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

APPLICATION FOR SURFACE WATER USE PERMIT FOR *PROPOSED NEW USE* IN A DESIGNATED SURFACE WATER MANAGEMENT AREA

FORM SWUPA-N

☒ Application for New use
☐ Application to Modify SWUP No. _____

For Official Use Only:

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 23 PM 4:51

For detailed instructions on filling out this application form completely, refer to the attached instructions sheet.
Incomplete applications will not be accepted for processing.

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 location and the quad map name.
- Property tax map showing the stream or diversion location and location of water use referenced to established property boundaries.
- Photograph(s) of the surface water source, diversion and end use, if applicable.

APPLICANT INFORMATION: NOTE: In accordance with HRS §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 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
JEFF AND RAMONA LEI SMITH	R. Lei Smith	SAME AS NO. 1	

Applicant's Mailing Address, or Principal Place of Business	Source Landowner's Mailing Address, or Principal Place of Business
1369 Malaihi Rd 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]					

SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT: Island: MAUI Hydrologic Unit: WAIEHU Hydrologic Unit Code: 6023

4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT IF APPLICABLE: N/A

5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: ☐ Yes ☐ No
Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit:
No IFS established for this hydrologic unit. See Attachment.

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 2 - 0 1 7 : 0 3 3 (Zone, Sec, Plat, Parcel)

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: ___ - ___ - ___ : ___ (Zone, Sec, Plat, Parcel)

7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all that apply.
☒ Pipe ☒ Pump ☐ Ditch/auwai ☐ Other Describe:

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?
☒ Yes. How much water will be returned? Much of the water will be returned, depending on amount of kalo in cultivation; See Attachment.
☐ No

8. PROPOSED FLOW MEASUREMENT INFORMATION:
Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts?
☐ Yes. List the manufacturer and describe the device _____
☒ No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below.
See Attachment.

PROPOSED USE INFORMATION HRS §174C-51(4), (5), (6)

9. TOTAL QUANTITY OF WATER REQUESTED: 153,660 gallons per day. See Table 1, Item14.

10. PROPOSED USE: Check all that apply. See Table 1, Item 1.
☒ Agriculture ☒ Domestic ☐ Industrial
☐ Irrigation ☐ Military ☐ Municipal

11. LOCATION OF PROPOSED WATER USE: Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps. See Table 1, Item 2.

PROPOSED USER INFORMATION We claim traditional & customary Native Hawaiian rights to grow kalo

12. APPURTENANT RIGHT: Do you claim an appurtenant right for your proposed water use? ☐ Yes ☒ No
If yes, has the appurtenant right been established by the courts or the Commission? ☐ Yes ☐ No

13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system?
☐ Yes. List the name of the system operator: ☒ No

14. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use from the Commission?
☐ Yes. List the file reference name(s): ☒ No

15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from 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, additional 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.**

16. APPLICANT	17. SOURCE LANDOWNER
Jeffery Smith Lei Smith Signature	Signature
Jeffery Smith / Lei Smith 4/19/09 Print Date	Print Date

FILE ID: SWUP.2369.6
DOC ID: 3481

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY

(Attach additional copies of Table1 if necessary.)

LAND USE CONSISTENCY						EFFICIENCY OF USE				
1	2	3	4	5	6	7	8	9	10	11
PURPOSE / WATER USE CATEGORY	TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.	STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (OPD)	SUB-METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 9. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 2.
Uses that require **potable** (drinking) water										
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
							TOTAL POTABLE USE	0 [12]	GPD	
Uses that **do not** require potable water										
DOM	Zone 3 - Sec 2 - Plat 017 : Parcel 033	AG	☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No	AG	☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No	1.22	3000	3,660	☐ Yes ☒ No	See Attachment.
AGRCP	Zone 3 - Sec 2 - Plat 017 : Parcel 033	AG	☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No	AG	☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No	0.5	300,000	150,000	☐ Yes ☒ No	See Attachment.
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☒ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
							TOTAL NON POTABLE USE	153,660 [13]	GPD	
							TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	153,660 [14]	GPD	

15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(5) HRS

To the best of our knowledge, there no legal limitations on the use of water described above.

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 2: IRRIGATION INFORMATION

List all crops that will be grown as separate line items and include landscape and golf course irrigation.
Attach additional copies of Table 2 if necessary.

1	2	2	4	5	6	7	8
TMK OF PROPOSED LOCATION OF USE (Attach TMK map outlining area and photos for each proposed use.)	CROP	TOTAL ACREAGE	NET IRRIGATED ACREAGE	BEGIN GROWTH PERIOD (Month)	END GROWTH PERIOD (Month)	IRRIGATION SYSTEM (Refer to instructions.)	IRRIGATION PRACTICE (Refer to instructions.)
3 - 2 - 017 : 033 (Zone Sec Plat Parcel)	household use, crops & gardening	1.86	1.22	year round	year round	Other- sprinkler and hand water	Field capacity
3 - 2 - 017 : 033 (Zone Sec Plat Parcel)	Wetland kalo	1.86	0.5	year round	year round	Flood (kalo)	Field capacity
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							
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- - : (Zone Sec Plat Parcel)							
- - : (Zone Sec Plat Parcel)							

9. COMMENTS:
See Attachment.

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS

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

C. **ADDITIONAL REQUIREMENTS:**

PUBLIC INTEREST Hawaii Revised Statutes §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.*

1. Explain below how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code above.
See Attachment

2. Explain below how your proposed new use(s) will not interfere with any existing legal use(s).
See Attachment

3. Explain below how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.
See Attachment

APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE

INSTRUCTIONS

This application form is for **new surface water uses** or for a modification of a previously approved water use permit in designated surface water management areas. New surface water uses are proposed uses after the effective date of designation of the surface water management area. Please check the appropriate box.

Do not use this form for existing surface water use applications. Existing surface water uses are actual uses before the effective date of designation. Please use Form SWUPA-E for existing uses.

Most questions can be addressed by visiting our website at: www.hawaii.gov/dlnr/cwrm, or contacting us at 587-0234, or by email at: dlnr.cwrm@hawaii.gov. The current application forms are also available at: www.hawaii.gov/dlnr/cwrm/resources_permits.htm.

REQUIREMENTS FOR A COMPLETE APPLICATION

1. Fill in the most recent application form. A current form is available at our web site or by contacting us at 587-0234.
2. Print in ink or type in the information on the application.
3. Fill in every item in the application form (page 1) and Tables 1, 2, and 3 as it relates to your proposed new use or permit modification.
4. Enclose a check for the non-refundable filing fee of $25 payable to: Department of Land and Natural Resources. Government agencies are not required to pay the filing fee.
5. Pay for the cost of publishing any required public notices related to your application. The current cost for publishing public notices is approximately $400.00. Commission staff will provide instructions later in the permit process regarding payment of these costs.
6. Mark the source and end use locations on the appropriate USGS quad map (scale 1:24,000) and property tax (TMK) map and attach these maps to your application.
7. Attach photos showing your existing diversion, measuring device(s) (if applicable) and end use areas.
8. Sign the application form in ink. Both the applicant and the landowner where the source is located must sign the application form.
9. Submit the original application and **15** copies of the application form and all attachments (maps, photos and any other attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

ADDITIONAL REQUIREMENTS FOR A COMPLETED APPLICATION

Per Hawaii Revised Statutes §174C-49, the applicant must establish that the proposed new use of surface water:

1. Can be accommodated with the available water source.
2. Is a reasonable-beneficial use.*
3. Will not interfere with any existing legal use of water.
4. Is consistent with the public interest.**
5. Is consistent with state and county general plans and land use designations.
6. Is consistent with county land use plans and policies.
7. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.

