

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications,) Case No. CCH-MA-15-01
Integration of Appurtenant Rights and)
Amendments to the Interim Instream Flow) STIPULATION AND ORDER
Standards, Nā Wai ‘Ehā Surface Water) REGARDING SWUPA 2206
Management Areas of Waihe‘e, Waiehu, ‘Īao,)
and Waikapū Streams, Maui)
_____)

STIPULATION REGARDING SWUPA 2206

HUI O NĀ WAI ‘EHĀ and MAUI TOMORROW FOUNDATION, INC. (collectively, the “Community Groups”), OFFICE OF HAWAIIAN AFFAIRS (“OHA”), and MAHI PONO, LLC (“Mahi Pono”), collectively, the “Parties,” by and through their respective attorneys or representatives, hereby stipulate as follows:

WHEREAS, on or about April 22, 2009, Hawaiian Commercial & Sugar Company (“HC&S”) filed a Surface Water Use Permit Application (“SWUPA”) designated as SWUPA 2206, which included, among other requests, 26.99 million gallons per day (“mgd”) to cultivate sugar cane on 3,808 acres of HC&S’s Waihe‘e-Hopoi fields and 9 mgd for system losses; and

WHEREAS, HC&S ceased sugar cane cultivation on its Waihe‘e-Hopoi fields in 2016 and, through its submissions and testimony in this proceeding, amended SWUPA 2206 to request a total of 19.48 mgd of surface water, consisting of 17.33 mgd to irrigate 3,650 acres of bioenergy crops on the Waihe‘e-Hopoi fields, plus an additional 2.15 mgd for system losses; and

WHEREAS, the Hearings Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision & Order, filed November 1, 2017 (“Proposed D&O”) recommends granting SWUPA 2206 a total of 15.65 mgd of surface water (consisting of 13.5 mgd to cultivate 3,650 acres of bioenergy crops and 2.15 mgd for system losses), while requiring the permittee, once it reaches “half of its permitted amount, or approximately 7 mgd, . . . to use Well No. 7 to the point that the brackish well water becomes unusable for irrigation”; and

WHEREAS, the Community Groups and OHA filed Exceptions to the Proposed D&O on January 5, 2018 (“Exceptions”) objecting, with respect to SWUPA 2206, that: (1) HC&S’s actual water need should be no more than 9.13 mgd over 3,650 acres, based on the water duty of 2,500 gallons per acre per day (“gad”) that the Commission has established for diversified agriculture and the Proposed D&O applies to other applicants in this case; (2) the 9.13 mgd should be reduced by 50% or 4.57 mgd from Well 7 and 0.1 mgd from ‘Īao Tunnel, leaving 4.46 mgd; and (3) HC&S’s system losses should be no more than 5% of 4.46 mgd—such that HC&S’s total allocation of stream water should be 4.68 mgd; and

WHEREAS, HC&S filed a “Response” to the Proposed D&O on January 5, 2018, accepting the Hearing Officer’s recommendation and declined to file any exceptions thereto; and

WHEREAS, no other party to the contested case filed exceptions to the Proposed D&O with respect to SWUPA 2206; and

WHEREAS, Mahi Pono purchased the land HC&S farmed on Maui and other property and interests, including HC&S's "West Maui Water Interests" in December 2018, and sought to be substituted for HC&S as the applicant for SWUPA 2206; and

WHEREAS, in connection with HC&S's and Mahi Pono's Joint Motion for Withdrawal and Substitution of Parties for SWUPA 2206, filed May 14, 2019, which the Commission heard on April 28, 2019, Mahi Pono indicated it might seek to reopen the contested case hearing, and the Commission "encouraged the parties to engage in discussion regarding potential resolution of issues in this case," Minute Order No. 16, dated September 9, 2019, at 2; and

WHEREAS, the Parties and their attorneys engaged in discussions over several months in a good faith effort to reach an agreement that, if adopted by the Commission, would obviate an appeal by any of the Parties hereto with respect to the allocation of surface water to Mahi Pono pursuant to SWUPA 2206; and

WHEREAS, the Parties have reached a settlement whereby Mahi Pono has agreed to certain commitments and conditions, and the Community Groups and OHA have agreed to withdraw their Exceptions to SWUPA 2206, as described below; and

WHEREAS, the Parties intend this Stipulation to be a binding and enforceable settlement and resolution of any disputes regarding SWUPA 2206;

NOW, THEREFORE, the Parties stipulate and agree as follows:

I. MAHI PONO'S COMMITMENTS:

1. Mahi Pono supports and endorses the Interim Instream Flow Standards ("IIFSs") recommended in the Community Groups' and OHA's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and Order, filed February 17, 2017, and reiterated in their Exceptions. Mahi Pono agrees that Community Groups' and OHA's recommended IIFSs—which increase the baseline IIFS amounts and also include sharing provisions during lower-flow periods—provide a fair and workable balance consistent with the law. Mahi Pono confirms its willingness and ability to implement and comply with the Community Group's and OHA's recommended IIFSs and commits to do so should the Commission adopt said recommended IIFSs.

2. As soon as practicable, and no later than 180 days after the execution of this Stipulation by the Parties, Mahi Pono will provide for comprehensive and continual monitoring and public reporting of data related to its water diversions, deliveries, and uses, subject to independent verification by the Commission. These data will include, at minimum: stream flows above and below diversions, flows in each ditch, water usage by field, and Well 7 use and salinity. The data will be made openly accessible to the public (e.g., online), and posted in real time or otherwise as promptly as practicable.

3. Mahi Pono recognizes and agrees that IIFSs are binding and enforceable absolute minimum flow requirements, subject to penalties for noncompliance. Mahi Pono also recognizes and agrees with the legal requirement that any water above the IIFSs not actually needed for reasonable-beneficial use must remain in the streams.

4. Mahi Pono will bypass the Wai‘ale Reservoir to avoid the reservoir’s significant seepage losses of 6 to 8 mgd. In implementing the Commission’s 2014 Order adopting the settlement in Case No. MA 06-01 (remand), HC&S had opted to bypass the Wai‘ale Reservoir to avoid such waste. Mahi Pono will adopt and implement this bypass solution and will use Wai‘ale Reservoir only for flood control purposes for the surrounding Wailuku community. Mahi Pono will replace some of the storage capacity of the Wai‘ale Reservoir with other reservoir(s) on its farm, which will be lined to minimize losses.

5. Within 45 days of the execution of this Stipulation by the Parties, Mahi Pono will close the low-flow intake for the Spreckels Ditch on Wailuku River. The existing IIFS for Wailuku River provides for 5 mgd at or near the mouth; based on the available seepage data, this means that when the existing mauka IIFS at the ‘Īao Ditch Diversion is 10 or mgd or less, the Spreckels Ditch should not be taking any water. HC&S had partially sealed the Spreckels Ditch low-flow intake, which has resulted in the Spreckels Ditch taking water during low-flow conditions, particularly when debris accumulates behind the intake. To remedy this situation, Mahi Pono agrees to fully close the low-flow intake. The high flow intake will remain in operation.

6. Mahi Pono, in consultation with the other Parties, will begin immediately to identify the system losses attributable to the sections of the water delivery system Mahi Pono owns, which are the section running from the start of the Hopoi Chute to the western boundary of Field 719, and the section of Spreckels Ditch that runs from South Waiehu Stream to the western boundary of Field 719. The Parties will work together over a three-year period to better understand these losses, and Mahi Pono, in consultation with the other Parties, will develop a remediation plan to address these losses. Mahi Pono will allocate an initial investment of \$250,000.00 to implement the remediation plan.

7. Mahi Pono recognizes that one way they can give back to the Waihe‘e community would be to support and assist in the restoration of the po‘owai of North Waihe‘e ‘auwai, which has been damaged by flooding. The Community Groups are willing to help engage the Waihe‘e community to determine the community’s openness to such assistance. If the Waihe‘e community is supportive, Mahi Pono will provide assistance to enable reopening of the ‘auwai by December 31, 2021, subject to reasonable extensions based on circumstances out of the control of the Parties. Mahi Pono will be excused from this Commitment No. 7 if the community consensus is to decline Mahi Pono’s assistance.

8. Mahi Pono supports and accepts conditions in its surface water use permit that (1) the permit is non-transferrable to any other party, and (2) the use of water under the permit must be for agricultural use, which does not include residential developments on agricultural land. These conditions, along with the other terms of this Stipulation, will be incorporated as express conditions in Mahi Pono’s permit. *See* Section II.3, below.

9. In the interest of responsible stewardship of its lands and public trust water resources, and recognizing that Ke Kula o Kama'oma'o (a.k.a. Waikapū-Wailuku Commons, Central Maui Plains) was historically a native shrublands ecosystem, Mahi Pono will seek opportunities for ecosystem restoration with native species conducive to that region on lands more suitable for such use instead of agricultural cultivation.

10. Mahi Pono will work in good faith with the Community Groups to facilitate communication and public transparency on the implementation of and compliance with this Stipulation and will provide the Community Groups, OHA, and the Commission the information necessary to verify compliance with all its terms. This Commitment No. 10 will include allowing site visits by representatives of the Community Groups to relevant areas of interest or concern (e.g., diversions and ditches, farm operations, etc.) on a quarterly basis, or as the Parties may otherwise agree to facilitate mutual understanding.

II. AGREEMENT REGARDING SWUPA 2206:

1. The Parties agree to Mahi Pono receiving a surface water use permit for a total of 11.22 mgd, to be administered as follows:

a. Mahi Pono will be allowed an initial allocation of 9.35 mgd of surface water. This amount is derived by multiplying a total plantable acreage of 3,740 acres by the standard water duty of 2,500 gad for efficient diversified agricultural operations.

b. Mahi Pono will be allowed to access an additional surface water allocation of 1.87 mgd—which amounts to an additional 500 gad over the same 3,740 acres—if it meets all of its Commitments in Section I, above, as well as the following specific conditions regarding its water uses:

(i) Mahi Pono must plant 1,850 acres of food crops in the Waihe'e-Hopoi Fields before December 31, 2021. The acreage will be determined by a licensed surveyor;

(ii) Mahi Pono must reach and maintain a running annual average use of 4.5 mgd from Well 7 for actual, reasonable-beneficial agricultural use (i.e., not waste). This amount of well water usage must continue for Mahi Pono to continue accessing the additional 1.87 mgd of surface water. Mahi Pono may seek to amend its water use permit and recalibrate this condition if the brackish well water becomes unusable for irrigation based on its ongoing monitoring of Well 7 salinity; and

(iii) Mahi Pono must have an actual need for the additional 1.87 mgd for reasonable-beneficial agricultural use (i.e., not waste), in addition to the 9.35 mgd initial surface water allocation and the 4.5 mgd well water use (total 13.85 mgd not including the additional 1.87 mgd).

(iv) Mahi Pono must implement the remediation plan developed pursuant to Section I.6. before it may access the additional surface water allocation of 1.87 mgd. The Parties support this approach to provide proper incentives for the permittee to

diligently investigate and minimize system losses.

(v) Mahi Pono will provide the Community Groups and OHA, as well as the Commission, with the information necessary to verify that these conditions (i) to (iv) have been met.

c. The Parties agree to this total permitted surface water allocation of 11.22 mgd as a reasonable and balanced solution to give Mahi Pono some potential flexibility to access more surface water if necessary, while recognizing Mahi Pono's commitment to use a substantial amount of well water, in distinction from other permit applicants in this case.

2. Mahi Pono's permit for 11.22 mgd would be a "Category 2" existing-use permit under the framework proposed in the Hearings Officer's Proposed D&O.

3. The Parties agree that the terms of this Stipulation be incorporated as express conditions in Mahi Pono's permit, and a copy of the Stipulation be attached to the permit.

STIPULATED AND AGREED:

DATE: 11/16/19



SHAN TSUTSUI
Senior Vice President of Operations for MAHI
PONO, LLC

DATE: 11/18/19



ISAAC MORIWAKE
Attorney for HUI O NĀ WAI 'EHĀ and MAUI
TOMORROW FOUNDATION, INC.

DATE: 18 Nov. 2019



PAMELA W. BUNN
Attorney for OFFICE OF HAWAIIAN AFFAIRS

Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Nā Wai 'Ehā Surface Water Management Areas of Waihe'e, Waiehu, 'Īao, and Waikapū Streams, Maui; CCH-MA-15-01, Commission on Water Resource Management; STIPULATION AND ORDER REGARDING SWUPA 2206.

