

EXHIBIT A

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILĀ, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

January 3, 2022

Ref.: PO-22-001

MEMORANDUM

TO: The Honorable Suzanne D. Case, Chairperson
Commission on Water Resource Management

FROM: William J. Ailā, Jr., Chairman
Hawaiian Homes Commission

SUBJECT: Petition for new ground water reservations by rule on the island of Molokaʻi.

I. BACKGROUND AND OVERVIEW OF PETITION

A. Origin of the Expanded and Amended Water Reservation Petition

By memorandum dated May 18, 2020, the Commission on Water Resource Management (“CWRM”) notified the Department of Hawaiian Home Lands (“DHHL” or the “Department”) that Maui County filed Water Use Permit Application (WUPA) No. 01094 for the ‘Ualapu’e¹ Shaft Well (Well No. 4-0449-001, ‘Ualapu’e System, Southeast Sector, Molokaʻi. In our June 10, 2020 memorandum in response to the County WUPA, DHHL requested that CWRM “reserve for DHHL by rule sufficient water for the proposed 175 DHHL homesteads at ‘Ualapu’e on a 376-acre parcel. DHHL believes on preliminary analysis a reservation of mgd (100,800 gpd for 175 lots at the applicable water system standard of 600 gallons per unit per day), and 750,000 gallons per day for irrigation of 300 acres of the 376-acre parcel at a duty of 2500 gallons per acre per day, totaling .850 mgd”

Subsequently to that request, relevant actions included:

- A request via email on February 24, 2021 from CWRM staff to clarify that the proper amount to be requested based on the demands used is 0.855 mgd, to which DHHL agreed;
- A inquiry via email on March 9, 2021 from CWRM staff asking if DHHL wished to, with this request, seek other reservations of water on Molokai along with the ‘Ualapu’e reservation request, and have the rulemaking proceedings consolidated, to which DHHL agreed;

¹ We note that the official notice from CWRM omits the diacriticals in the name ‘Ualapu’e, though the WUPA from Maui County uses them. We use them here.

- DHHL held a Beneficiary Consultation meeting on a proposed set of requests for groundwater across Moloka‘i, held (virtually) on May 5, 2021.

Subsequently, on July 19, 2021, the Hawaiian Homes Commission (“HHC”) unanimously approved item G-1 (attached), which authorized the Chairman to formally request new ground water reservations on the island of Moloka‘i. DHHL hereby submits this ground water reservation request for the following tracts and following amounts in the following Aquifer System Areas (“ASAs”):

DHHL Tract	Reservation Request (MGD)	Aquifer System Area
Kapa‘akea Makakupa‘ia Kamiloloa	0.1716	Kawela 40302
Kapa‘akea Makakupa‘ia Kamiloloa	1.0	Kamiloloa 40301
Kalama‘ula	0.0342	Kawela 40302
Kalama‘ula	0.0378	Kawela 40302
Kalama‘ula	0.530	Pālā‘au 40202
‘Ualapu‘e	0.855	‘Ualapu‘e 40303

Granting this ground water reservation request will assist DHHL and CWRM to carry out their trust responsibilities to DHHL beneficiaries in accordance with the provisions of the Hawaiian Homes Commission Act (“HHCA”), the state Constitution, and the Water Code (HRS 174C).

B. DHHL Administrative Process

The primary method by which DHHL serves its native Hawaiian beneficiaries is through the provision of 99-year homestead leases. The Department currently holds approximately 25,899 acres of land in trust on the island of Moloka‘i. In 1923, DHHL issued the first lease awards on the island of Moloka‘i. As of June 30, 2020, there are 839 leases on Hawaiian home lands on Moloka‘i. The purpose of this request is to adequately reserve water for current and foreseeable development and use of Hawaiian Home Lands on Moloka‘i as set forth in §§174C-48(d) and -101 of the Hawai‘i State Water Code.

On July 22, 2014, the HHC adopted a Water Policy Plan (“WPP”) to provide comprehensive and consistent guidance and direction to the HHC, DHHL staff, and its beneficiaries on water-related issues,

actions, and decisions. The WPP was developed relying on existing legal authorities, previously approved policies, and plans (e.g., General Plan 2002), and two years of extensive beneficiary input and consultation in compliance with DHHL's Beneficiary Consultation Policy ("BCP") (2009). One of the four primary goals in the WPP is to "[a]ggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL, and the HHC to water before all relevant agencies and entities." WPP Additional Goal III. 6. is to "Secure adequate and enforceable reservations of water for current and foreseeable future needs for all of its lands across the islands."

In accordance with the WPP and BCP, on May 5, 2021, DHHL hosted a virtual beneficiary consultation meeting to present the proposed water reservation requests and collect beneficiary feedback and perspective. Beneficiary comments related to DHHL's proposed groundwater reservation requests focused on a need for the Department to request more water and a concern that taking too much water from the ground will have negative impacts to natural / cultural resources. From this feedback, the Department proceeded with its reservation request that balanced water consumption with other Public Trust uses of water.

II. LEGAL AUTHORITIES

A. The Hawaiian Homes Commission Act, the Admission Act, the Hawai'i State Constitution, and the Hawai'i Water Code provide the foundation for water reservations for Hawaiian Home Lands.

A century ago the United States Congress enacted the Hawaiian Homes Commission Act ("HHCA") to provide a homesteading program for native Hawaiians on approximately 200,000 acres of land. In 1959, the State of Hawai'i adopted the HHCA, as amended, in section 4 of the Admission Act, Public Law 86-3, and as a provision of the Hawai'i State Constitution. Sections 5(b) and 5(f) of the Admission Act reaffirm the State's primary responsibility to manage the Hawaiian Home Lands and fulfill the purposes of the HHCA, as part of a compact with the United States accepted as a condition for admission into the Union. In relevant part, Article XII, section 2 declares:

The State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to **the continuance of the Hawaiian Homes projects** for further rehabilitation of the Hawaiian race **shall be faithfully carried out.** (Emphases added).

Therefore, the State (and its subdivisions) as fiduciary, must fulfill the enumerated directives of the HHCA, which include "[p]roviding adequate amount of water and supporting infrastructure" to homestead lands and reserving sufficient water "for the current and foreseeable domestic, stock water, aquaculture, and irrigation activities on tracts leased to native Hawaiians." HHCA §§ 101(b)(4), 220(d).²

² The Hawaii State Constitution Article XII, sections 1 through 4 further define the State's responsibility to carry out and fulfill the purposes of the HHCA.

Numerous state statutory provisions carry out the State's broad mandate to provide "adequate amounts of water and supporting infrastructure" for Hawaiian Home Lands. For example, the State Water Code establishes a specific framework for water reservations to ensure the Department's present and future water needs may be satisfied. HRS §174C-101(a) states:

Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, [. . .]. **Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian Home Lands as set forth in section 221 of the Hawaiian Homes Commission Act.** (Emphases added).

Additionally, the needs of HHC beneficiaries must also be considered in the government's water plans. HRS § 174C-31(q) declares:

In formulating or revising each county's water use and development plan, the state water projects plan, the water resource protection plan and the water quality plan, each county and the commission shall incorporate the current and foreseeable development and use needs of the Department of Hawaiian Home Lands for water as provided in section 221 of the Hawaiian Homes Commission Act.

Relatedly, to obtain a water permit under the water code, applicants must, among other things, "establish that the proposed use of water will not interfere with the rights of the Department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act." HRS § 174C-49(a)(7). This section of the water code also requires that:

All permits issued by the commission shall be subject to the rights of the Department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act, whether or not the condition is explicitly stated in the permit. HRS § 174C-49(e).

Upon this strong legal foundation, the Hawai'i Supreme Court has upheld DHHL's rights to water to carry out its trust duties to native Hawaiian beneficiaries.

B. Hawai'i case law consistently confirms DHHL's water reservations are entitled to the full panoply of constitutional protections afforded to other public trust purposes.

The Hawai'i Supreme Court in Wai'ola held that DHHL water reservations and homestead uses are protected public trust purposes and have priority over other private commercial uses. See In re Wai'ola O Molokai, Inc., 103 Hawai'i 401, 430-31 (2004).³ Therefore, as a public trust purpose, the State has an affirmative duty to take DHHL water reservations into account in the planning and allocation of water resources. See Waiāhole, 94 Haw. 97, 141 (2000) (identifying the state's "affirmative duty to take the public

³ The Wai'ola court explained that Article XI, sections 1 and 7 of the Hawai'i Constitution adopts the Public Trust Doctrine as a fundamental principle of constitutional law in Hawai'i. See Wai'ola at 431. Moreover, the Court determined that the Water Code "does not supplant the protections of the public trust doctrine." 103 Haw. at 429 (citing Waiāhole, 94 Hawai'i at 133-35 (2000)).

trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible”). Without adequate reservations in place, however, the ability of the CWRM and others to affirmatively take DHHL’s needs into account is hampered.

In summary, the Department’s priority claim to water and review standards are clearly set forth in the aforementioned authorities, which serve to accomplish the State’s broad mandate to provide adequate water and infrastructure to homestead lands so that they are usable and accessible.

III. METHODOLOGY FOR CALCULATION OF WATER DEMANDS

DHHL has calculated its water reservation requests to CWRM based on its planning system and related standards, as described further below.

A. DHHL Planning System and Planned Land Uses

The Department has developed a three-tiered planning system to guide development and management of its land holdings for the benefit of current and future beneficiaries. The planning system includes its over-arching General Plan, followed by its second tier of Strategic Program Plans and Island Plans (which include the Moloka‘i Island Plan (“MIP”) and the WPP), followed again by Regional and Development Plans in its third tier.

1. DHHL General Plan (2002)

The General Plan (“GP”), approved by the HHC in February 2002, is the first tier of the Department’s planning system.⁴ It is a statewide plan with a long-term perspective that establishes seven categories of goals and objectives to meet the Department’s mission. The seven categories are: Land Use Planning; Residential Uses; Agricultural and Pastoral Uses; Water Resources; Land Resource Management; Economic Development; and Building Healthy Communities.

The General Plan also establishes ten land use designations that may be applied to land (akin to state and county land use designation and zoning). There are four homesteading designations: Residential, Subsistence Agriculture, Supplemental Agriculture and Pastoral. The remaining six non-homesteading designations are: General Agriculture, Special District, Community Use, Conservation, Commercial and Industrial. These land designations, similar to county zoning, are a valid basis for determining water demands.

2. Water Policy Plan (2014)

This Reservation Request is consistent with the vision, mission, values, and policies of the WPP and specifically advances Goal 2 of the WPP to “[a]ggressively, proactively, consistently, and

⁴ The General Plan can be viewed online at https://dhhl.hawaii.gov/wp-content/uploads/2012/05/Island_Plan_General_2002.pdf.

comprehensively advocate for the kuleana of the beneficiaries, DHHL, and the HHC to water before all relevant agencies and entities.”⁵ It is also consistent with the WPP policy to “[d]evelop, manage, and steward water in a manner that balances cost, efficiency measures, and Public Trust uses in the short and long term.” It specifically will further WPP Additional Goal III. 6. to “Secure adequate and enforceable reservations of water for current and foreseeable future needs for all of its lands across the islands.”

3. Moloka‘i Island Plan (2005)

Island Plans are the second tier of the DHHL Planning System and have a longer-term perspective (around twenty years with an update at ten years); they also establish land use goals and objectives based on the GP, apply land use designations to meet the needs of the Department, and ensure proper stewardship of the ‘āina. These plans are developed through a process focused on identifying the needs and opportunities of DHHL beneficiaries by surveys, focus groups, open houses, community consultations, workshops with the HHC, and other community-based planning tools. They are also “living documents” in the sense that they remain applicable if funding or other constraints prevent their implementation within stated timeframes, until such time a superseding Island Plan is approved.

