

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
WILLIAM D. BALFOUR, JR.
SUMNER ERDMAN
NEAL S. FUJIWARA
CHIYOME L. FUKINO, M.D.
DONNA FAY K. KIYOSAKI, P.E.
LAWRENCE H. MIIKE, M.D., J.D.
KEN C. KAWAHARA, P.E.
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

February 17, 2010
Honolulu, Oahu

Spring Mountain Produce
Bruno Lenta and Roxana Ramos

**VIOLATION and APPLICATION FOR AFTER-THE-FACT
WELL CONSTRUCTION / PUMP INSTALLATION PERMITS**

Spring Mountain Produce (Well No. 5312-01)
Well Construction: 4-inch Casing Diameter, 390-ft Deep Well
Pump Installation: 20 gpm for domestic and agriculture use
TMK (2) 2-9-011:009, Hanawana Road, Makawao, Maui

APPLICANT:

Spring Mountain Produce
P.O. Box 1405
Haiku, HI 967078

LANDOWNER:

Roxana Ramos
35 A Uhi Road
Lahaina, HI 96761

DESCRIPTION:

Location: (See Exhibit 1)

Dimensions: (See Exhibit 2)

BACKGROUND:

January 21, 2008 Keith Douglas filed a complaint against Roxana Ramos and Bruno Lenta (sister and brother) for drilling a well that was unpermitted and drilled by an unlicensed driller (Exhibit 3). A copy of the complaint was transmitted to

Ms. Ramos and Mr. Lenta. Staff made numerous calls to Maui DOCARE and to the Maui Planning Department to follow up the allegation with a site visit, learned that there were other violations of the County Building Code, and tried to coordinate a field visit to gather more information.

- January 2, 2009 DOCARE filed their December 24, 2008 investigation report with the Commission.
- January 15, 2009 Staff sent a letter to Bruno Lenta, notified him of the field investigation findings and the **potential violation**, and requested that he cause a licensed driller to apply for an after-the-fact permit.
- February 16, 2009 Staff received an application for an after-the-fact well construction and pump installation permit, with a cover letter with findings from a licensed driller, Wailani Drilling Services, Inc. Staff was unable to accept it as complete for agency review because the Special Management Area (SMA) permitting process had not been completed. The application stated that an SMA permit application had been filed February 13, 2009 by Arakaki Engineering.
- September 2, 2009 Staff decided to route the incomplete application for agency review with a comment deadline of October 2, 2009.
- October 6, 2009 Maui County Planning Department Zoning Enforcement Division (MCPDZED) notified the Commission that it would not be able to fix the well problems until the landowner had cleared up numerous SMA permit violations and paid fines. The MCPDZED is recommending fines of around \$90,000, and mentioned that it had been a very difficult process to get cooperation from the landowner on all the specifics his department needed to complete the SMA process.
- October 8, 2009 Staff sent a letter of assurance to the licensed driller that the normal CWRM review process had been completed satisfactorily and that permits could be issued as soon as the SMA permitting process had been completed.
- December 1, 2009 Staff sent a letter to Aaron Shinmoto, head of Maui Planning Department's Zoning Enforcement Division, outlining several points of the history of this case, repeating the concern about addressing any necessary correction of well construction in a timely way, and officially requesting permission to allow a licensed driller to proceed with remedial work, including possibly sealing the well.

To date, we have not received a reply, and no definitive answer as to when the SMA violations process will conclude and the Commission may direct the applicant to proceed with remedial action on the well.

WATER AVAILABILITY:

Honopou Aquifer System Area of the Koolau Sector Area

Estimated Sustainable Yield: 25 mgd

Current Aquifer System Area Pumpage (12-MAV as of January 2010): < 1.0 mgd

Proposed Use: 0.001 mgd, domestic and agriculture

ISSUES/ANALYSIS:

"No well construction and no installation of pumps and pumping equipment shall commence without appropriate permit from the commission. An application for a permit for well construction shall be required for all areas of the State including water management areas and shall be made by the well driller who will construct the well. An application for a permit for installation of a pump and pumping equipment shall be made by the pump installation contractor who will install the pump and pumping equipment." HRS § 174C-84(a) and HAR § 13-168-12(a).

Agency Review: As required by the Water Code, copies of the application were sent to the Department of Health's Safe Drinking Water, Clean Water, Wastewater Branches and the Hazard Evaluation and Emergency Response Office for review and comment. Additionally, comments were solicited from DLNR Land Division and Historic Preservation Division as well as the County Departments of Planning and Water Supply. Most agency comments were standard or "no comments or objections"; the Maui Planning Department initially said no SMA permit was required, but a few weeks later responded that an SMA application would be required.

Staff Review: Making a determination as to the proper construction standards is extremely problematic after-the-fact. The licensed driller hired to complete the after-the-fact well permit applications made a preliminary assessment of the wellhead and found that the wellhead seal needs to be raised and replaced, the benchmark slab needs to be repoured, and a flowmeter must be installed. Representations from the well owner suggest that the drill bit and casing size would have provided a 3-inch annulus, which meets the Well Standards (HWCPIS). An invoice for 9 yards of concrete grout provides evidence that a sufficient quantity was available for sealing a 3-inch annulus to 275 feet, or 70% of total depth, though we cannot verify all the concrete was used for the well and not other purposes.

The well was drilled from an elevation of 650 ft., msl down a total of 390 feet (260 ft.el, msl), by the well owner's description, meaning that it taps a perched source, which may contribute flow to perennial Hanawana Stream. The installed pump has a capacity of 20 gpm, and the proposed use is 1,200 gpd for domestic and agricultural needs. There are two registered diversions on Hanawana Stream, one Div# 5312-009D and the other as yet unnumbered, each taking 120 gpm

(estimated during the wet season), but exact stream and diversion flow measures are unavailable. The amount of 20 gpm would be considered difficult to measure, and stream impacts may be *de minimis*. The diversions are located downstream of the well at about 250 ft. el., msl, and could be affected by any contamination from the well.

There are eleven other wells within a mile of the proposed well. Most are separated hydrologically from impacts of potential contamination from this well, but one well is directly downgradient and would likely be affected. No contamination is known or suspected at this point.

Unlicensed Driller and Unpermitted Well: The major issue is the unpermitted drilling by an unlicensed driller. Licensed drillers are required under §174C-84. The purpose of requiring a licensed contractor is to assure that the work is bonded, accountable, and follows the Hawaii Well Construction and Pump Installation Standards (HWCPIS, 2004). While the licensed driller has reviewed construction with the “owner-driller”, he cannot vouch for correct construction. While concrete grout ordered and used may be sufficient, we cannot be sure it was not used elsewhere for other purposes. Sealing the annular space is a primary concern for avoiding potential contamination of ground water. There are tools to determine whether the annular space outside a casing is grouted, which could be sent down a well to determine how far it is properly grouted, but staff does not possess or have access to such tools.

Without further evidence, staff cannot be certain that potential contamination is prevented by the construction of this well. In light of apparently multiple other violations of County building codes and the County’s difficulty in gathering sufficient information to resolve their questions, we cannot have faith that representations about this well are accurate and complete.

Penalty Policy: The violations of the Water Code include 1) work without a well construction permit or 2) a pump installation permit, and 3) failure to file water use reports. The Penalty Policy (Exhibit 6) is used to help determine the fines and penalties discussed below.

Initial Minimum Fine: Finding a violation incurs a minimum fine of **\$250** per day. It is not in a water management area, nor is it a repeat violation.

Gravity Element: If there are problems in cooperation or compliance, serious concerns about potential risks to the resource, or other complications, staff may recommend adding a gravity factor of up to \$1,000 per day. Because it cannot be known whether this well was properly constructed, the potential remains for the well to act as a conduit for inadvertent or accidental contamination to the perched source and possibly from there to Hanawana Stream, a gravity factor has been applied to equal the initial fine in the amount of **\$250** per day.

Mitigation Element: Prompt compliance and strong cooperation in resolving potential problems are mitigative factors in determining an appropriate fine. Prompt compliance in this case suggests a mitigative factor of **\$150** for each violation.

Duration Element: The resident well user clearly expressed concern for correcting deficiencies, and the well owner promptly hired a licensed contractor to complete applications to rectify the situation, which was filed within 30 days of the Notice of Potential Violation (see Background). While fines may be levied at up to \$5,000 per day, there is an initial minimum fine and both gravity factors to increase fines and mitigative elements to negate fines. The prompt and cooperative filing of the applications to rectify this situation are evidence of good faith and reduce the violation to a single day duration. However, given the unknowability of construction according to the Hawaii Well Construction and Pump Installation Standards (HWCPIS) that should have been followed, and the risk to existing downstream diversions, staff is recommending sealing this well. Staff recommends the minimum fine with a mitigative factor for each violation, resulting in a total fine of **\$1,050**. (see Exhibit 7)

Order to Abandon/Seal: The Administrative Rules deem an abandoned well to be one “allowed to become unsealed, leaking, polluting, deteriorated in quality, uncontrollable, buried, or is in such a state of disrepair that continued use for the purpose of obtaining ground water is impractical or unsafe” (Sec §13-168-2) and states the proper remedy: “The owner or operator of any well which has been determined by the commission or voluntarily declared by the owner or operator to be abandoned, after written notification, shall be required, at owner’s or operator’s expense, to recase, cement, plug back, cap, or otherwise repair the well or fill and seal the well with cement in a manner approved by the Commission.” (Sec §13-168-16 (a)). Under better known construction circumstances, staff would prefer to recommend penalty fines and corrective reconstruction. In this case, the as-is construction cannot be known, and argument is not a sufficient condition for protecting the public trust. Sealing the well is unfortunately the most practical solution for this situation, and staff considers it sufficient penalty such that fines are not being recommended. The licensed driller concurred that trying to recase or rehabilitate the well would probably cost as much as sealing and redrilling a new well.