FOR GOOD CAUSE APPEARING, IT IS
APPROVED AND SO ORDERED:

SUZANNE D. CASE, Chairperson

BRUCE S. ANDERSON, Ph.D., Commissioner

KAMANA BEAMER, Ph.D., Commissioner

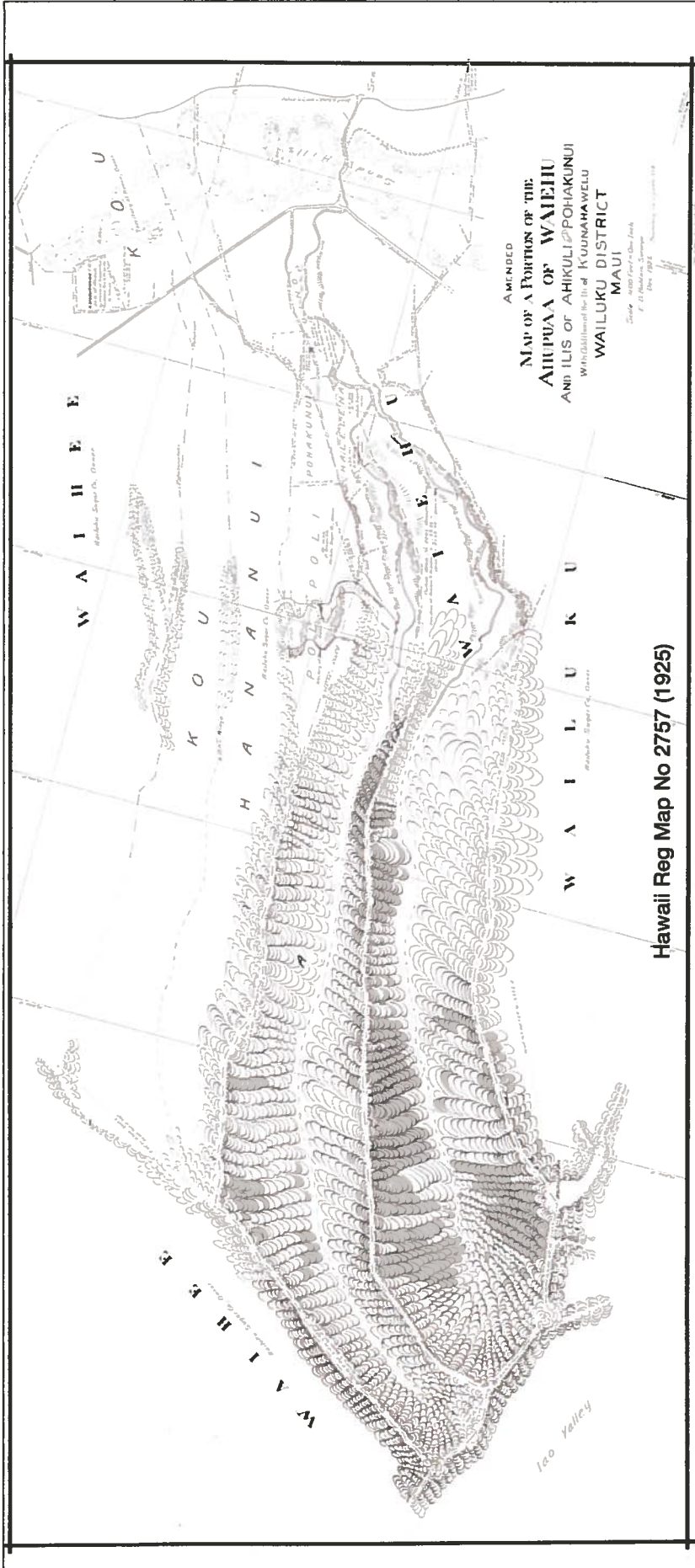
MICHAEL G. BUCK, Commissioner

WAYNE K. KATAYAMA, Commissioner

NEIL HANNAHS, Commissioner

PAUL J. MEYER, Commissioner

Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Nā Wai 'Ehā Surface Water Management Areas of Waihe`e, Waiehu, `Īao, and Waikapū Streams, Maui; CCH-MA-15-01, Commission on Water Resource Management; STIPULATION AND ORDER REGARDING SWUPA 2206.



**SURFACE WATER USE PERMIT APPLICATIONS 2307 and 2308N WITHIN
THE AHUPUAA OF WAIIEHU**

The following is in support of my oral arguments for the exceptions or objections to the Hearings Officer's (HO), Proposed Findings of Fact (FOF), Conclusions of Law (COL), and Decision (DO) before the Commission on

**Water Resources Management on November 19, 2019
CCH-MA-15-01**

2307/2308N-CERIZO- 1 (11/19/19)

Overview

- The proposed HO FOF 387 p 130, - Commission is unable to make a provisional recognition of appurtenant rights even with supplemental information. The referenced Provisional Order, Attachment C, Revised Exh. 7, p 17 (Exhibit 7) states in part “cannot determine boundary of LCA 8[8]559-B: Apana 20. No historic documentation to support water use on LCA.”
- The proposed HO COL 266 p 385 denies the Appurtenant rights request noting that “Parcel 12 is a portion of the konohiki award, for which the acreage and other contents are not known.”

- The Commission adopted the Na Wai Eha Provisional Order on Claims That Particular Parcels Have Appurtenant Rights on December 31, 2014, which in part allowed those applicants who requested more time to file additional material by January 31, 2015 and that the update and revisions of Exhibit 7 as needed may only be done with the written approval of the Commission. The Commission delegated to the HO to approve or deny such claims of the applicants that were given until January 31, 2015 to submit further documentation.
- On January 30, 2015, I submitted to the Commission staff an 18 paged addendum to my documents initially submitted at the November 21, 2014 Commission hearing to address the Commission's comments.

2307/2308N-CERIZO- 3 (11/19/19)

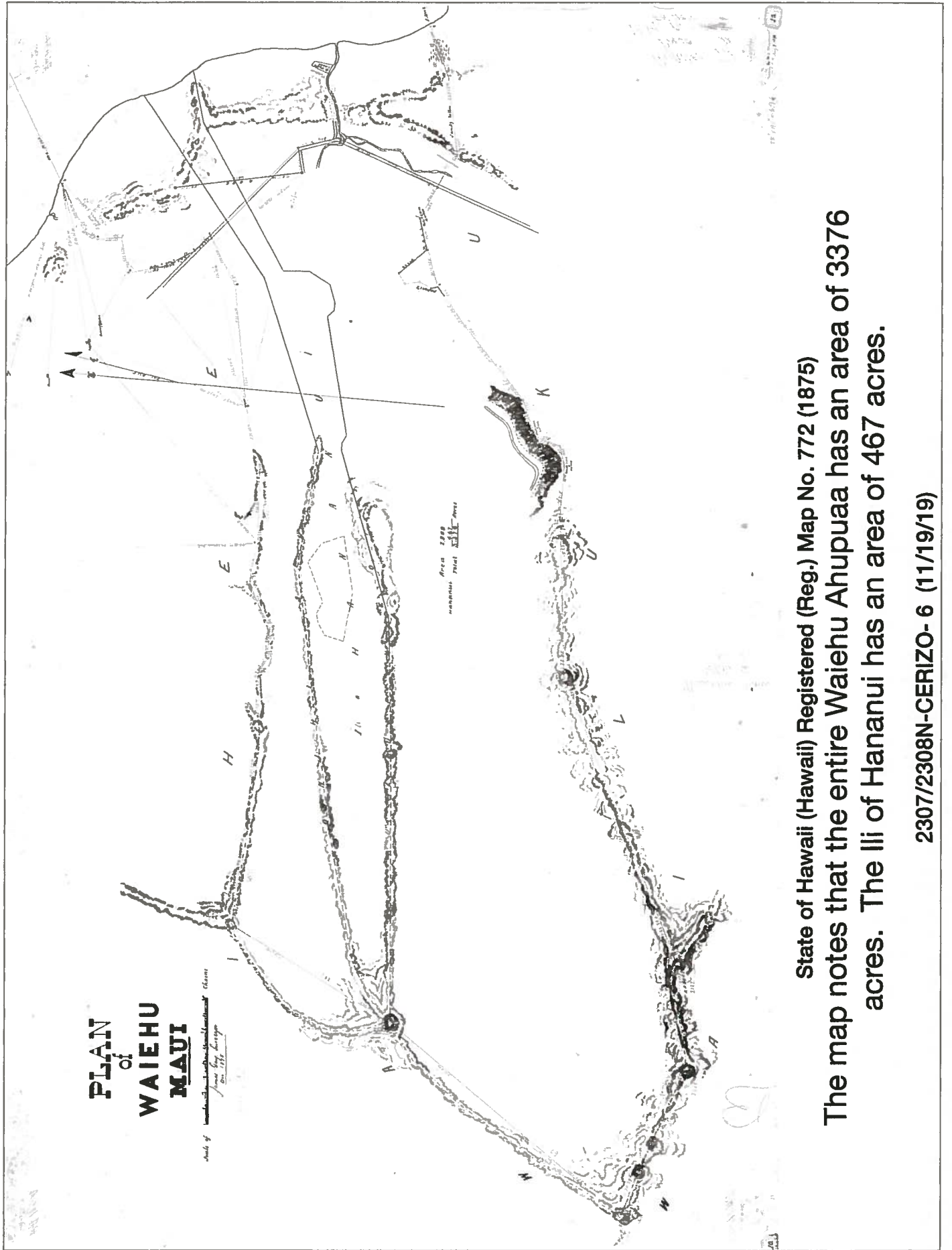
- A revised Exhibit 7 or DO has not been received from the Commission on the additional documentation submitted on January 30, 2015.
- Written testimony dated December 15, 2015 on the quantification of the appurtenant rights along with a request for the recognition of appurtenant rights for TMK (2) 3-3-002:012 (parcel 12) was submitted to the Commission.
- On November 1, 2017, the Commission issued the Proposed FOF, COL and DO.. Minute Order 12 provided for any party to file exceptions by January 5, 2018.
- Additional documentation clarifying the previous submittals in support of the recognition of appurtenant rights for parcel 12 were included in my Exceptions to the proposed CCH-MA 15-01 HO FOF, COL & DO.

2307/2308N-CERIZO- 4 (11/19/19)

OBJECTIVES

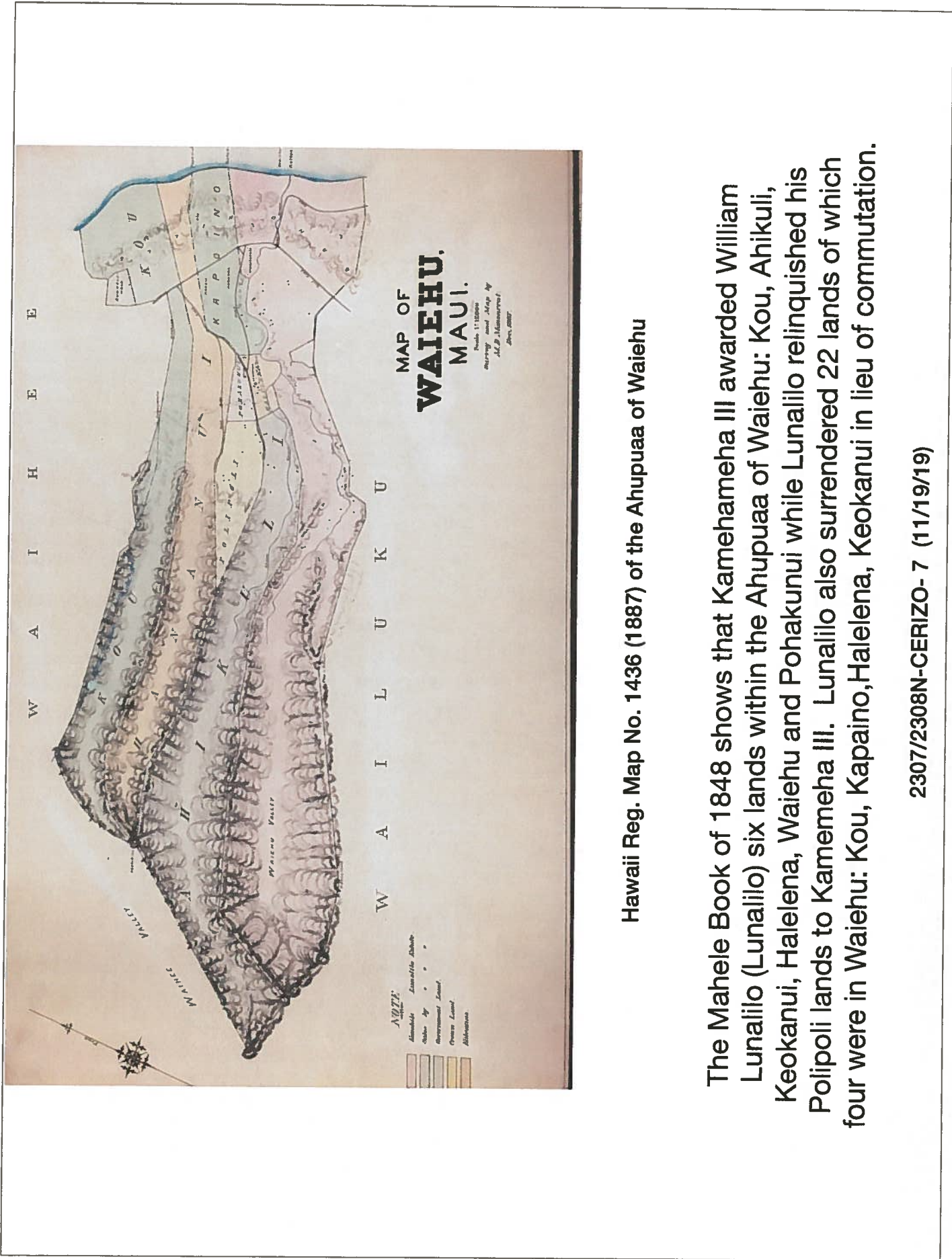
- Determine the boundary and area of the konohiki award to WC Lunailo, LCAw 3559-B:20
- Determine the other contents of the konohiki award
- Provide historic documentation to support water use on parcel 12
- Provide sufficient documentation (area and contents of the Konohiki award) to support the recognition of our appurtenant rights and amending our FOF, COL & DO to permit for 69,000 gpd of which the 69,000 gpd is in Category 2 under appurtenant rights.

2307/2308N-CERIZO- 5 (11/19/19)



State of Hawaii (Hawaii) Registered (Reg.) Map No. 772 (1875)
 The map notes that the entire Waiehu Ahupuaa has an area of 3376
 acres. The Ili of Hananui has an area of 467 acres.