The MIP was approved in 2005 and provides recommendations for future uses of the Department’s land holdings on Moloka‘i to meet the needs of the Department and its beneficiaries, with particular focus on the next twenty years.⁶ The primary objectives of the MIP included the following:

- Deliver at least 400 Residential homesteads, or an average of 20 new lots per year;
- Provide agriculture and pastoral homestead lots for subsistence and supplemental purposes;
- Provide general lease agriculture and pastoral lots of adequate size for commercial farming or ranching business purposes by native Hawaiians;
- Identify and establish a clear understanding of existing water resources available to the Hawaiian Homes Trust;
- Preserve and protect significant natural, historic and community resources on Trust lands;
- Allow native Hawaiian use of natural resources on Trust lands for traditional and cultural purposes;

Following land analysis and intensive community engagement by beneficiaries, the HHC assigned its Moloka‘i lands the following land use designations in the MIP:

⁵ The Water Policy Plan can be viewed online at <https://dttl.hawaii.gov/wp-content/uploads/2013/09/DHHL-Water-Policy-Plan-Final-Draft-140617.pdf>.

⁶ The Moloka‘i Island Plan can be viewed online at https://dttl.hawaii.gov/wp-content/uploads/2012/05/Island_Plan_Molokai_2005.pdf.

Land Use Designation	Acreage
Residential Homestead	742
Subsistence Agriculture	2, 338
Supplemental Agriculture	5,862
Pastoral	1,927
General Agriculture	6,415
Special District	7,758
Community Use	93
Conservation	655
Commercial	58
Industrial	16
TOTAL	25,864

Residential Homestead and General Agriculture in Kapa‘akea, Kamiloloa & Makakupa‘ia

The DHHL lands of Kapa‘akea, Kamiloloa, and Makakupa‘ia make up 20 percent of the DHHL lands on Moloka‘i and are situated along the southern portion of Moloka‘i and are approximately 1 mile east of Kaunakakai town. These three land sections comprise 5,218 acres of DHHL’s lands on Moloka‘i. Kapa‘akea, Kamiloloa, and Makakupa‘ia is a desirable residential location because of its proximity to Kaunakakai. This water reservation request will help meet the Department’s existing needs as well as its future needs for residential homestead and general agriculture uses.

Currently, there are 72 existing residential leases situated on 60 acres ranging from 0.3 to one-acre lots. The Department plans for a single-phase development for the middle portion of the tract. The phase will yield 286 half-acre lots on 204 acres. To support this buildout, an onsite wastewater treatment facility will be required. The tract is served by the Maui Department of Water Supply (“MDWS”) Kaunakakai Water System. For its residential water needs, the Department is seeking a reservation from the Kawela System Area.

The Department designated 2,165 acres of its lands as General Agriculture to be made available to individuals and groups for short-term leases. Some of these lands could be the site of future homesteads beyond the 20-year planning framework identified in this plan. For its general agriculture needs, the Department is seeking a reservation from the Kamiloloa System Area.

Residential Homestead and Subsistence Agriculture in Kalama‘ula

DHHL properties in Kalama‘ula consists of 5,318 acres located west of Kaunakakai. The area consists of multiple uses with a growing residential community in the lowlands and coastal region, a wetlands to be the southwestern corridor, pastoral use permitted to the Moloka‘i Homestead Livestock Association; Kapuāiwa Grove, a noted cultural and community resource area front the area’s shorelines, Church Row; and Kulana ‘Ōiwi, a community services center that houses the island branch offices of DHHL, Office of Hawaiian Affairs, and the Queen Lili‘uokalani Children’s center. Similar to the ahupua‘a mentioned above, this water reservation request will help facilitate the Department’s plans for residential homestead and general agriculture uses in the Kalama‘ula ahupua‘a. Notably, the first DHHL homestead in the State of Hawai‘i was established in Kalama‘ula on the island of Moloka‘i.

The Department proposes a limited growth of new residential development that would entail 49 1-acre lots on 70 acres in the eastern portion of the parcel and 8 1-acre lots on 11 acres in the section of the parcel adjacent and ma kai to Maunaloa Highway for a total of 57 new units. For its future residential water needs in Kalama‘ula, the Department is seeking a reservation from the Kawela System Area.

In Kalama‘ula, 72 lots on approximately 212 acres have been leased for agricultural homesteads and are designated in the MIP as Subsistence Agriculture. These lots vary in size from 2-4 acres and are considered large enough for small-scale agriculture and keeps beneficiaries eligible for certain types of U.S. Department of Agriculture (USDA) loans. For its planned subsistence agriculture needs in Kalama‘ula, the Department is seeking reservations from the Kawela (residential) and Pālā‘au (general agriculture) System Areas.

B. Water Demand Calculation and Water Reseravtion Request

The Department’s fundamental water needs for homesteading and beneficiary agricultural uses are based on conservative, reasonable, and fact-based estimates. To the extent possible, the demand standards and their application, including the level of planning detail and justification, are identical to those utilized in other CWRM-approved planning documents (e.g., the county Water Use and Development Plans).

The Department relied upon and utilized County Standards for residential and the domestic demands of subsistence homesteads, an accepted standard for County Water Use and Development Plans, when applicable. Specifically, the Maui County Water System domestic consumption standard for residential use is 600 gallons per unit and 2,500 gad for general agriculture uses. Thus, the calculated demands are set forth in the following table:

Table 1: DHHL Calculated Water Demand

DHHL Tract	Use	Acreage	Units	Rate	Calculated Demand
Kapa'akea Makakupa'ia Kamiloloa	Residential	264	286	600 gpd/unit	0.1716
Kapa'akea Makakupa'ia Kamiloloa	General Agriculture	2,165	--	2,500 gad	5.413
Kalama'ula	Residential	88	57	600 gpd/unit	0.0342
Kalama'ula	Subsistence Agriculture	212	63	600 gpd/unit	0.0378
Kalama'ula	Subsistence Agriculture	212	--	2,500 gad	0.530
<u>'Ualapu'e</u>	Residential		175	600 gpd/unit	0.105
<u>'Ualapu'e</u>	Subsistence Agriculture	300		2,500 gad	0.75

DHHL however recognizes that a full allocation of water for Kapa‘akea, Makakupa‘ia, and Kamiloloa based on designated land uses would exceed the Sustainable Yields for the area. Based on the forgoing, the Department requests the following quantities of water in the listed Aquifer System Areas.

Table 2: DHHL Calculated Water Demand and Reservation Request by Aquifer System Area

DHHL Tract	Calculated Demand (MGD)	Reservation Request (MGD)	Aquifer System Area
Kapa‘akea Makakupa‘ia Kamiloloa	0.1716	0.1716	Kawela
Kapa‘akea Makakupa‘ia Kamiloloa	5.413	1.0	Kamiloloa
Kalama‘ula	0.0342	0.0342	Kawela
Kalama‘ula	0.0378	0.0378	Kawela
Kalama‘ula	0.530	0.530	Pālā‘au
‘Ualapu‘e	0.855	0.855	‘Ualapu‘e

IV. CONCLUSION

Throughout its history, DHHL has faced challenges in its attempts to secure adequate water resources to support homestead development. In some cases, the lack of available water has prevented HHCA beneficiaries from realizing the promises of the HHCA. Here, in order to improve this shortcoming and implement its homesteading objectives in this area, the Department must secure adequate ground water for its planned uses as well as capital investments for existing inadequate or proposed infrastructure development. The Department has put forth a conservative estimate of its water needs, rooted in and consistent with legal authorities, HHC policy and plans, and beneficiary consultation. Therefore, the Department humbly requests that CWRM consider and grant this request in light of its duties to the beneficiaries of the HHCA as enshrined in the HHCA, State Constitution, and Water Code.

Enclosures:

1. Hawaiian Homes Commission Agenda Item G-1, July 19, 2021
2. DHHL Memorandum to CWRM, June 10, 2020

PLANNING OFFICE
DEPARTMENT OF HAWAIIAN HOME LANDS

July 19-20, 2021

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Andrew H. Choy, Acting Planning Program ManagerAC

SUBJECT: Accept Beneficiary Consultation Report for additional
Moloka'i groundwater reservations.

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC):

- (1) Accept this Beneficiary Consultation Report as the official public record of beneficiary input and feedback relative to the department's consideration to proceed with additional Moloka'i groundwater reservation requests;
- (2) Authorize the Chairman to formally request a water Reservation from CWRM for DHHL lands on Molokai;
- (3) Take other actions as necessary to effectuate these requests;

DISCUSSION

Background

DHHL initially sought a ground water reservation of 0.855 mgd for the 'Ualapu'e aquifer system area on the island of Moloka'i from the state Commission on Water Resource Management (CWRM). The purpose of this ground water reservation request was to carry out one of the priority projects set forth in the 2019 Moloka'i Regional Plan – the development of a new Kuleana Homestead Community in 'Ualapu'e and submitted a reservation request to CWRM in the fall of 2020. The 'Ualapu'e ground water reservation anticipates and seeks to satisfy the potable and non-potable water demand of approximately 175 kuleana lots.

During the processing of DHHL's 'Ualapu'e reservation request, CWRM inquired as to whether DHHL had any additional requests for water

reservations for its lands on Moloka'i. Department staff then explored the future water needs of other DHHL tracts on Moloka'i. DHHL consultant and staff established a process for calculating Moloka'i's future water needs and provided the following estimates (see Table 1) for consideration and comments from beneficiaries. A beneficiary consultation meeting was held on May 5, 2021 to provide Moloka'i beneficiaries an opportunity to review and comment on DHHL's proposed reservation requests. This report reviews the Moloka'i Beneficiary Consultation (BC) meeting held on Wednesday, May 5, 2021, from 6:30 pm - 8:00 pm. Due to the ongoing COVID-19 pandemic, DHHL staff meet virtually with beneficiaries using the Zoom video conferencing platform.

DHHL Beneficiary Consultation Process

The DHHL recognizes that meaningful, timely, and informative beneficiary consultation is necessary for the successful formulation and implementation of its policies, programs, and projects. In 2009, the HHC adopted a Beneficiary Consultation Policy (Policy). The purpose of the Policy is to ensure that appropriate beneficiary consultation processes and activities are incorporated into DHHL's planning and decision-making. The Policy requires BC for four types of proposals: 1) Statewide Policy Issues, 2) Amendments to Land Use Designations, 3) Development Proposals, and 4) Development of DHHL Plans. In addition to the Beneficiary Consultation Policy, DHHL's Water Policy Plan also states that DHHL will: "Affirmatively communicate our decisions, our reasoning, and our performance in managing, stewarding, and using water before and after major water decisions."

The purpose of the May 5, 2021 beneficiary consultation meeting was to collect beneficiary feedback and input on additional water reservations for groundwater on Moloka'i.

Beneficiary Notification

Notification of the May 5, 2021, virtual Beneficiary Consultation meeting was announced by postcard and published on the DHHL website, <https://dhhl.hawaii.gov/po/water/>. In addition, the department sent individual emails to homestead leaders on Moloka'i.

