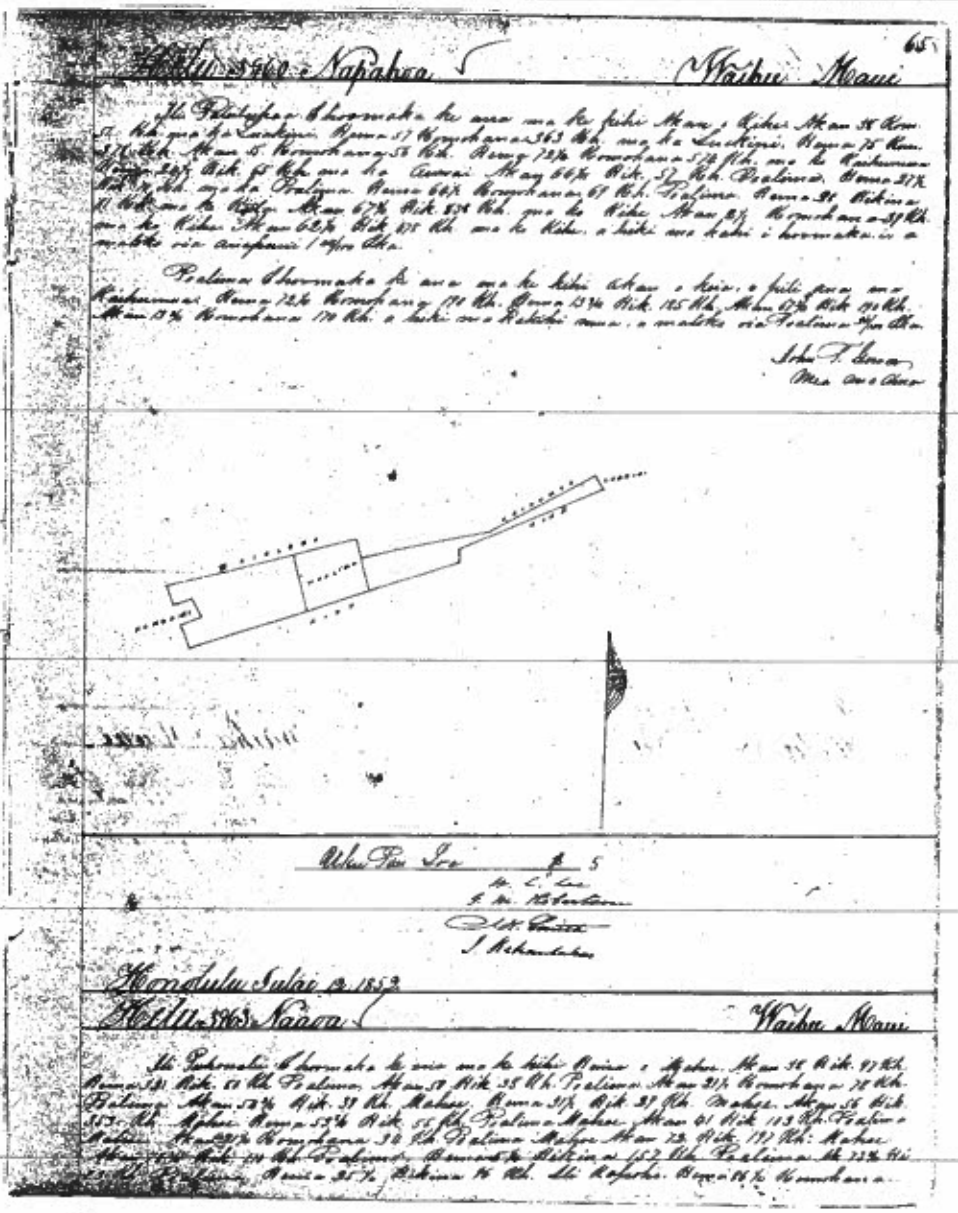
This is a true and correct photograph taken on October 12, 2008 that accurately depicts of the conditions of a lo'i that is currently irrigated on the Kana's property.