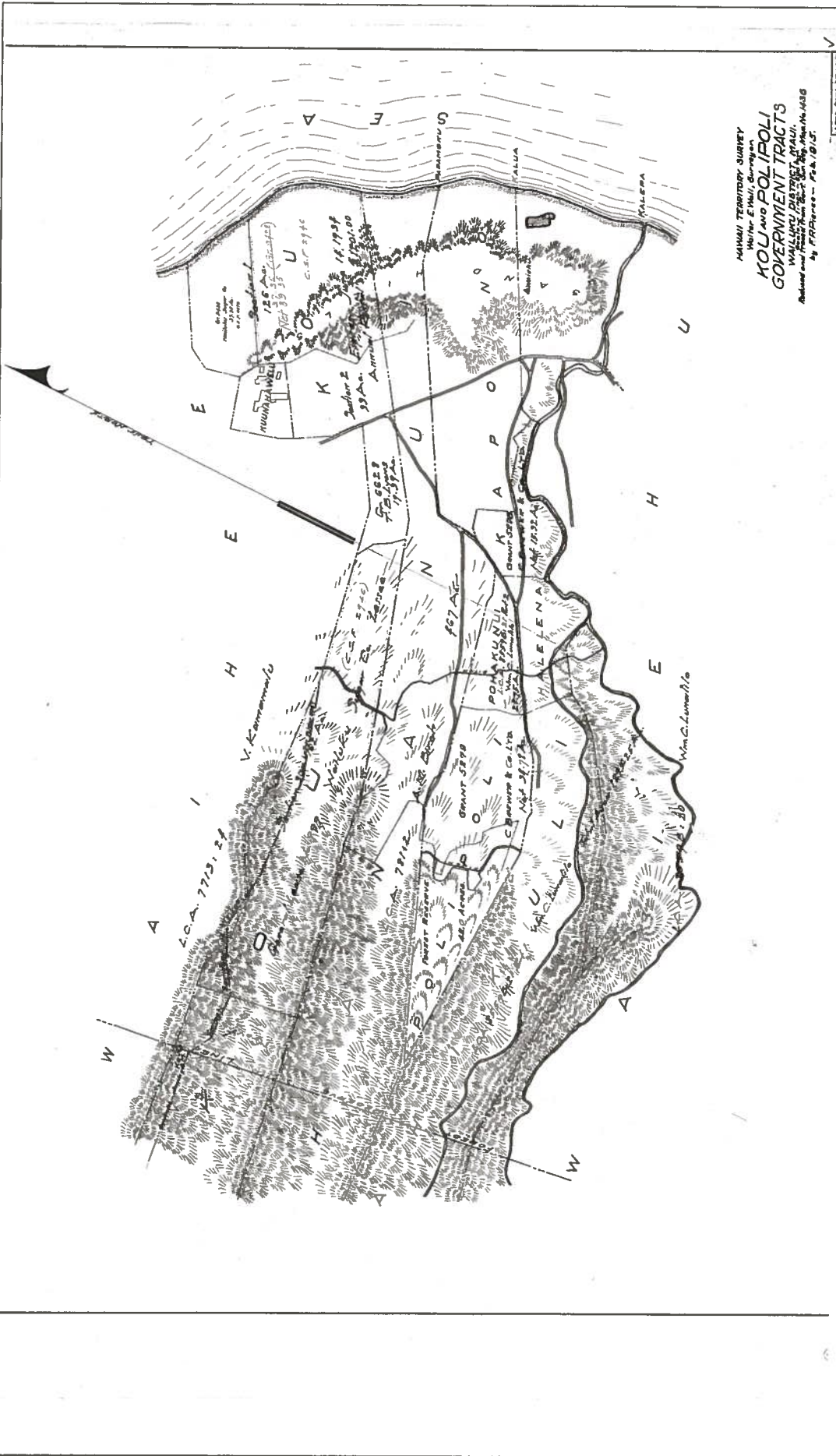
2307/2308N-CERIZO-6 (11/19/19)



Hawaii Reg. Map No. 1436 (1887) of the Ahupuaa of Waiehu

The Mahele Book of 1848 shows that Kamehameha III awarded William Lunaliilo (Lunalilo) six lands within the Ahupuaa of Waiehu: Kou, Ahikuli, Keokanui, Halelena, Waiehu and Pohakunui while Lunaliilo relinquished his Polipoli lands to Kamehameha III. Lunaliilo also surrendered 22 lands of which four were in Waiehu: Kou, Kapaino, Halelena, Keokanui in lieu of commutation.

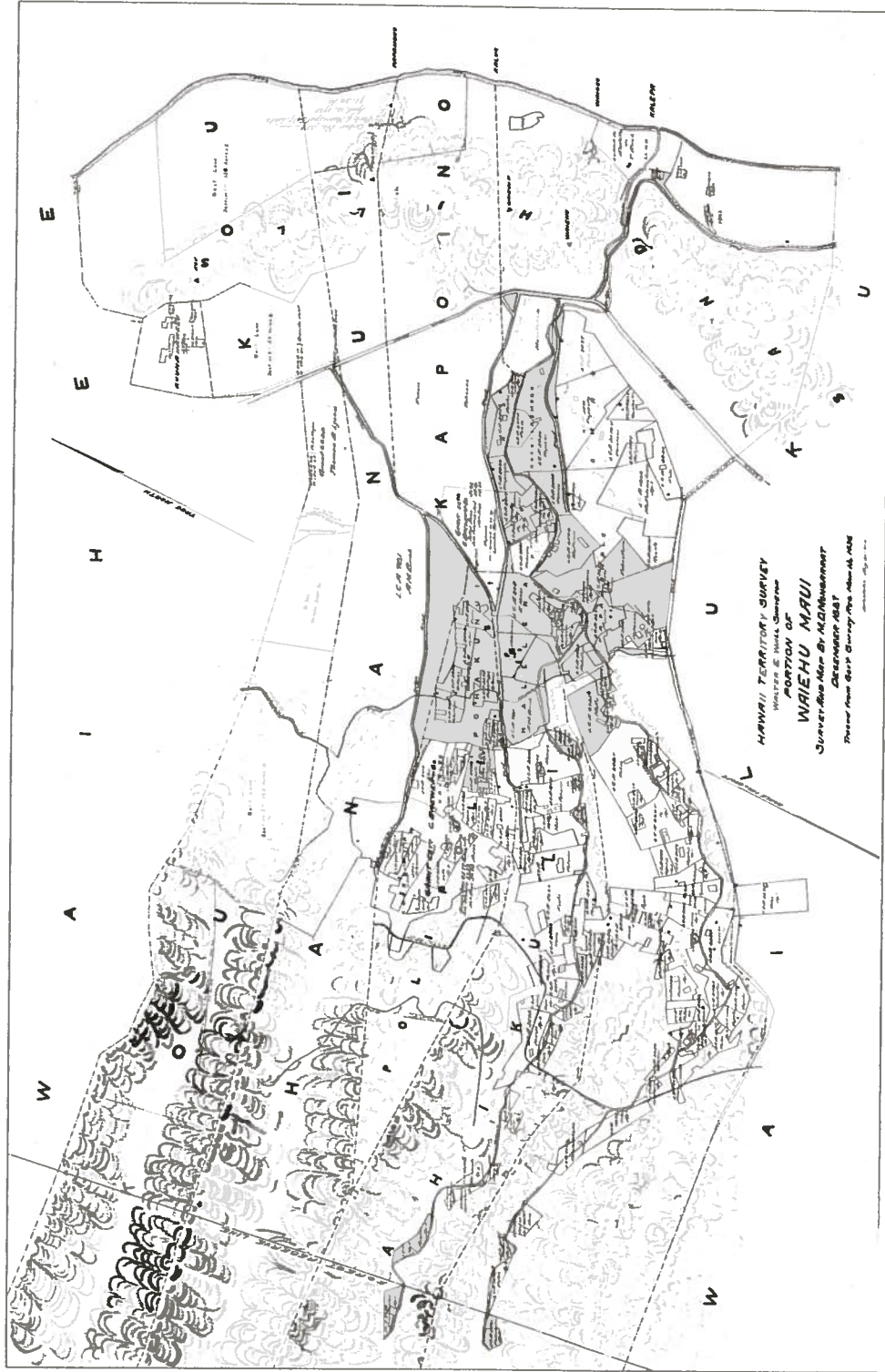
2307/2308N-CERIZO- 7 (11/19/19)



Hawaii Territorial Map Plat 1010 (1915)

Map notes the land areas of Ili of Ahikuli - 1295.25 acres(ac.), Hananui - 467 ac., Pohakunui- 28.75 ac, Kou's total Grants/leases - 340 ac., Polipoli (Forest Reserve) 42 ac., Total Area - 2173 acres, The land area for Halelelena and Kapolino were provided on Hawaii Reg. Map No. 2757 having a total area of 62.52 acres.

2307/2308N-CERIZO- 8 (11/19/19)



Hawaii Reg Map No. 1436 (1887 updated 1910) of Portion of Waiehu

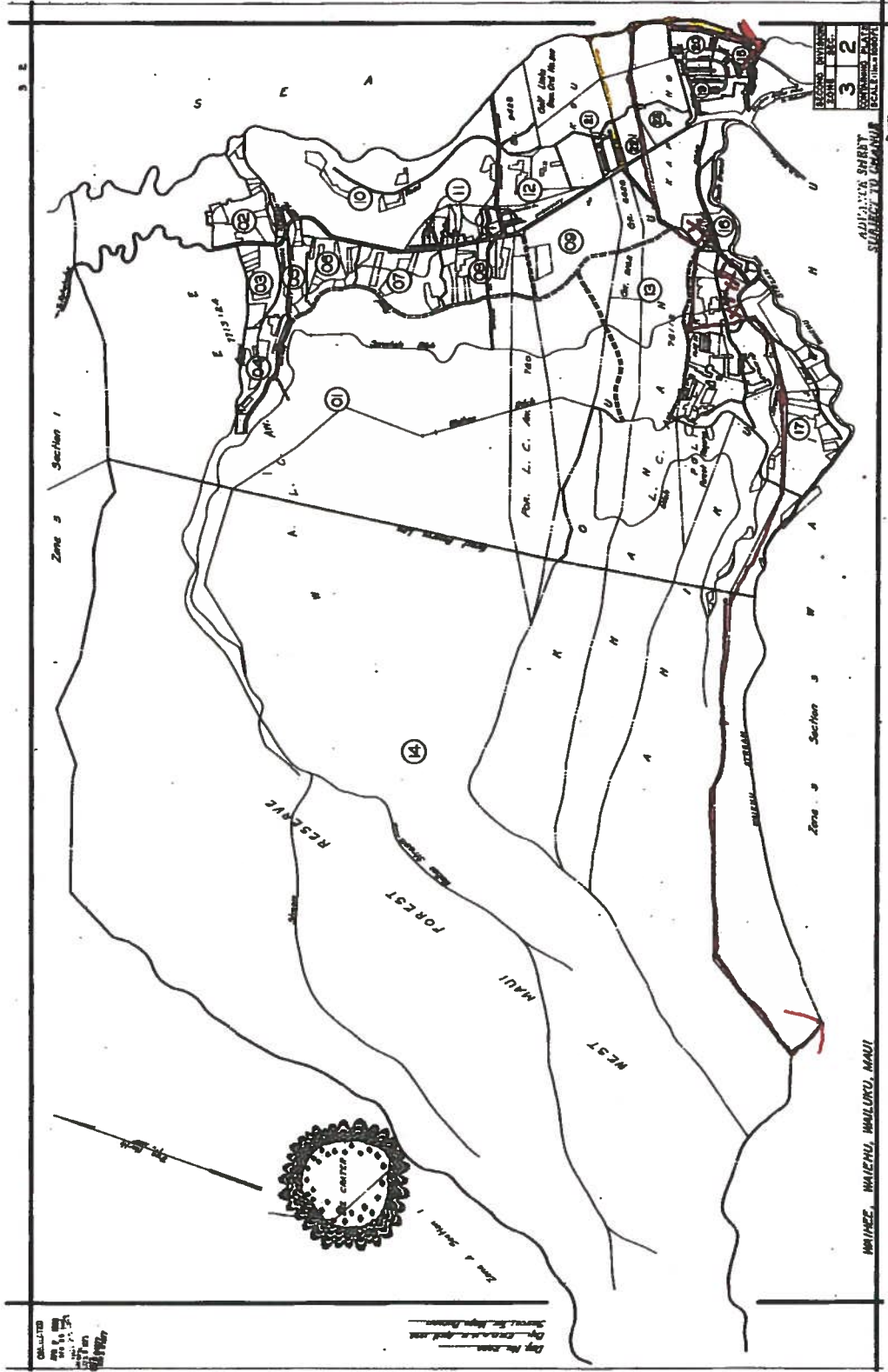
Map notes the Polipoli Grant to C. Brewer Co. has a gross area of 65.77 acres

2307/2308N-CERIZO-9 (11/19/19)

Land	Area in Acres
Kou	340
Hananui	467
Ahikuli	1295.25
Polipoli	107.77
Halelane/Kapoino	65.52
Pohakunui	38.75
Total area	2311.29
Ahupuaa of Waiehu	3376
Waiehu 2	1064.71

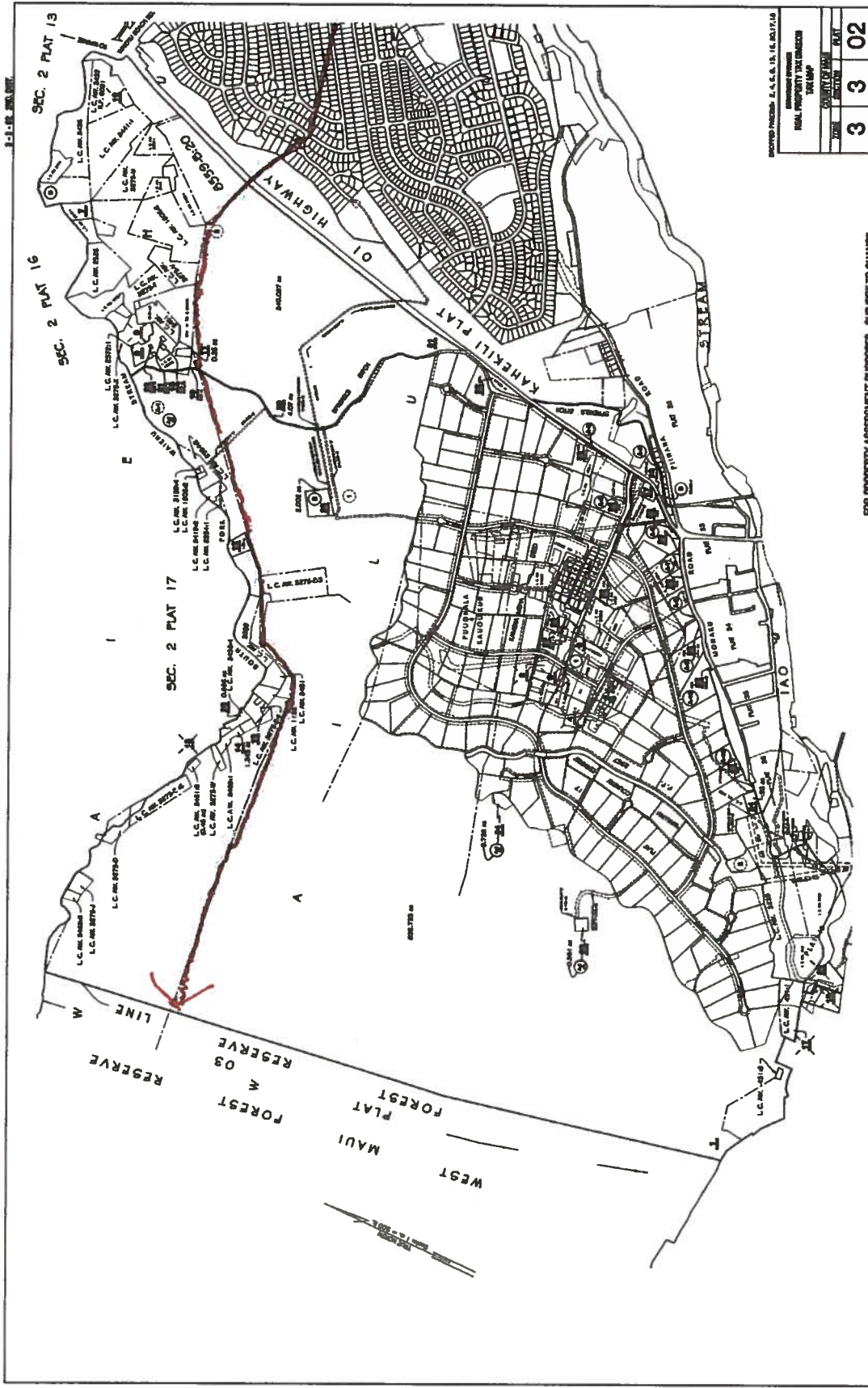
Land Commission Award (LCAw) 3559-B:20 Waiehu 2 was granted to Lunalilo on May 26, 1854 reserving the rights of the tenants within the awarded area. Sixty six (66) LCAws were granted within Waiehu 2 as shown in the Indices of Awards pp 635 to 639 containing a total area of 185.35 acres. The total net area of LCAw 3559-B:20 is 879.36 acres.