RECOMMENDATION:

That the Commission:

- A. Find Roxana Ramos and Bruno Lenta to be in violation of HRS §174C-84(a) for the illegal construction of the Spring Mountain Produce Well (Well No. 5312-01).
- B. Waive the calculated fine and order the landowner to seal the existing well, and approve the issuance of a well construction permit to the licensed driller to abandon and seal the Spring Mountain Produce Well (Well No. 5312-01).

February 17, 2010

- C. Issue the letter of assurance to the licensed driller for a new well, to take its normal administrative course of approval on the well construction and pump installation permit application for the reconstruction of a well according to approved Commission standards once the County has resolved its Special Management Area (SMA) permitting issues.

Respectfully submitted,



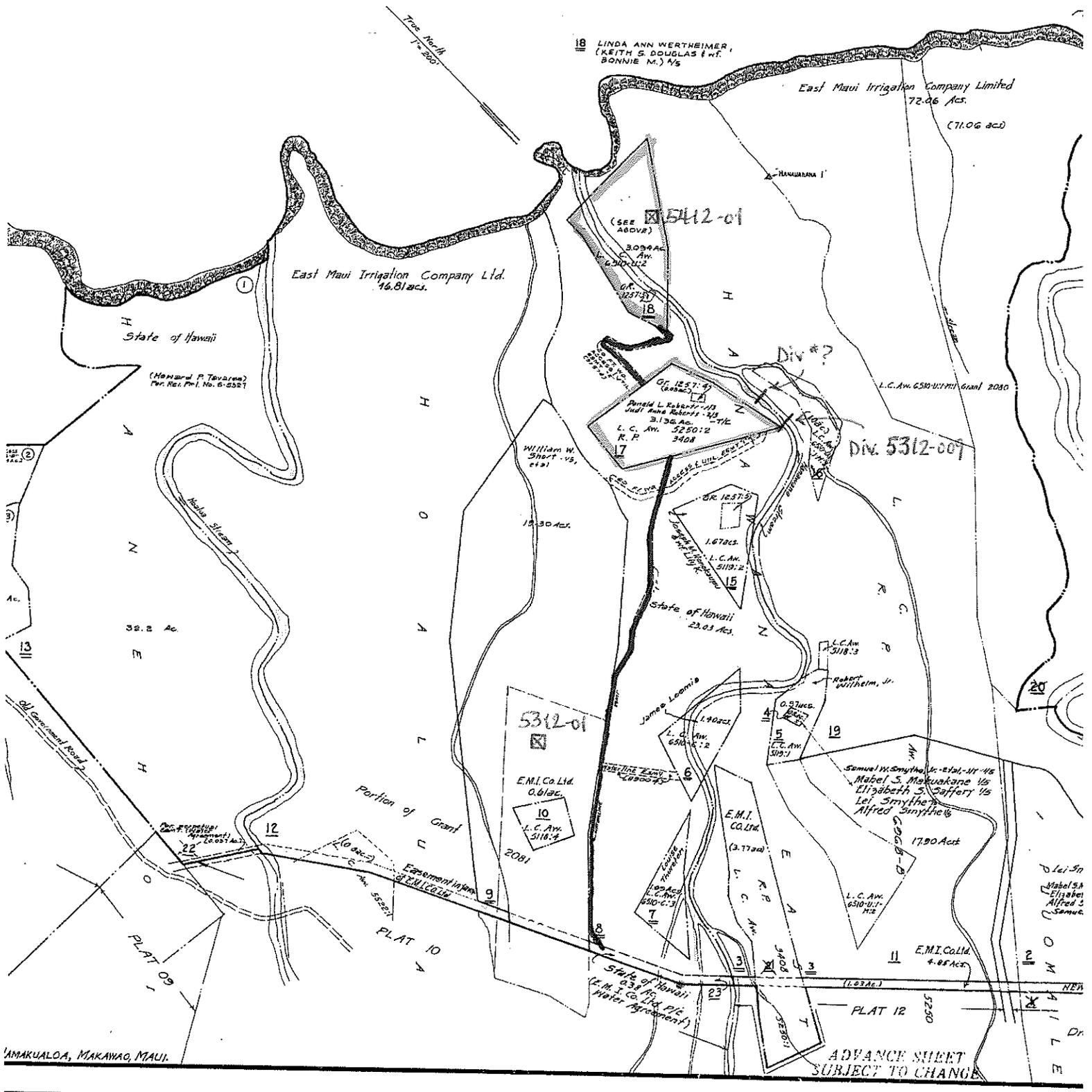
KEN C. KAWAHARA, P.E.
Deputy Director

- Exhibit(s):
1. (Location Maps)
 2. (Proposed Well Section)
 3. (Complaint C-08-01)
 4. (DOCARE Report MA-09-777)
 5. (Well Abandonment Report Form)
 6. (Penalty Policy)
 7. (Penalty Calculation Summary Sheet)

APPROVED FOR SUBMITTAL:

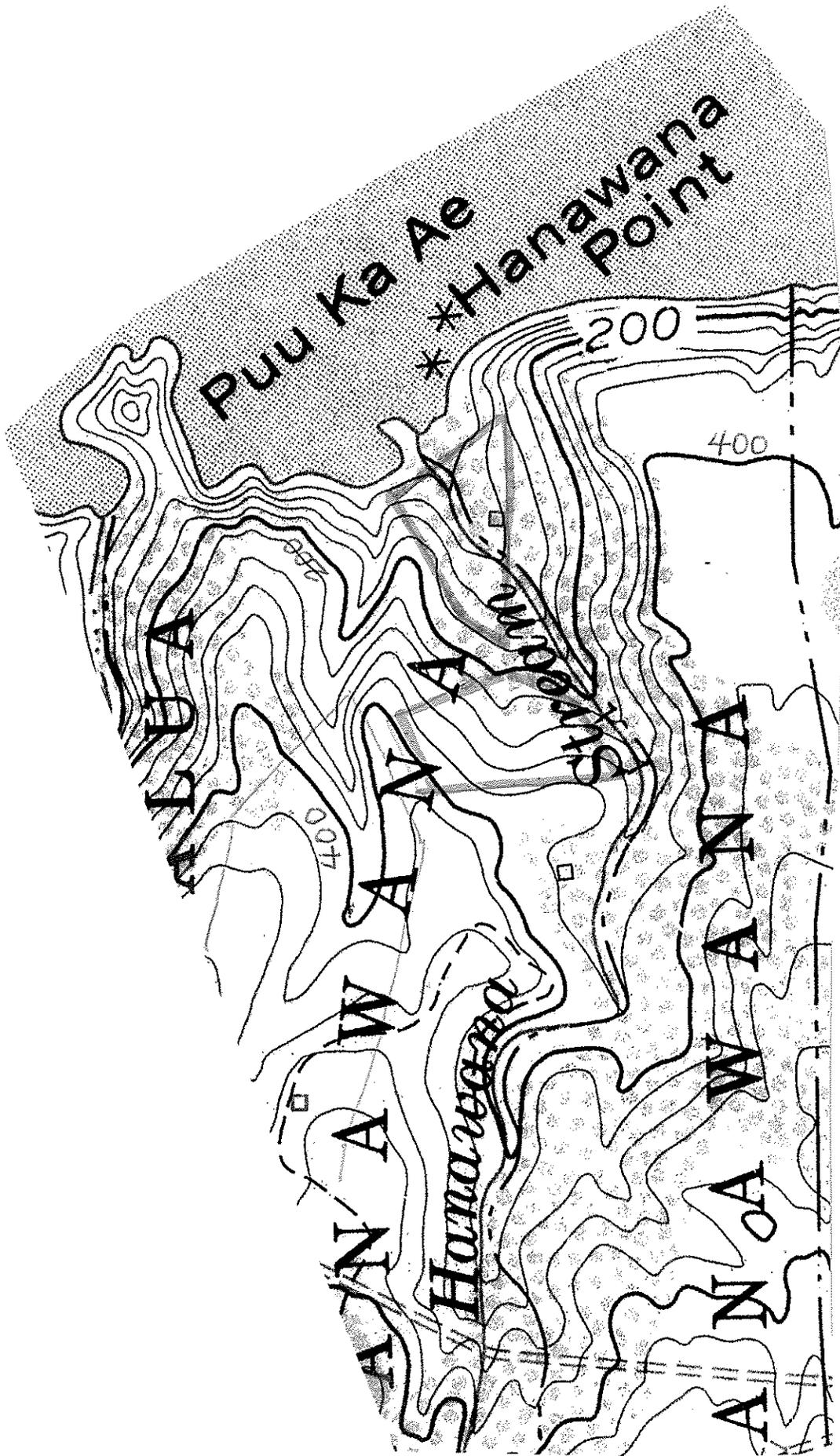


LAURA H. THIELEN
Chairperson



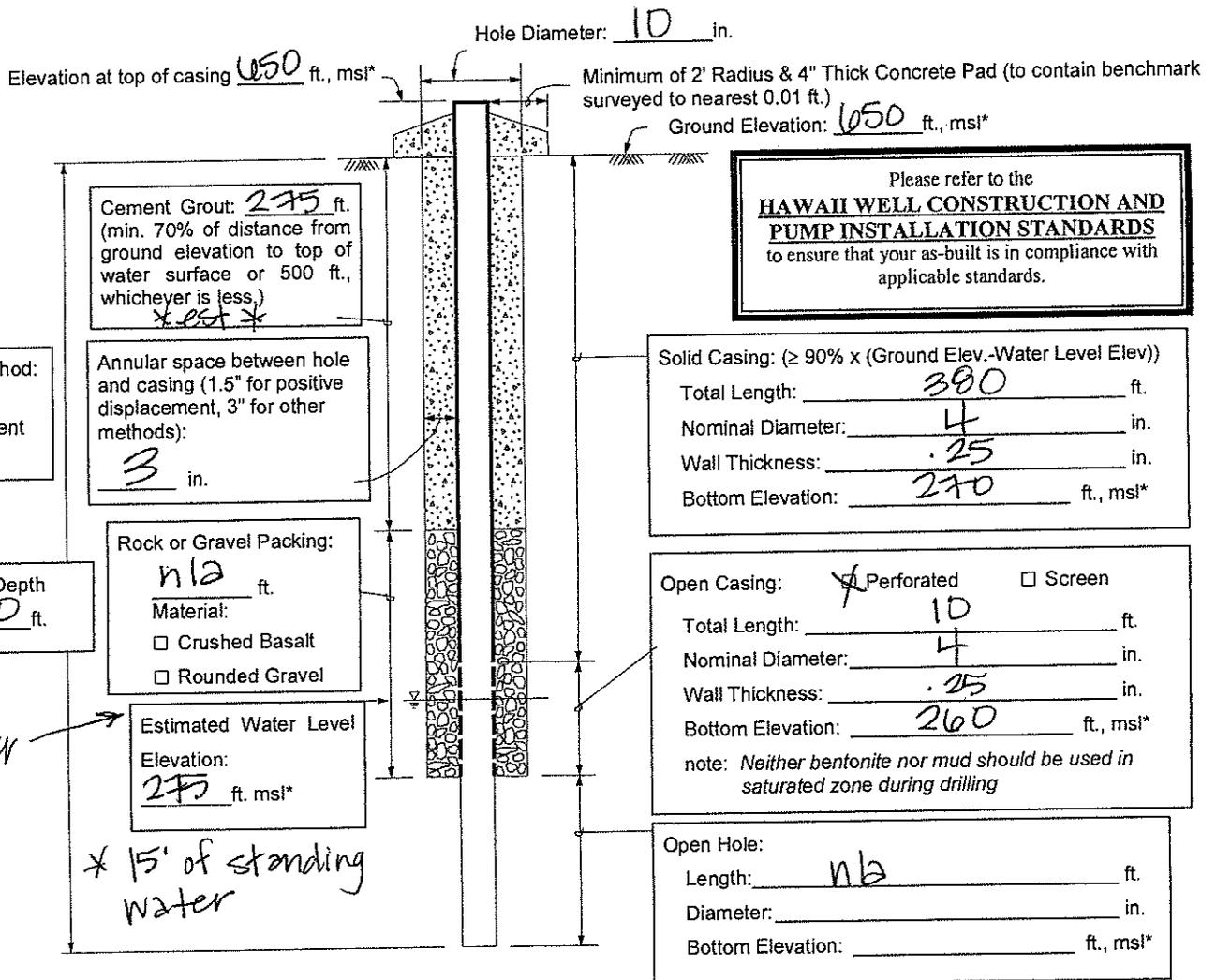
- Lenta, et al
- State of Hawaii
- Keith Douglas & Jeff White

2-9-11 (par)



TOPOGRAPHY

PROPOSED WELL SECTION (Please attach schematic if different from diagram provided below)



Please refer to the **HAWAII WELL CONSTRUCTION AND PUMP INSTALLATION STANDARDS** to ensure that your as-built is in compliance with applicable standards.

* The approximate elevation must be referenced to mean sea level (msl) at the time of application filing. Final elevations of well components shall be submitted in the Well Completion/Well Abandonment reports and referenced to a benchmark which has been established by a surveyor licensed by the State.

For non-salt water Basal Wells - bottom elevation of well should not be deeper than 1/4 of aquifer thickness or,
 Bottom Elevation of Well Limit = $(\text{Water Elevation} - \frac{41 \times \text{Water Level Elevation}}{4})$
 Example: Estimated + 2 ft. Water Level Elev. → Bottom Elevation of Well Limit = $(2 - \frac{41 \times (2)}{4}) = -18.5$ ft.

Solid Casing Material:

- Carbon Steel: compliant with (check one or more): ANSI/AWWA C200 API Spec. 5L ASTM A53 ASTM A139
 And compliant with (check one or more): ASTM A242 (or A606) Type E Type S Grade B Other
- Stainless Steel: (check one): ASTM A409 (production wells) ASTM A312 (monitor wells)
- ABS Plastic conforming to ASTM F480 and ASTM D1527: (check one) Schedule 40 Schedule 80
- PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (check one): Schedule 40 Schedule 80 Schedule 120
- Thermoset Plastic: (check one) Filament Wound Resin Pipe conforming to ASTM D2996
 Centrifugally Cast Resin Pipe conforming to ASTM D2997
 Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3517
 Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950
 PTFE Fluorocarbon Tubing conforming to ASTM D3296
 FEP Fluorocarbon Tubing conforming to ASTM D3296

Open Casing Material:

- Carbon Steel: compliant with (check one or more): ANSI/AWWA C200 API Spec. 5L ASTM A53 ASTM A139
 And compliant with (check one or more): ASTM A242 (or A606) Type E Type S Grade B Other
- Stainless Steel: (check one): ASTM A409 (production wells) ASTM A312 (monitor wells)
- ABS Plastic conforming to ASTM F480 and ASTM D1527: (check one) Schedule 40 Schedule 80
- PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (check one): Schedule 40 Schedule 80 Schedule 120
- Thermoset Plastic: (check one) Filament Wound Resin Pipe conforming to ASTM D2996
 Centrifugally Cast Resin Pipe conforming to ASTM D2997
 Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3517
 Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950
 PTFE Fluorocarbon Tubing conforming to ASTM D3296
 FEP Fluorocarbon Tubing conforming to ASTM D3296



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
APPLICATION FOR A WELL CONSTRUCTION /
PUMP INSTALLATION PERMIT

For Official Use Only:

RECEIVED

09 FEB 18 P 1: 00

COMMISSION ON WATER RESOURCE MANAGEMENT

Instructions: Please print in ink or type and send completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Application must be accompanied by 10 copies and a non-refundable filing fee of \$25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225. For further information and updates to this application form, visit <http://www.hawaii.gov/dlnr/cwrm>.

WELL LOCATION INFORMATION

1. STATE WELL NO. (if already assigned)	2. WELL NAME	3. ISLAND <u>Mau</u>	4. TMK <u>2 - 9 - 011 : 009</u> <small>zone sec plat parc</small>
---	--------------	-------------------------	---

- 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) with well location labeled and include the name of the quad map
 - Property tax map, showing well location referenced to established property boundaries
 - Photograph of the proposed well site
 - A schematic diagram showing the well site, access road and proposed well infrastructure
 - For dug wells, attach a grading plan with cross section profiles showing existing and finish grades

5. WELL OPERATOR'S NAME/COMPANY <u>Spring Mountain Produce</u>	Well Operator's Contact <u>Bruno Lenta</u>	6. LANDOWNER'S NAME/COMPANY <u>Roxanne Ramos</u>	Landowner's Contact <u>Bruno Lenta</u>
Well Operator's Mailing Address <u>PO Box 1405 Hauku HI 96708</u>		Landowner's Mailing Address <u>35 A Uhi F Road Lahaina HI 96761</u>	
Well Operator's Phone <u>(808) 264 8689</u>	Well Operator's Fax <u>nil</u>	Well Operator's E-mail <u>hawaiiorganic@msn.com</u>	Landowner's Phone <u>(808) 264 8689</u>
			Landowner's Fax <u>nil</u>
			Landowner's E-mail <u>hawaiiorganic@msn.com</u>

PROPOSED WELL CONSTRUCTION

7. Proposed Work <input checked="" type="checkbox"/> Construct New Well <input type="checkbox"/> Modify Existing Well <input type="checkbox"/> Abandon/Seal Well	8. Construction Type <input checked="" type="checkbox"/> Drilled <input type="checkbox"/> Dug <input type="checkbox"/> Shaft <input type="checkbox"/> Tunnel
9. Is this well part of a battery of wells? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

PROPOSED PUMP INSTALLATION

10. Proposed Work <input checked="" type="checkbox"/> Install New Pump <input type="checkbox"/> Replace Pump	11. Proposed Pumping Rate, gpm (gallons per minute) <u>20 gpm</u>	13. Method of flow measurement <input checked="" type="checkbox"/> Flowmeter <input type="checkbox"/> Other (explain)
	12. Proposed Amount of Withdrawal, gpd (gallons per day) <u>1200 gpd</u>	

14. Proposed Surveyor name and license number (a surveyor is required for all Well Construction Permits and may be required for some Pump Installation Permits)
not applicable

PROPOSED USE

15. Municipal (water systems serving greater than 25 individuals or 15 service connections)

16. Domestic Number of units to be served: 1

17. Industrial (describe)

18. Irrigation (describe crop and no. of acres) ~2 acres inc. lettuce, tomatoes, chard, beans, etc...

19. Military (describe)

20. Other (describe)

OTHER LEGAL REQUIREMENTS *If required, items 21. and 22. must be obtained before the Commission can legally issue a permit:*

21. Conservation District Use Permit (CDUP)
 Well is in Conservation District
 Required, CDUP # _____ date approved _____
 Not Required (attach documentation from OCCL)
 I have not checked with OCCL about whether or not a CDUP is required. I understand that checking with OCCL prior to making this application will expedite my review. I further understand that issues raised by this agency may delay or result in denial of the permit issuance, or revocation of the permit after it is issued.