*HRS §174C-3 of the State Water Code states: *"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.*

**HRS §174C-2(c) of the State Water Code 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 agriculturol 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.*

NOTE: Filling in the application from and Tables 1, 2, and 3 completely will address the requirements of HRS §174C-49.

LINE BY LINE INSTRUCTIONS ON APPLICATION

APPLICANT INFORMATION

In accordance with the Hawaii Water Code, both the applicant and the person who owns the property where the water source is located are required to apply for a water use permit. §174C-5I(1)(B), HRS, states, *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: Fill in the information for the applicant. This should be the person who 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.

SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Enter the appropriate island, hydrologic unit name, and hydrologic code where the proposed source is located. The "source" is the stream 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.

APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE

4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT: Provide Instream Flow Standard (IFS) for hydrologic unit if available.
5. CAN YOUR PROPOSED USE BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: Check "Yes" or "No". Explain how your proposed use(s) can be accommodated within the Instream Flow Standard (IFS) for the above hydrologic unit.

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: Fill in the Tax Map Key (TMK) number of the tax parcel where the stream diversion will be located. Each tax parcel is issued a TMK number by the county property tax office and is defined as follows: 1st digit = (Island code), 2nd digit = Zone, 3rd digit = Section, Digits 4-6 = Plat, Digits 7-10 = Parcel, e.g. (1) 1-1-001:001. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: Fill in the Tax Map Key (TMK) number of the parcel where the proposed ditch diversion will be located.

7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all the appropriate box(es).

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH? Check "Yes" or "No." If yes, enter the amount of water to be returned.

8. PROPOSED FLOW MEASUREMENT INFORMATION: Check "Yes" or "No". If yes, please describe the measuring device. A flowmeter with a totalizer will directly measure the total use for the source (similar to a car's odometer). If no, explain how stream diversion will be measured or estimated to justify amounts requested.

PROPOSED USE INFORMATION (HRS §174C-51(4), (5), (6))

9. TOTAL QUANTITY OF WATER REQUESTED: Enter the amount of water requested as gallons per day (GPD). Fill out Table 1 and enter the amount in Box 14, "Total Use Requested."
10. PROPOSED USE: Check all the boxes that apply for the proposed use. Refer to the instructions for Table 1: Land Use Consistency/Efficiency of Use, Item 1: Purpose/Water Use Category below to determine which water use category to use.
11. LOCATION OF PROPOSED WATER USE: Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps and show the location of the proposed use.

PROPOSED USER INFORMATION

12. 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 proposed water use? Check "Yes" or "No."
    If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system? Check "Yes" or "No." If yes, please list the name of the water system operator.
14. 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, list the name of the registrant(s).
15. 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."
16. APPLICANT: Sign and print your name, and date your application.
17. SOURCE LANDOWNER: Sign and print your name, and date your application. The landowner of the source shall be a 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)

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY OF USE

Provide information on all of the proposed uses you are applying for or seeking to modify. In the space provided below the table or on a separate sheet, explain whether there are any limitations (e.g., a contract or other legal agreement(s)) on your proposed water use(s), as required by §174C-51(5), HRS.

1. PURPOSE / WATER USE CATEGORY: For each proposed use, choose one of the categories listed below and enter the appropriate code in the space provided (e.g. AGRAQ, IRRIG, etc.)

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

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INDUSTRIAL	
INDEL	Geothermal, Thermoelactric 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 will be 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, check "Yes" and enter the date CDUP was approved if you have a CDUP applicable to this project; or check "Yes, not acquired". If a CDUP is not required, check "No." To find out 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 Na Wai Eha, contact Maui County Department of Planning at 270-6279 or 270-7253.
6. SMAP REQUIRED: If a Special Management Area Permit (SMAP) is required, check "Yes" and enter the date SMAP was approved if you have a SMAP applicable to this project; or check "Yes, not acquired". If a SMAP is not required, check "No." To find out if your parcel is in a Special Management Area and requires an SMAP, contact Maui County at 270-8205.
7. UNITS OR NET ACREAGE: This is the value and category as the basis for calculating the duty. "Duty" means the amount of water requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling unit, or number of people, or animals. Some examples of this category include: 400 dwelling units, 500 people, and 3.74 acres.
8. GPD/UNIT or GPD/ACRE (GPD=gallons per day): Enter the gallons per day or gallons per acre for each water use category listed in Column #1.
9. REQUESTED QUANTITY OF USE (GPD): Enter the requested quantity of use in gallons per day (GPD) at build out after all phases of your project have been completed. The build out amount may differ from the four-year cumulative projected demand if your build out date extends beyond the cumulative projected four-year demand.
10. SUBMETERED? Is there a second measuring device or meter for another user? Check "Yes" or "No" if the specific use will be submetered or not. Submetering is specific to each line item.
11. APPLICANT'S JUSTIFICATION FOR QUANTITY OF REQUESTED USE FOR ITEM #9: Explain how you are justifying the amount(s) you are requesting for Item #9. Attach additional copies of Table 1 if necessary to show how this number was calculated. For irrigation uses, fill in Table 2.
12. TOTAL POTABLE USE: Add the quantities listed in the column above for potable water and enter the total potable use in gallons per day (GPD) here.
13. TOTAL NON-POTABLE USE: Add the quantities listed in the column above for uses that do not require potable water and enter the total non-potable use in gallons per day (GPD) here.
14. TOTAL QUANTITY OF WATER REQUESTED: Add the requested amounts listed on Box 13 and Box 14 and enter the total requested amount of both potable and non-potable uses here.
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. HRS §174C-51(5)

TABLE 2: IRRIGATION INFORMATION

On Table 2, provide the information requested for all the crops you are proposing to grow, including landscape and golf course turf and plants. Enter only one crop and one parcel number (TMK) per line. For multiple crops, list each one as a separate line item. All proposed or modified irrigation uses you are applying for must be listed. Attach additional copies of Table 2, if necessary.

1. USE TAX MAP KEY (TMK): Enter the parcel number where the crop will be grown. Also attach a property tax map with an outline around the area(s) of proposed use(s) and a photograph of each area of the proposed use.
2. CROP: Enter the crop type.
3. TOTAL ACREAGE: Enter the total acreage of the parcel listed.
4. NET IRRIGATED ACREAGE: Enter the acreage that the specific crop will be grown.
5. BEGIN GROWTH PERIOD (MONTH): This is the month of the start of the growth cycle.
6. END GROWTH PERIOD (MONTH): This is the month of the end of the growth cycle.
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 in the space provided for Comments.