2307/2308N-CERIZO- 10 (11/19/19)



The northern boundary of LCAw 3559-B:20 is highlighted on the current Maui County Tax Map (2) 3-2 index panel along the lands of Ahikuli and Hananui. The area within the forest reserve is shown on TMK (2) 3-2-014 as 263 acres.

2307/2308N-CERIZO-11 (11/19/19)



HAWAIIAN TERRITORIES
 REAL PROPERTY RECORDS
 COUNTY OF HAWAII
 DEPARTMENT OF LAND AND NATURAL RESOURCES
 L.A.W. 3559-B:2U

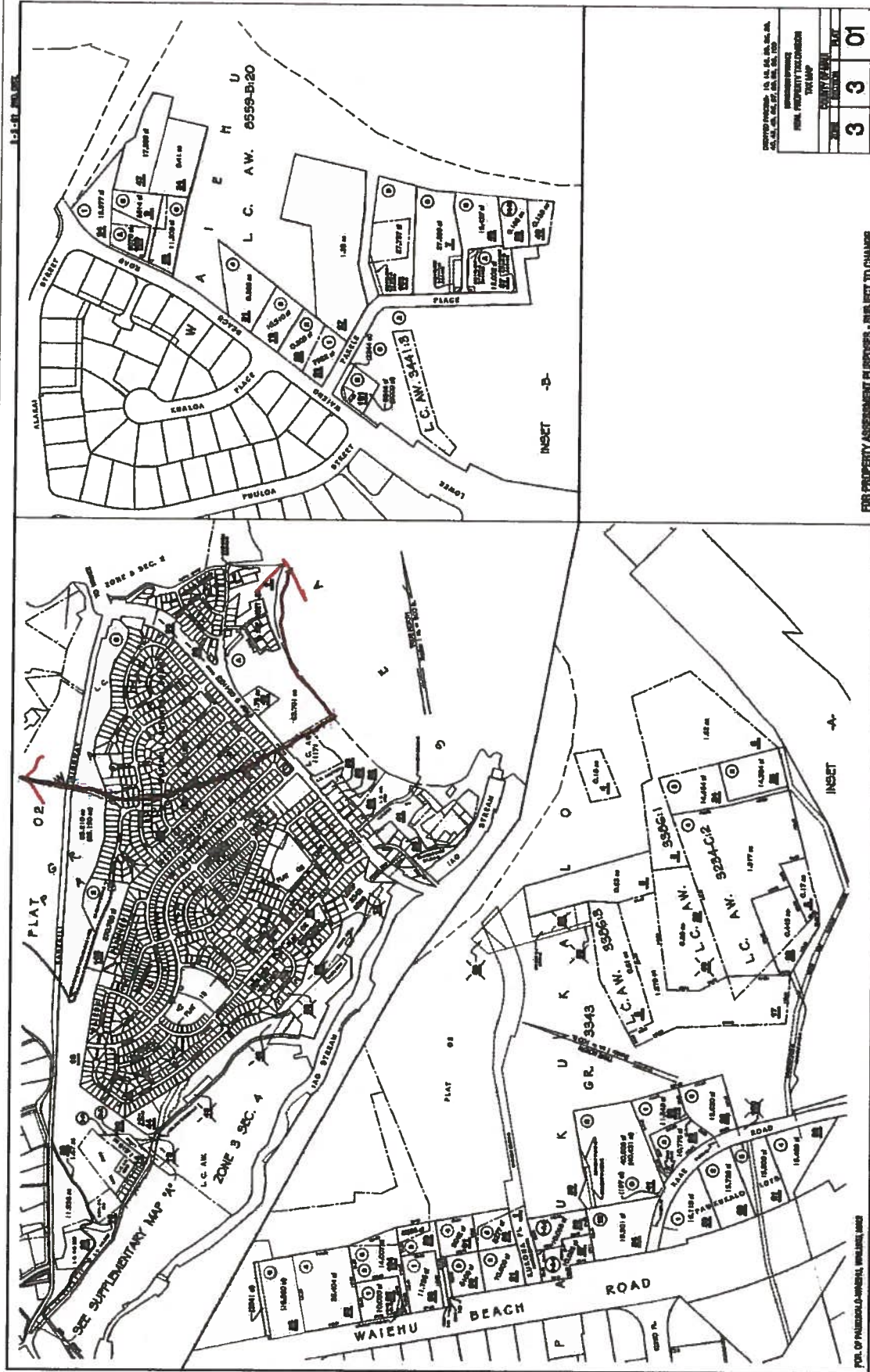
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 SUBJECT: 2307/2308N-CERIZO-12

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

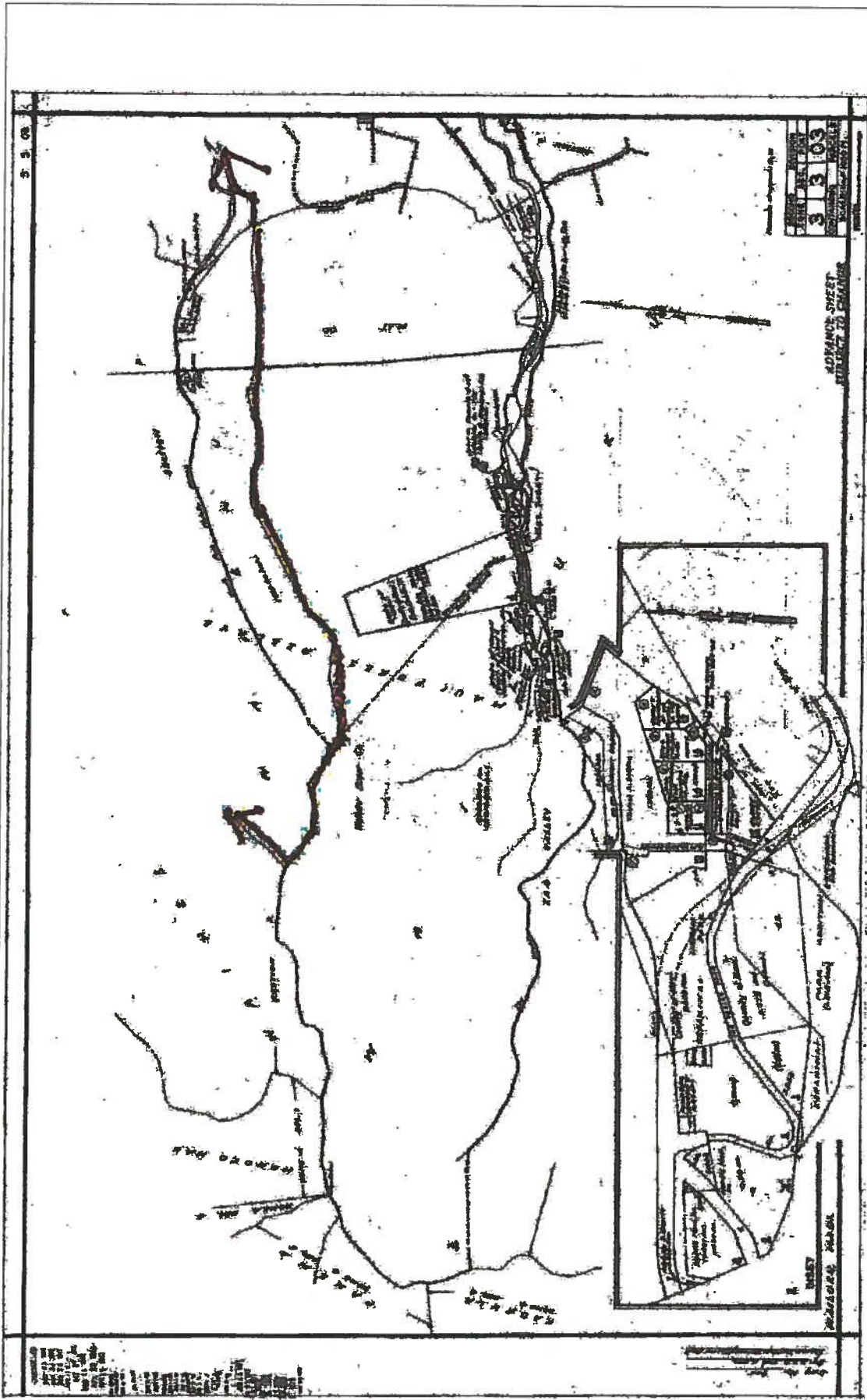
The southern boundary of L.A.W 3559-B:2U is shown. The mauka end is at the forest reserve while the makai portion enters into the Waiehu Heights subdivision.

2307/2308N-CERIZO- 12 (11/19/19)



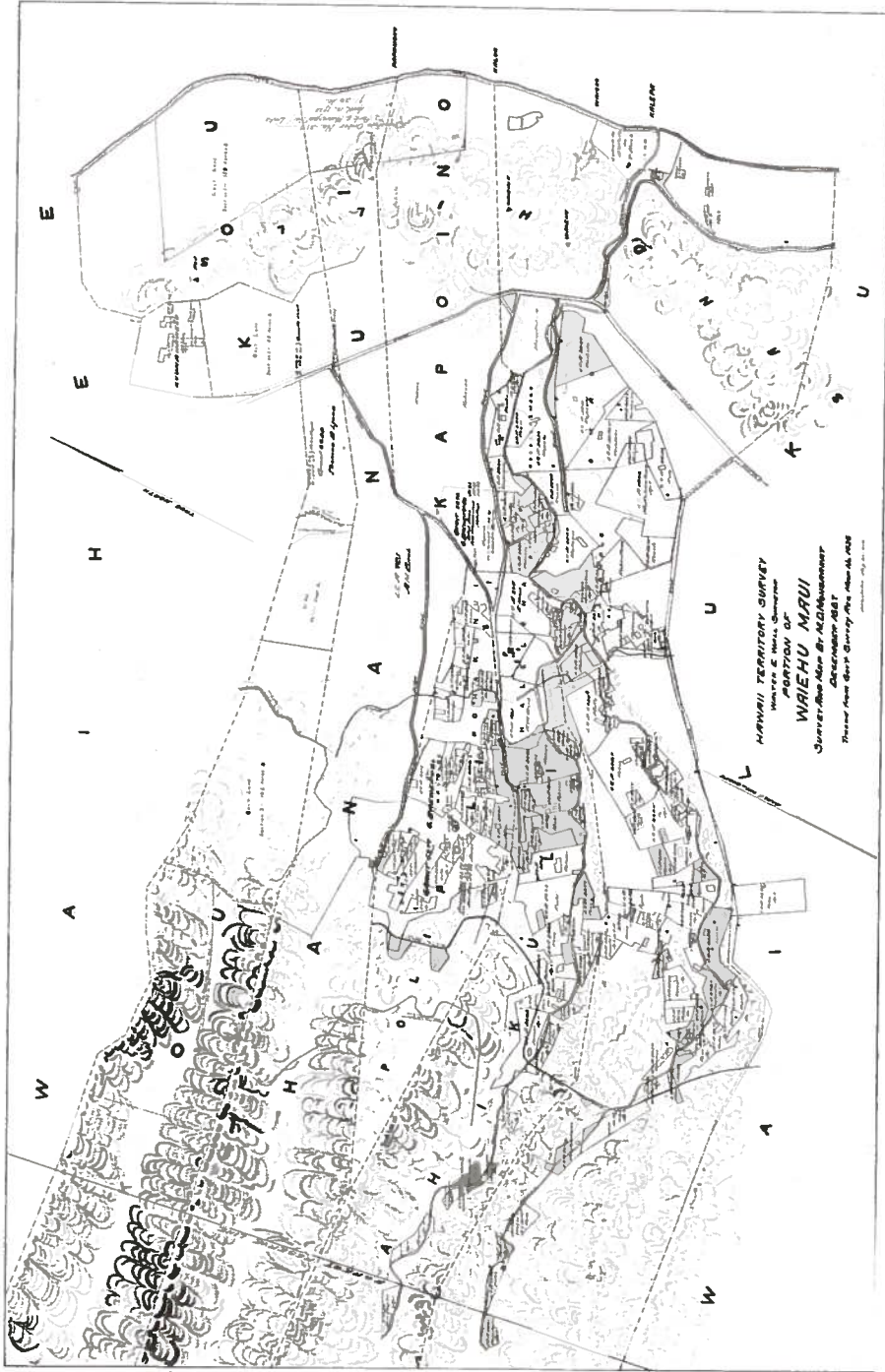
This is the southern boundary of LCAw 3559-B:20 as the boundary goes through Waiehu Heights and ends at the coastal wetlands.

2307/2308N-CERIZO- 13 (11/19/19)



This is the west or mauka portion of LCAw 3559-B:20 (Lunailo's land) as it meets the lands of Ahikuli and Wailuku at the rim lao Valley. The area within the forest reserve is noted on TMK (2) 3-3-003:03 as 293 acres.