Well is not in Conservation District
 I have not checked if well is in or out of Conservation District. I understand that checking if the well is in a Conservation District may expedite my review. I further understand that issues raised may delay or result in denial of the permit issuance, or revocation of the permit after it is issued.

22. Special Management Area Permit (SMAP)
 Required, SMA # _____ date approved _____
 Not Required (attach documentation from applicable County agency)
 I have not checked with the county about whether or not an SMA Permit is required. I understand that checking with the County prior to making this application may expedite my review. I further understand that issues raised by this agency may delay or result in denial of the permit issuance, or revocation of the permit after it is issued.

23. State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources
 I have consulted with the HPD regarding potential impacts of well construction activities on historic sites. I have attached applicable documentation from the HPD.
 I have not consulted with the HPD regarding potential impacts of well construction activities on historic sites. I understand that checking with the HPD prior to making this application may expedite my review. I further understand that issues raised by this agency may delay or result in denial of the permit issuance, or revocation of the permit after it is issued. Additionally, the history of past land use is attached.

Additional remarks, explanations, etc. (attach additional sheet if more space is needed)

NOTE: Signing below indicates that the signatories understand and swear that the information provided is accurate and true to the best of their knowledge. Further, the signatories understand that upon permit approval: 1) the proposed work is to be completed within two (2) years of the approval date; 2) the contractor shall submit to the Commission a well completion/abandonment report within 60 days after the completion date of the permitted work; 3) in the event that the application is not completed correctly, any permit may be suspended until the item is brought in to compliance, and any work done while the permit is in suspension may result in fines of up to \$5000/day.

24. WELL DRILLER (Must be filled out if application is for Well Construction)

Wailani Drilling Services Inc. 29405
 Licensee business name C-57 License No.

Will Steele 2-16-09
 Signature Print Date

25. PUMP INSTALLER (Must be filled out if application is for Pump Installation)

Wailani Drilling Services Inc. 29405
 Licensee business name C-57/C-57a/A License No.

Will Steele 2-16-09
 Signature Print Date

1-25-08

copy

DEAR MR. POPE:

I ENCLOSED A COMPLAINT I FILLED WITH THE COUNTY OF MAUI (PUBLIC WORKS DIVISION) WITH REGARD TO MS. RAMOS AND MR. LENTA'S UNPERMITTED STRUCTURES AS WELL AS THE IMPROPER USE OF A PERMITTED STRUCTURE.

08 JAN 28 AM 8:49

COMMISSION ON WATER RESOURCES

MR. RALPH NAGIMINI (PUBLIC WORKS) IS ACUTELY AWARE OF THE SITUATION WITH MS. RAMOS AND MR. LENTA DOWN IN HANA WANA HILLS. (TRK 2-9-11-9 AND 2-9-10-17).

ON JAN. 25TH 08 I MET WITH MR. NAGIMINI, MR. DAVID GALAZIN, DEPUTY CORP. COUNSEL AND MR. MICHAEL RAMICK, BUILDING INSPECTOR WITH REGARD TO THE THE ILLEGAL STRUCTURES.

DURING THE MEETING I MADE THEM AWARE OF THE ILLEGAL WELL THE RAMOS AND LENTAS HAD DRILLED IN OR APOX. 2004.

BECAUSE OF THE SITUATION I SUGGESTED AND THEY AGREED THAT IT MIGHT WORK OUT BETTER IF ALL PARTIES COORDINATED A JOINT INSPECTION AT THE SAME TIME AS SOON AS POSSIBLE.

MR. NAGIMINI SUGGESTED THAT I HAVE YOU GIVE MR. RAMICK A CALL TO COORDINATE.

A AERIAL PHOTO AND A TAX MAP HAVE BEEN ENCLOSED AS WELL TO SHOW THE LOCATION WHERE THE WELL WAS DRILLED. THE FOLLOWING PHONE #S SHOULD SURFACE.

- MICHAEL ^{Mike} RAMICK 808-270-7375 / FAX 808-270-5520
- DAVID GALAZIN 808-270-7742 / FAX 808-270-7152
- RALPH NAGIMINI 808-270-7379

IF YOU HAVE ANY QUESTIONS, PLEASE CALL AT YOUR EARLIEST POSSIBLE CONVENIENCE.

RESPECTFULLY,

KEITH DOUGLAS

4. Describe the complaint or reason for the dispute:
(Attach a sketch or photograph if that will help explain the problem.)

MRS. RAMOS AND HER BROTHER, MR. LENTA DRILLED A WELL AT LOCATION SITE ENCLOSED IN APPROX. 2004 ON HUI PROPERTY TMK 2-9-11-9.

I NEVER WITNESS ANY CONCRETE WORK AT THE SITE DURING OR AFTER DRILLING WAS COMPLETED SO I COULDN'T VERIFY IF WELL WAS CAPED CORRECTLY AS REQUIRED PER REGULATIONS TO PREVENT GROUND WATER CONTAMINATION.

RECENT INQUIRIES WITH MR. CHARLIE ICE OF THE DLNR REVEALED NO PERMIT HAD EVER BEEN APPLIED FOR FROM THE LENTAS OR RAMOS'S. THE TMK 2-9-11-9 SHOWED NO PERMIT ISSUED.

5. Describe how your water usage or water rights are specifically affected by the other party, if at all:

I HAVE A PERMITTED WELL (WELL PERMIT No. 5412-01) THAT WAS DRILLED IN APPROX. 2003 AT A LOWER ELEVATION DIRECTLY BELOW THE LENTAS AND RAMOS'S WELL.

ITS QUITE POSSIBLE THAT THE RAMOS AND LENTAS WELL COULD HAVE A DIRECT EFFECT ON THE QUALITY OF THE SURROUNDING WATER TABLE IF IT WASNT SEALED PROPERLY, WHICH APPEARS TO BE THE SITUATION.

6. Date the problem was first noticed: JAN. 2008 WHEN INQUIRES WERE MADE WITH REGARD TO WELL PERMITS ISSUED IN THE AREA.

7. If this complaint or dispute is related to a water source, was the water source previously declared with the Commission on Water Resource Management?
Yes No Don't Know

If yes, what was the name and tax map key of the source?

8. Have you had any communication with the party/parties described in Section 3 above?

Yes No

If yes, list the communications and dates: (Attach copies if written communications were made)

9. Have you sought resolution of this matter with any other entity?
(e.g., government agency, judicial body, or private entity)

N.A.

If so, with whom and what was the outcome?
(Please provide copies of any documentation of this process)

N.A.

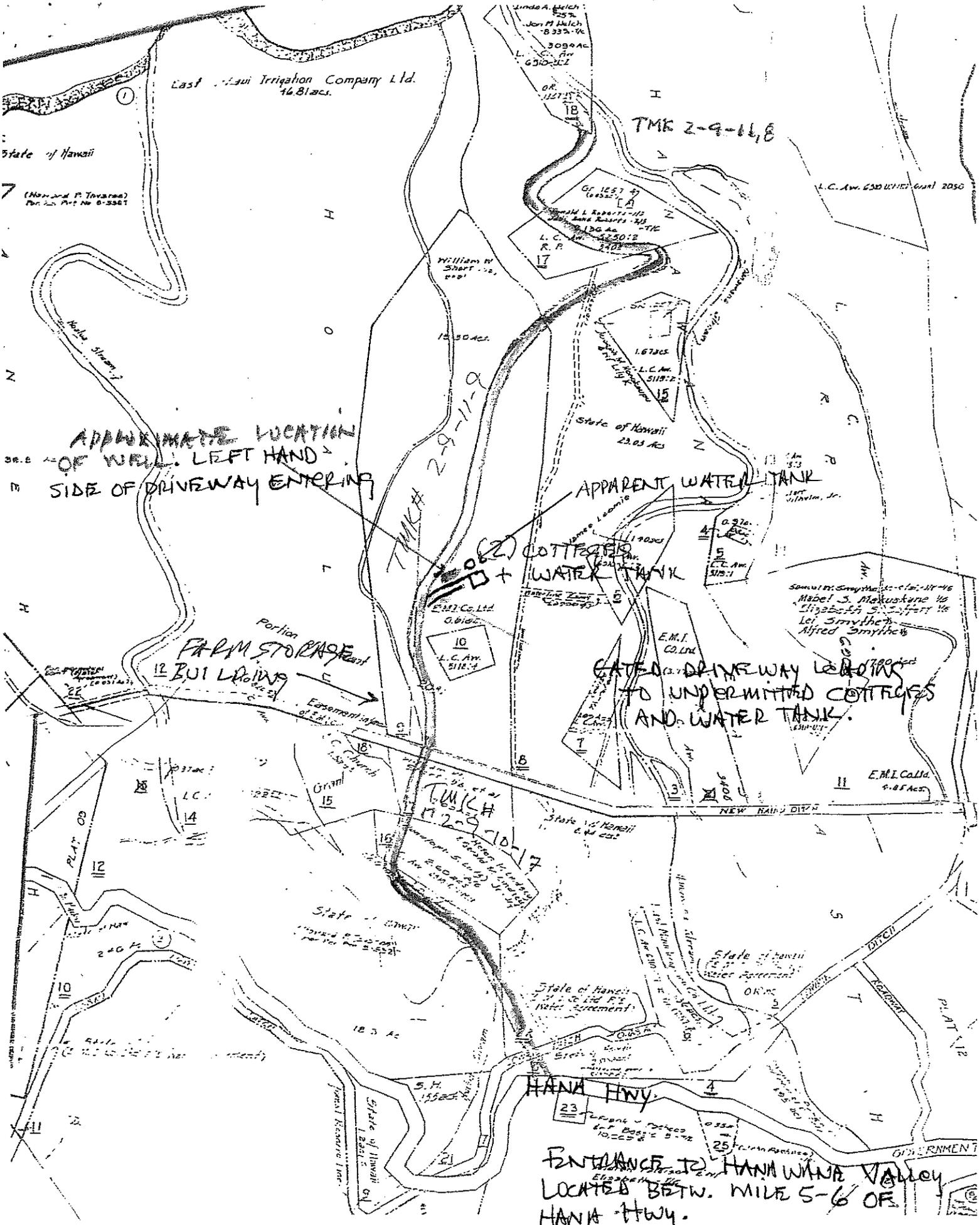
Describe what you believe a successful and fair remedy might be:

VERIFICATION THAT WELL IS CAPED PROPERLY IMMEDIATELY AS PER REGULATIONS, SO GROUND WATER IN SURROUNDING AREA IS NOT POLLUTED BECAUSE OF IMPROPER INSTALLATION.

I request that the Commission on Water Resource Management assist in resolving the matter described herein.


Signature

1/21/08
Date



State of Hawaii
 7 (Howard P. Tavares)
 Part of Part No 0-5387

APPROXIMATE LOCATION
 OF WELL LEFT HAND
 SIDE OF DRIVEWAY ENTERING

PORTION
 FARM STORAGE
 12 BUT LEADING

APPARENT WATER TANK

(2) COTTAGE
 + WATER TANK

GATED DRIVEWAY LEADING
 TO UNPERMITTED COTTAGES
 AND WATER TANK.

ENTRANCE TO HANA WANA VALLEY
 LOCATED BETW. MILE 5-6 OF
 HANA HWY.

East Maui Irrigation Company Ltd.
 46.81 acs.

TMK 2-9-11, E

William H. Short, Jr.
 12.50 acs.

Gr 1257-9
 (1952)
 L.C. Am. 4650:2
 R.R. 2403

1.67 acs.
 L.C. Am. 5118:2

State of Hawaii
 23.03 acs

E.M.I. Co. Ltd.
 0.61 acs.
 L.C. Am. 5118:4

E.M.I. Co. Ltd.

Samuel B. Smyth, Jr. et al. et al.
 Mabel S. Makusky et al.
 Elizabeth S. Siffert et al.
 Let. Smyth et al.
 Alfred Smyth et al.

E.M.I. Co. Ltd.
 9.85 acs.

TMK 2-9-10-17

State of Hawaii
 6.44 acs.

HANA HWY.

23
 25

GRASSY AREA



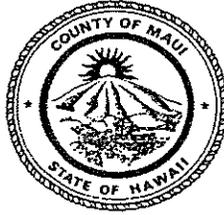
DRIVEWAY LEADING
TO UNPERMITTED
COTTAGE. WELL
WAS DRILLED IN
APPROX. 2004 IN
THE AREA TO THE
LEFT OF WHERE
THE AUTOMOBIL
IS LOCATED



APPARENT LOCATION OF
UNPERMITTED WATER TANK.

REQUEST FOR SERVICE

County of Maui
Development Services Administration



RECEIVED

08 JAN 28 8:49

COMMISSION ON WATER
REGULATORY MANAGEMENT

TO INSURE ACCURACY, PLEASE PRINT CLEARLY

Requestor: KEITH DOUGLAS
THE IDENTITY OF THE COMPLAINANT WILL BE KEPT CONFIDENTIAL
TO THE EXTENT ALLOWED BY LAW

Company: _____

Address: _____
house number street city state zip code

Telephone: 875-0307 (907) 617-4452
home work cellular fax

Event address: HANAWANA VALLEY, HAIKU
house number street city

Tax Map Key number: (2) 2-9-11-9 AND 2-9-10-17

PLEASE BRIEFLY DESCRIBE YOUR REQUEST

Request: REMOVE ALL ILLEGAL BUILDINGS AND STRUCTURES
DOCUMENT ILLEGAL USE OF PERMITTED A9 STORAGE
BUILDING (NON-HABITABLE). HAVE OWNER, ROXANA RAMOS
TO CEASE ILLEGAL USE.
PLEASE REFER TO ENCLOSED PHOTOS AND
EXPLANATORY NOTES.

Please check one of the following in relationship to this request:

- You are:
- | | |
|---|---------------------------------|
| <input type="checkbox"/> consultant | <input type="checkbox"/> owner |
| <input type="checkbox"/> contractor | <input type="checkbox"/> tenant |
| <input checked="" type="checkbox"/> concerned citizen | <input type="checkbox"/> other |

Staff use only: Received by: _____ Date: _____
How Taken: _____ RFS Number: _____

East Maui Irrigation Company Ltd.
16.81 acs.

TMK 2-9-11,8

State of Hawaii

(1) (Kam and P. T. Treadwell)
Per. Plan No. 8-3387

L.C. Am. 630 001-12 Grant 2050

Williams H. Sharp, Inc.
18.30 acs.

Gr. 1257-9
10.93 acs.
Donald L. E. Barber, III
L.C. Am. 518-2
R.R.

State of Hawaii
22.03 acs.

(2) COTTAGES
+ WATER TANK

EMIC Ltd
10
L.C. Am. 518-4

EMIC Ltd
3.77 acs.

Samuel M. Smythe, Jr. et al. - 11-48
Mabel J. Makushane vs
Elizabeth Smythe vs
Lei Smythe vs
Alfred Smythe
17.90 acs.

EMIC Ltd
4.85 acs.

Portion
FARM STORAGE
12 BUT LOTS

TMK 2-9-10-17

State of Hawaii
6.44 acs.

NEW HAWAII DITCH

State of Hawaii
18.3 acs.

State of Hawaii
Water Agreement

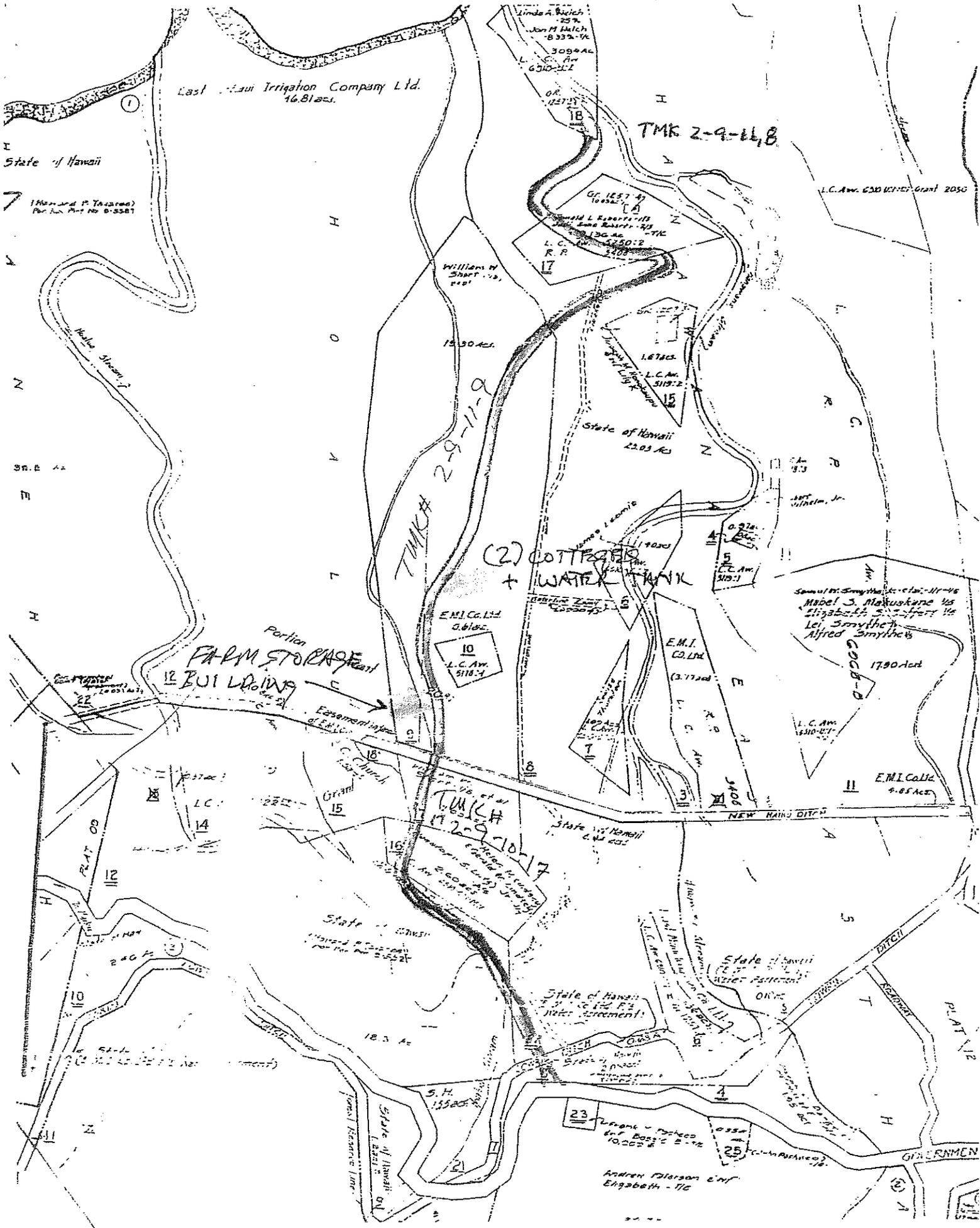
State of Hawaii
Water Agreement

S.H. Isaac
18.3 acs.