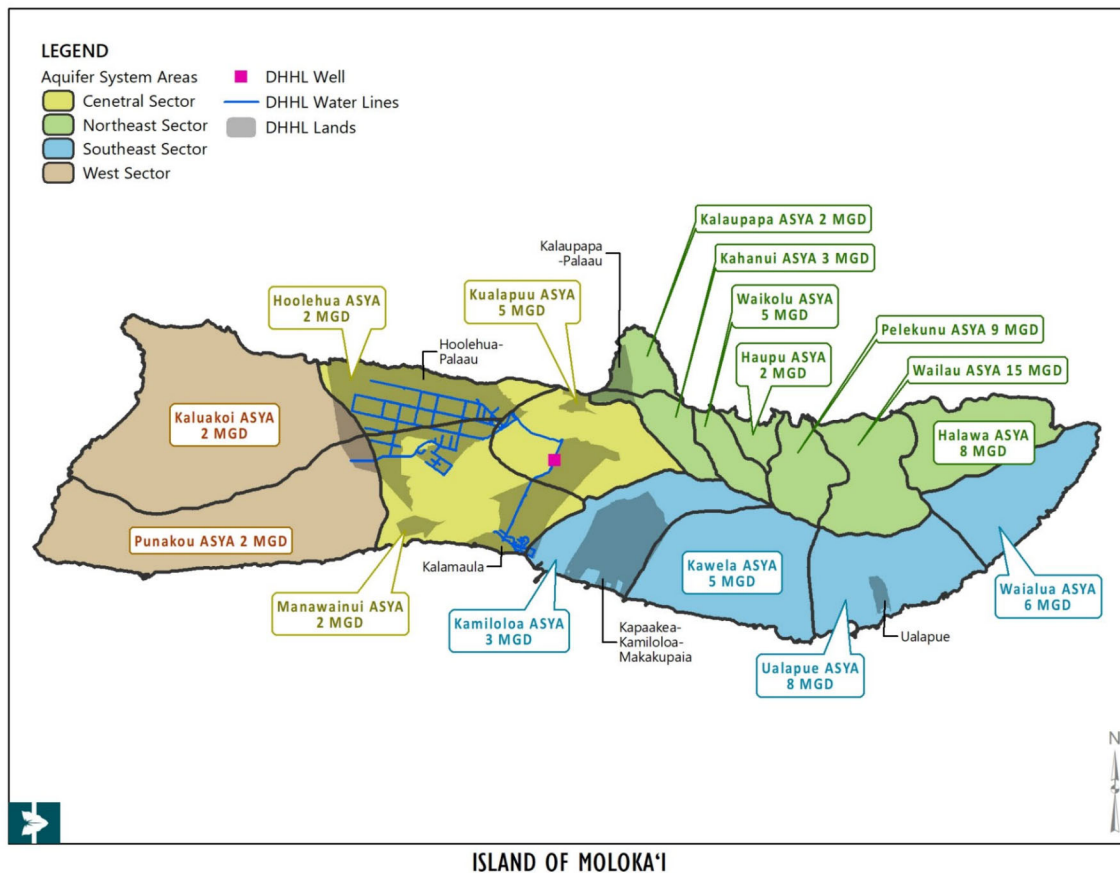
BENEFICIARY CONSULTATION MEETING

Approximately 20 individuals participated in the Zoom Beneficiary Consultation meeting. Meeting attendees did not sign a physical sign-in sheet due to their participation via a video conferencing platform. The video conferencing platform did provide the capability for DHHL to record the meeting and post it to its website. The recording of the meeting can be on the DHHL website:

<https://dhhl.hawaii.gov/po/water/>

The meeting commenced with a presentation of the DHHL Planning System and relevant department plans--specifically, the 2014 Water Policy Plan and the 2019 Moloka'i Island Plan. Department staff also presented a review of DHHL's Moloka'i tracts from Ho'olehua to 'Ualapu'e along with their planned land use designations.

The map below--created for and shown to beneficiaries during the BC--displays the lands within the trust corpus and delineates Moloka'i into the four aquifer sector areas and sixteen system areas as established by CWRM. The map also locates DHHL's water systems in addition to the sustainable yield of each system area.



Following this overview of DHHL policies and plans concerning the island's water resources, staff updated beneficiaries on the department's water use permit application for the Kualapu'u aquifer and the potential for the department to request and establish water reservations for its other lands on Moloka'i. DHHL also provided foundational information defining and clarifying water reservations, along with a synopsis of the process and relevant laws. Based on the foundational information, the presentation concluded with an overview of DHHL's proposed ground water reservation requests on the island of Moloka'i. A summary of the ground water reservation requests are found in Table 1 below.

Table 1 – Proposed DHHL Ground Water Reservation Requests

DHHL Tract	Calculated Demand (MGD)	Reservation Request (MGD)	Aquifer System Area

Kapa'akea / Makakupa'ia / Kamiloloa	0.1716	0.1716	Kawela
Kapa'akea / Makakupa'ia / Kamiloloa	5.413	1.0	Kamiloloa
Kalama'ula	0.0342	0.0342	Kawela
Kalama'ula	0.0378	0.0378	Kawela
Kalama'ula	0.530	0.530	Pālā'au

Following the presentation, participants were asked to provide feedback and comments on the department's additional groundwater reservation. DHHL staff posed three questions to participants:

- 1) Are the additional reservation requests adequate?
- 2) Are there any water needs that DHHL did not account for?
- 3) Are the criteria for developing water and identifying reservation areas complete, or should other factors be considered?

The following section summarizes beneficiary comments provided during the discussion portion of the consultation meeting as well as additional comments received from beneficiaries during the 30-day comment period May 5, 2021 to June 4, 2021. Comments included responses to the above questions, comments on water issues in general, as well as questions related to water resource management and the laws that relate to water resource management. A full record of beneficiary comments, questions, and DHHL responses to questions are memorialized in the meeting notes that are included as Exhibit B.

Summary of Beneficiary Comments

Beneficiary comments related to DHHL's proposed groundwater reservation request can be grouped into two major themes as follows:

(1) DHHL should seek more water in its CWRM reservation request than the amount it is currently asking for;

- *DHHL should look into additional water reservation from the Kualapu'u aquifer, considering the amount of land which it serves;*
- *600 gallons per day (the amount per home that DHHL is basing its calculations on) is not a reasonable amount of water for residences. Kalama'ula and Ho'olehua are really dry areas, and the water evaporates extremely fast. The numbers are too conservative and we need to increase those estimates;*

(2) Taking too much water from the ground will have a negative impact on natural and cultural resources;

- *I have major concerns about taking water from the ground because that will have major impacts on fishing, coastlines, reefs, and our farms.*
- *We're talking about DHHL stuff in isolation while there are so many things going on simultaneously. The biggest problem I see is people in the same "glass", sucking on straws so close together. The impacts from these actions are being seen on the shorelines and reefs.*

Given these two important perspectives on DHHL's groundwater reservation requests, DHHL needs to balance beneficiary water needs with the ecological impacts that excessive water use may cause. As such, DHHL is recommending no changes to the amounts of its groundwater reservation requests that it presented to beneficiaries.

Additionally, beneficiaries also provided the following mana'o during the meeting:

- DHHL should support the Molokai community's advocacy to designate Moloka'i as a surface water management area;
- CWRM has historically failed to timely act on DHHL's Kualapu'u Water Use Permit Application;
- Beneficiary perceptions that other water purveyors on island (Department of Agriculture, Maui County Department of Water Supply) have treated DHHL beneficiaries inequitably.

DHHL beneficiaries also raised several questions related to Hawaii water laws and how they relate to DHHL's water rights under the HHCA. Those questions and answers can be found in the meeting notes (Exhibit B).

RECOMMENDED ACTION

Staff respectfully requests approval as recommended.

List of Exhibits

EXHIBIT A:	PowerPoint Presentation
EXHIBIT B:	Meeting Notes



HAWAIIAN HOME LANDS

HAWAIIAN HOMES COMMISSION • DEPARTMENT OF HAWAIIAN HOME LANDS

Beneficiary Consultation

Moloka'i Groundwater Reservation Request

May 5, 2021

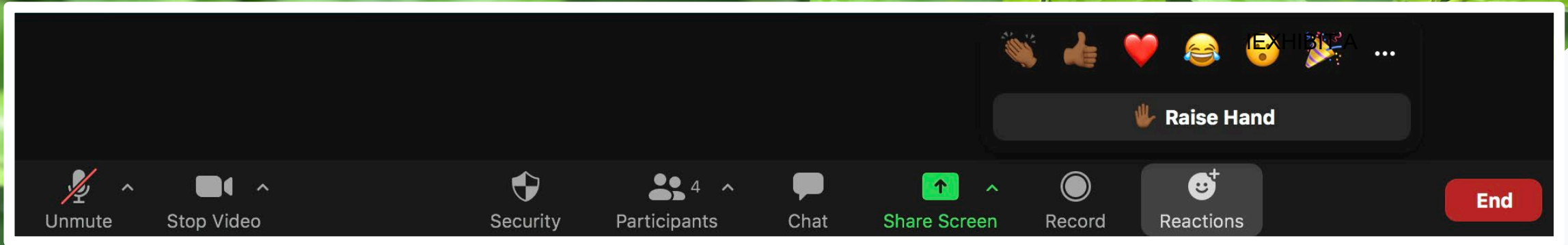
Meeting will start at 6:30pm



Tonight's Agenda

EXHIBIT A

- DHHL Informational Presentation
 - Overview of DHHL Planning System and Moloka'i Plans
 - Water issues and initiatives on Moloka'i
 - Water rights related to reservations
 - Reservation request in Groundwater Management Areas (GWMA) and non-GWMAs
 - Reservation requests methodology & amounts
- Beneficiary Questions & Mana'o



House Keeping

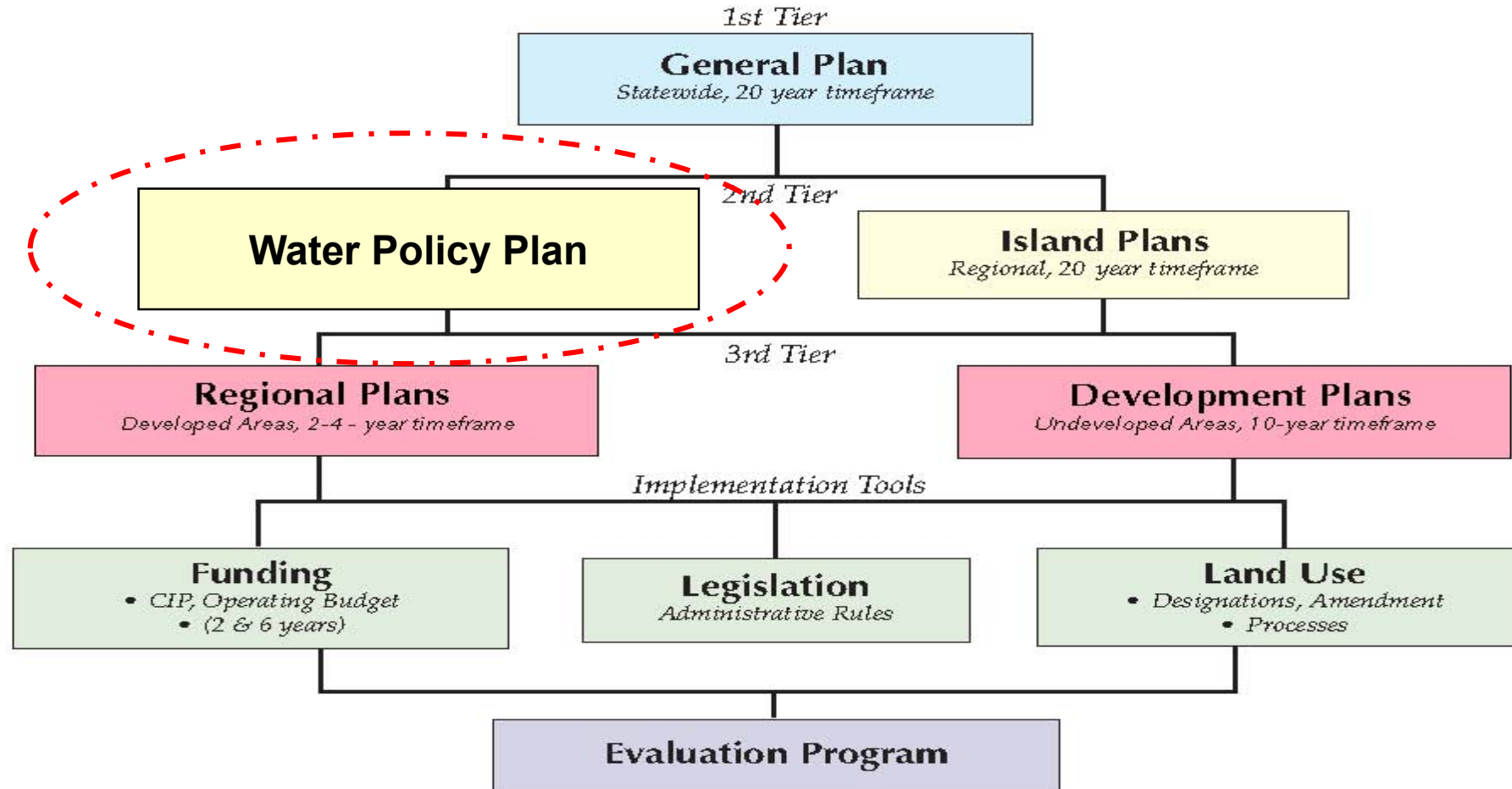
- Please keep your microphone on mute when you are not talking
- Type your questions in the chat or raise your virtual hand
- Please keep in mind this meeting is being recorded