8. IRRIGATION PRACTICE: Enter one of the following:

IRRIGATE TO FIELD CAPACITY
APPLY A FIXED DEPTH PER IRRIGATION
DEFICIT IRRIGATION
OTHER - Please describe in the space provided for COMMENTS below.

TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS

A. ALTERNATIVES ANALYSIS: Please address each alternative and explain why they are or are not available for potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc. that are not already listed above.

B. ALTERNATIVES ANALYSIS: Please address each alternative and explain why they are or are not available for non-potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc. that are not already listed above.

Surface water is defined in §174C-3, HRS 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.*

C. ADDITIONAL REQUIREMENTS

1. Explain how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code below.

   Hawaii Revised Statutes §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.*

2. Explain how your proposed new use(s) will not interfere with any existing legal use(s).

3. Explain how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act. See below. To inquire about potential interference, you may contact the Department of Hawaiian Home Lands Planning Office at 586-3836.

   The State Water Code in §174C-101(a), HRS [Native Hawaiian water rights], states: *Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.*

ATTACHMENTS

EXHIBITS: Appended hereto as **EXHIBIT 1** is a 7.5 minute-series USGS topographic map depicting South Waiehu Stream and the site where we would like divert water via pump and `auwai. **EXHIBIT 2** is a TMK map showing the location of our property as well as a close-up of the property depicting both the location that we seek to place our pump and `auwai and our area of proposed use. **EXHIBIT 3** contains true and correct copies of photographs and drawings of the site of our proposed pump/`auwai and area of proposed use. These photos accurately depict the conditions at the time the photos were taken. **EXHIBIT 4** contains true and correct copies of Māhele documents establishing that our land was in kalo at the time of the Māhele of 1848.

BOXES 4 & 5. CAN YOUR PROPOSED USE BE ACCOMODATED BY THE IFS: There currently are no Instream Flow Standards for Nā Wai `Ehā, and a petition to amend upward the Interim Instream Flow Standards is pending. There is sufficient water upstream of all diversions to accommodate our proposed use.

BOX 7. PROPOSED STREAM DIVERSION: Our property is adjacent and riparian to South Waiehu Stream. Since the Department of Water Supply does not provide municipal water service to our area, we would like to pump water directly from the stream to a holding tank to supply all of our domestic and other uses, with the exception of our drinking water. Any water that is not consumed, will flow into our lo`i kalo, then into a small aquaculture pond, then will be returned to the stream. The amount returned to the stream will vary, depending on a number of conditions including weather, our domestic water needs, and the amount of water used by our crops.

BOX 8. PROPOSED FLOW MEASUREMENT INFORMATION: See **TABLE 1** explanation, below.

BOX 12. APPURTENANT RIGHTS: EXHIBIT 4 contains true and correct copies of Land Commission Award No. 3459 and accompanying documentation indicating that this land was in kalo at the time of the Māhele and had appurtenant rights. We believe that Wailuku Water Company (then Wailuku Agribusiness) sold the property to our predecessor in interest in 2000, it reserved the appurtenant rights. As a result, it appears our property's appurtenant rights may be extinguished, although we reserve the right to claim appurtenant rights in the future based on further information.

TABLE 1: JUSTIFICATION FOR REQUESTED QUANTITY: We estimated our proposed domestic water use, including the use of water within our home (except drinking water) and outside our home for watering our yard and non-commercial garden, by multiplying the 2002 State of Hawai`i Water System Standard for Maui County of 3000 gallons per acre by the total acreage of our property (1.86 acres) minus the

approximate acreage of our lo`i kalo and aquaculture (.64 acres), for a total of 3,660 gallons per day.

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

Together, we are requesting 153,660 gallons per day for our lo`i kalo and domestic water use.

Although we will be running the outflow from our lo`i kalo into our aquaculture pond, we are not seeking an additional allocation for our aquaculture because we are relying on adequate throughflow from our lo`i to support our aquaculture.

TABLE 3B: ALTERNATIVES ANALYSIS:

I (Lei Smith) am Native Hawaiian, and our `ohana's exercise of our traditional and customary right as Native Hawaiians to cultivate kalo and other traditional crops on our land in the traditional manner is constitutionally protected, and by definition should not be required to use alternative, non-traditional sources. Even if such a requirement applied, there is no potentially available alternative source that is economically practicable. We seek to cultivate kalo on our land for cultural, subsistence, and educational purposes. An alternative water source that would require us to pay for volumes of constantly flowing water in our lo`i necessary to keep temperatures cool and support healthy kalo and other crops, would make our practice economically impossible. We would effectively be denied our traditional and customary right to grow kalo and other crops on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected right.

Municipal Sources. There are no municipal water sources or service in the vicinity, and no prospects for obtaining such service for our property in the foreseeable future. The stream at our property is the only available source that is able to supply all our water needs.

Wastewater reuse. Reusing wastewater is impracticable because, as a small domestic user seeking water for domestic purposes, traditional uses, and non-commercial gardening, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului. Moreover, reclaimed water is not suitable for household uses such as brushing our teeth, bathing, washing dishes, etc.

Ditch system. Getting water from other ditch systems is not practicable. First, the 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 a connection to any existing ditches. As a small user engaged in traditional uses and non-commercial gardening, the cost of such construction is not practicable, especially compared to drawing water from our own property directly adjacent to Waiehu Stream.

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 domestic and traditional uses and non-commercial gardening, we do not have the means to install and maintain such infrastructure.

Other (Catchment). Because there is no municipal water service in our area, we currently use a rain catchment system for our domestic water uses. We have one 27,000-gallon tank, although the water level in our tank fluctuates greatly and is insufficient to properly irrigate all of our proposed crops. Catchment alone is not sufficient to support all of our water needs and, therefore, is not a practicable alternative.

TABLE 3C: ADDITIONAL REQUIREMENTS:
1) My proposed new uses will maximize beneficial uses and are in the public interest:

"As a general matter, 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"). Haw. Rev. Stat. § 174C-2(c) declares 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." Much of the water we are requesting will be used for non-commercial gardening and kalo cultivation. We will grow kalo in traditional ways and use it for home, ceremonial, and educational purposes. We will also be growing ti leaf, flower trees like puakenikeni and plumeria, fruit trees like banana, papaya, breadfruit, lychee, mango, avocado, and lemon, and other functional and edible plants for our `ohana to use. We will engage in traditional agricultural practices, and our crops help maintain ecological balance and scenic beauty. As such, our proposed uses of stream water are consistent with the public interest.

Our Proposed Use is a Protected Public Trust Purpose

Kalo cultivation by Native Hawaiians is a protected public trust purpose. Waiāhole I, 94 Haw. at 137, 9 P.3d at 449; 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 will use will be returned to Waiehu Stream, our use supports other 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.