23
Front of House
6.7 Base 2-12
10.00 acs.

Andren Peterson and
Elizabeth - TIC

GOVERNMENT



No building permit

REBUILD AUTHORITY

PROD80 - KIVA LAND 09 JAN 2008 VER 8.1 PARCEL NUMBER LOOK UP

File Actions Query Permits Land Project Insp Co/D Request Window Help

APN	Permit Type	Permit Number	Project	Address	City/Locality
2290110090000	B	20061147	RAMOS, ROXANA	OFF HANA HWY	HAIKU
2290110090000	B	990538	BEST, BARBA	0 HANAWANA 7G	
2290110090000	B	990539	BEST, BARBA	0 HANAWANA 7G	
2290110090000	B	981311	SCOTT, WILLOW	0 HANAWANA 7G	
2290110090000	B	981312	SCOTT, WILLOW	0 HANAWANA 7G	
2290110090000	B	990303	LEE ARTHUR	OFF HANA HWY	HAIKU
2290110090000	B	991316	MCDONALD, MICHAEL	0 HANAWANA 7G	
2290110090000	B	991317	MCDONALD, J	0 HANAWANA 7G	
2290110090000	B	992113	MCLAIN, ROS	OFF HANA HWY	HAIKU
2290110090000	B	T20042742	RAMOS, LENTA	OFF HANA HWY	HAIKU
2290110090000	B	T20042744	RAMOS, LENTA	OFF HANA HWY	HAIKU
2290110090000	BPC	982675		OFF HANA HWY	HAIKU
2290110090000	BPC	911272		OFF HANA HWY	HAIKU
2290110090000	BPC	911274		OFF HANA HWY	HAIKU
2290110090000	BPC	970790	BEST, BARBA	OFF HANA HWY	HAIKU
2290110090000	BPC	970791	BEST, BARBA	OFF HANA HWY	HAIKU
2290110090000	BPC	970826	SCOTT, WILL	0 HANAWANA 7G	

Highlight desired record and select an option from the menu

Project Description: RAMOS, ROXANA
 Permit Name: AG STORAGE BUILDING
 Scope Description: FARM/AG BUILDING (NON-HABITABLE)

Accela GIS
 7 Highlighted Record 1 Active
 8 Entire Query 2 Inactive
 9 ON 0 OFF 3 All

Record: 1/7 <OSC> <DBG>

Documents
 Checklist
 Work In Progress

John Everts" <jevarts@am...> Anita-Poulson Permit from 1002 11/17/2007 4:04
 "John Everts" <jevarts@am...> FW: Anita-Poulson Permit from 1992 11/1/2007 4:05
 Jennifer Faulata please call patli at HDI regarding da rush...i know 11/2/2007 8:21
 Renee Segundo Reminder 11/2/2007 9:31

Mailbox Size: 15% Selected: 1 Total: 348

ASKING FOR BUILDING PERMIT

WATER TANK

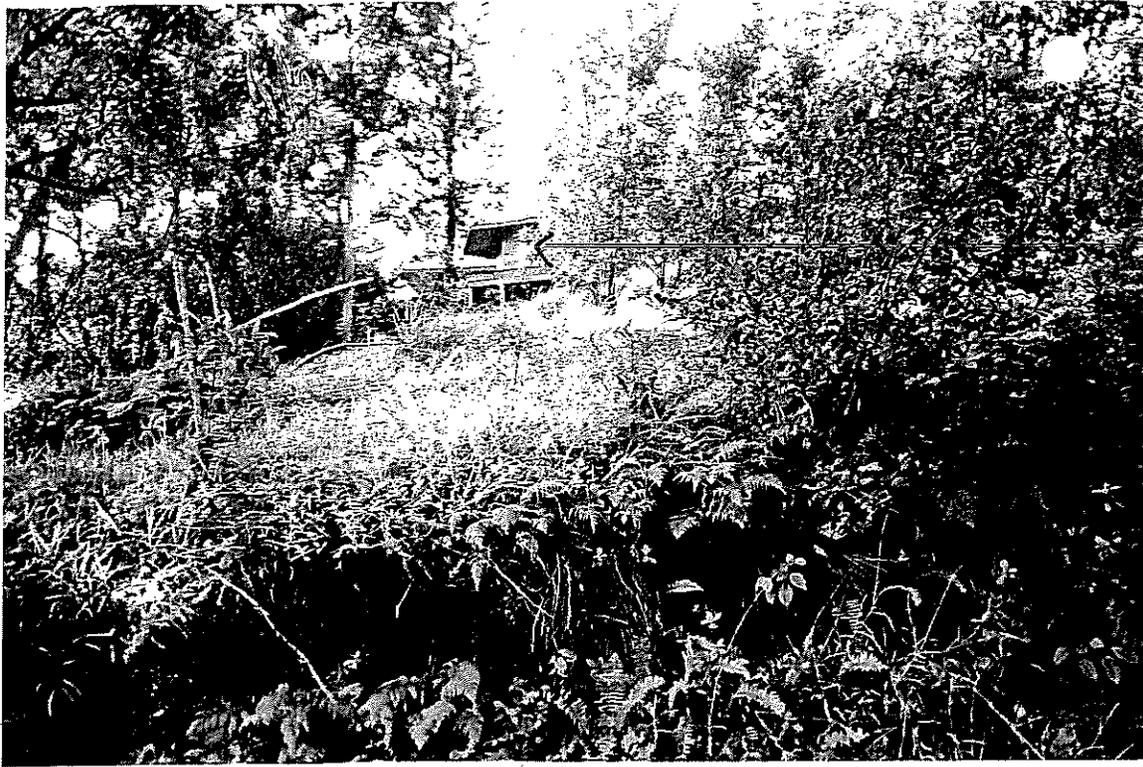
*MIKE REMICK / ANN FRATIS
ACTING BUILDING
INSPECTOR*



AG STORAGE
BUILDING BUILT
2006-2007.
PERMITTED BUT
APPEARS TO BEING
USED AS A DWELLING



OUT HOUSE BUILT
2007. NOT ALLOWED
BY COUNTY OR
HEALTH DEPARTMENT



UNPERMITTED
STRUCTURE BUILT
APPROX 2006
APPARENTLY NO
APPLICATION FOR
A PERMIT WAS
EVER APPLIED
FOR.



UNPERMITTED
WATER TANK



T 20042742
REQUIREMENT COTTAGE
SUPPOSEDLY TO ARTHUR
LEE, COTTAGE NOT
BUILT TO CODE OR
SIZE

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RECEIVED

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

09 JAN 2 P2:03

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 30, 2008

TO: Charlie Ice, Hydrologist
THROUGH: Ken Kawahara, Water Commission Deputy
FROM: Gary D. Moniz, Enforcement Chief
SUBJECT: Un-Permitted Well – Maui Confidential Investigative Report
No. MA-09-777

Attached is a CONFIDENTIAL copy of our Division of Conservation and Resources Enforcement's, Maui Branch, Investigative Report No. MA-09-777 relating to a possible Un-Permitted Well on the Island of Maui.

We submit this report to you for review, final disposition by your office and records.

Confidential information contained in this report has not been redacted. Please ensure that all necessary precautions regarding confidential information are taken.

Attachment

Dept. DLNR
Div. DOCARE

STATE OF HAWAII
INVESTIGATION REPORT

COPY

CONFIDENTIAL

1. REPORT NUMBER
MA-09-777
2. INVESTIGATOR
CAHILL, RONALD

CLASSIFICATION
Land Division/Commission on Water Resource Management: Un-Permitted Well
3. ISLAND
MAUI
4. DISTRICT

5. COMPLAINANT (Firm Name, if Business)
Hawaii Water Commission: Hydrologist, Charley ICE
6. SEX RACE AGE
M
7. D.O.B.
8. OCCUPATION
Hydrologist

9. ADDRESS
P.O. Box 621 Honolulu HI 96809
10. EMPLOYED/SCHOOL ATTENDING
DLNR / Commission on Water Resource Mgmt.
Res. Ph. Bus. Ph.
587-0218

11. LOCATION AND CLOSEST INTERSECTING STREET
Property TMK (2)2-9-011:009 / Hanawana Rd. / Hana Highway
12. DATE/TIME/DAY OCCURRED
Prior to 12-17-08/1000/Wednesday
13. DATE/TIME REPORTED
12-16-08/1521

14. SCENE:
Island of Maui, 19.3 acres private property lot located off of Hanawana Rd. in the area of Hanawana Valley, Haiku.
15. HOW REPORTED

The TMK No. for the property is (2) 2-9-011:009. The suspect parcel is located on Hanawana Rd. about 1/2 mile makai of Hana Highway. The driveway for the property is one of about three that are close together and on the Hana side of Hanawana Rd.