Meeting Kuleana

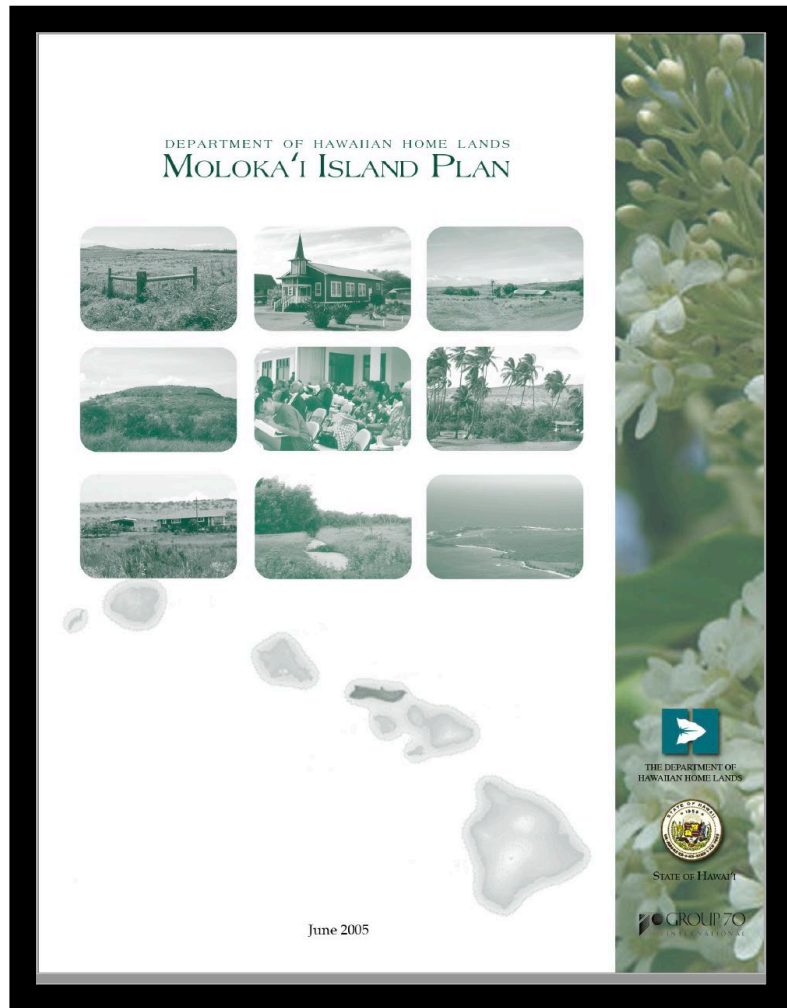
- Be respectful of the person talking – please do not interrupt the person that is talking;
- Wait for the facilitator to call on you or type your question into the chat box;
- When addressing other participants (verbally or in the chat box), be respectful, show aloha, treat others how you would like to be treated;
- Agree to disagree — accept that others may have different perspectives and opinions;
- Have an open mind — take home new ideas or new information.

DHHL Planning System



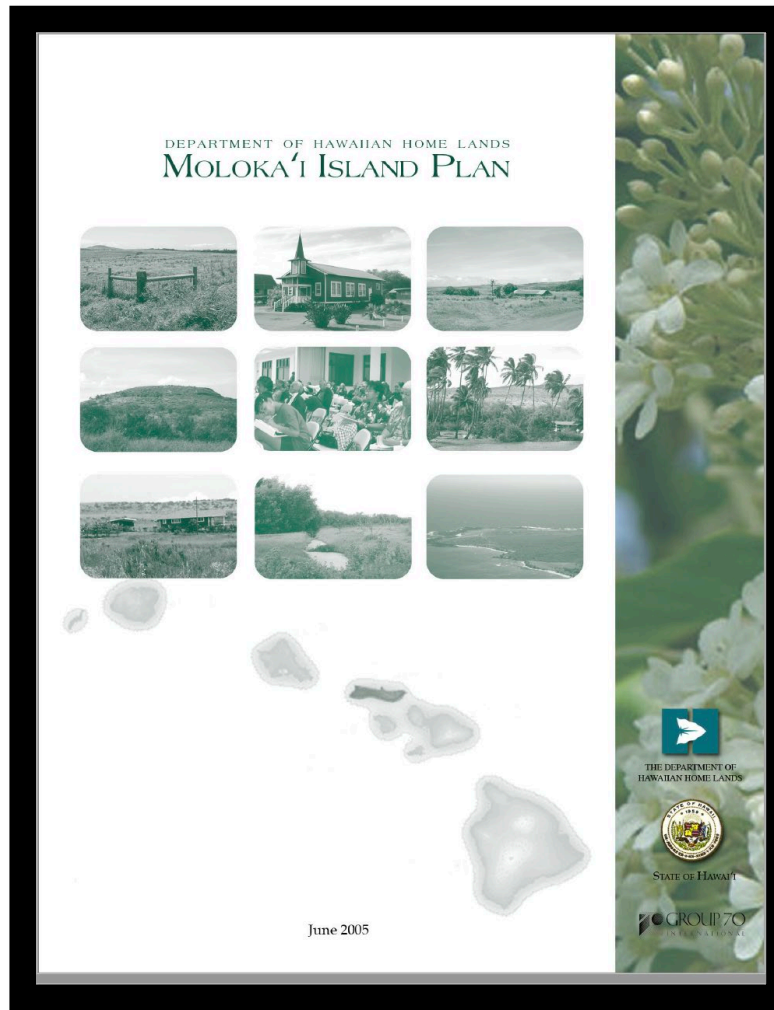
DHHL Planning System

Moloka'i Island Plan (2005)



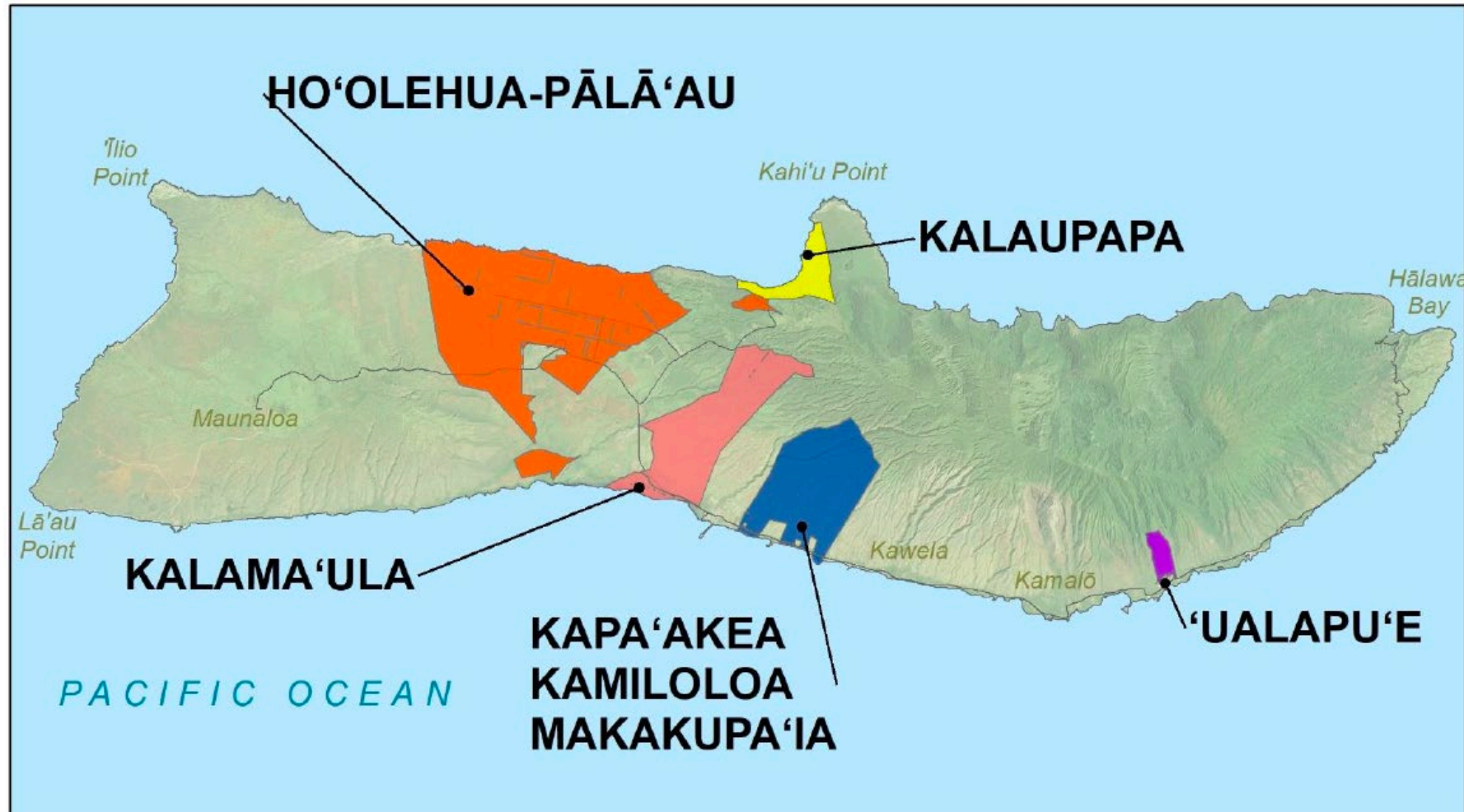
- Land use designations for 25,800+ acres on Moloka'i
- Different land uses have different water demands
- 20 year projection

Moloka'i Island Plan (2005)