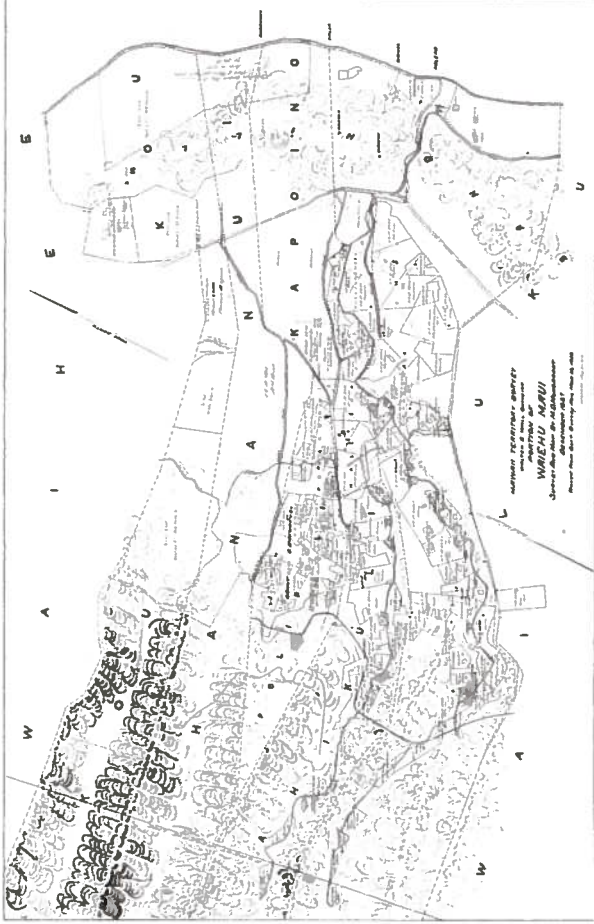
2307/2308N-CERIZO- 14 (11/19/19)



Hawaii Reg Map No. 1436 (1887 updated 1910) of Portion of Waiehu

Lunalilo's land has 66 LCAs (awards) accounting for 185 acres. Less than one half the awards have a single house. A few has two houses and one has four houses on their award and Lunalilo has three houses on his remaining lands. One below the beach road. One is on parcel 12. Another is on the same ridge, less than 1,000 feet makai of parcel 12.

2307/2308N-CERIZO- 15 (11/19/19)



Hawaii Reg Map No. 1436 (1887 updated 1910) of Portion of Waiehu

Other contents on Lunailo's net land area of approximately 880 acres includes 556 acres in forest reserve or mountainous areas and approximately another 100 acres of mountainous slopes on the south or Wailuku side of his land below the forest reserve.

In Lunailo Estate's sale to Wailuku Sugar Company on January 20, 1890, a coastal parcel identified as the "Second" parcel "of cane and pasture land containing 207 86/100 acres...". A "Third" parcel was also sold on the same deed and described as "That parcel or tract of taro, cane, pasture and mountain land containing 879 66/100 acres belonging to the estate and included within the following metes and bounds...". It was discovered that the course no. 38 matches the length of the boundary line of Lunailo's land adjacent to parcel 12.

2307/2308N-CERIZO-16 (11/19/19)

This is part of the Jan 30, 2015 addendum for the provisional recognition of appurtenant rights documentation. The water source for parcel 12 is by an existing auwai created before the Mahele to provide water to the tenants and future awardees.

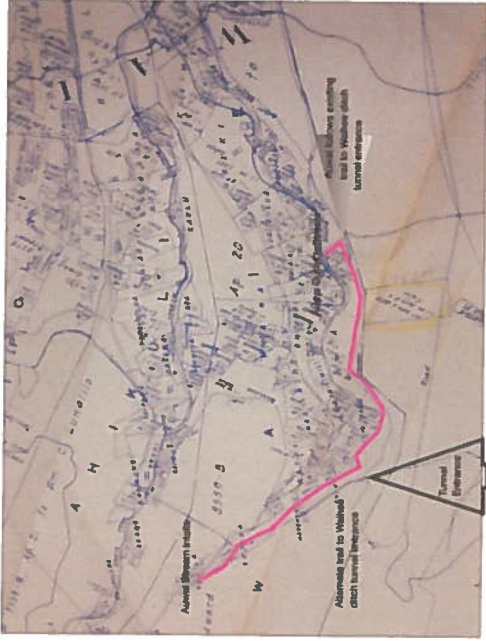
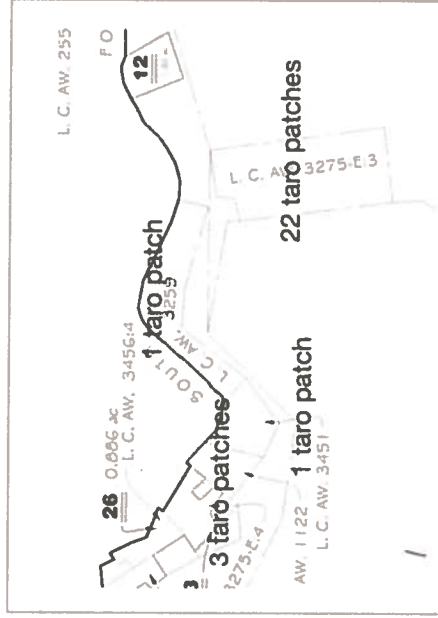
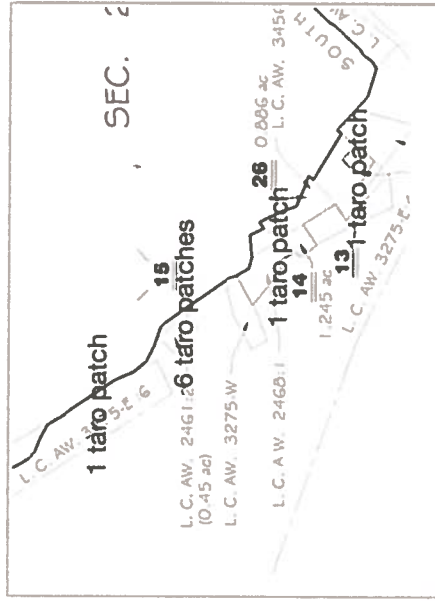


Figure 20. Portion of the auwai system providing water to parcel 12 runs adjacent to a trail to the Waiehu Ditch entrance. At times the auwai can be up to six feet deep and cut into the steep South Waiehu Stream valley slopes. The auwai needs consistent maintenance from debris, intrusive tree roots and ferns.



Figure 21. Portions of the auwai was built into the steep slopes adjacent to LCAw 3259.

Location of Taro patches at time of the Māhele



Taro patches as documented by native and foreign testimony.

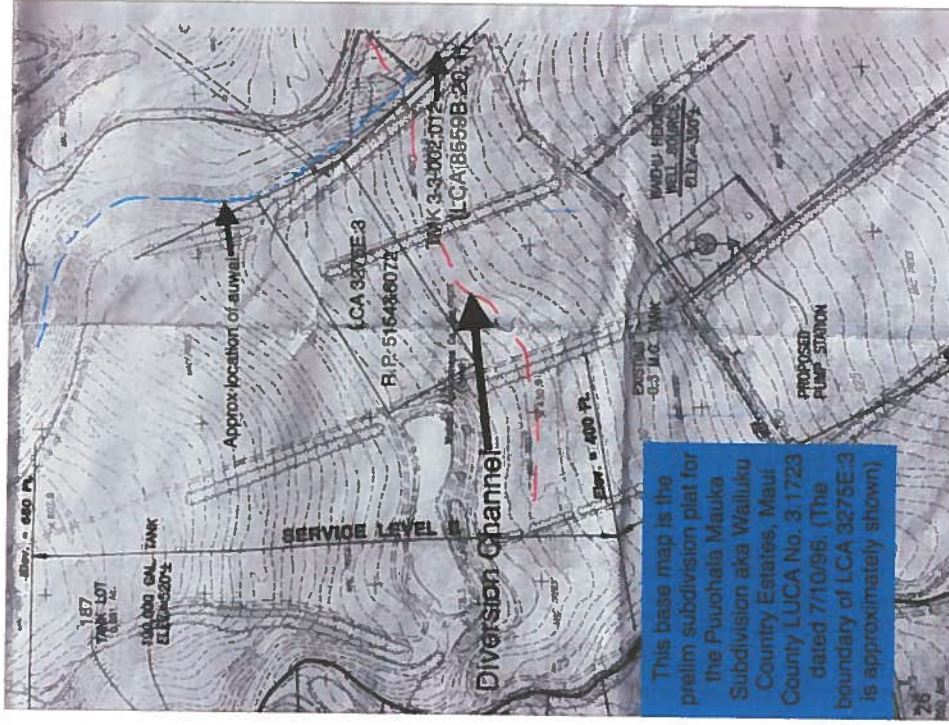
16

2307-CERIZO-4-P.1

The existing auwai provided water to 36 taro patches before reaching parcel 12's eight taro patches. Native and Foreign Testimony stated 22 lo'i's were located at LCAw 3275-E:3. Based on the current water needed to grow taro (150,000 gad x 6.62 acres) 993,000 or nearly one million gallons of water would be needed.

2307/2308N-CERIZO- 18 (11/19/19)

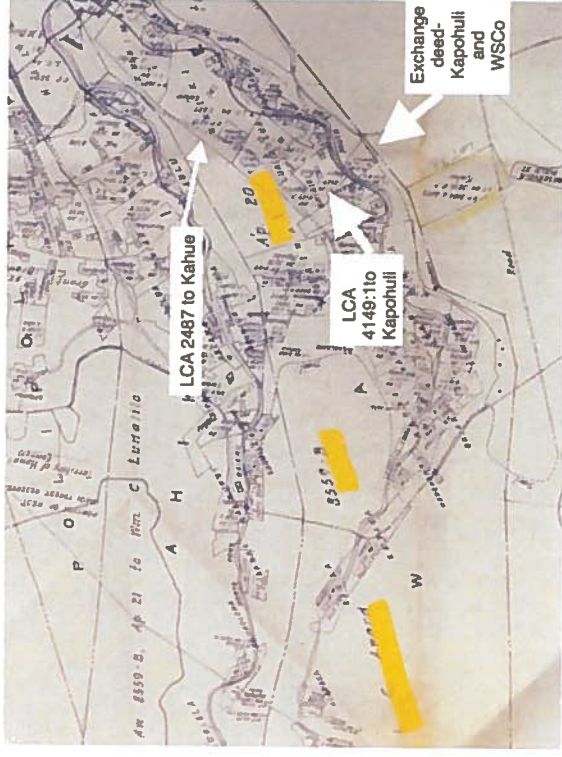
TOPOGRAPHIC MAP OF LCA 3275E:3 AND PORTION OF LCA 3559B:
20.1



The existing grades of the LCAw 3275-E:3 are high enough to allow water flow from the patches to return to the existing auwai so that it can be returned to the stream. It is highly likely that during the Mahele, the water did flow to and through parcel 12 as it does now to S Waiehu Stream

Native and foreign testimony provided for the adjacent LCAW 4149:1 to Kapohuli indicated “one poalima loi”. The creation of parcel 12 was due to an exchange from a partial owner of LCAW 2487 to Kahue, Kapohuli and his wife and Wailuku Sugar Co. (WSCo). According to the native and foreign testimony, the LCAW had 70 lo’i therefore it is highly likely, that the exchange with WSCo would be for similarly productive lo’i lands and that the 8 lo’i on LCAW 3559-B:20.1 (parcel 12) did exist in wetland kalo at the time of the Mahele.

PORTION OF WAILUKU SUGAR CO TITLE MAP (1937)



These pictures shows our family working on a typical lo'i on Parcel 12. It was included in the Jan 30, 2015 addendum for the provisional recognition of appurtenant rights documentation.

3. DOCUMENTATION ON THE CULTIVATION ON THE PROPERTY DURING THE TIME OF THE MAHELE



Our family of twelve acquired and worked on the taro patches and other crops on the property for over sixty years. The property provides us with food, health, serenity and community.



**MOP LLC Oral Arguments SWUPA #2207 & 2208N
CWRM CCH-MA15-01 November 19, 2019**

First, I want to make it clear, I am here today in my individual personal capacity representing Makani Olu Partners, not as a representative or employee of any other organization.

Makani Olu Ranch (hereinafter referred to as MOR), accepts the recommendations as it relates to COL #300 found on pages 436 to 444 in the Hearings officers proposed D&O. At this time MOR will operate within the parameters as recommended, however as future needs increase MOR reserves the right under its recognized appurtenant rights of 5,069,000 GPD to seek an amendment to its SWUP to increase its volume of permitted surface water use on the property.

Based on the record as documented in this CC, I do believe as the Hearing Officer Miike has found, that our use of surface water is a reasonable and beneficial use as defined under HRS 174C-3 of the water code and ask that you grant our allocation of 138,200 GPD.

Further, MOR reserves the right to seek a future change in stream source delivery from the current Wailuku River through the WWC system of the Iao- Waikapu Ditch connecting to Reservoir #10 located on Kuikahi Drive and then via an underground pipeline to the MOR property, the reservation is to submit a Stream Diversion Works Permit (SDWP) for a diversion intake directly off the Waikapu Stream. For the record I would note that the Waikapu Stream runs through the MOR fee simple property and therefore a Riparian Right could be claimed as the stream source for the delivery of the recognized appurtenant rights water.

As noted in our MOR exceptions filed January 8, 2018, we reserved the right to respond to ANY other Parties exceptions or comments that may impact MOR interests. To that reservation, I would like to provide rebuttal comments to the exceptions filed by Hui O Na Wai Eha and Maui Tomorrow Foundations' legal team.

The Hui and Maui Tomorrow (MTF) claim through their attorneys that the proposed allocation to MOR is one of four allocations in a group it characterizes as “Major Diverters whose allocation are inflated”.

Worthy of note, is that out of the seventy-nine (79) permit applications that were given a proposed allocation, thirty-two (32) or 40% received an allocation greater than MOR, its very odd that such a small volume of 138,000 GPD makes MOR a major divertor. They claim the allocation would contravene the reasonable and beneficial standard of the water code by giving MOR water to shoot out of a water cannon.