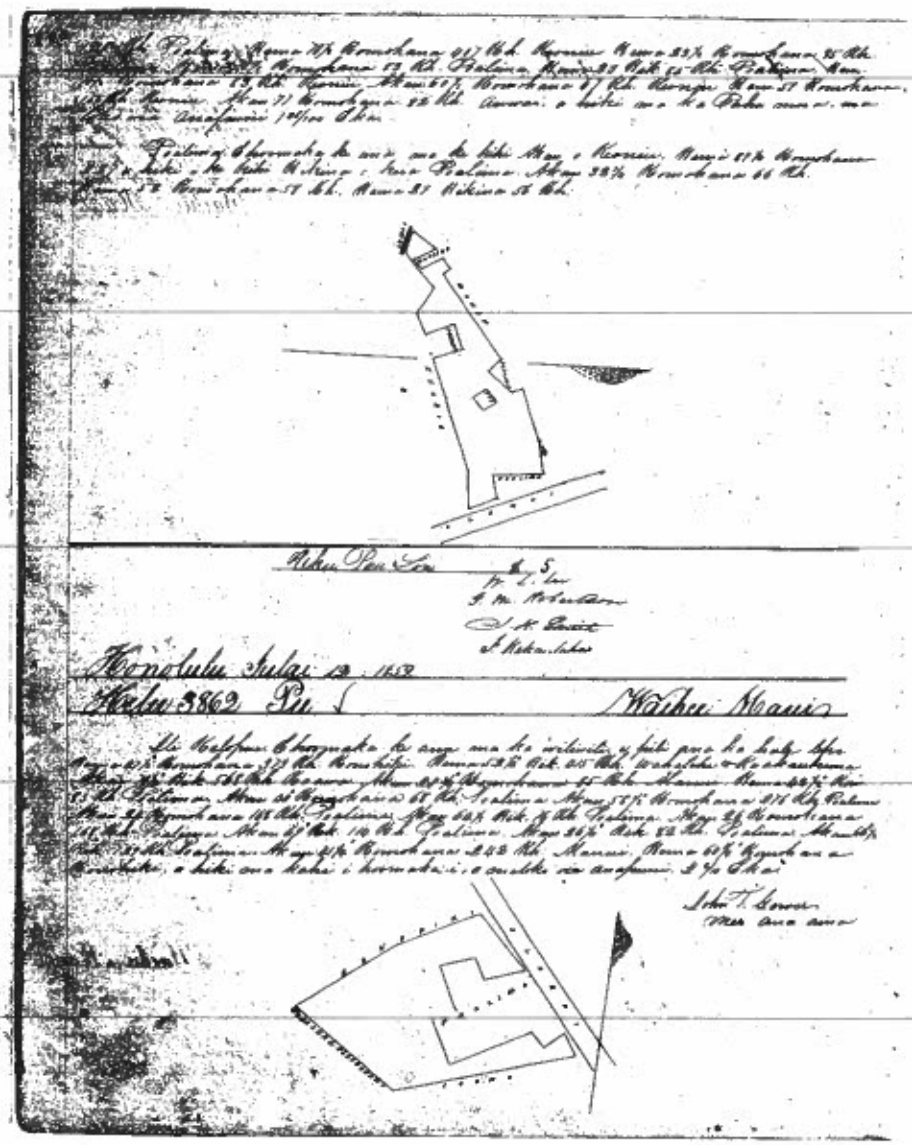
This is a true and correct photograph taken on October 12, 2008 that accurately depicts the conditions of the lo'i on the lower property (TMK No. 2-3-2-006: 001).