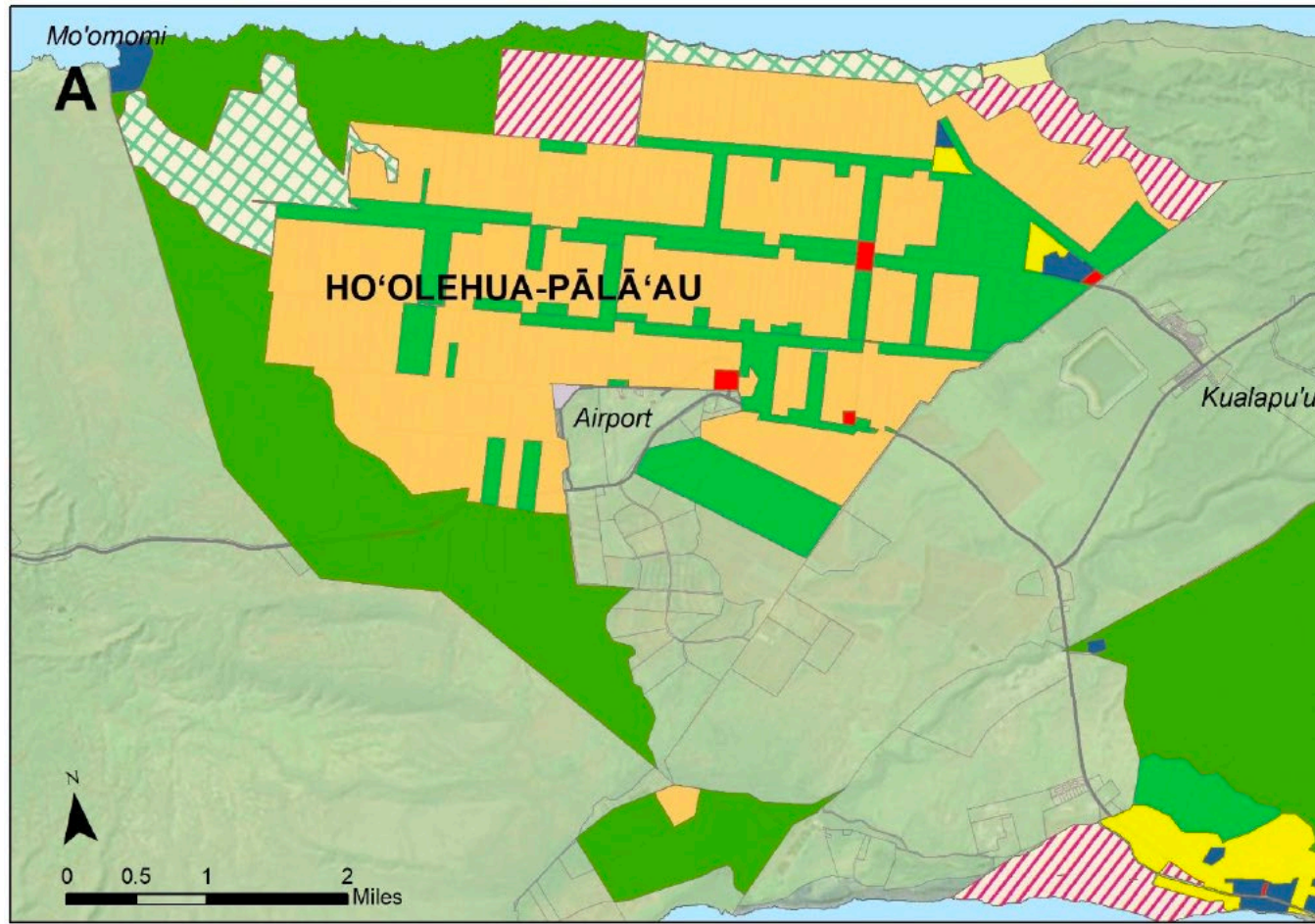


<i>Moloka'i Land Use Designations</i>	<i>Acres</i>	<i>Percent of total</i>
Residential Homestead	742	2.87
Subsistence Agriculture	2,338	9.04
Supplemental Agriculture	5,862	22.64
Pastoral	1,927	7.45
General Agriculture	6,415	24.80
Special District	7,758	29.99
Community Use	93	0.36
Conservation	655	2.53
Commercial	58	0.22
Industrial	16	0.06
<i>Total Acres</i>	25,864	100