The two most common definitions of a “Water Cannon” are;

1) A device that ejects a powerful jet of water typically used to disperse a crowd.

2) A large truck mounted nozzle for directing a high-pressure stream of water, as at a crowd of rioters or demonstrators.

There are four basic recognized methods of irrigation, they are: surface/flood, sprinkler, drip/trickle and sub-surface. MOR does utilize a sub-surface pipeline distribution system that connects to a reel irrigator that is pulled out and retracts back under its own water pressure power with a sprinkler head to disperse the water. This reel irrigator device is a commonly used method throughout Hawaii and is a standard across the nation, it is NOT a WATER CANNON as we see being used in the riot conflicts in Hong Kong and as alleged in their exceptions.

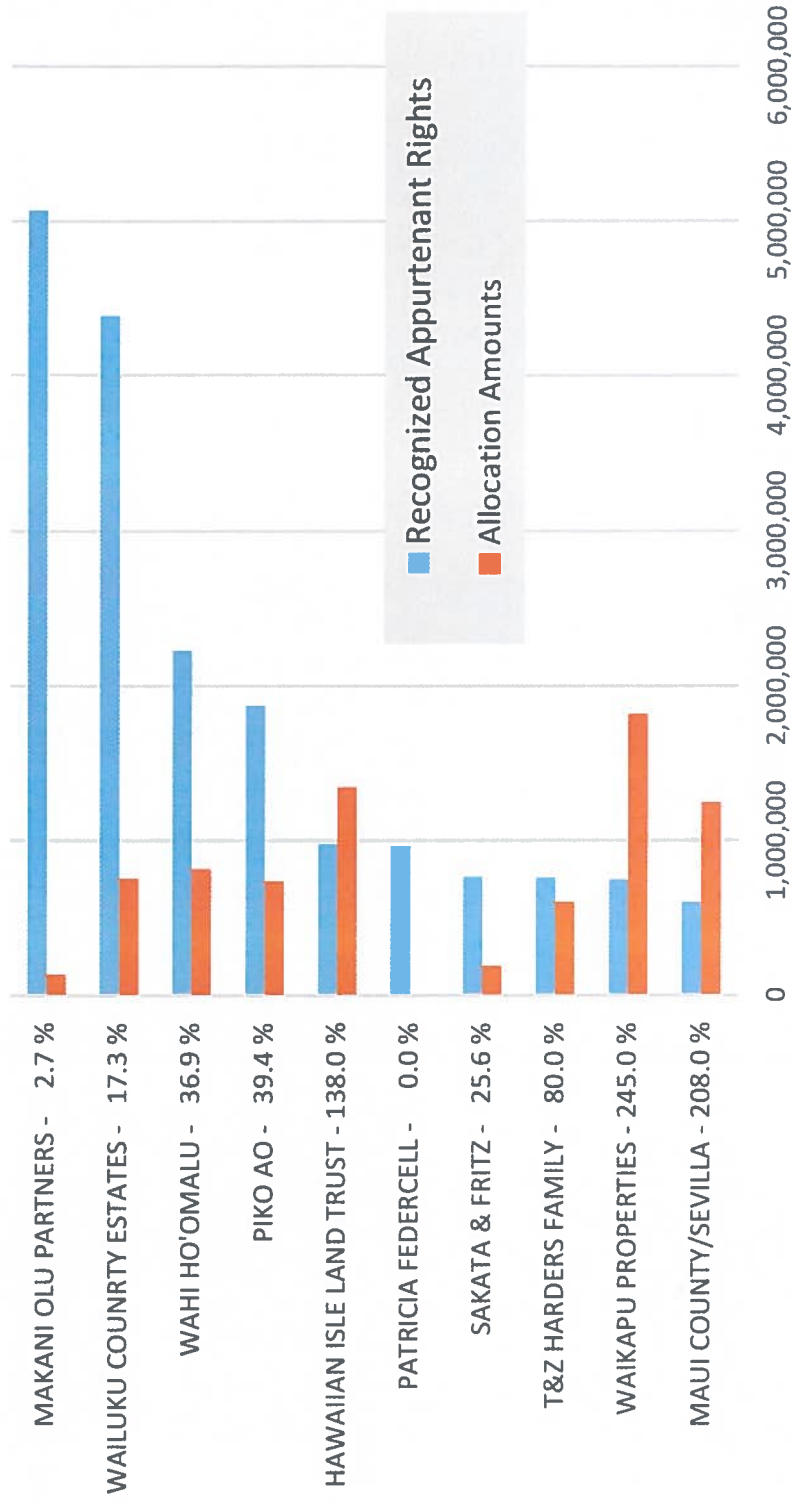
The Hui and MT ask you to reduce the small allocation given to MOR under this proposed D&O by 131,450 GPD, which would be a 95% reduction. Leaving MOR with a mere 6,750 GPD to use over the recognized area of 50.69 acres with appurtenant rights. This clearly feels like a lash out of retaliation against me personally as the President of WWC and not a rational claim of a legitimate exception against the MOR SWUPA.

I would note that of ALL the SWUPA in this case and those with a recognized appurtenant right, the CC record documents that MOR has the single largest provisional recognized appurtenant right of 5,069,000 GPD with a very small proposed allocation of just 2.7% of that right.

I have attached a graph with backup numerical data to visually show you the top ten recognized appurtenant rights and their proposed allocations to demonstrate the actual percent of allocation to appurtenant right.

In conclusion, I ask that you grant a SWUP to MOR as proposed in the D&O and acknowledge the two (2) future reserved rights that I have noted, one of a possible additional increase in usage and second, a change in the source delivery point to MOR under the permit.

Comparison of Recognized Appurtenant Rights and Allocated Amounts





Noho‘ana Farm LLC

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HŌKŪAO & ALANA PELLEGRINO
SWUPA 2332-E & 2333.6-N

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI‘I

Surface Water Use Permit Applications,)	Case No. CCH-MA15-01
Integration of Appurtenant Rights and)	
Amendments to the Interim Instream Flow)	HŌKŪAO & ALANA PELLEGRINO
Standards, Nā Wai ‘Ehā Surface Water)	CLOSING ORAL ARGUMENTS
Management Areas of Waihe‘e, Waiehu,)	TESTIMONY
‘Īao and Waikapū Streams, Maui)	
)	

HŌKŪAO & ALANA PELLEGRINO CLOSING ORAL ARGUMENTS TO THE HEARING’S OFFICER’S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION & ORDER

Aloha mai kākou,

Pursuant to Minute Order 17, I, Hōkūao Pellegrino respectfully submit supplemental written and oral testimony to the Hearing Officer’s Proposed Findings of Fact, Conclusions of Law and Decision & Order in Case Number CCH-MA 15-01 filed on November 1, 2017 (the “Proposed Order”). There are three main objections that I am requesting the Commission to address in the following Exceptions that I provided on January 5, 2018.

1. Regarding Surface Water Use Permit Application – SWUPA 2332-E & 2333.6-N for TMK No. (2) 3-5-012:023.
 2. Regarding Traditional & Customary Rights related to Surface Water Use Permit Application – SWUPA 2332-E & 2333.6-N for TMK No. (2) 3-5-012:023.
 3. Regarding the proposal that no further action is needed on the IIFS below the Waihe‘e Ditch diversion based on an apparent misperception of the situation regarding the dumping of Waihe‘e River water into Waikapū Stream and impact to Keālia Wetlands and National Wildlife Refuge as well as the dumping of water into Pale‘a‘ahu Gulch, Waikapū.
1. In 2009, my family and I filed SWUPA 2332-E and 2333.6-N, for surface water from the North Waikapū Kuleana ‘Auwai via the Waikapū Stream for both TMK No. (2) 3-5-012:020 (“Parcel 20”) and No. (2) 3-5-012:023 (“Parcel 23”). The matter on hand is in regards to Parcel 23. This 2.134 acre parcel of kuleana land is where my wife (Alana Ka‘ōpūiki-Pellegrino) and I along with our 2 keiki live and operate Noho‘ana Farm. Since 2004, we along with my parents (Victor and Walette Pellegrino), extended ‘ohana and neighbors have been restoring and cultivating our ancestral lo‘i kalo for the purpose of sustaining our family, community and implementing our cultural ag education program which has engaged more than 14,000 preschool through college students and community participants. Since returning to our

ancestral land, my family and I have always had the intention and commitment to restoring and cultivating all of our lo'i kalo. We conducted a detailed survey of our land and have concluded that as specified in SWUPA 2332-E and 2333.6-N that there are a total of 12 lo'i kalo which equates to a total of 1.6 acres of 2.134 acres on Parcel 23. As provided in my testimony during the 2016 CCH, I specified that our lo'i kalo range from as small as 300 sq. ft. to over 8,000 sq. ft. In fact, our largest lo'i on Parcel 23 is 182' x 46' or 8,372 sq. ft. When we began restoring our lo'i in 2004, we were greatly limited in our ability to cultivate beyond 1-2 lo'i kalo at any given time out of 12 that we intended to open due to the low stream flow caused by the WWC South Waikapū Diversion which distributes most of its water to Waikapū Properties and Maui Tropical Plantation. Historically, the Waikapū Stream was completely diverted and dry from 1904 to the early 1980s. The flows since then had been minimal with less than 5% being left in the stream. Our 'ohana felt like we were held hostage since the restoration of our first lo'i in 2004 until the end of 2014 in which an IIFS was implemented for Waikapū Stream. Even since the 2014 IIFS was implemented, my 'ohana and entire community experience many periods of low flows due to Wailuku Water Co's inability to follow the law and release the legally binding amount of water. On top of this is the lack of enforcement by CWRM and a gauging system in working order. The current IIFS for Waikapū is still very limiting, allowing us to expand our cultivation of lo'i kalo from 1-2 lo'i on 0.2 acres to only 4-5 lo'i on 0.5 acres. It is important to keep in mind that there are also kuleana land owners around us whom we support and are restoring lo'i kalo with an increasing water usage. While this is a great step forward for our community, with the increase in traditional agricultural production on kuleana lands in Waikapū, there is not enough water via the current Waikapū IIFS to support all of our efforts.

The permit granted to Parcel 23 by the 2018 Proposed Decision & Order will negatively impact our current needs and intentions for full restoration of 12 lo'i kalo. For one, the allocated amount via the permit is only 31,700 gpd for 0.2 acres when in our SWUPA 2332-E we specified our existing use as 54,000-62,000gpd. Furthermore, since 2014, we now have 0.5 acres in cultivation and are in the process of restoring all 1.6 acres/12 lo'i kalo when more stream flow exists. This current permitted allocation limits our current state of cultivation and would not allow us to cultivate all 12 lo'i kalo or 1.6 acres as we have specified in both SWUPA 2332-E and SWUPA 2333.6-N as our main purpose and end goal. I would like to request the Commission to make the appropriate changes in the permitted amount to include our current use of water for 0.5 acres as well as the proper amount for our full build out of 1.6 acres. The allocation for full build out of our 1.6 acres based on the calculation used by the Hearing's Officer for lo'i kalo should be as follows; 240,000 mgd (1.6 acre x 150,000 gad).

2. The second issue on hand is in regards to the 2018 Proposed Decision and Order not to grant a Category 1: Traditional and Customary Rights permit for Parcel 23. I strongly disagree with this conclusion due to the fact that both my wife and I are Native Hawaiian and growing kalo on our kuleana land, in an area in which kalo was historically grown by Native Hawaiians, of whom I am related to. There was no process for me to prove that I am genealogically connected to this parcel even though I am in fact genealogically connected to this land in addition to 3

other kuleana parcels in which my ancestors were awarded in the Great Māhele throughout the Waikapū Ahupua‘a in the ‘ili of ‘Ōhi‘a, ‘Aikanahā and Kāloapelu. Had I known that I needed to disclose in greater detail my ancestral connection to Parcel 23 and others to prove my lineage to the ahupua‘a of Waikapū, I would have provided that in my testimony. It is however irrelevant due to the fact that I am Native Hawaiian and engaged in the traditional and customary practice of growing kalo in Nā Wai ‘Ehā. Therefore, I would like to request that our permit for Parcel 23 be classified as Category 1: Traditional and Customary Rights by the Commission.

3. The third and final exception is in regards to a statement in the 2018 Proposed Decision and Order on page 525 about how water has returned to Keālia Pond: “The conditions for the Waihe‘e Ditch diversion at high flows was to ensure that such flows would not be captured by the Waihe‘e Ditch and that water would reach Kealia (sic) Pond when the stream flooded. As a consequence, water has returned to Kealia (sic) Pond, which was previously “mud flats,” despite its not flowing continuously in its lowest reaches. (FOF 85, 301, COL 127.)”

The true characteristics of Waikapū Stream and its natural flow in relationship to Keālia Wetlands and now National Wildlife Refuge have never been fully understood nor studied scientifically. While there may be water observed in the lower reaches of the Waikapū Stream and consistent flow entering the Keālia wetlands and exiting via the muliwai of Palalau into Mā‘alaea Bay, what is occurring is unnatural and caused by Wailuku Water Co. dumping of Waihe‘e Ditch water into Waikapū Stream via a return ditch that parallels the stream 50 feet beyond the Waihe‘e Ditch diversion intake on Waikapū Stream. The dumping of water by Wailuku Water Co. has been a common practice and is in fact happening as we speak at this very location as of 8:39 am. The water being dumped derives from Waihe‘e River, Wailuku River and Waikapū Stream.

The main source of water for Kēalia historically and prior to any sugar plantation stream diversions was solely the Waikapū Stream and sometimes intermittent flow via ‘Oawakilikika, Ka‘onohua, Pale‘a‘ahu and Pōhākea Gulches during major storm events. Keālia was once Maui’s largest wetland, ancient inland fishpond, included Māhele Land Commission awardees to those Native Hawaiian families who managed the most famous pa‘akai or salt producing region on Maui. Following the installation of modern sugar plantation era diversions such as the South Waikapū Intake (circa 1904), the only water that would reach Keālia was during high flow events, in which water flowed over the 4+ diversion intakes. In 1992 when the 704 acre Keālia Pond National Wildlife Refuge was established, brackish wells provided water and habitat for the endangered ae‘o or Hawaiian stilt (*Himantopus mexicanus knudseni*) and ‘alae ke‘oke‘o or Hawaiian coot (*Fulica americana alai*).