Our Proposed Use Supports Beneficial Instream Uses

Conveyance of water along Waiehu Stream for use on riparian land is also a recognized "instream use," i.e., the conveyance of irrigation and domestic water supplies to downstream points of diversion. Haw. Rev. Stat. § 174C-3. My proposed use keeps water in the watershed of origin and will help maintain the water resources of the watershed. The water used for aquaculture and kalo will be returned to the stream, which contributes to (1) the maintenance of fish and wildlife habitats; (2) outdoor recreational activities; (3) maintenance of ecosystems such as estuaries, wetlands, and stream vegetation; (4) aesthetic values such as waterfalls and scenic waterways; (5) maintenance of water quality; (6) the conveyance of irrigation and domestic water supplies to downstream points of diversion; and (7) the protection of traditional and customary Native Hawaiian rights. See HRS § 174C-3.

Our Proposed 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 proposed use of stream water is consistent with the public interest. It will also be "economic and efficient" because we will only use the amount we need. We will take steps to make our water use efficient. For instance, we will use pipes where appropriate to minimize water loss, and our farming practices will 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."

2) Our proposed use(s) will not interfere with any existing legal use

Our proposed use will not interfere with existing legal uses. We believe the flow of Waiehu Stream is able to accommodate our new use, and our use on riparian land within the watershed will not interfere with existing legal uses given the legal mandate to establish instream flow standards and provide the mauka to makai flow necessary to support instream uses, including our use. As mentioned above, much the water we use will go back to Waiehu Stream. Thus, our use will not interfere with other existing legal uses because it will not result in a large net loss of water from the stream and larger ecosystem.

3) Our proposed use(s) will not interfere with the rights of the Department of Hawaiian Home Lands

We are not aware of any DHHL lands using water from Waiehu Stream. To the best of our knowledge, DHHL has not filed an application to use water from this source. While we are aware that DHHL has outstanding reservations for municipal water meters in Central Maui, our use will not interfere with those reservations, which are largely served by ground water sources. Instead, our proposed use will actually help to protect DHHL's rights because much of the water that we have requested will be returned to the stream, and if it remains in the stream, it will recharge the aquifer, protecting the health of the aquifer system for DHHL's present and future ground water uses.

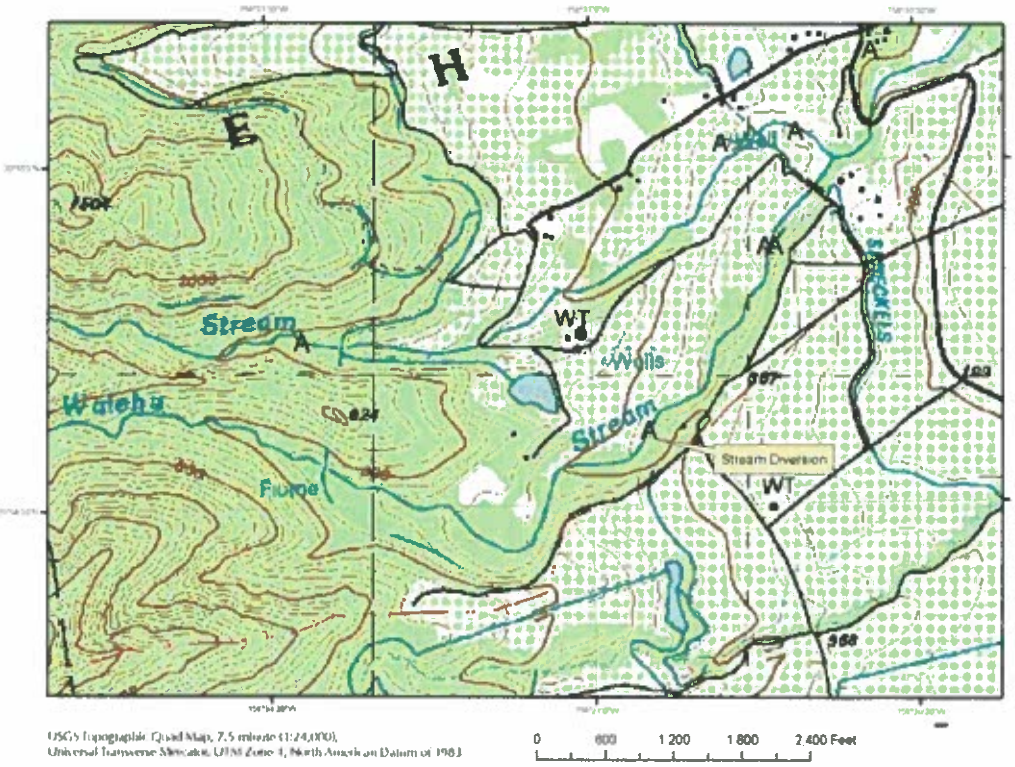


EXHIBIT 1

Excerpt from a USGS Wailuku Quadrant Map depicting South Waiehu Stream and the location of our proposed stream diversion (placement of our pump/`auwai).