Moloka'i Tracts



Ho'olehua Pālā'au



LEGEND

— Roads

DHHL Island Plan Designations

Commercial

Community Use

Conservation

General Agriculture

Industrial

Pastoral

Residential

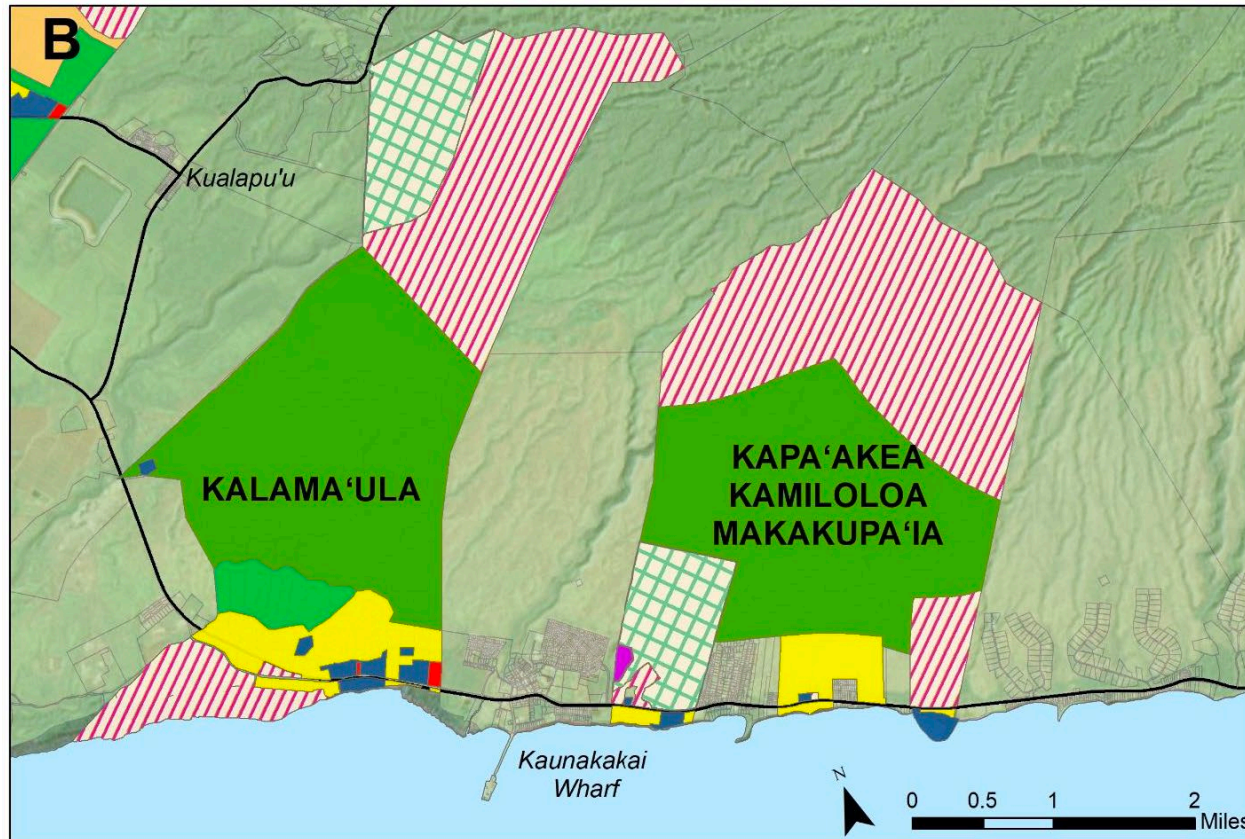
Special District

Subsistence Agriculture

Supplemental Agriculture

To be acquired

Kalama'ula, Kapa'akea, Kamiloloa, Makakupa'ia



LEGEND

— Roads

DHHL Island Plan Designations

Commercial

Community Use

Conservation

General Agriculture

Industrial

Pastoral

Residential

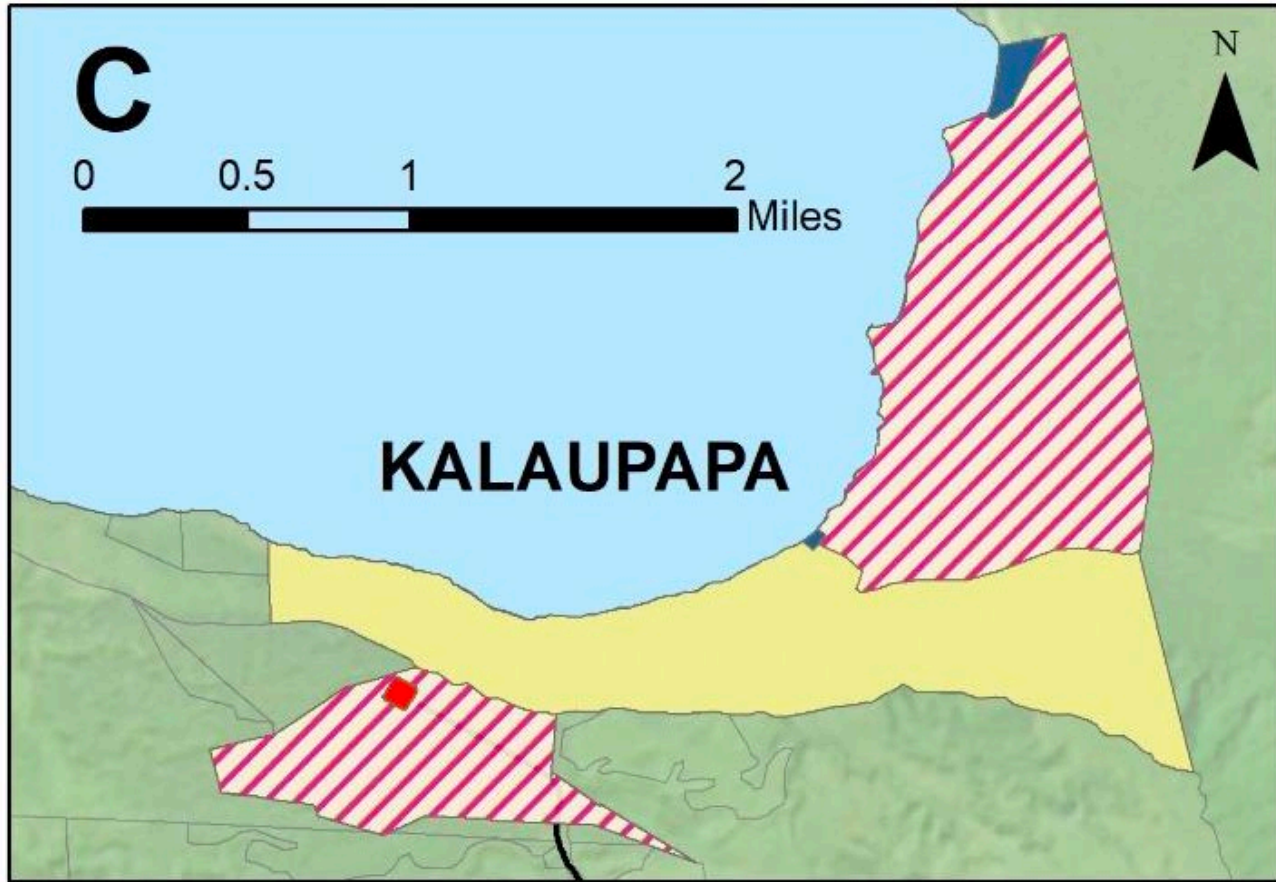
Special District

Subsistence Agriculture

Supplemental Agriculture

To be acquired

Kalaupapa



LEGEND

— Roads

DHHL Island Plan Designations

Commercial

Community Use

Conservation

General Agriculture

Industrial

Pastoral

Residential

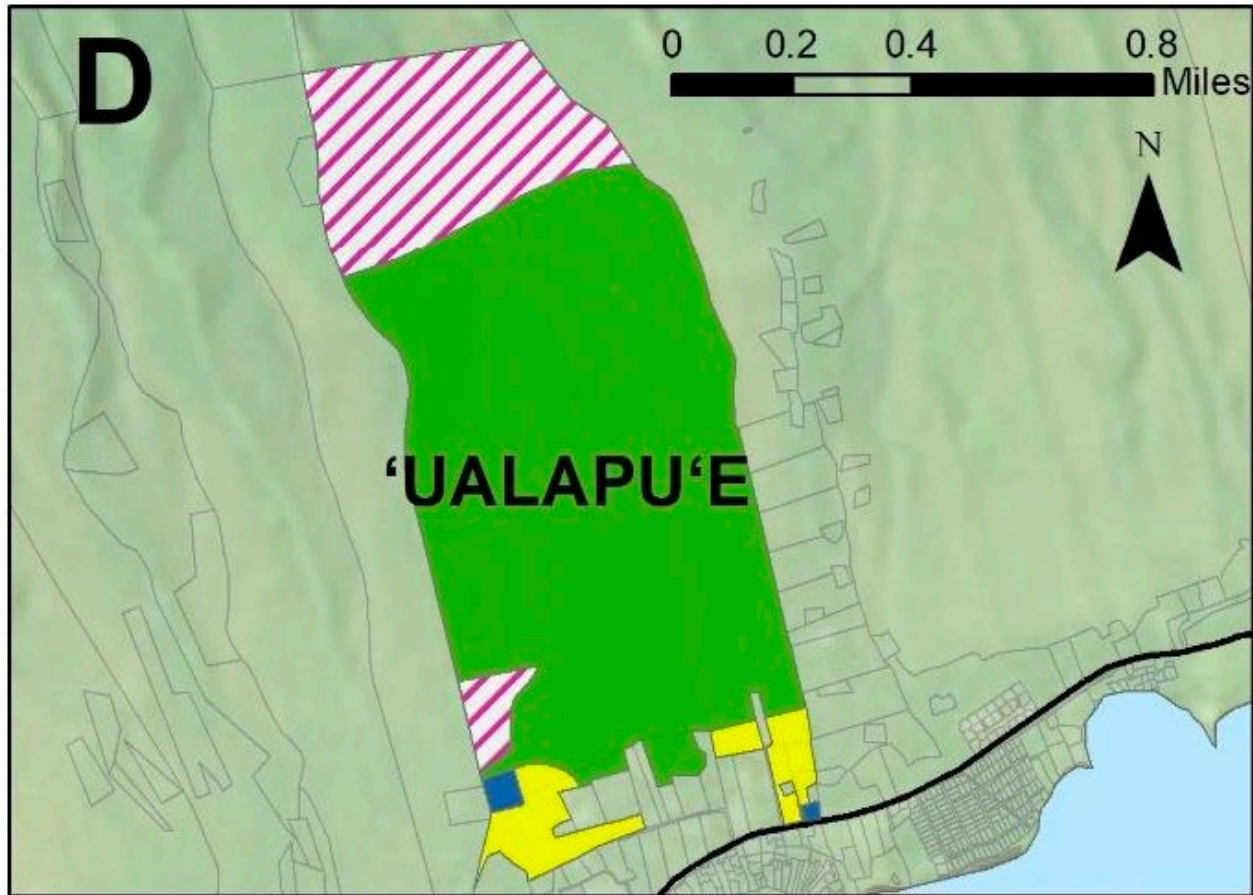
Special District

Subsistence Agriculture

Supplemental Agriculture

To be acquired

'Ualapu'e



LEGEND

— Roads

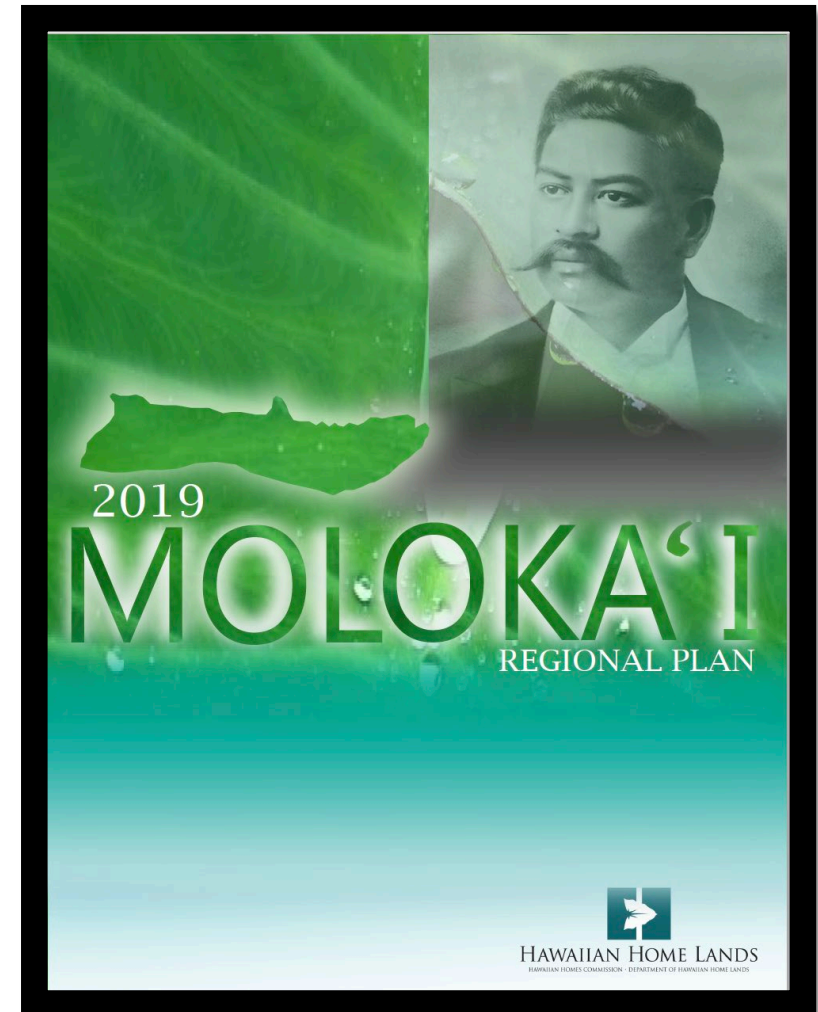
DHHL Island Plan Designations

- Commercial
- Community Use
- Conservation
- General Agriculture
- Industrial

- Pastoral
- Residential
- Special District
- Subsistence Agriculture
- Supplemental Agriculture
- To be acquired

Moloka'i Regional Plan (2019)

- Priority Project -- 'Ualapu'e Kuleana Homestead Settlement Plan
- Fall 2020, DHHL requested a water reservation in the 'Ualapu'e aquifer system area (ASYA)





DHHL Water Issues on Moloka‘i

- DHHL’s Kualapu‘u WUPA
- Additional “Water Reservations” for groundwater on Moloka‘i

Kualapu'u WUPA

- ACCEPTED April 8, 2021 – GWUPA 1100
 - To be published in Maui News issues of April 26, 2021 and May 3, 2021.
 - Application to be processed within ninety (90) days from the date of receipt unless there are objections



Additional Moloka'i groundwater “reservations”

- DHHL holds a reservation for Kualapu'u
- Our calculation: 2.905 mgd + .367 mgd

Additional Molokaʻi groundwater “reservations”

- DHHL requested a new reservation for ʻUalapuʻe for .855 mgd
- Reservations are by rulemaking in management areas
- CWRM asked: do we want any additional reservations on Molokaʻi?
- DHHL looking at potential needs for Kalamaʻula, Kapaʻakea, Kamiloloa, Makakupaʻia, Kalaupapa and Pālāʻau

What is a reservation?

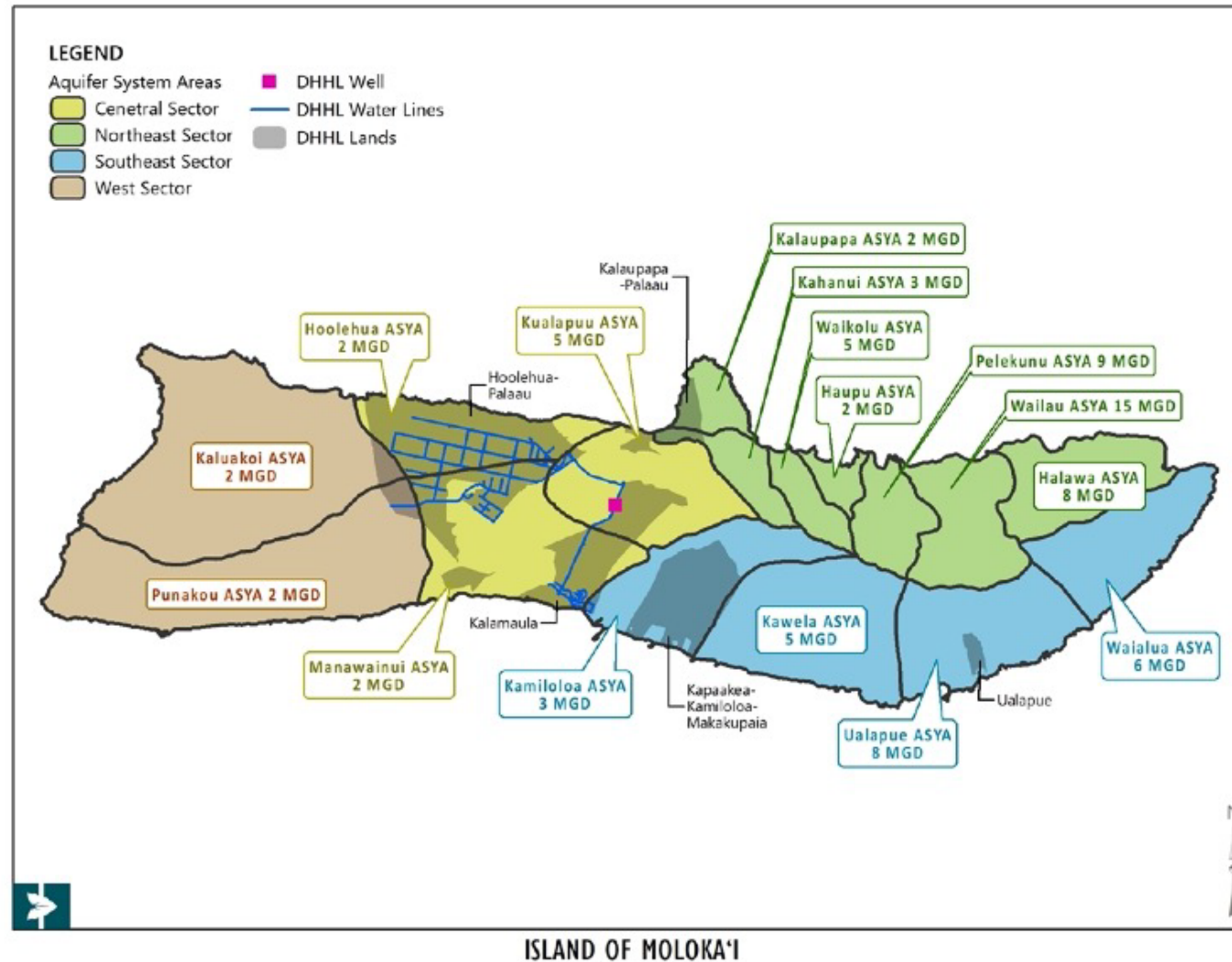
- A reservation is:
 - Kapu for future use
 - CWRM protects it from other users



A reservation is not

- It is not immediate access to “wet water”
- From reservations to “wet water” we still need:
 - CIP funds
 - Developing source, storage, transmission
 - Detailed design
 - Agreement w/county or others

Additional Moloka'i groundwater “reservations”



Additional Moloka'i groundwater "reservations"?

DHHL Tract	Use	Ac.	Units	Rate	Calculated Demand
Kapa'akea / Makakupa'ia / Kamiloloa	Res	264	286	600 gpd/unit	0.1716
Kapa'akea / Makakupa'ia / Kamiloloa	GA	2,165		2,500 gad	5.413
Kalama'ula	Res	88	57	600 gpd/unit	.0342
Kalama'ula	Sub. Ag	212	63	600 gpd/unit	.0378
Kalama'ula	Sub. Ag	212		2,500 gad	.530



Criteria for Developing Water

- For reservations or water development, criteria include
 - Source capacity (SY/IIFS)
 - Proximity to and rights to connect to
 - Pipelines
 - Roadways
 - Utilities
 - Impacts on public trust and other uses

Additional Moloka'i groundwater "reservations"?

DHHL Tract	Calculated Demand	Reservation Request	System Area
Kapa'akea / Makakupa'ia / Kamiloloa	0.1716	0.1716	Kawela
Kapa'akea / Makakupa'ia / Kamiloloa	5.413	1.0 mgd	Kamiloloa
Kalama'ula	.0342	.0342	Kawela
Kalama'ula	.0378	.0378	Kawela
Kalama'ula	.530	.530	Pālā'au



Meeting Kuleana

- Be respectful of the person talking – please do not interrupt the person that is talking;
- Wait for the facilitator to call on you or type your question into the chat box;
- When addressing other participants (verbally or in the chat box), be respectful, show aloha, treat others how you would like to be treated;
- Agree to disagree — accept that others may have different perspectives and opinions;
- Have an open mind — take home new ideas or new information.