What one observes today at Keālia is a pond that literally full to the brim. The Refuge has ceased operating their wells for over 5 years which related directly what they thought as the establishment of the IIFS for Waikapū Stream (2014) but was really due to increased dumping by Wailuku Water Co. Waihe‘e Ditch water being dumped in the Waikapū Stream is the sole

reason why there is an abundance of water currently in Keālia. Waihe‘e Ditch was the source of irrigation for HC&S, which leased over 1,000 acres of land from Waikapū Properties (previously Wailuku Agribusiness) for cultivating sugarcane. HC&S no longer exists and the leased lands returned to the current owners which is Waikapū Properties for diversified agricultural use. Beginning in 2015, after the 2.9 mgd IIFS was established on Waikapū Stream and HC&S had substantially phased out of sugarcane production, Wailuku Water Company started dumping the “surplus” water from the Waihe‘e Ditch into Waikapū Stream on a daily basis. Rather than leaving the “surplus” water in its source streams (i.e. Waihe‘e River, Wailuku River, and Waikapū Stream), it was diverted and then dumped, inundating Keālia Pond National Wildlife Refuge. USGS in late 2018 and early 2019 measured flows below the WWC Waihe‘e Diversion Intake crossing over the Waikapū Stream and documented upwards 5 million gallons per day. The intake would divert most if not all of the Waikapū Stream at the Waihe‘e Ditch Diversion Intake, not allowing for the passage of water and then 50 feet below, would dump the same amount of water that was diverted plus millions of gallons of additional water from the Waihe‘e Ditch into the Waikapū Stream which then flowed to Keālia.

While water in Keālia Pond is beneficial to promoting habitat for the endangered native aviary, aquatic and mammal species, the sudden and continual surge of water has caused an onset of challenges never faced before. Keālia Pond in a very short period of time expanded from less than 50 acres to over 400 acres of wetlands. The entire Refuge staff which include biologists have been overwhelmed with problems never experienced since their inception, including a vast increase of feral ungulates, rodents and non-native aviary species, many of which prey on the endangered wetland birds, nests and eggs. The large increase of unnatural flow entering the Refuge has also allowed for invasive plant species to flourish which in turn outcompetes native plant species that are critical habitat for the endangered wetland birds.

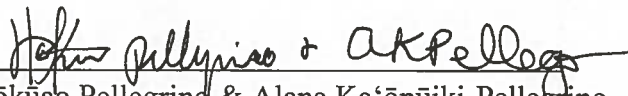
There is no doubt that Keālia wetlands needs stream water for the purpose of providing habitat for endangered wetland aviary and mammal species, native aquatic and insect species as well as serving as an important cultural and historic site on Maui. However, the unnatural flow of water that has been occurring via the dumping of other river and stream water into Waikapū Stream by Wailuku Water Company is unacceptable and is causing detrimental problems to what should be a naturally flourishing wetland environment.

I would like to request that the Commission address this issue head on by first ordering Wailuku Water Co. to cease all dumping of Waihe‘e Ditch water into Waikapū Stream, except as may be helpful to support a study of the downstream flow characteristics of the stream. Secondly, since Waikapū Stream water is not being allocated in any Surface Water Use Permit Applications after users from the South Waikapū Intake, South Kuleana ‘Auwai and North Waikapū Kuleana ‘Auwai, whatever flow that is in the Waikapū Stream at the point of the Waihe‘e Ditch Intake at Waikapū Stream, should not be diverted at all and allowed to flow naturally and continuously to Keālia Pond. The diversion should in fact be shut down period! The major user of the Waihe‘e Ditch beyond the Waikapū Stream is Waikapū Properties LLC – Mike Atherton. He has strongly supported our efforts to shut this intake down once and for

all to support stream connectivity (See 2019 Integrated Natural-Cultural Resource Preservation & Management Plan: A Framework for Protecting, Enhancing and Stewarding the Natural & Cultural Resources of Waikapū set forth by the Waikapū Country Town Development via Maui County Planning Department). Restoring streamflow connectivity in this part of the stream will provide critical data and a true understanding of the characteristics of the Waikapū Stream in relationship to the Keālia Wetlands and National Wildlife Refuge, which has never been comprehensively studied from the first Nā Wai 'Ehā Contested Hearing Case to the one before us currently.

Mahalo nui Water Commissioners for your service on matters of great importance to my 'ohana and the Nā Wai 'Ehā community. I respectfully request that you take these concerns seriously and make decisions that benefit both our streams and kuleana kalo farmers.

Dated: Waikapū, Hawai'i, November 19, 2019.


Hōkūao Pellegrino & Alana Ka'ōpūiki-Pellegrino
Kuleana Land Owner
Noho'ana – Waikapū Ahupua'a

Sarasin SWUPA Picture Descriptions

Page 1

Picture #1-Taken on 7/5/19 at 10:11AM. I cleaned this entire section of Auwai by myself, around 300 feet worth of ditch. This picture was from the road level.

Picture #2-Taken on 7/5/19 at 10:43AM. This is a view from the ditch level.

Picture #3-Taken on 7/5/19 at 1:30PM. This picture shows areas that I've cleaned as well as areas that remained to be cleaned.

Picture #4-Taken on 7/5/19 at 2:45PM. This picture shows a long stretch of the ditch opened up so that the water can flow without obstruction.

Page 2

This page and picture #1 on page 3 shows just how much the flow that runs through our farm from the auwai bordering us can vary from day to day and week to week as all of these 5 pictures were from an 8 day period.

Picture #1-Taken on 7/22/19 at 3:09PM. This picture shows how well the water flowed after myself and a number of other Kuleana farmers came together and cleaned about 500 feet of the most overgrown part of the auwai on 7/20/19. This is the quantity of water that we used to have when we started digging our ponds to start raising fish as you can see, it is much better than what you see in the pictures after picture #1 and #2.

Picture #2-Taken on 7/24/19 at 3:25PM. This picture shows continued high quantities of water running in the auwai after the thorough cleaning of the ditch.

Picture #3- Taken on 7/27/19 at 12:09PM. This picture shows a significant reduction in the quantity of water in the auwai which seems to be commonplace every time that we do repairs to the ditch. We will get an increased flow to raise our hopes that we will finally get adequate water again just to see the water slow again in short order.

Picture #4-Taken on 7/29/19 at 2:07PM. This picture shows more water than there was available in picture 3 but it is still a far cry from the water that we used to see regularly like in picture #1 and #2.

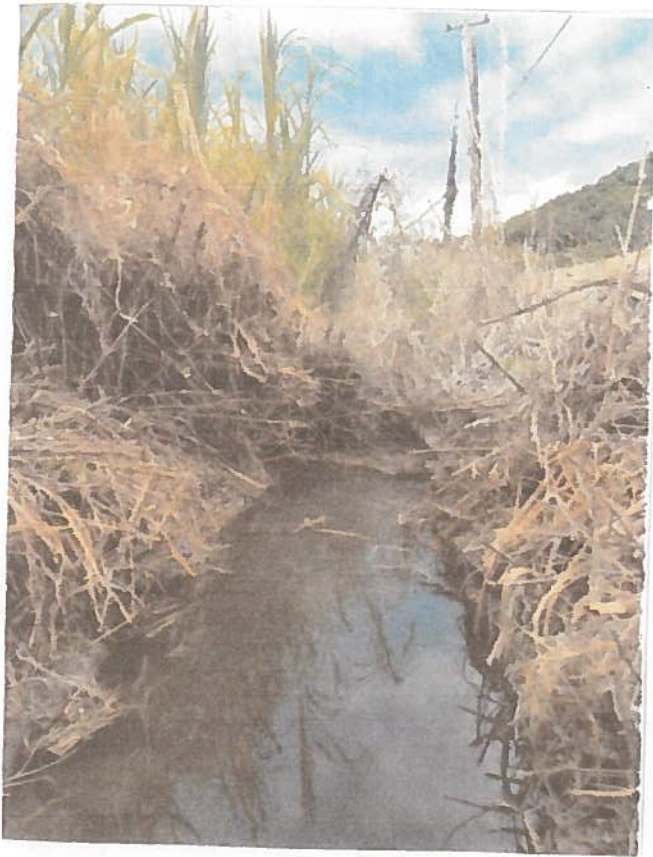
Page 3

Picture #1-Taken on 7/30/19 at 2:22PM. This picture shows far less water than the previous page of pictures and has been the kind of flow that we have seen far too often in recent years sometimes for weeks on end.

Picture #2-Taken on 7/14/19 at 1:08PM. A view from the road of the absolute worst part of the ditch to clean. The cane grass in and around the ditch towered over my head, root balls plugged parts of the ditch and vines intertwined into the grass. Thankfully when we cleaned this part of the ditch we had a number of farmers helping us. Myself and 2 others cleaned about 500 feet starting in this mess of tangled grass and vines and ending after removing Java Plum and fern roots far beyond this picture's view.

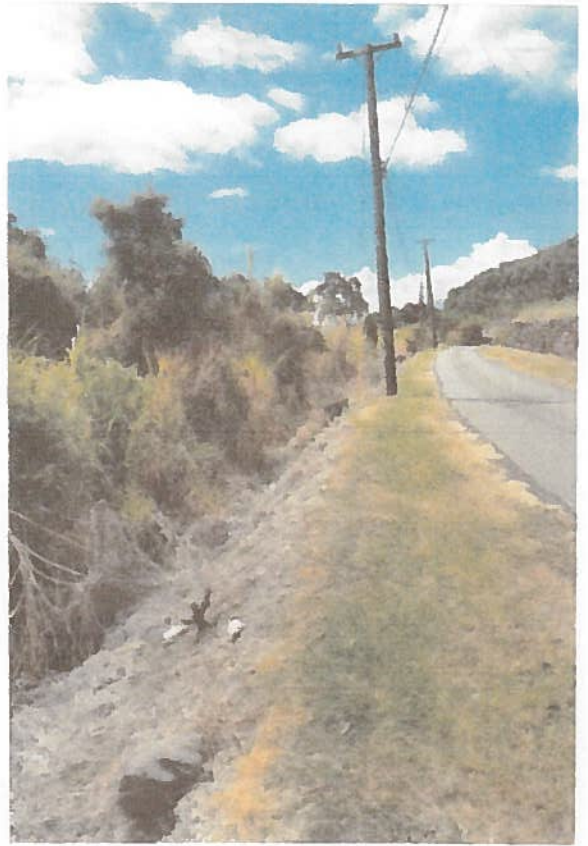
Picture #3-Taken on 7/14/19 at 1:25PM. I started cleaning the ditch by myself but fell ill shortly after starting, likely a combination of juggling daily life with a young family along with all of the work chasing after the water to try and get our farm back to having the water needed for full production. This picture shows just how intertwined everything is. We bought a bigger hedge trimmer as the grass stalks were too thick for the electric hedge trimmer that we had bought previously. Thankfully a number of farmers came out to help 6 days later which led to the ditch having considerably more water flowing by us for a number of days before it started to taper off again.

Picture #4-Taken on 10/24/19 at 4:31PM. This is a picture showing a time of an extreme low flow which again we have seen far too often over the last 4-5 years or so. All of the water from the auwai is going through pond #1 here and in viewing it, I estimated it to be less than 10 GPM. Seeing days where the flows are like those in picture #1 and picture #4 are very scary especially when days turn to weeks. We need a higher quantity of water and a more consistent flow.