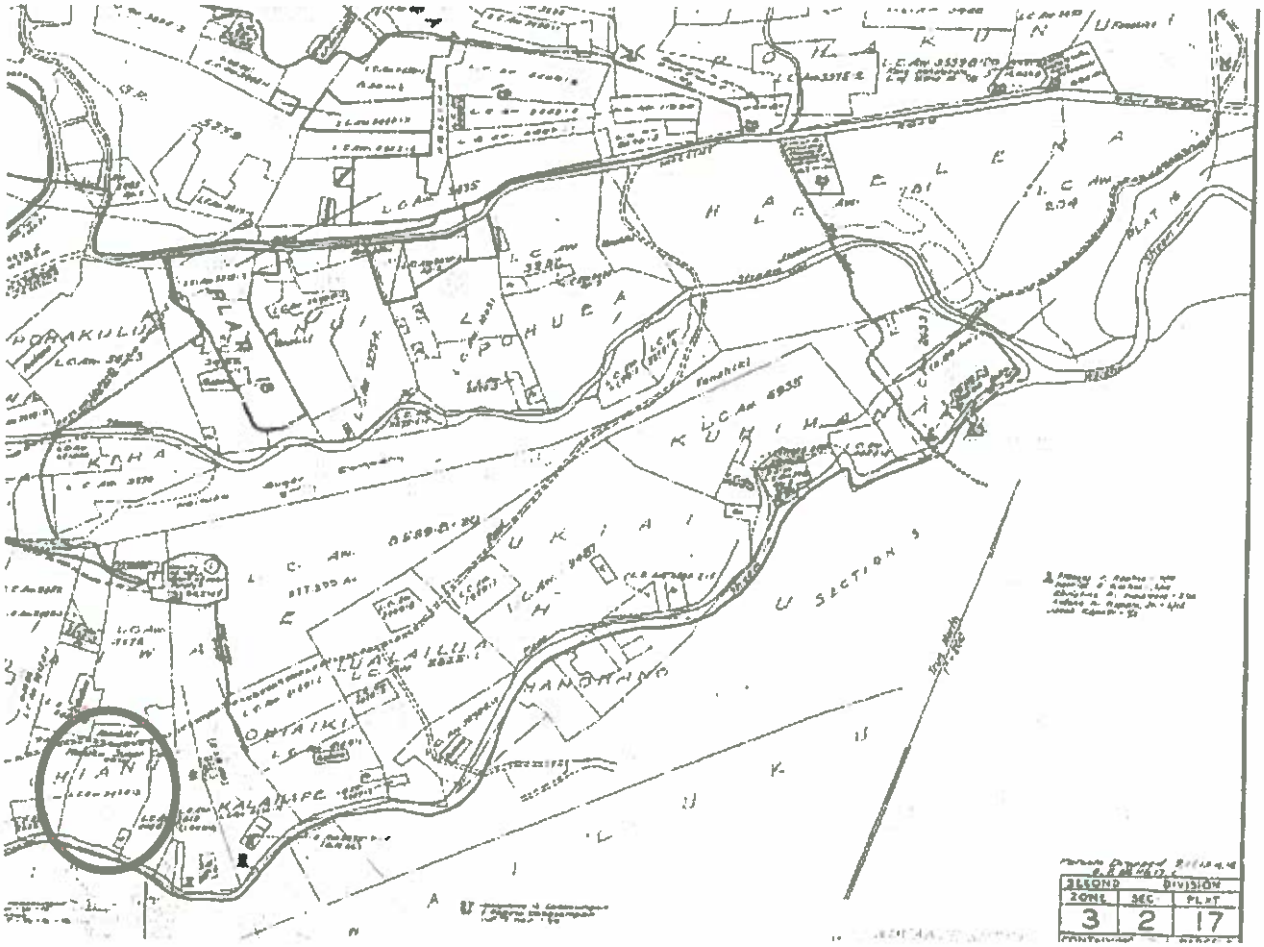


EXHIBIT 2A

TMK 3-2-017:033 depicted on map as LCA No. 3459

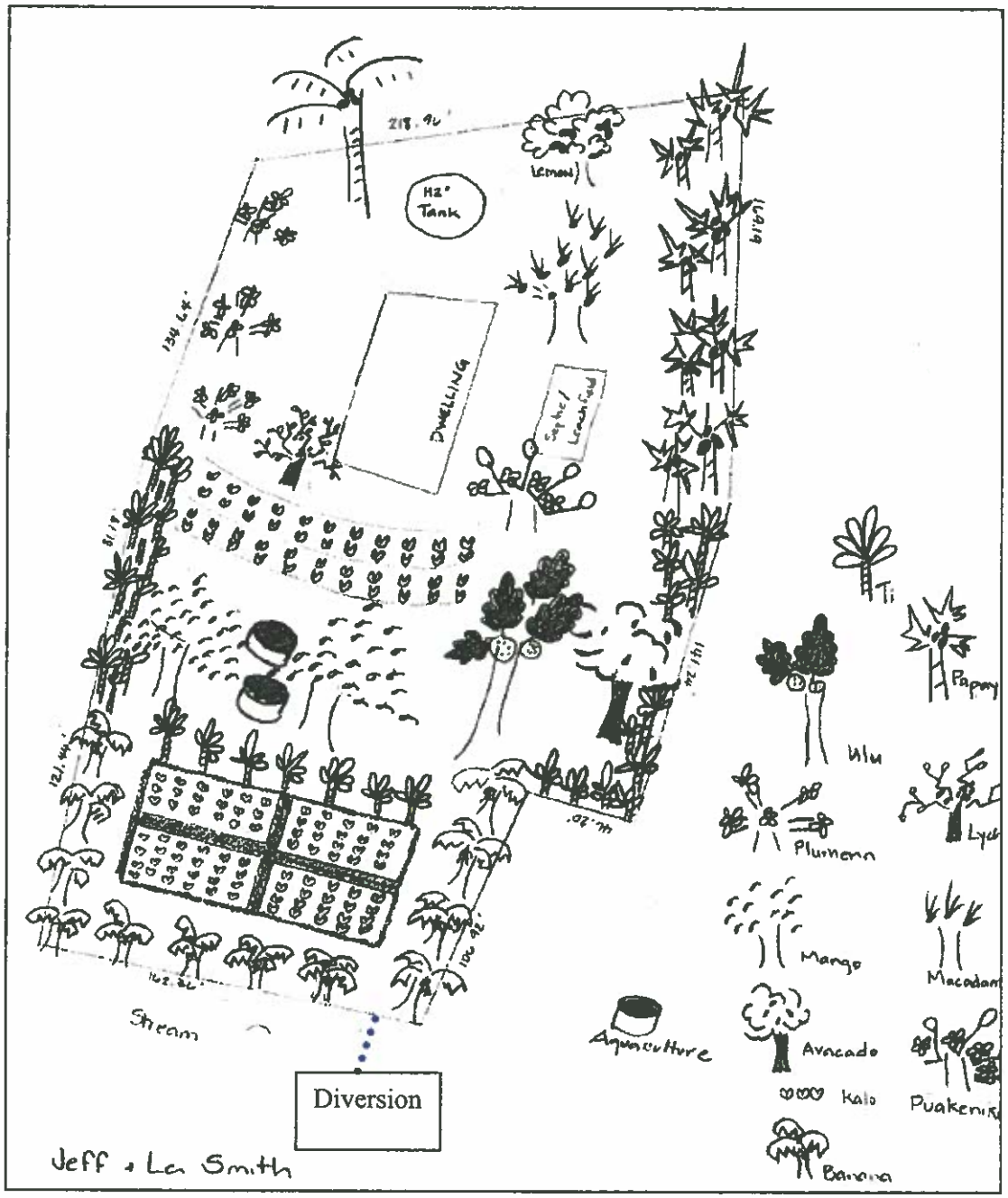


EXHIBIT 2B

Map detailing our proposed new uses; this drawing is approximate and not to scale.

EXHIBIT 3A

Diversion point. Location on our property (TMK 3-2-017:033) where we would like to install a small pump to draw water from South Waiehu Stream. We would like to place the pump on the river bank, connect it to the white PVC pipe shown above, and put a hose from the pump into the stream to draw water for our domestic, agricultural, and other needs. Since we do not have access to municipal water service, this is our only source of water.

EXHIBIT 3B

PVC pipeline running to the area where we would like to install a small pump at the stream. Also depicted are areas for aquaculture and taro. The perimeters of the terraces will be planted in ti, flowering plants, and fruit trees. This photo is taken from our house, facing South toward South Waiehu Stream.