16. VEHICLE INVOLVED
Year Make Model Color(s) License No. I.D. Characteristics

17. BOAT INVOLVED
Length Make Model Color(s) Name HA No. I.D. Characteristics

18. REGISTERED OWNER
Address Res. Phone

CODE: W = Witness S = Suspect (Fill in Composite Description) V = Victim R = Reporting Person O = Other

19. NAME Age Sex Code Address Res. Phone Bus. Phone
RAMOS, Roxana F S 35-A Hui Rd. Lahaina HI 96761 669-7843 669-7743

LENTA, Bruno M S P.O. Box 1405 Haiku HI, 96708

LENTA, Uala M. 26 F S P.O. Box 791987 Paia HI 96779 573-8337 cell 756-0852

20. Composite Description / Race Ht. Wt. Build Hair Eyes Complex Birthdate: H# or SSN:

21. INVESTIGATION: 1. Insert a synopsis of the crime or incident. 2. Summarize details of the crime or incident. 3. Denote persons from whom statements taken and who took them. 4. Identify additional suspects and witnesses. 5. Identify additional investigators. 6. Use opposite side for continuation of report, if necessary.

SYNOPSIS: Charley ICE of DLNR Water Commission received a complaint of an un-permitted well on the above described property. An inspection of the property revealed what appeared to be an un-permitted fresh water well and storage tank.

A/A:
On 12-17-08 at about 1000 hours, I was assigned via Field Supervisor D. TOM to investigate a report of an un-permitted fresh water well in the area of Hanawana Rd.

REPORTING PERSON'S STATEMENT / BACKGROUND INFO: ICE, Charley Refer to Incident & Report Control Form
On 12-17-08 at about 1010 hours, I contacted via phone an adult male identified as a Hydrologist employed by DLNR / Commission on Water Resource Management, Charley ICE. His office and location is on Oahu. On about 1-21-08, he received a complaint from a resident on Maui concerning an un-permitted fresh water well drilled on private property in the area of Hanawana Rd. on Maui. That the drilling started in 2004. ICE related contacting a Maui County Building Inspector identified as Ann FREITAS concerning the matter. FREITAS told him she was familiar with the property and has taken action on illegal structures there. ICE related wanting to conduct a joint agency site inspection but had not been able to coordinate with Maui County Inspector(s).
ICE provided copies of the initial complaint made to him by a resident identified as Keith DOUGLAS, a copy of a TMK map depicting the suspect property, and copies of photos depicting the suspect property driveway and water storage tank.
The copy of the Complaint / Dispute Resolution Form provided ICE identified the property owner as Roxana RAMOS and the tenant as RAMOS'S brother Bruno LENTA.

DLNR / LAND AGENT CONTACTED: PACHECO, Larry
ON 12-17-08 at about 1020 hours, I contacted Land Agent, Larry PACHECO and apprised him of the facts & circumstances of the case. He did research using the TMK No. and was able to identify the private property parcel and retrieve site data from his office resources.

MAUI COUNTY DEPT. OF PUBLIC WORKS / DEVELOPMENT SERVICES ADMIN. BUILDING INSPECTORS CONTACTED:
On 12-17-08 at about 1700 hours, I contacted via phone an adult female, Maui County Building Inspector identified as Ann FREITAS. I apprised her of the case and she related being familiar with the report, property, and property owner. FREITAS related having contacted the property owner known as Roxana RAMOS on several occasions concerning illegal/un-permitted structures on the property. She related RAMOS does not live on the property. That RAMOS'S brother Bruno LENTA resides there. FREITAS requested to join DOCARE for an unannounced site visit because she had reports of additional un-permitted structure(s) there.

22. REPORT WRITTEN BY
R. CAHILL
Badge No. 249 Date/Time 12-25-08/1030
23. SUPERVISOR APPROVING
[Signature] 12/25/08
Badge No. 20

24. DISPOSITION Unfolded Citation/No. Arrested/Prosecuted Other/No Arrest
 Arrested/No Prosecution Adult Juvenile

25. Date/Time Reproduced 26. Distribution 27. Connecting Report No.

DLNR LAND AGENT PROVIDED INFO: PACHECO, Larry

On 12-17-08 at about 1530 hours, I met with DLNR Land Agent, Larry PACHECO. He provided an aerial photo of the suspect and surrounding properties. The property is listed as being owned by (26) several people (hui property). Two of the principle contacts as property owners are REED, Robert G. and RAMOS, Roxana with an address of 35-A Hui F Road, Lahaina HI. 96761.

Maui County Real Property Assessment Division lists the suspect property address as 7953 Hana Hwy.

SITE INSPECTION CONDUCTED:

On 12-24-08 at about 0830 hours, Maui County Inspector Ann FREITAS, DOCARE Officer J. YAMAMOTO and I conducted an inspected of the aforementioned suspect property. Upon our arrival we were met by an adult female verbally identified as Uala LENTA, the legal tenant. Related she pays rent to her father Bruno LENTA who allegedly owns the property with her auntie Roxana RAMOS. Related her father, Bruno LENTA stays there sometimes but has another place on Maui as well as living part-time in California. Related her father was currently on Maui but not on scene. I identified myself and reason for being there. Ann FREITAS also identified herself and reason for being there. Uala LENTA voluntarily consented to a site inspection.

POSSIBLE WELL LOCATED: Refer to attached photos

The suspect property driveway extends about 40 yards from Hanawana Rd. and ends at a one level, single-family type house. Located about midway along the driveway and makai is a small shack type structure. Within that structure was a gas generator, which was operating. There were also three 55-gallon drums with a hand pump and hoses. Within about 15 feet from the generator shack was what appeared to be the (PVC pipes) plumbing, caps, and manual shutoff valves to a water well enclosed in a concrete box. Uala LENTA related the generator is used to pump water from their well to the house and related fixtures. She further related the aforementioned plumbing and related hardware was known to her ad the fresh water well dug on the property a few years ago (sometime in 2004).

WATER TANK LOCATED: Refer to attached photos

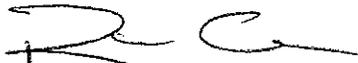
Directly opposite the generator shack and across the driveway was a cleared area of dirt. This area was about 40 yards across and appeared to be cleared for planting. Across the field was a large, green colored, circular, metal, tank that was about 7 feet high. Uala LENTA related the tank was their water tank and believed the well water was pumped into the tank via the aforementioned generator.

TENANT'S STATEMENT: Uala LENTA

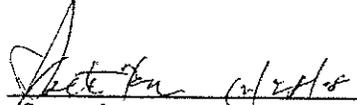
Uala LENTA related knowing the water well on her property was unauthorized and un-permitted. She related being in the process of attempting to obtain the proper permit(s) and documentation for the well. She requested assistance with the process and asked for points of contacts, phone numbers, and addresses for the applicable agencies.

ALLEGED PROPERTY OWNER'S STATEMENT / DEMEANOR: LENTA, Bruno

Uala LENTA related her father Bruno LENTA owned the suspect property with her auntie Roxana RAMOS. While on scene, Uala LENTA contacted via phone, her father, Bruno LENTA. Via Uala LENTA's cell phone, I spoke with an adult male verbally identified as Bruno LENTA. I identified myself and reason for being at the scene. I asked him questions concerning the well's presence and exact location. He refused to provide any information and stated he would not respond to the scene, answer any questions, or met with me until consulting with his lawyer. Our conversation was immediately terminated.


R. CAHILL #249

12-25-08/1300


Supervisor

PHOTO'S:

Refer to attached

At the scene, I took photos of the generator/shack, the plumbing and related hardware/fixtures, and the water tank. Photos #1 and #2 depict the generator shack and 55-gallon barrels. Photos #3 and #4 depict the well plumbing, valves and concrete housing. Photos #5 and #6 depict the water tank.

ATTACHEMENTS:

1. Copy of documents provided by Charley ICE, includes the Complaint / Dispute Resolution Form, and initial investigation by Hawaii Water Commission. Includes copy of photos and a TMK drawing. (7-Pages)
2. Copy of documents provided by DLNR Land Agent. Includes an aerial photo and TMK General Parcel Info. sheet.(2-Pages)

FINDINGS / RECOMMENDATIONS:

Research and indicates an un-permitted water well violates the following Hawaii Revised Statutes (HRS) and Hawaii Administrative Rules (HAR):

HRS 174C-83 Registration of All Existing Wells

HRS 174C-84 Permits For All Well Construction and Pump Installation

HRS 174C-85 Well Completion Report

HAR 13-168-11 Registration of All Existing Wells

HAR 13-168-12 Well Construction and Pump Installation Permits

HAR 13-168-13 Well Completion Report

Investigation revealed an un-permitted well constructed and operating on the suspect property.

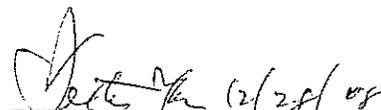
Recommend a copy of this report and supporting documents be forwarded to the DLNR Land Division and Commission On Water Resource Management for review, investigation, and final disposition.

DISPOSITION:

Referred to Land Division & Commission on Water Resource Management.
Records.