Discussion

Are the additional
reservation requests
adequate?



Discussion

Are there any water needs that DHHL did not account for?



Criteria for developing water and identifying reservation areas

Source capacity

Proximity and rights to connect to infrastructure

Impacts on other public trust uses

Discussion

Is this list complete? Are there any other factors to consider?

Closing & Next Steps

- Comment Deadline – Friday, June 4, 2021 (Please email dhhl.planning@hawaii.gov)
- Beneficiary Consultation Report & Recommendations - Hawaiian Homes Commission Meeting (June / July)
- DHHL to Submit Water Reservation Request to State Commission on Water Resource Management (CWRM) (August)
- CWRM act on DHHL Water Reservation (TBD)
- DHHL will seek incorporation of its reservations into Maui County DWS's Moloka'i Water Use & Development Plan



Contacts

DHHL Planning:

dhhl.planning@hawaii.gov

Andrew Choy, Acting Planning

Program Manager (DHHL)

andrew.h.choy@hawaii.gov



A hui hou!

Mahalo for your time and
joining us this evening!

USGS Study

- Published January 30, 2020
- Funders: DHHL, USGS, OHA, County
- Presented to HHC Oct 2020
- Important for DHHL Water Use Permit Application (WUPA), reservations

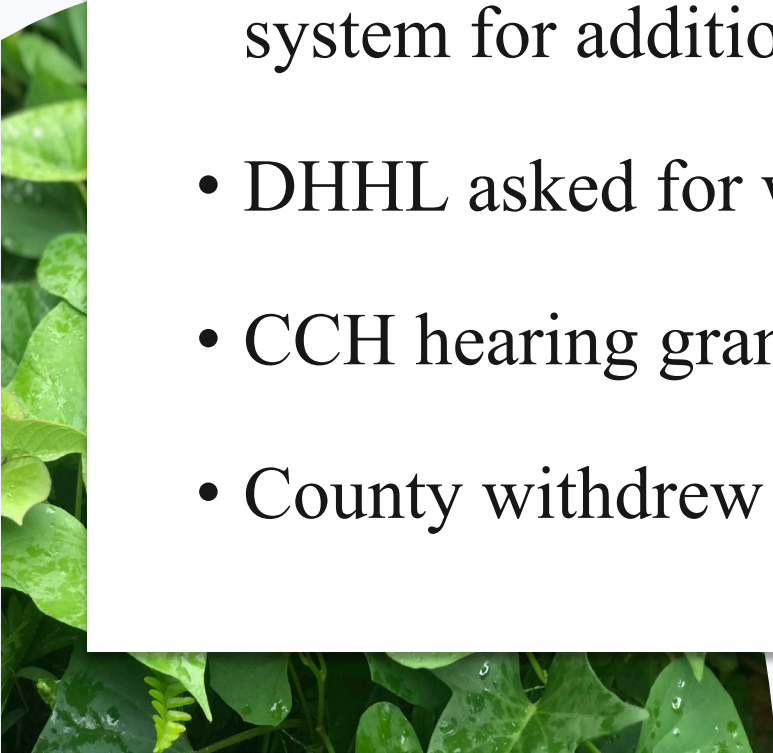


Kualapu‘u WUPA

- Drafted February – October 2020
- Extensive consultation w/CWRM staff
- Seeks water for Kalama‘ula Mauka, Nā‘iwa, Ho‘olehua, and 210 additional connections
- Submitted October 12, 2020
- December 18, 2020 CWRM requested addt’l info
- DHHL responded March 26, 2021
- CWRM asked for new information March 31



Maui County ‘Ualapu’e WUPA

- HHC approved the Moloka‘i Regional Plan February 18, 2020
 - Includes 175 kuleana homestead lots at ‘Ualapu’e
 - May of 2020: Maui County requests a WUPA for their ‘Ualapu’e system for additional uses and “flushing”
 - DHHL asked for water, and a reservation
 - CCH hearing granted in October 2020
 - County withdrew application in March 2021
- 

Molokai Reservation Request

May 5, 2021 Beneficiary Consultation Meeting Notes

Q = Question, A = Answer, C = Comment

Q: Is the Hawaiian Homes Commission Act (HHCA) a higher law than the Hawai'i Water Code? What is the relationship between the Water Code and the HHCA?

Q: If DHHL takes water beyond their present allocation, what is CWRM's recourse?

A: In short, DHHL has been doing so for many years, technically the water commission can try to fine DHHL, and the department would fight it vigorously. Molokai Ranch has no permit to water, and they continue to pump water from Kualapu'u and it has not been enforced against them, among other things, there would be a basic equity issue.

C: DHHL should look into an additional water reservation from the Kualapu'u aquifer, considering the amount of land (approximately 18,000 acres; Ho'olehua, Pālā'au, and Kalama'ula) which it services.

Q: Is Waihānau considered groundwater or surface water? Waihānau is a DHHL water source and could, if designed that way, help serve Kalama'ula. It's unclear whether that is surface water or groundwater.

A: Pursuant to the water code, the water commission can delineate groundwater (gw) areas and surface water (sw) areas or a combination thereof. We know that gw and sw are intimately intertwined. Although the commission has always managed them separately, they are not legally required to do so. Your question highlights one of the key issues in managing water and how the current management system is inadequate.

C: DHHL should be an active part in having a surface water designation for Moloka'i because that is going to impact how much water goes into the aquifer for the Kamiloloa ahupua'a. The water from the mountain is coming from Kawela all the way down and crossing approximately 12 ahupua'a. Therefore, we need to have some control of that water to ensure we have enough water for areas such as Makakupa'ia, another 5,000-acre parcel.

C: There needs to be an inquiry into the amount of land that is able to be developed for Hawaiian homesteading, considering the pressure from DHHL's waitlist and the amount of water needed for this area.

C: Our community and DHHL must carefully consider the amount of water we're asking for because once we move forward with a reservation, others will come after and take the remainder.

Q: What is the department's timetable for answering water meters requests by lessees in scattered lots in Ho'olehua and Kalama'ula? It's concerning because some of these lessees have waited since 2016 for a water meter.

A: The department is currently pumping over its permitted use and therefore, is unable to issue new water meters. The water commission has accepted DHHL's water use permit application as complete. The water commission has 90 days to act on this application. Once approved, the department will be able to issue meters because it will be authorized to pump more water.

A: DHHL has invested in studies to determine the amount of water it can responsibly withdraw water from this aquifer. Ultimately, the HHC may make a policy call. In other words, the HHC can decide to issue meters, if they feel the water commission is "dragging its feet." This action, however, may have consequences, such as fines from the water commission.

A: As you folks are aware, the Ho'olehua system is very old. The current pumping activity we're doing on this system puts a lot of stress on the components of the system. The department is doing massive improvements on the system that began this year. Once we have a better utility system with functioning parts, we can revisit this issue.

C: There needs to be some type of redress and consideration for the ways in which the state's water commission has treated homesteaders over the past 30-35 years since the enactment of the water code. CWRM's nonfeasance has directly impacted families' ability to get on their lands, lands they have been awarded yet they are unable to occupy because they do not have access to water.

Q: Is Kapa'akea included in the current rerouting of DHHL water pipes? Or is the new construction solely focused on Kualapu'u, Kalama'ula, and Ho'olehua?

A: No, Kapa'akea will not be included. The current construction project is to upgrade and replace the existing system. The current construction is not going to expand the DHHL Ho'olehua water system to areas not being currently served.

Q: When Maui County has repairs and maintenance on their water pipes, they rely on DHHL to provide water to their customers that pass through Kapa'akea. If DHHL is able to service Maui County at those times, what is stopping DHHL from providing water to their homesteaders in Kapa'akea?

A: It may be a capacity issue with the existing system, it might not be able to supply water to Kapa'akea on a full-time basis. We will check on this.

C: In terms of its procedures, it seems like CWRM has no deadlines and is, therefore, able to withhold water from homesteaders on a technicality. The lack of deadlines fails to hold CWRM

accountable to the homesteader communities and the outstanding water issues that go unaddressed.

C: When the department discusses water policies and issues, is it possible to keep that conversation separate from a discussion on land issues?

C: The Moloka‘i Island Plan, does not reflect the ‘Ualapu‘e project.

C: DHHL did not address the water problems in 2004 and 2005. This is concerning because it seems as if the beneficiaries’ needs were forgotten and left unaddressed.

Q: Is there an existing water pipe in Kamalō that can be easily piped over to ‘Ualapu‘e?

A: We will research this question and get back to the community with an answer.

Q: Do DHHL beneficiaries, as Hawaiians, have first rights to domestic water use over Maui County?

A: On paper, yes. DHHL and its beneficiaries are supposed to come before any private commercial use of water, which includes the municipal uses of the county. The struggle over water in Hawai‘i, however, has been to get the law actually followed.

Q: What exactly are we asking CWRM for that we need to be involved in as homesteaders?

A: Initially, we were asking for a future water reservation for ‘Ualapu‘e for .855 MGD, for the already approved Kuleana Homestead Plan that was adopted by the HHC with the updated Moloka‘i Regional Plan. This reservation is for domestic needs for 175 kuleana lots and agricultural needs, such as irrigation. The water commission then asked if DHHL has any other reservations. Upon review, we have some preliminary calculations, however, we wanted to conduct beneficiary consultations prior to submitting other reservation requests to CWRM. Our questions to the beneficiaries include should we be asking for reservations in different aquifers or for these same aquifers?

Q: Does the reservation amount we would potentially ask for come out of one well?

A: No. To fully use our existing reservation in Kualapu‘u, we will need new wells eventually.

Q: Does DHHL also serve Nā‘iwa, non-homesteaders that the County should be serving?

A: I am not sure but I will check. We do have some pipes in the Nā‘iwa subdivision with hydrants. Our goal and plan are to try and get water into our subdivision. As it relates to servicing non-homesteaders in that area, I have to double-check.

A: In general, as a regulated public water system under the Department of Health, DHHL is required to service any members of the public that are close to or within our water

system. The same rules apply to the County. If there are homesteaders near the County's system, they are required to serve them.

Q: Does anyone know if the County used to use water coming out of the MIS to service county people before the water went into the MIS? Can the water from the MIS also be used for drinking water?

C: I have concerns about taking water from the ground because that will have major impacts on fishing, coastlines, reefs, and our farms.

C: DHHL should look into taking over the Moloka'i Irrigation System to ensure that homesteaders have water. The ability to expand the system to serve every homesteader is the responsibility of the Department of Agriculture and they have not taken action to ensure that every homestead lot has access to irrigation water.

C: DHHL should support the move to designate Moloka'i as a water management area. This action would ensure that we have the ability to cautiously manage our water resources. Our water resources should be left in place rather than transferred over 13 ahupa'a throughout the island.

C: Does DHHL need to build new wells in Kualapu'u or should the County vacate their well?

C: All the water issues on Moloka'i, the HHC should be pressing the water commission on.

Q: What is the status of the Hawaiian Homes seat on the Maui County Water Board?

A: SB1122 was one of the bills DHHL introduced in this year's legislative session. The bill sought to achieve 5 things:

- 1) if the counties have capacity on their system, they must reserve some of that capacity for DHHL to utilize in order to provide water to homestead areas
- 2) if the county does not have the capacity and the department would have to develop a new water source, the department will be permitted to keep all the water from that source. The current practice is that the county takes 1/3 of the water that a developer develops for its own use
- 3) require each county BWS to reserve a seat for an individual to represent DHHL in the county BWS decisions
- 4) require counties to annually report on how much capacity it might have in its systems that could serve DHHL
- 5) require the counties to gain water licenses from the state because they provide water for commercial purposes as well

C: It is appalling that homesteaders have to beg for water that we have a preference for. Homesteaders gave up water rights to help the rest of the people on Molokai to our detriment. The trust has deteriorated over the years between state departments and the homestead communities. More collaboration is needed from community members and the department to resolve the water issues.