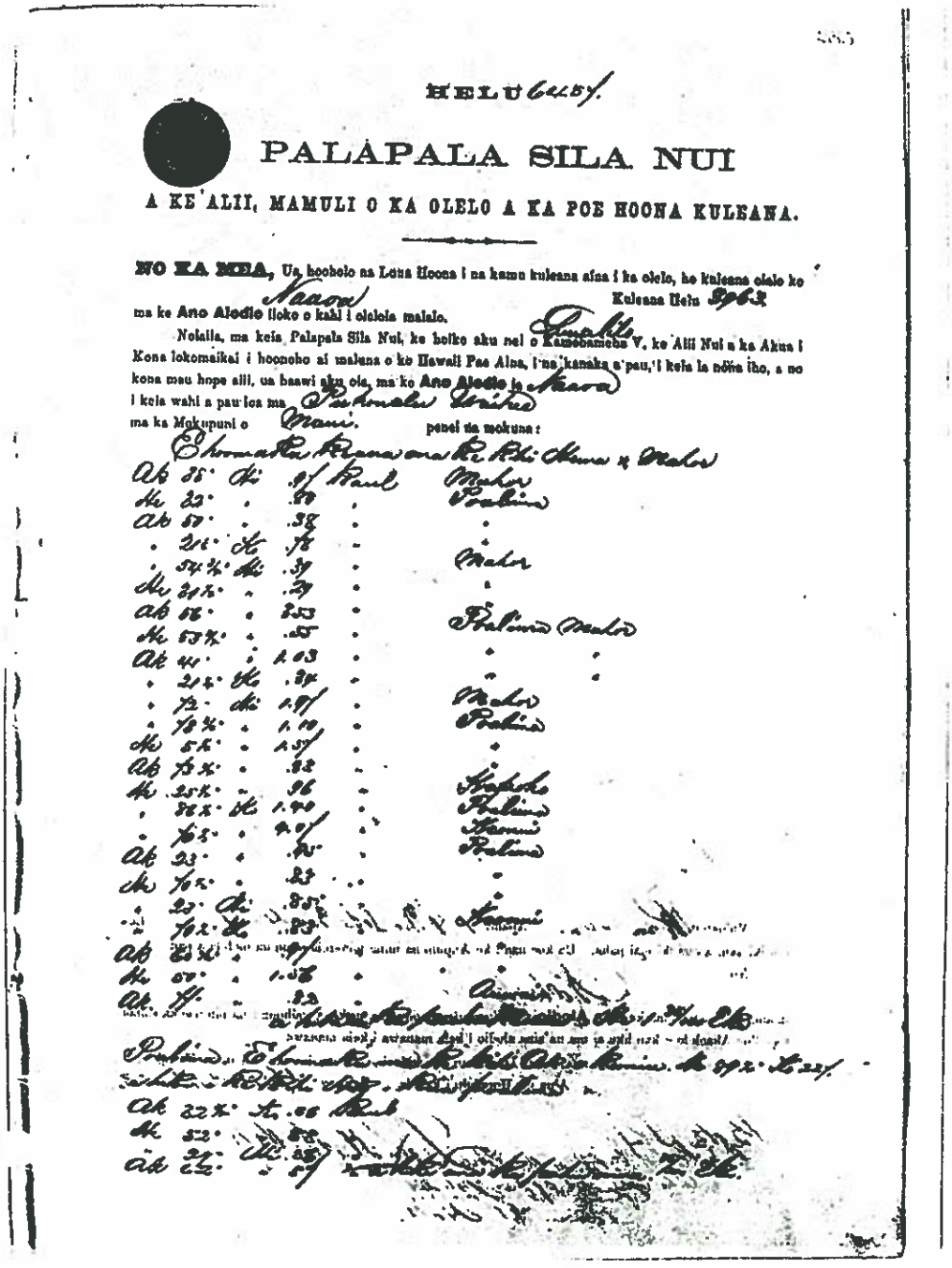
This is a true and correct copy of a photograph taken on October 12, 2008 that accurately depicts the condition of the kalo and azola grown in the lo'i, which helps to cool the water and maximize efficient water use.

This is a true and correct copy of a photograph taken on October 12, 2008 that accurately depicts the condition of the banana grove and ti leaf grove that are currently grown on the Kana's property.

ATTACHMENT D: DOCUMENTATION ESTABLISHING APPURTENANT RIGHTS







HELU 6454.

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 olelo ko Naava Kuleana Helu 3963 ma ke **Ano Alodio** iloko o kahi i olelola malalo.