EXHIBIT 3C

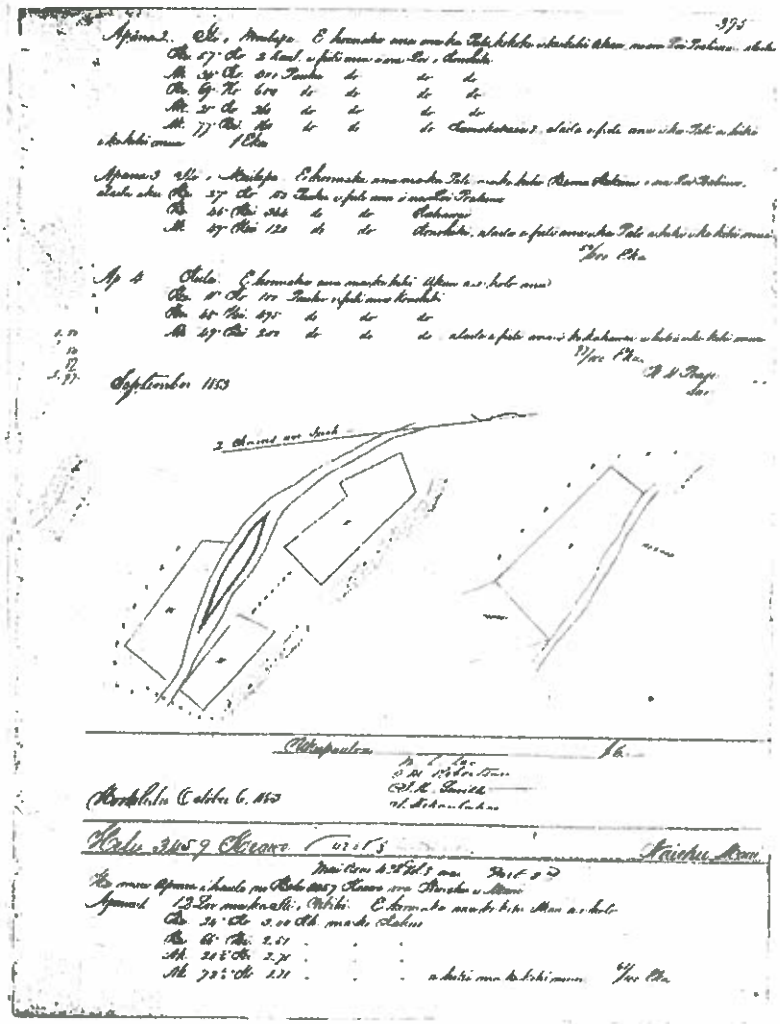
Areas for fruit and flowering trees. This photo is also taken from our house, facing East.