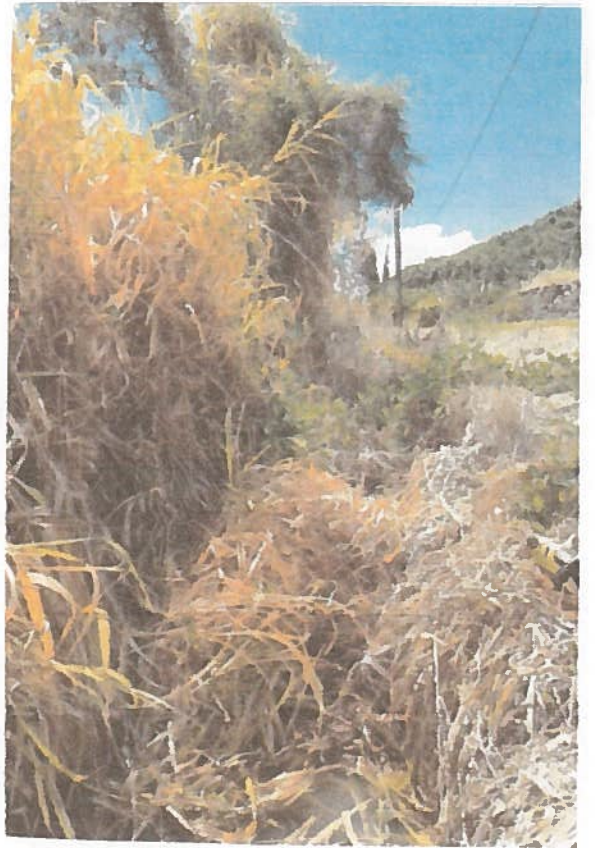
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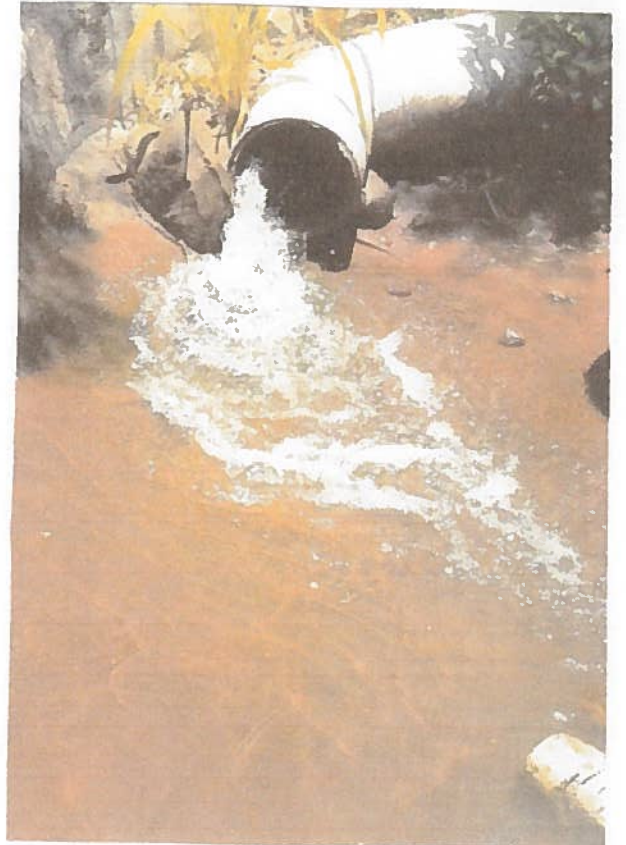
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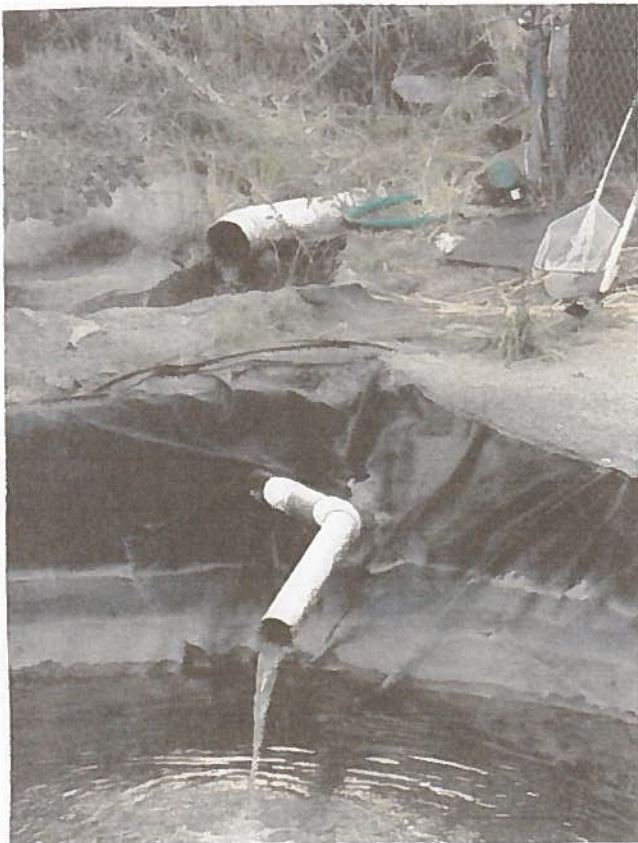
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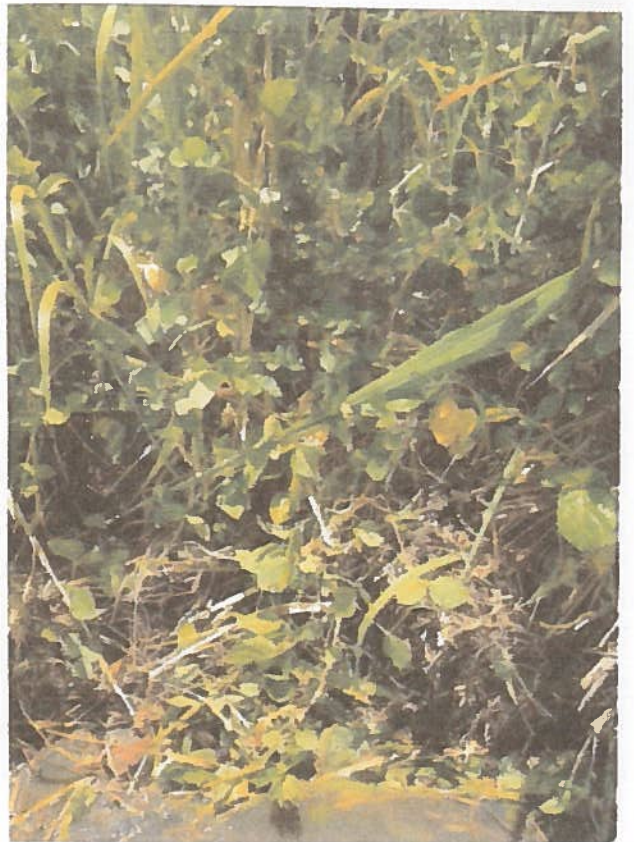
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Wailuku River

Hui o Nā Wai ‘Ehā’s and Maui Tomorrow’s Exceptions and Recommendations

**Case No. CCH-MA15-01
November 19, 2019**

Outline of Exceptions/Recommendations

- I. Increase IIFSSs; include sharing provisions.
- II. Correct legal errors in priority categories, including T&C and appurtenant rights.
- III. Correct/reduce inflated allocations to several larger users.
- IV. Include implementation requirements.

I. Increase IIFS; include sharing provisions



- IIFS in proposed D&O does not protect and restore streams “to the extent practicable.”
 - at or less than lowest end of streamflows
 - does not include flows for downstream rightholders
- Also does not provide flexibility.
 - may not protect rightholders on ditch system, accommodate offstream uses during low flows
- Solution: higher base IIFS, with sharing provisions at low flows.
 - Precedent: Wailuku and South Waiehu; Waimea River

Recommended Nā Wai ‘Ehā IIFS



- Waihe‘e: 10 mgd → 18 mgd
- Wailuku: 10 mgd → 13 mgd
 - relocate makai IIFS to just below Spreckels
- N. Waiehu: 1 mgd → 1.5 mgd
- S. Waiehu: 0.9 mgd → 1.3 mgd
- Waikapū: 2.9 mgd → 3.9 mgd
 - relocate IIFS to just below Waikapū diversion
 - study downstream flow conditions for makai IIFS

Sharing provisions at low flows



- Waihe'e and Wailuku Rivers: share 2/3 instream – 1/3 offstream during low flows.
- N. & S. Waiehu and Waikapū Streams: continue to provide water to kuleana 'auwai during low flows.
 - require WWC to restore supply to Waiehu kuleanas

II. Correct legal errors in priority categories



- direct lineal connection not required for T&C rights.
- 1-acre limit on T&C Rights is arbitrary.
- resurrecting extinguished appurtenant rights is error.
- appurtenant rights of kalo lands in larger grants (e.g., pō'alimas) should be recognized.
- County is municipal, not domestic/public trust use.

III. Correct/reduce inflated allocations to several larger users

- HC&S → Mahi Pono
- Wailuku Country Estates
- Wahi Hoomalu
- Makani Olu
- (also response to MMK golf course)

Settlement/Stipulation with Mahi Pono

- MP Commitments include:
 - MP supports and endorses Hui-MT/OHA's proposed IIFSs; will implement and comply.
 - Comprehensive and continual monitoring and reporting of stream and ditch flows, water uses, well use and salinity.
 - Recognize legal mandate of IIFS, prohibition against waste.
 - Immediate ditch improvements: bypass Wai'ale Reservoir, close low-flow intake at Spreckels.
 - Investigate and remediate system losses.
 - Potential assistance for North Waihe'e 'auwai reopening.
 - Non-transferable and ag-only conditions on permit.
 - Seek opportunities for native dryland ecosystem restoration.
 - Communication, transparency, information, site visits.

Settlement/Stipulation with Mahi Pono (pt 2)

- MP's SWUPA 2206: Total 11.22 mgd (vs. 15.65 mgd for HC&S in proposed D&O)
 - Initial 2,500 gad over 3,740 acres (9.35 mgd)
 - Additional 500 gad (1.87 mgd), if MP:
 - ✓ meets all its Commitments
 - ✓ reaches and maintains 4.5 mgd Well 7 use
 - ✓ has actual need for additional water
 - ✓ implements plan to remediate system losses
 - ✓ provides info to verify conditions have been met.

III. Correct/reduce inflated allocations to several larger users

- Wailuku Country Estates: allocation should be reduced to county's 1,200 gpd figure, no more than WCE's 2,666 gpd "allowable allotment."
- Wahi Hoomalu: allocation for kalo should be denied w/o prejudice, mac nut irrigation should be denied.
- Makani Olu: 131K gpd for spraying pasture with water cannons should be denied.
- response to MMK (golf course): proposed 1.037 mgd based on efficient use is correct.

IV. Include implementation requirements



- Real-time monitoring and reporting of flows in each stream (upstream/downstream) and ditch to ensure IIFS compliance
- Enforcement of requirement to restore flow passage

Real-time flow monitoring and reporting



- Essential for IIFS compliance.
- Feasible cost.
- Duty of ditch operator to provide, CWRM to verify.
- CWRM should require by date certain, as part of final order and condition of permit.

Flow passage restoration



- IIFSs expressly specify “at” or “just below” diversions.
- Diversion/dumpback practice is mere “convenience” and a “high priority” issue to remedy.
- Standard: flow passage restoration “to the extent practicable.”
- CWRM should reiterate and enforce order to remediate diversion structures.

The work only begins with the Final Decision:



- Require ditch operators to develop implementation-compliance plan on how to implement the decision, optimize ditch operations, and track and report compliance.
- Quarterly status updates on implementation and compliance.
- Convene Community-Based Working Group to identify challenges, seek solutions, and suggest improvements
- Designate Water Master or other representative for dispute resolution as needed, including for water priority and access issues.



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Mahalo

Noho'ana Farm, Waikapū

Table 3: Traditional and Customary Rights*

Community Member	SWUPA #(s) (existing and new)	Stream	Hui/MTE-OHA		Proposed Decision Category 1	
			Lo'i (acre)	GPD (@150,000 gad)	Lo'i (acre)	GPD (per Table 2)
Diannah Lai Goo	2365N	Waihe'e	1.05	157,500	1.05	157,500
Joseph Alueta	2362N	Waihe'e	2	300,000		
Winifred & Gordon Cockett	2223	Waihe'e				
Alfred Santiago	2273, 2274N	Waihe'e	1.5	225,000		
Diannah Lai Goo	2233, 2234N	Waihe'e	0.724	108,600		
Stanley Fausino & Kanealoha Lovato-Rodrigues	2228, 2229N	Waihe'e	0.67	100,500		
Michael Rodrigues & William Freitas	2269, 2270N	Waihe'e	0.33	49,500		
Michael Rodrigues & William Freitas	2269, 2270N	Waihe'e	0.98	147,000		
Clifford & Cristal Koki	2252, 2253N	Waihe'e	0.736	110,400		
William Lata & Emmett & Renette Rodrigues	2324, 2325N	Waihe'e	1.64	246,000		
William Freitas	2364N	Waihe'e	0.5	75,000	0.5	75,000
Kenneth Kahalekai	2249	Waihe'e	1.92	288,000		
Kau'i Kahalekai	2312	Waihe'e	2.776	416,400	1.94	291,000
Kaiulani (Michael) Doherty	2225, 2226N	Waihe'e	2	300,000		
Thomas Texeira & Denise Texeira	2280, 2281	Waihe'e	0.15	22,500		
Piko A'o, LLC (Lori Lei Ishikawa)	2264, 2265N	Waihe'e	4.78	717,000		
Gordon Apo & Lester Nakama	2316, 2317N	Waihe'e	0.73	109,500		
Cordell Chang	2221, 2222N	Waihe'e	0.5	75,000		
Charlene & Jacob Kana	2313, 2314N	Waihe'e	1.153	172,950		
Diannah Lai Goo	2231, 2232N	Waihe'e	0.46	69,000	0.46	69,000
Kathleen De Hart	2361N	Waihe'e	0.02	3,000	0.02	3,000
Alfred Kaiiehu, Jr. & Ina Kaiiehu	2250, 2251N	Waihe'e	0.253	37,950	0.25	37,915
		Waihe'e Total	24.872	3,730,800	4.22	633,415
Paul Higashino	2342	Waiehu	2	300,000		
Jeff & Ramona Lei Smith	2369N	Waiehu	0.5	75,000		
Isabelle Rivera	2266, 2267N	Waiehu	2.42	363,000		
Regino Cabacungan & Kathy Alves	2219, 2220N	Waiehu	0.22	33,000		
Renee Molina	2171	Waiehu	0.125	18,750		
		Waiehu Total	5.265	789,750	0.00	0

* Does not include numerous rightholders whose domestic uses were exempted from the permit requirement, but whose rights still must be protected 1

Table 3: Traditional and Customary Rights*

Community Member	SWUPA #(s) (existing and new)	Stream	Hu/MTF-OHA Lo'i (acre)	GPD (@150,000 gad)	Proposed Decision Category 1 Lo'i (acre)	GPD (per Table 2)
Gary & Evelyn Brito	2215, 2216N	Waiuku	0.037	5,550	0.04	7,400
Ho'ouluhūhui, LLC	2243, 2244N	Waiuku	3.08	462,000	1.00	151,667
Francis Ornellas	2370N	Waiuku	1.421	213,150	1.42	213,150
Kimberly Lozano	2371N	Waiuku	0.1836	27,540	0.18	27,540
Noelani & Allan Almeida & Gordon Almeida	3623N	Waiuku				3,270
Duke & Jean Sevilla & Christina Smith	2275	Waiuku	0.33	49,500		
Luke McLean	2204	Waiuku	1	150,000	1.00	150,000
Leslie Vida, Jr.	2188	Waiuku	0.0365	5,475	0.04	5,475
Donna Vida	2292, 2293N	Waiuku				
Clairé Pinto	2303	Waiuku				3,300
Katherine Riyu	2268	Waiuku Total	6.0881	913,215	3.68	561,802
Judith Yamanoue	2338	Waikapū	0.305	45,750		
Hokuao & Alana Pellegrino	2332, 2333N	Waikapū	0.5	75,000		
Karl & Lee Ann Harders	2237	Waikapū	0.821	123,150		
Theodore & Zeile Harders Family Ltd P'ship	2238	Waikapū				
Theodore and Zeile Harders	2239	Waikapū				
T & Z Harders Family LTD	2240, 3467N	Waikapū	5	750,000	1.00	153,000
Theodore and Zeile Harders	2311	Waikapū				
Alan Birnie	2213, 2214N	Waikapū	0.0045	675		
Douglas Bell	2212	Waikapū				
Ho'okahi Alves	2260, 2261N	Waikapū	0.5	75,000		
John Minamina Brown Trust/Crystal Smythe, Trustee	2217, 2218N	Waikapū	1.15	172,500		
		Waikapū Total	8.2805	1,242,075	1.00	153,000
		Grand Total	44.5056	6,675,840	8.90	1,348,217

*Does not include numerous rightholders whose domestic uses were exempted from the permit requirement, but whose rights still must be protected 2