Nolaila, ma keia Palapala Sila Nui, ke hoike aku nei o Kamehameha V, ke Alii Nui a ka 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 haawi aku ola, ma ke **Ano Alodio** ia Naava i keia wahi a pau loa ma Pahonalu Waihee ma ka Mokupuni o Maui. penei na mokuna:

Ehoomaka Kiana ana Ke Kihi Hema x Mahor

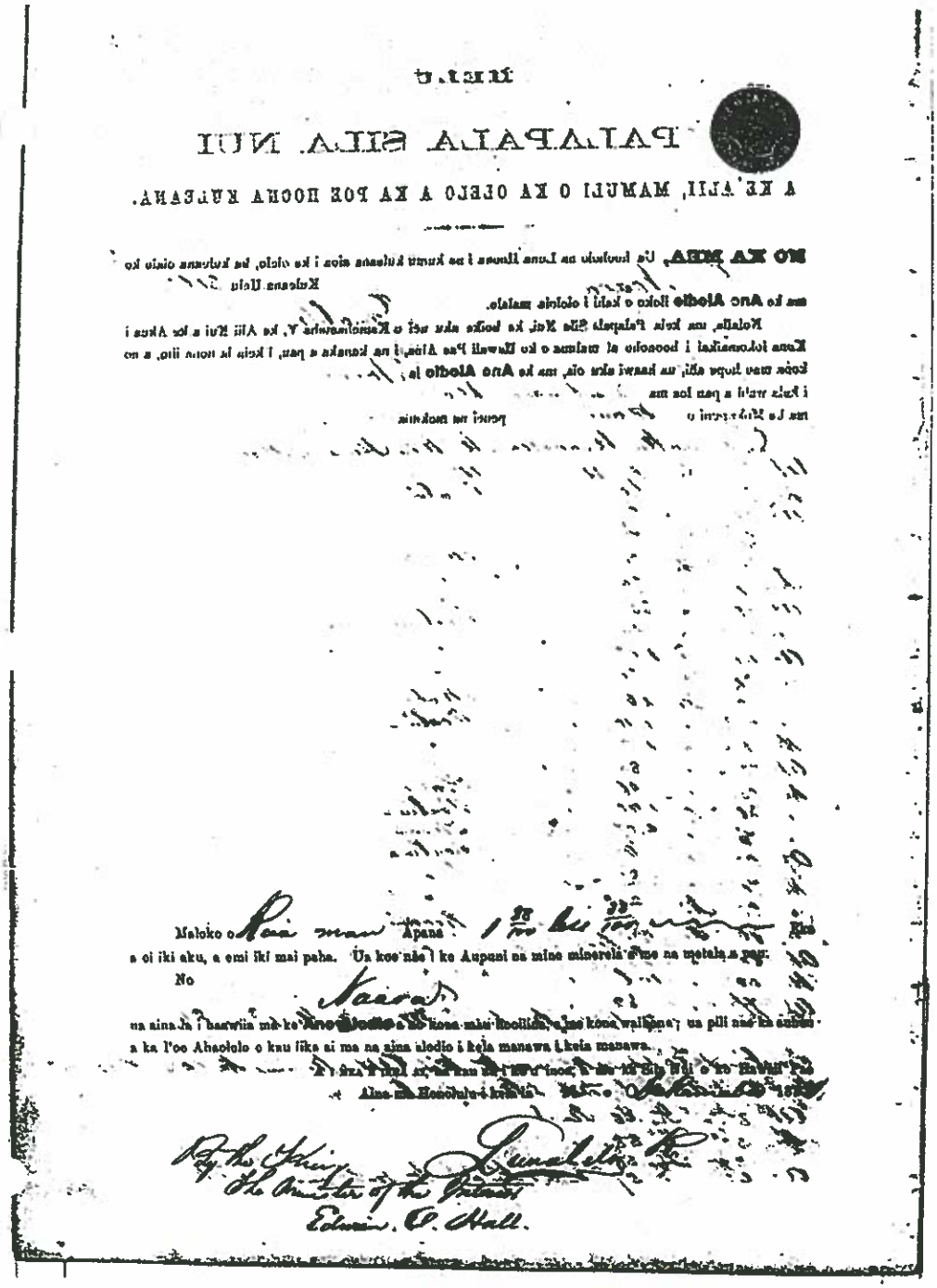
Ak	35	Hi	.97	Kaul	Mahor
He	32	"	.80	"	Poalima
Ak	50	"	.38	"	"
"	21½	Ko	.78	"	"
"	54½	Hi	.39	"	Mahor
He	31½	"	.29	"	"
Ak	56	"	2.53	"	Poalima Mahor
He	53½	"	.55	"	" "
Ak	41	"	1.03	"	" "
"	21½	Ko	.34	"	" "
"	72	Hi	1.97	"	Mahor
"	78½	"	1.10	"	Poalima
He	5½	"	1.57	"	"
Ak	73½	"	.83	"	"
He	25½	"	.96	"	Hapoho
"	86½	Ko	1.40	"	Poalima
"	76½	"	4.07	"	Hoomi
Ak	23	"	.95	"	Poalima
He	70½	"	.83	"	"
"	23	Hi	.85	"	"
"	70½	Ko	.83	"	Hoomi
Ak	60½	"	.97	"	"
He	50	"	1.56	"	"
Ak	77	"	.82	"	Auwai