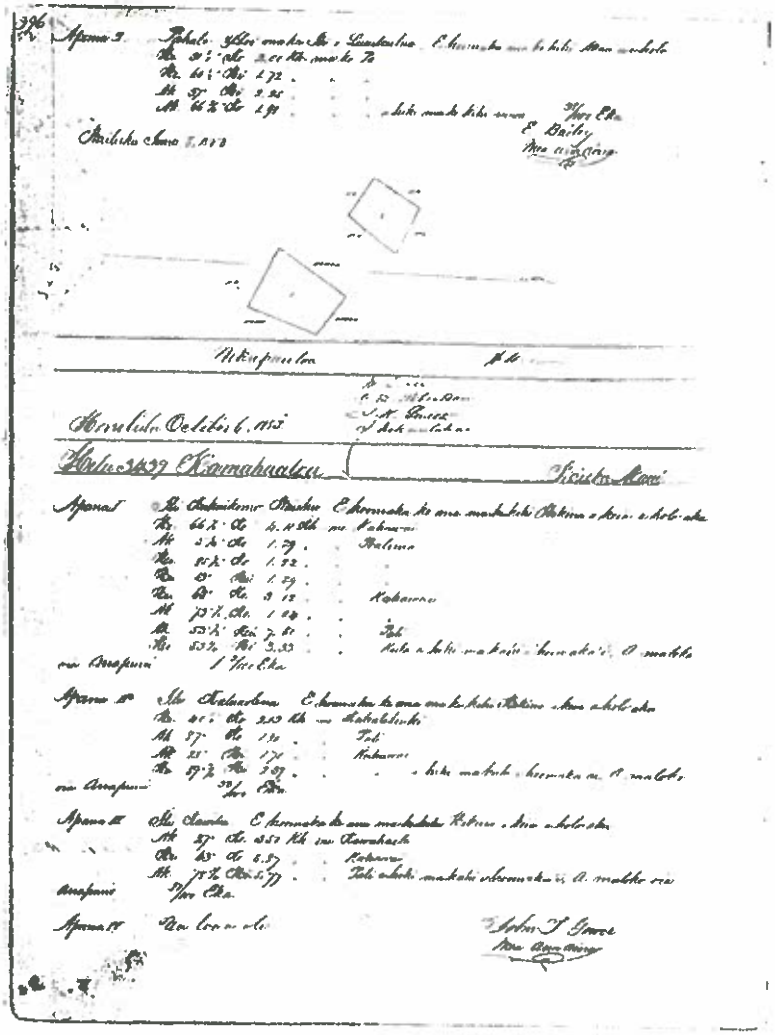
EXHIBIT 3D

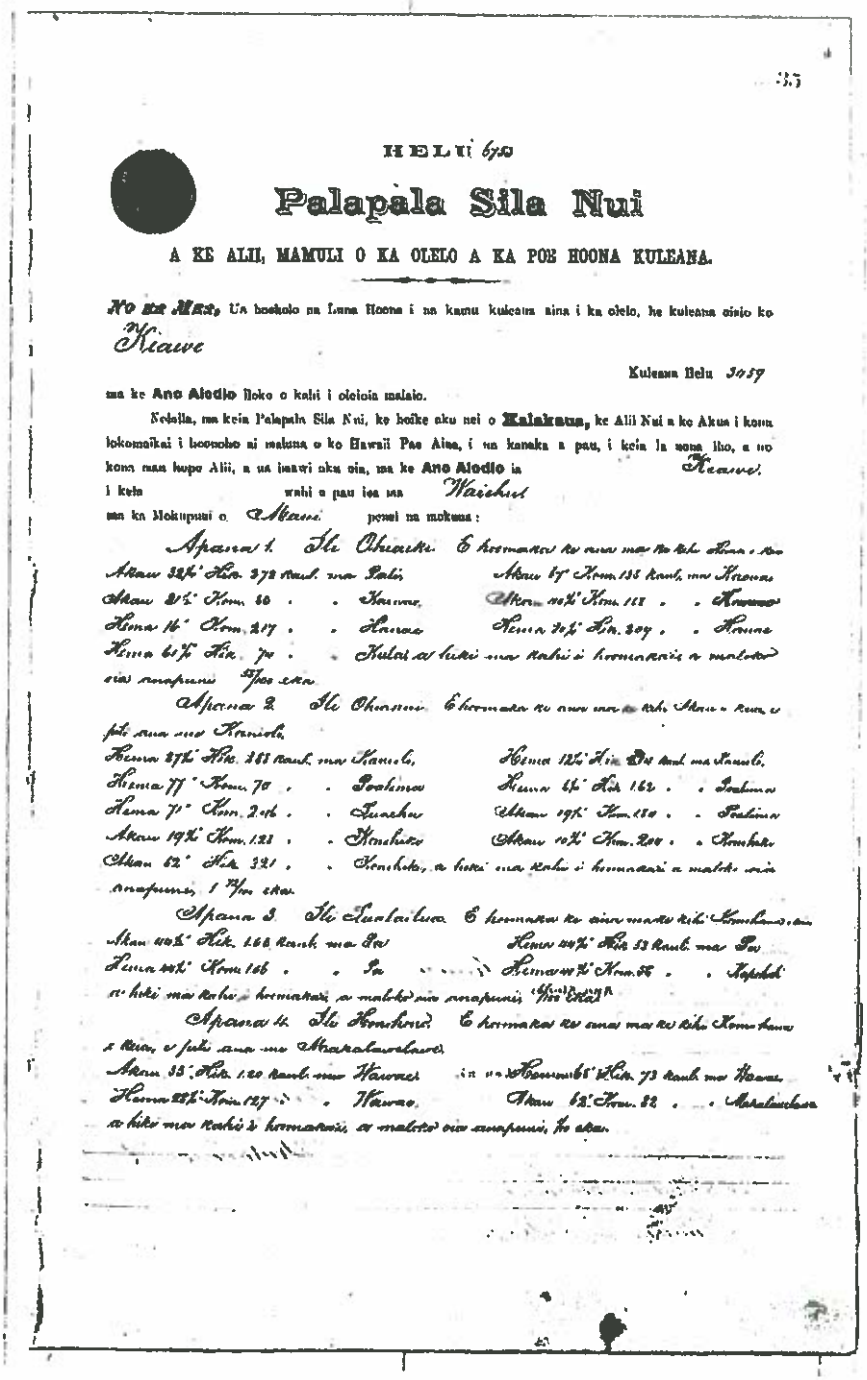
Area for flowering plants/trees and landscaping. This photo is also taken from our house, facing West.

EXHIBIT 4

Documentation establishing that our property was in kalo at the time of the Māhele of 1848 and had appurtenant rights at one time.







HELU 670

Palapala Sila Nui

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

NO KE ALII. Ua hoohalo na Luna Hoona i na kanu kuleana aina i ka olelo, he kuleana oiaio ko Kiawe

Kuleana Helu 3059

ma ke **Ano Aiodio** iloko o kalai i oleioia malaio.

Nolaila, ma keia Palapala Sila Nui, ke hoike aku nei o **Kalakaua**, ke Alii Nui a ko Akua i koua lokomaikai i hoonoho ai maluna o ko Hawaii Pae Aina, i na kanaka a pau, i keia la wana iho, a no kona mau kupo Alii, a ua iaawi aku oia, ma ke **Ano Aiodio** ia Kiawe, i keia wahi a pau loa ma Waiehu ma ka Mokupuni o Maui penei na mokuna:

Apana 1. Ili Ohiaiki. E hoomaka ma ka aoao mua ma ka Kihi Hema o ka Akau 32½° Kiko 372 kaulo ma Pali; Akau 6° Kiko 135 kaulo ma Kaowao
Akau 2½° Kiko 50 . . Kaowao, Akau 10½° Kiko 113 . . Kaowao
Hema 1½° Kiko 217 . . Kaowao Hema 30½° Kiko 207 . . Kaowao
Hema 61½° Kiko 70 . . Kulai ai hiki ma kahi i hoomaka ia a malaila oia anapuni 57/100 eka.

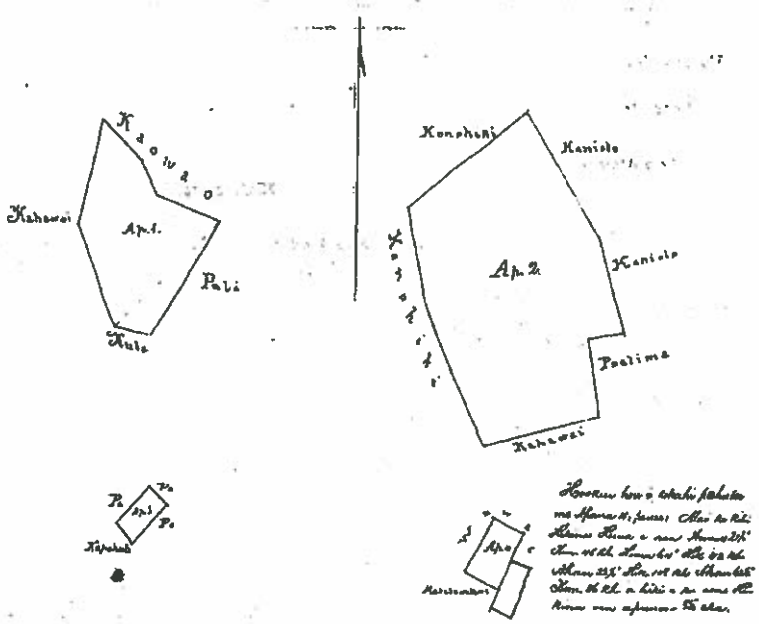
Apana 2. Ili Ohiaiki. E hoomaka ma ka aoao mua ma ka kihi Akau o ka pili aina ma Kaniali.
Hema 27½° Kiko 283 kaulo ma Kaniali, Hema 12½° Kiko 204 kaulo ma Kaniali.
Hema 77° Kiko 70 . . Poalima Hema 4½° Kiko 162 . . Poalima
Hema 7° Kiko 206 . . Kuaiha Akau 19½° Kiko 150 . . Poalima
Akau 19½° Kiko 123 . . Kaukaha Akau 10½° Kiko 200 . . Kaukaha
Akau 62° Kiko 321 . . Kaukaha, a hiki ma kahi i hoomaka ia a malaila oia anapuna, 1 17/100 eka.

Apana 3. Ili Kualaiwa. E hoomaka ma ka aoao mua ma ka kihi Kaukaha o ka
Akau 10½° Kiko 168 kaulo ma Pa Hema 24½° Kiko 53 kaulo ma Pa
Hema 10½° Kiko 166 . . Pa Hema 24½° Kiko 56 . . Kapahi
a hiki ma kahi i hoomaka ia a malaila oia anapuni, 1/100 eka.

Apana 4. Ili Kaukaha. E hoomaka ma ka aoao mua ma ka kihi Kaukaha o ka Akau 35° Kiko 120 kaulo ma Kawao Hema 65° Kiko 73 kaulo ma Kawao
Hema 22½° Kiko 127 . . Kawao Akau 62° Kiko 82 . . Makalauhaa
a hiki ma kahi i hoomaka ia a malaila oia anapuni, 1/100 eka.

EXHIBIT 4

36



Aloki
2.43 Eka

Maloko o Kua mau apana ho 22 ½ Eka a oi iki aku, a emi iki mai paha. Ua koe nae i ke Aupuni na mine minerola a me na metela a pau.