R. CAHILL #249

12-25-08/1300


Supervisor

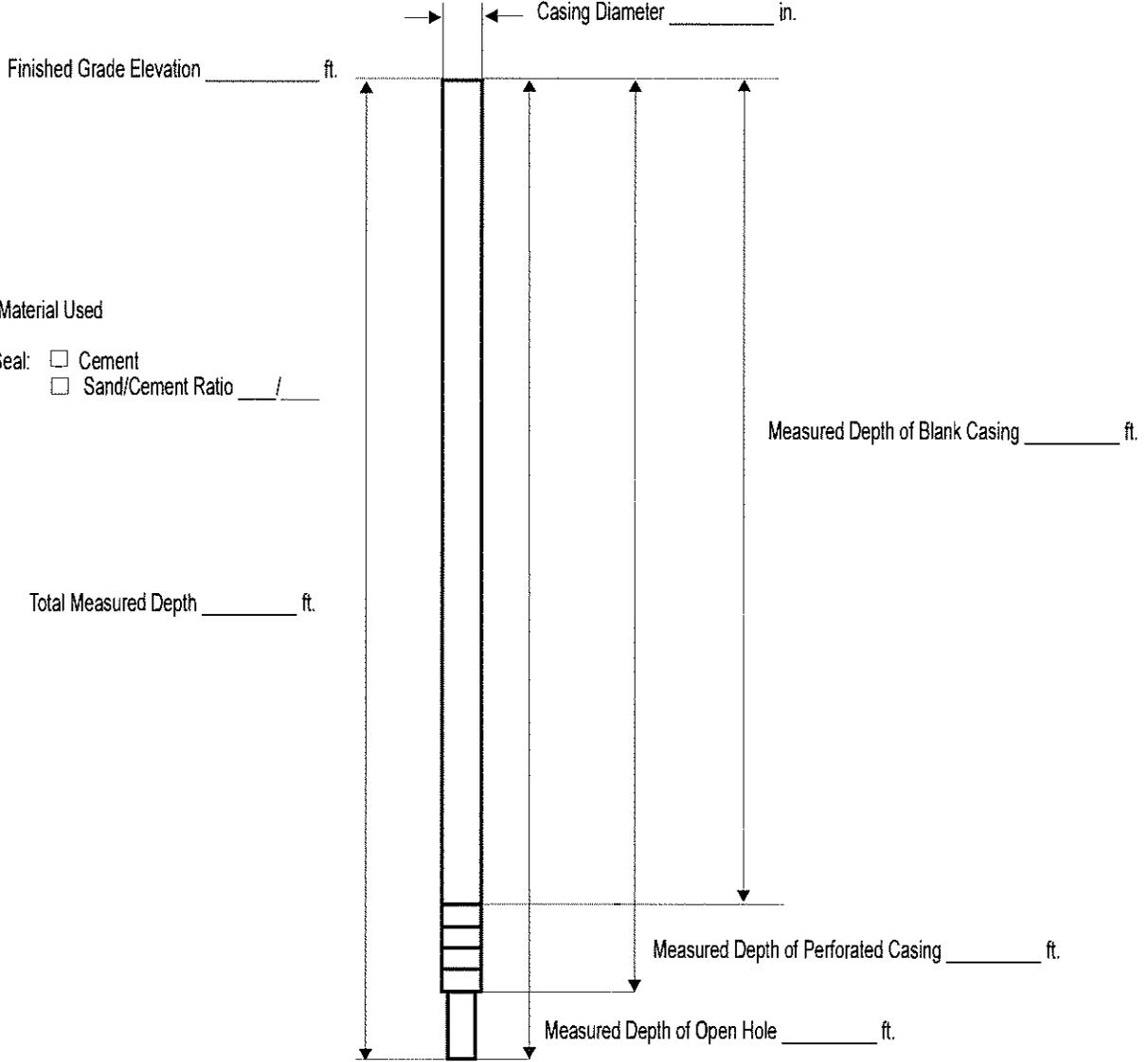


State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
 Department of Land and Natural Resources
WELL ABANDONMENT REPORT

For Official Use Only:

Instructions: Please print in ink or type and send completed report (with attachments, if applicable) to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete reports. This form shall be submitted within 60 days of the completion of work. For assistance, please consult the Hawaii Well Construction and Pump Installation Standards or call the Regulation Branch at 587-0225. For further information and updates to this application form, visit <http://www.hawaii.gov/dlnr/cwrm>.

1. State Well No. 5312-01 Well Name Spring Mountain Produce
2. Location / Address off Hanawana Road Island Maui TMK (20 2-9-011:009
3. Contractor Wailani Drilling, Inc. Name of driller who performed work _____
4. Type of Rig / Construction _____ Date of well sealing completion _____
5. Photo Attached (required) Yes No (explain below)



Check Material Used
 Grout Seal: Cement
 Sand/Cement Ratio ____/____

Remarks: _____

Well Abandonment
 Contractor (print) _____ C-57 Lic. No. _____
 Signature _____ Date _____



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

ADMINISTRATIVE AND CIVIL PENALTY GUIDELINE (G99-01-**Revised**)
COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

I. GOALS

This penalty guideline seeks to provide a logical and consistent means to assess penalties and guide the settlement of Commission on Water Resource Management (Commission) enforcement cases. The Commission and staff should use this system to:

- A. Deter violations;
- B. **Remove the economic benefit of violations;**
- C. Provide fair treatment of the regulated community; and
- D. Offer the violator a chance to undertake a beneficial alternative, under proper conditions, in a partial or total replacement of a cash penalty.

II. LEGAL AUTHORITY

Hawaii Revised Statutes (HRS) § 174C-15 provides for fines of up to \$1,000 for any violation of any provision of HRS § 174C. For a continuing offense, each day during which the offense is committed is a separate violation.

Administrative Rule § 13-167-10 provides for fines of up to \$1,000 for any violation of any provision of Title 13, any permit condition or limitation established pursuant to Title 13, or for negligent or willful failure to comply with any final order of the Commission. For a continuing offense, each day during which the offense is committed is a separate violation.

III. APPLICABILITY

- A. This guideline applies to the Commission programs, which include but are not limited to:
 - 1. Measuring and reporting of water data;
 - 2. Well Construction and Pump Installation Permits;
 - 3. Stream Diversion Works Permits;
 - 4. Stream Channel Alteration Permits;
 - 5. Instream Use Protection Program;
 - 6. Instream Flow Standards;
 - 7. Water Use Permits;
 - 8. Violations of any permit issued by the Commission;
 - 9. Violations for failure to comply with final orders issued by the Commission; and
 - 10. Violations of Hawaii Administrative Rules Title 13.

- B. This guideline is only for use by Commission personnel. The guideline is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in litigation with the Commission on Water Resource Management, Department of Land and Natural Resources or the State of Hawaii. The Commission's staff reserves the

right to act at variance with this guideline and to change it at any time without notice. The Commission's staff expects to change this guideline as it gains experience with the guideline's implementation.

IV. PENALTY CALCULATION METHOD

A. The Commission's staff shall calculate a minimum penalty figure for settlement purposes based on the following:

1. Finding of willful violation = \$250 per day

(A willful violation is deemed to occur when the violator has **notice** of the violation, given a reasonable timeframe to correct the violation, and fails to correct the violation within a reasonable timeframe or fails to exhibit good faith efforts to correct the violation.)

2. Occurring in Water Management Area = \$250 per day

3. Repeat Violation = \$250 per day

(A repeat violation is deemed to occur when the party has previously been found to be a willful violator by the Commission. A repeat violation is tied to the party involved and is irrespective of the nature of the violation.)

B. GRAVITY COMPONENT

Additional fines of up to \$1,000 per day may be imposed depending on the seriousness of the violation. The degree of risk or actual harm to human health or the environment is relevant to the amount of the penalty for violations.

C. MITIGATION COMPONENT

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. Presence of one or more mitigative factors can reduce or eliminate the fine or alternative penalty recommendation. Mitigative factors include: attempt to remedy the violation without notice, good faith effort to remedy violation once noticed, and diligent and speedy effort to remedy the violation once noticed.

D. DURATION OF VIOLATION

A daily fine, as calculated above, shall accrue beginning from the date that the party was notified of the violation, and continuing until the violation is corrected, either by the violator's own volition or Commission order. **Given the circumstances of each case, any one of the following constitutes notification of the violation:**

- (1) The permit issued by the commission.**
- (2) Staff notification (oral or written) of the violation to the permit holder or his authorized agent. Oral notification shall be documented in the file.**
- (3) Written notice of the violation sent by regular or certified mail.**
- (4) Date of Commission meeting for conditions or deadlines imposed by the Commission not contained in a permit.**

Where there are multiple notifications of a violation, Commission staff may use the earliest possible date set forth above in the calculation of the fine or alternative settlement unless another date is more appropriate under the circumstances of the case.

E. ALTERNATIVE SETTLEMENT

The following considerations will guide the Commission's staff recommendation in deciding whether to allow a project to substitute for or be credited against a cash penalty. However, any finding of a willful violation by the Commission shall result in a minimum one-time \$500 cash fine in addition to an alternative settlement. Failure to successfully meet the alternative will result in re-institution of the fines as calculated in IV. A. and B. above.

1. The project must be something that the violator was not required to do anyway, either because of legal or other obligation. Projects committed to, or started before a settlement is finally agreed upon may be eligible for credit, but such projects must be carefully examined to determine the extent to which they resulted from the enforcement case or were due to other factors, or prior plans or commitments. In some cases, partial credit may be appropriate.
2. The project must result in new water resources (including aquatic biota) information, provide water resources education, or benefit the water resources of the state.
3. The project may consist of corrective action to be completed within a timeframe established by the Commission. Failure to abide by the timeframe will result in re-institution of the fines as calculated in IV. A. and B. above.

E. FUTURE APPLICATIONS

Future applications from an applicant who has not paid fines or met alternative settlements or for a project with outstanding violations may be considered incomplete until sanctions are fulfilled and/or violations are corrected.

LINNEL T. NISHIOKA
Deputy Director

EXHIBIT 1