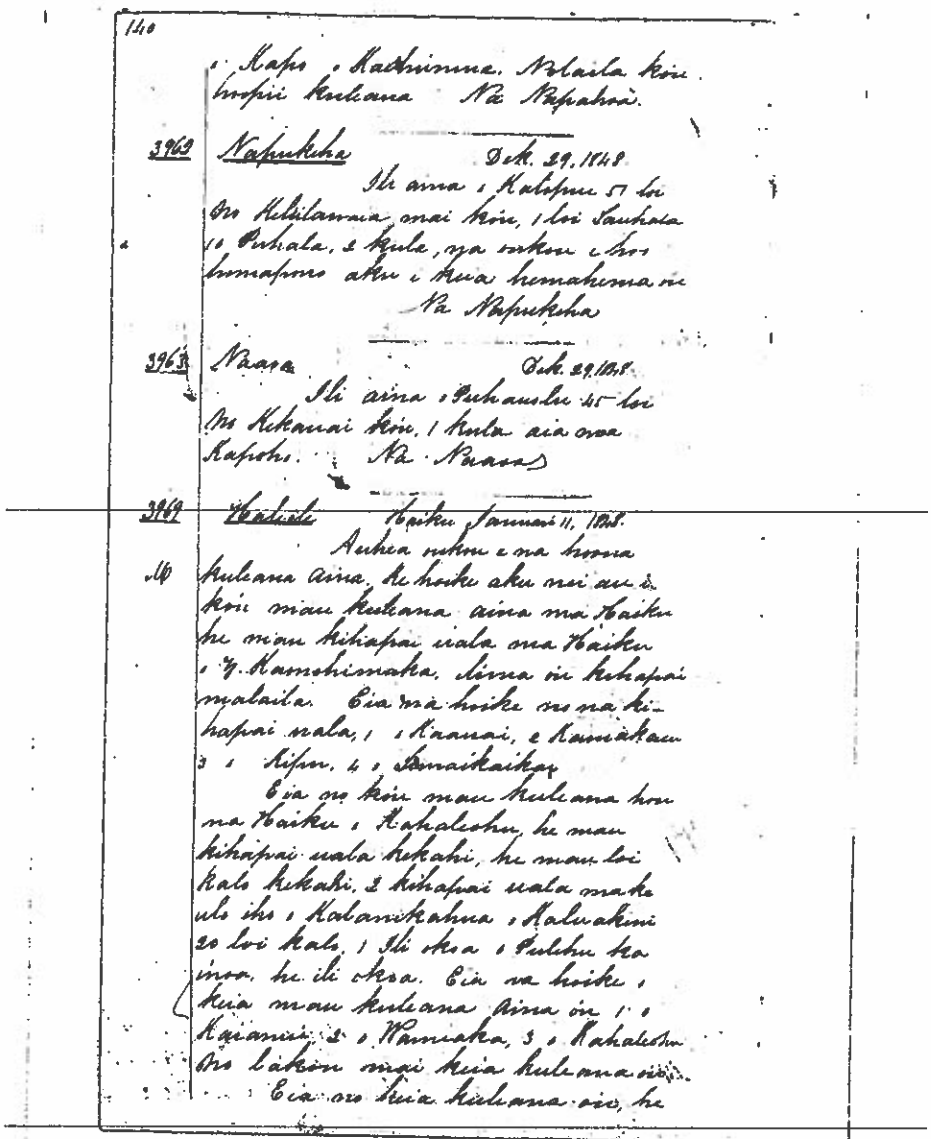
[illegible]