No Koawe

ua aina la i haawiia ma ke **Ano Alodio** a un kona mau hoolina, a ma kona waihena; ua pili nae ka auhau a ka Poe Ahaolelo e kau like ai ma na aina alodio i kela manawa 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 23 o Februari 1876.

Na ka Mor Kalakaua R

Ki Kuhina Kalaiaina

William L Mahonu

EXHIBIT 4

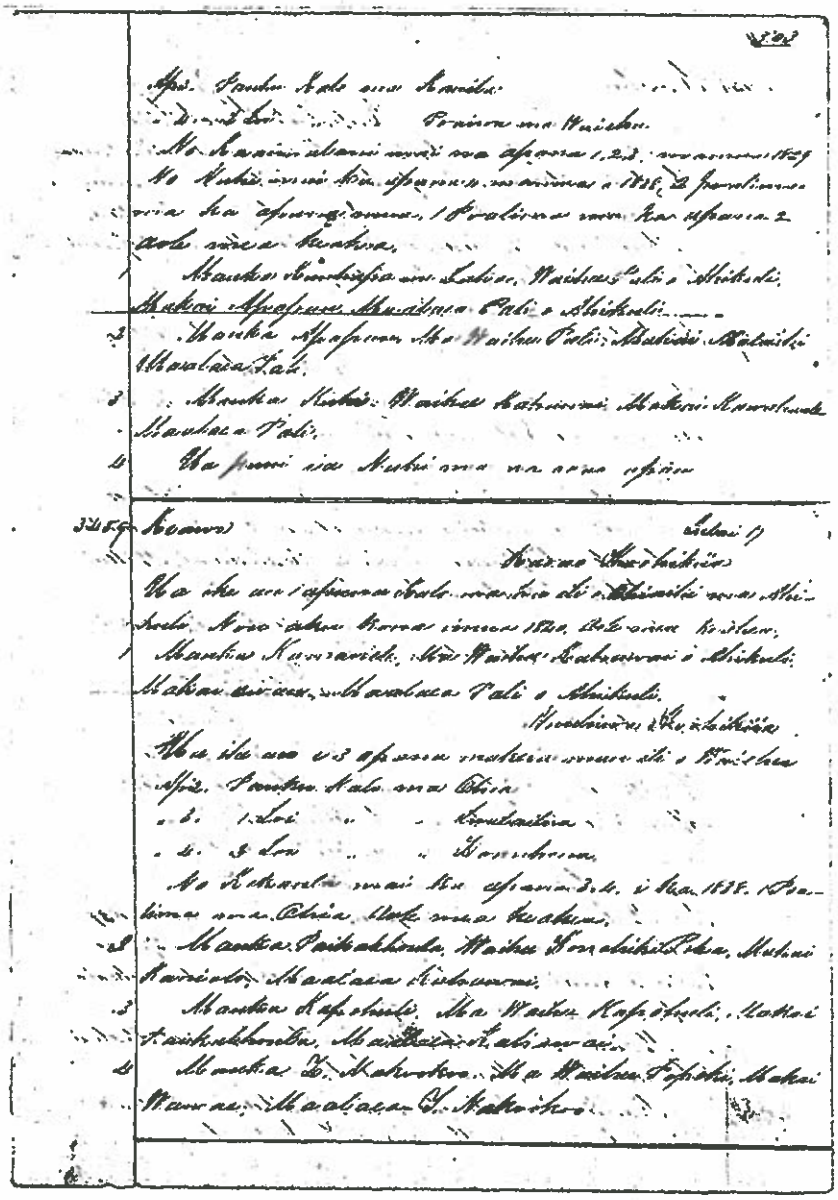


EXHIBIT 4

the Pali. Makai, by Malaihi's land. Maalaea, by the Pali.

No. 3. is bounded Mauka, by Nahi's land. Kaihee, by the Creek of Ahikeli. Makai, by Kamakawi's land. Maalaea, by the Pali.

No. 4. is bounded on all sides, by Nahi's land.

A. 3459. Keaue

Kaaiwa Sec. The Cts land consist of one piece, so far as I know, which is a kuh land in the ili of Ohiu ili, Ahikeli, Maui.

The Ct rec'd it from me before 1840, and his title has never been disputed.

It is bounded Mauka, by Kamahele's land. Kaihee, by the Creek of Ahikeli, Makai, by my land. Maalaea, by the Pali of Ahikeli.

Nunaiau Sec. The Ct has three pieces in Kaiehu, Maui.

No. 1. is a section of his in Ohia.

" 2. " one lot " Gualahilua.

" 3. " 2 lots " Hoomhoua.

The Ct rec'd these lands from Kaala in 1836, and his title has never been disputed. There is no prakaua li in No. 1.

No. 1. is bounded Mauka, by Paikekoula's land. Kaihee, by the Konohiki's land. Makai, by Kamiolo's land. Maalaea, by the Creek.

No. 2. is bounded Mauka and Kaihee sides, by Pohuli's land. Makai, by Paikekoula's land. Maalaea, by the Creek.

No. 3. is bounded Mauka, by Nakorhoo's land. Kaihee, by Popoki's land. Makai, by Kaauai's land. Maalaea, by Nakorhoo's land.

A. 3446 Kaahu

Pohuhu Sec. The Cts land consist of one piece of kuh & kuhe land in the Ahupuaa of Poimiki, in Napoko, Maui.

The Ct rec'd it from Pohu before 1840. I hunted in 1838. His title has never been disputed. There are 5 prakaua lei in it.

It is bounded Mauka, by Kekaula's land. Kaihee, by the same. Makai, by the Paakoo lois. Maalaea, by the Creek of Kaiehu.

83

17 loi i Kaohe, he moo aina okoa, oia ke kuleana e hai aku nei ia oukou. Aloha me ka Mahalo
Waiehu 25 Dek. 1847 Na Keliinui

3457 Kamaka

M. Auhea oukou e na Luna Hoona kuleana Aina loi kula, me kanu a na lima, aia i Polipoli kou kuleana 31 loi wai, 7 loi maloo, kula, 6 kau hoopii kuleana. Aloha me ka Mahalo
Polipoli i Napoko Na Kamaka
25 Dek. 1847

3458 Kikaho

M. Aloha oukou a pau loa e na Luna Hoona kuleana, he mau loi kou he kula 1, oia kou kuleana, aia i Pohakunui 27 loi, kula, oia ka nui o kou mau loi, aole wahi loi i koe aku, o ka pau iho la no ia i kahi kuleana. Aloha me ka Mahalo Na Kikaho
Pohakunui 24 Dek. 1847.

3459 Keawe

M. Ee hai aku nei au i kou kuleana i Ohia 9 loi me kahi kula me ka Auwai. Ohia i Waiehu 19 loi kula 1 kukui, i Honuhonu he mau puhala, i Ukihi puhala. Owau o Keawe, nona keia kuleana. Aloha na Luna Hoona Ohia i Waiehu
10 Januari 1848 Na Keawe.