Poalima. Ehoomaka ana Ke Kihi Ak a Kumu. He 89½ Ko 22/

[illegible]

Ak	32½	Ko	.08	Kaul
He	52	"	.88	"
"	21	Hi	.88	"
Ak	62	"	.57	[illegible]





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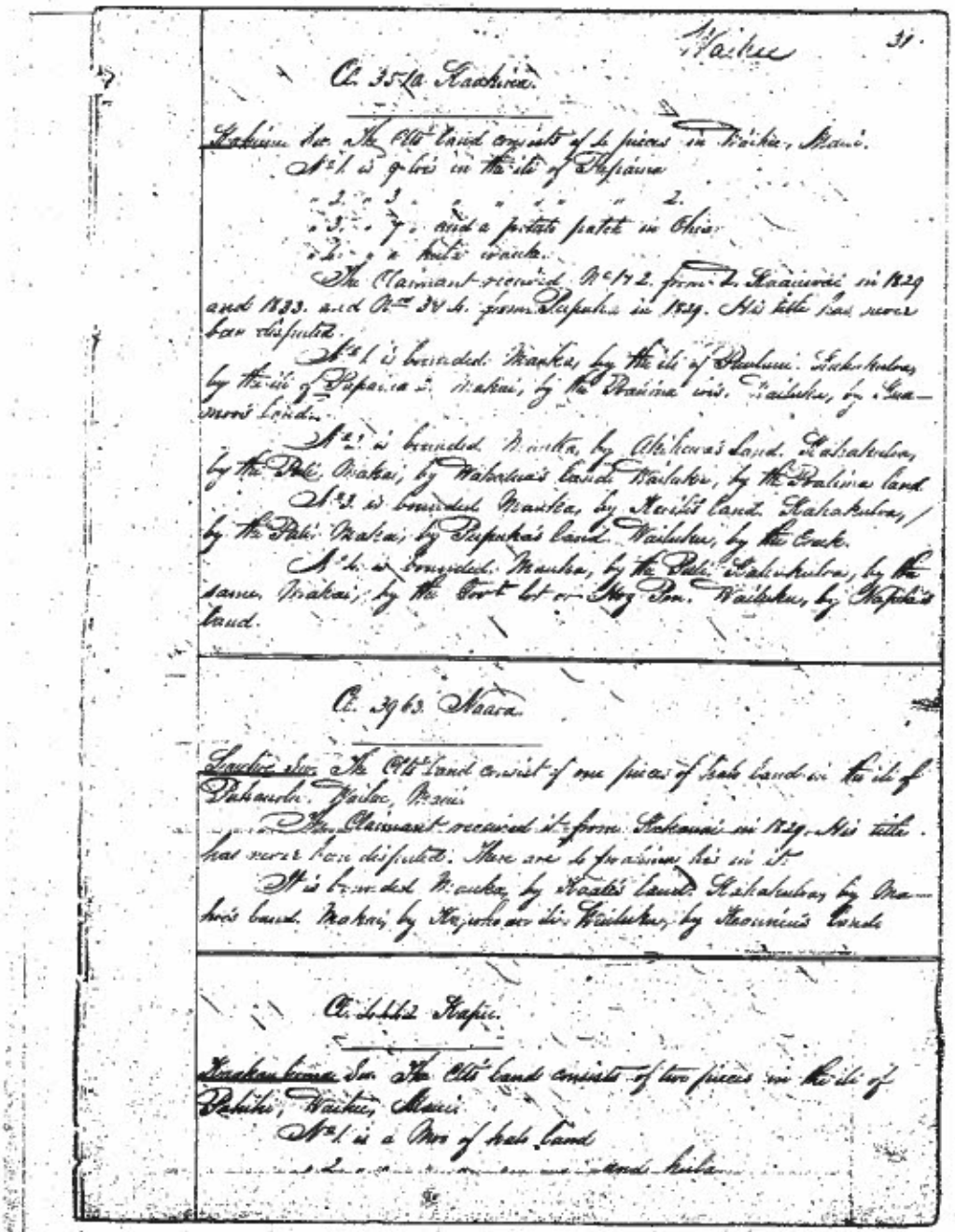
o Kapo o Kaohimua. Nolaila kou hoopii kuleana Na Napahoa.

3962 Napukeha Dek. 29, 1848.
Ili aina o Kalopue 51 loi no Kelilawaia mai kou, 1 loi Lauhala 10 Puhala, 2 kula, na oukou e hoo homapono aku i keia hemahema ou
Na Napukeha

3963 Naaoa Dek. 29, 1848.
Ili aina o Puhauolu 45 loi no Kekauai kou, 1 kula aia ma Kapoho. Na Naaoa

3969 Haleole Haiku Januari 11, 1848.
Auhea oukou e na hoona kuleana aina, he hoike aku nei au i kou mau kuleana aina ma Haiku he mau kihapai uala ma Haiku o Y. Kaonohimaka, elima ou kihapai malaila. Eia ma hoike no na kihapai uala, 1 o Kaauai, 2 Kamakau 3 o Kipu, 4 o Lamaikaika.
Eia no kou mau kuleana hou na Haiku o Kahaleohu, he mau kihapai uala kekahi, he mau loi kalo kekahi, 2 kihapai uala make ulo iho o Kalamikahua o Kaluakini 20 loi kalo, 1 Ili oksa o Pulehu ka inoa, he ili oksa. Eia na hoike o keia mau kuleana aina ou 1 o Kaianui, 2 o Wamiaka, 3 o Kahaleohu no lakou mai keia kuleana ou.
Eia no keia kuleana ou, he



Waikee 31.

Cl. 3510 Kaakina.

Kakina Sw. The Clt's land consists of 4 pieces in Waikee, Maui.
No 1 is 9 lois in the ili of Papaina
" 2 " 3 " " " " " 2.
" 3 " 7 " and a potato patch in Ohia
" 4 " a kula wauke.
The Claimant received No 1 & 2 from L. Kaauwai in 1829 and 1833. and No 3 & 4 from Pupuka in 1829. His title has never been disputed.
No 1 is bounded Mauka, by the ili of Paulani. Kahakulua, by the ili of Papaina 2. Makai, by the Pralima wis. Wailuku, by Kuamoo's land.
No 2 is bounded Mauka, by Akikewa's land. Kahakulua, by the Pali. Makai, by Wahalua's land. Wailuku, by the Pralima land.
No 3 is bounded Mauka, by Kevili's land. Kahakulua, by the Pali. Makai, by Pupuka's land. Wailuku, by the Creek.
No 4 is bounded Mauka, by the Pali. Kahakulua, by the same. Makai, by the Govt lot or Hog Pen. Wailuku, by Napela's land.

Cl. 3963 Naara.

Laulee Sw. The Clt's land consist of one piece of kalo land in the ili of Pahanolu. Wailee, Maui.
The Claimant received it from Kakauai in 1829. His title has never been disputed. There are 4 pralima lois in it.
It is bounded Mauka, by Kaate's land. Kahakulua, by Mahoe's land. Makai, by Kapoho an ili. Wailuku, by Keouniu's land.

Cl. 4442 Kapu.

Kaakaukuma Sw. The Clt's land consists of two pieces in the ili of Pahihi, Waikee, Maui.
No 1 is a Moo of kalo land
" 2 " " " " and kula

No. 4278 Kuahewa (cont.)

Section 4 - 6 Taro pathces and pasture at		Puhauolu
	Mauka	Land enclosure
	Kahakuloa	Poalima
	Makai	Large ditch
	Wailuku	Kaale

No. 3510 Kaakina — July 25, 1849

Kahinu sworn He has seen 4 sections in the ilis of Waihee. The two sections at Papaina 1 and 2 are from Z. Kaauwai in 1829 and 1830. The sections in 3-4 in Ohia are from Pupuka in 1829. No objections.

Section 1 - 9 Taro patches at Papaina 1		
	Mauka	Paulani ili
	Kahakuloa	Papaina 2 ili
	Makai	Poalima
	Wailuku	Kuamoo's land
Section 2 - 3 Taro patches at Papaina 2		
	Mauka	Akihewa
	Kahakuloa	Pali
	Makai	Wahalua
	Wailuku	Poalima
Section 3 - 7 Taro patches and pasture at		Ohia
	Mauka	Keoili
	Kahakuloa	Hale's land
	Makai	Pupuka's land
	Wailuku	Stream
Section 4 - Wauke pasture at Ohia		
	Mauka, Kahakuloa	Pali
	Makai	Land enclosure
	Wailuku	Napela

No. 3963 Nanoa — July 25, 1849

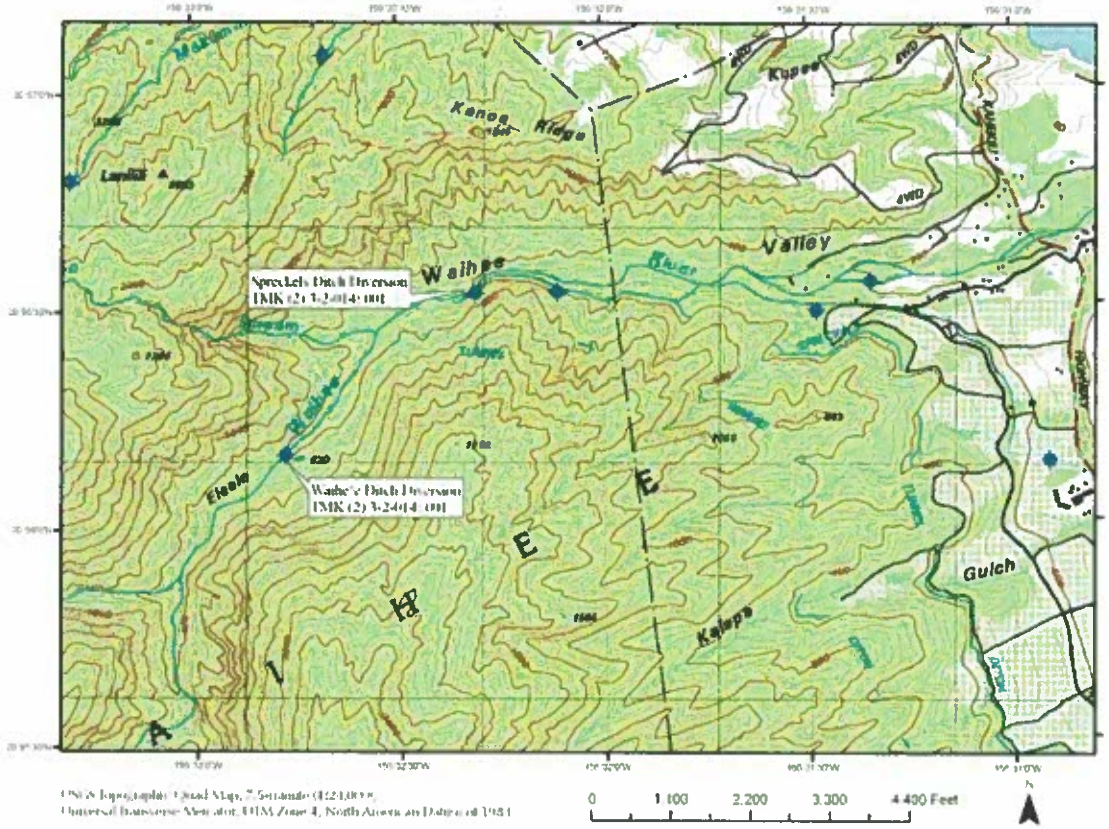
Lauhue sworn He has seen 1 section of land at Puhanolu ili in Waihee. Land from Kekanai in 1829, no objection. 5 Poalimas there.

	Mauka	Kaale
	Kahakuloa	Mahoe's land
	Makai	Kapoho ili
	Wailuku	Keaoniu

No. 4442 Kapu — July 25, 1849

Kaakauhema sworn He has seen 2 sections in Pahihi ili in Waihee. Land from Kapu's parents at the time of Kam II, no one objected.

Section 1 - Taro moo		
	Mauka	Palulu
	Kahakuloa	Naoho
	Makai	Poalima
	Wailuku	Palailaiha ili
Section 2 - Taro moo and house and pasture		
	Mauka	Land enclosure
	Kahakuloa	Pahaalele ili
	Makai	Poalima
	Wailuku	Palulu

ATTACHMENT E

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