Q: Does the Hawai'i Water Code or Hawaiian Homes Commission Act authorize the HHC or the County to enter into a formal agreement for the County to utilize DDHL water rights for DHHL customers that are served by the Kualapu'u water system? The County currently takes water from the same place that DHHL takes water except the County pushes it across the island which is highly inefficient. Additionally, we are not achieving equity under the law when Ho'olehua and Kalama'ula homesteaders benefit from DHHL water rates while Kapa'akea and others pay higher rates. Would there be a way for the County to apply DHHL's water rates for those homesteaders?

A: I'm not aware of anything that would prohibit the HHC through the department to enter into an agreement with the County to try and effectuate those kinds of actions. I'm not sure, whether on the County side, in terms of their rules and regulations, they would be allowed to charge a different rate of water for similarly situation customers. The County may also be concerned about an equal protection lawsuit if they charged different rates to homesteaders.

A: Another factor to consider is the department's water rates for Ho'olehua, which are still well below current water rates for the County system. I would caution folks against comparing rates because water system costs are different. For example, the cost to operate and manage DHHL's water system is different from the County's costs. Additionally, should the department reach a formal agreement with the County -- that the department's customers are charged a different rate from what the County's customers pay -- the County will likely argue that the trust should make up the difference and subsidize the homesteaders because of the costs to the County to operate and manage the system.

C: One reason the County water rates are so high is because its water source is in Kualapu'u and they service Kaunakakai and East End. This is inefficient because if the source was closer to where they serve, the County's distribution cost -- because of electricity -- would be lower.

C: 600 gpd is not a reasonable amount of water for residences. Kalama'ula and Ho'olehua are really dry areas, and the water evaporates extremely fast. The numbers that we are using are too conservative and we need to increase those estimates.

C: Due to climate change, the amount of water required per acre to farm has almost doubled. It would be best to overestimate the amount of water we need to mitigate the water that is not being accounted for.

C: I do not believe 2.5 million gallons of water per day is enough. However, we do need to be strategic because if we ask for more, they [CWRM] may not take action on our reservation.

C: It is not an efficient use of funds to spend money transporting water to Kapa‘akea to serve a small number of ‘ohana. Would it be possible to negotiate an agreement with the county to serve water to that community? Presently, DHHL supplies water to Kalai. Therefore, would it be possible for DHHL to request that the County provide water to the DHHL community in Kapa‘akea in exchange for providing the County’s water needs in Kalai? Otherwise, DHHL should advocate to ensure that Moloka‘i has a seat on the County’s water board. Relatedly, DHHL did try to transfer their water system over to the County in the ’80s but that was unsuccessful.

C: The County Water Board does not recognize DHHL’s first rights to water.

C: DHHL fixes the MIS when it is down. Should DHHL take over the system since DHHL is the entity that fixes it?

C: In terms of water issues on Moloka‘i, reservations are only one small part of it. However, it is a way to kapu DHHL’s and beneficiaries’ future demands.

C: We’re talking about DHHL stuff in isolation while there are so many things going on simultaneously. The biggest problem I see is people in the same “glass,” sucking on straws so close together. The impacts from these actions are being seen on the shorelines and reefs.

C: The County is considering developing another well somewhere because the Kawela well is not doing well. At the same time, there is a legal issue regarding surface waters in the Kawela River. Impacts to surface waters have an impact on the County’s well, which will likely impact the Kawela development.

C: Well 17 has been operating for 10-20 years without a permit and has a huge impact on the shoreline. This needs to be investigated because they do not have a permit and they are pumping 1 million gallons of water.

C: The County is going to run into major problems as they try to install a new well, therefore, they should take over Well 17. In addition, the County should try to get a reservation below 1 million gallons to take pressure off the salt content in the ‘Ualapu‘e aquifer.

C: Our community should also be mindful of the other water battles around us that all interconnect and will likely impact our ability to feed our families and natural resources.

C: Maybe DHHL can work toward having homestead rates or farm rates. For example, a law that can ensure homesteaders have the same rates as their counterparts.

C: Well 17, the County well, and DHHL's well all impact each other. The more pumping there is from a single area, the more intense the effects are on the reef. With that in mind, DHHL based its permit on the understanding that it can mitigate the impacts to the coastal resources. DHHL's permit, however, does not vouch for any additional effects that might occur from Well 17. Additionally, the department asked the commission to consider its water use permit separately and before considering the Ranch or the County's permit. CWRM has advertised DHHL's application and has not advertised the Ranch's application.

C: Re: 'Ualapu'e. When the County withdrew its water use permit, there was an appearance of discrimination against DHHL beneficiaries.

C: The County continues to waste water by flushing its pipes.

C: 'Ahahui members conducted shoreline scoping in 'Ualapu'e and discovered that majority of the residents had underground wells that were freshwater, which becomes brackish.

C: The County should have a working relationship with DHHL.

C: The closest proximity to 'Ualapu'e was Wailau and Pelekunu, which is right over the hill from 'Ualapu'e. Therefore, if the County can go in and do diversions, then let's put a "straw" in for 'Ualapu'e.

C: Moloka'i does not have representation on the Maui BWS. Testimony needs to be sent to advocate for representation for Moloka'i on the Maui BWS.

C: Notably, the County is starting their Moloka'i water use and development plan process. It's critical for the beneficiaries, DHHL, and the community to be involved in and articulate their concerns and needs.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

June 10, 2020

Ref:#PO-20-157

MEMORANDUM

TO: Suzanne D. Case, Chairperson
Commission on Water Resource Management

COPY TO: Jeff Pearson
Maui County Department of Water Supply

FROM: William J. Aila, Jr., Chairman
Hawaiian Homes Commission *[Signature]*

SUBJECT: Water Use Permit Application (WUPA) No. 01094
`Ualapu`e¹ Shaft Well (Well No. 4-0449-001, `Ualapu`e
System, Southeast Sector, Molokai

The Department of Hawaiian Home Lands (DHHL) has reviewed WUPA No. 01094 `Ualapu`e Shaft Well (Well No. 4-0449-001, `Ualapu`e System, Southeast Sector, Molokai.

We appreciate the opportunity to review this application and offer the following background, comments, and requests for action.

Background

The following points serve as a context for our comments on this WUPA.

The State (and particularly the Commission on Water Resource Management [Commission]) has a duty to protect the rights of DHHL to water resources, as enumerated in the Hawaiian Homes Commission Act (HHCA) §§ 101(4), 220, 221; Hawai'i

¹ We note that the official notice from CWRM omits the diacriticals in the name `Ualapu`e, though the WUPA from Maui County uses them. We use them here.

Ms. Suzanne D. Case, Chairperson
June 10, 2020
Page 2 of 5

Constitution, Article XI, §§ 1 and 7 and Article XII, § 7; and Hawaii Revised Statutes (HRS) Chapter 174C, the State Water Code.

DHHL lands on Molokai comprise approximately 25,900 acres of land, roughly 15% of the area of the island and one eighth of the total trust holdings across the islands. DHHL only has reservations of water by rule for its lands in Kualapu`u (HAR §13-171-63.² Many of our lands on Molokai do not currently have sufficient allocations or reservations of water (e.g., `Ualapu`e).

Generally, the State Water Projects Plan (SWPP) Update of 2017 estimated future water demands on Hawaiian Home Lands and can serve as the basis, among other things, for the Commission to secure reservations of water for DHHL. That document details its methodology and relied on Island, regional, and project plans for estimates of 20-year water demands. It carefully noted however in its conclusions that "Because the SWPP is a guide and a high-level planning document which identifies water demands and possible source development strategies statewide, localized water master plans should be reviewed and checked for consistency with the SWPP, and if available, County Water Master Plans, and should be updated where necessary."³

On February 18, 2020, the Hawaiian Homes Commission (HHC) approved an updated Molokai Regional Plan, which culminated a more than two-year, community-based planning process that was kicked off with a community meeting on November 1, 2018. See <http://dhhl.hawaii.gov/po/molokai-regional-plan-2019/>. Among other matters it calls for the development of 175 homestead lots on a 376-acre parcel of land at `Ualapu`e.

Unfortunately, the first time that DHHL heard from Maui County that it was seeking to increase its authorized pumping from Well No. 4-0449-001 was after receipt of the herein

² "Department of Hawaiian home lands reservation for Kualapuu, Molokai. The commission hereby reserves 2.905 million gallons per day of ground water from state lands in the Kualapuu aquifer system for use on Hawaiian home lands on Molokai. This amount shall be in excess of the existing uses of water on Hawaiian home lands as of the effective date of this rule. [Eff. June 10, 1995]"

³ SWPP 2017, Conclusion and Recommendation #2, Page 5-1.

referenced WUPA by CWRM. This was received by email by DHHL on May 18, with a deadline for comments or objections less than four weeks later.

Because DHHL's beneficiaries on Molokai have a long-standing interest in the development of homesteading in 'Ualapu'e, because they have been engaged in a planning effort for more than two years prior to this permit being sought, and because they may exercise traditional and customary practices in this area, DHHL anticipates considerable interest in this WUPA.

Comments and requests for the applicant and Commission

We understand this WUPA requests approximately 0.350 million gallons per day (mgd) total permitted uses, an increase from 0.185 mgd for residential, agricultural, irrigation, and system flushing uses. We understand that this is an amount closer to what is being currently used, and some of this water will allow for future use, though the information provided in the WUPA was insufficient to determine how much water was for new potential uses. Our attempt to discuss this matter with the County Department of Water Supply was unfortunately unsuccessful as of this writing.

Based on the above, the department offers two comments and two requests in regards to this WUPA.

Comment #1. The County's effort to address the impacts of this proposed withdrawal on traditional and customary practices exceeds that of most other applicants, but still should go farther. While the WUPA form from CWRM does not explicitly ask for an analysis of the impacts of a proposed well on traditional and customary practices of native Hawaiians, it is clear such an analysis is required (see *Ka Pa'akai o ka 'Āina v. Land Use Comm'n*, 94 Hawai'i 31, 7 P.3d 1068 (2000)).

The County has done a good job at beginning to identify key resources in the area that may be impacted from an increased withdrawal. However, we do not see any evidence that the County spoke to any known practitioners in the area. Secondly, we note and agree with the county's observations that the proposed withdrawal is a small fraction of the Sustainable Yield for the sector. However, the proposed source is very close to the

coast, and a more specific examination of groundwater impacts in the immediate vicinity may be warranted.

Comment #2. The applicant's response to Item No. 15 offers specific reference to the SWPP, which is a frequent request of DHHL when reviewing WUPA. However, as noted above, in this instance the information of future demand in the SWPP for Ualapu'e is outdated, and earlier outreach to DHHL could have addressed this.

Request #1. The CWRM has a statutory obligation described in Section 101 of the water Code (HRS 174C) as follows:
"Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act."

We believe the CWRM is obligated, and we hereby request, that they reserve for DHHL by rule sufficient water for the proposed 175 DHHL homesteads at Ualapu'e on a 376-acre parcel. DHHL believes on preliminary analysis a reservation of 100,800 gallons per day for 175 lots (at the applicable water system standard of 600 gallons per unit per day), and 750,000 gallons per day for irrigation of 300 acres of the 376-acre parcel (assuming 2,500 gallons per acre per day), totaling 0.850 million gallons per day.

Request #2. The DHHL, as the SWPP accurately notes and the WUPA repeats, has considered developing a well on its property at Ualapu'e. However, given the WUPAs note that a considerable amount of water is currently used to flush the lines, and that DHHL has a future public trust need for water in this area, we would seek the County's cooperation in providing water for our planned development in this area.

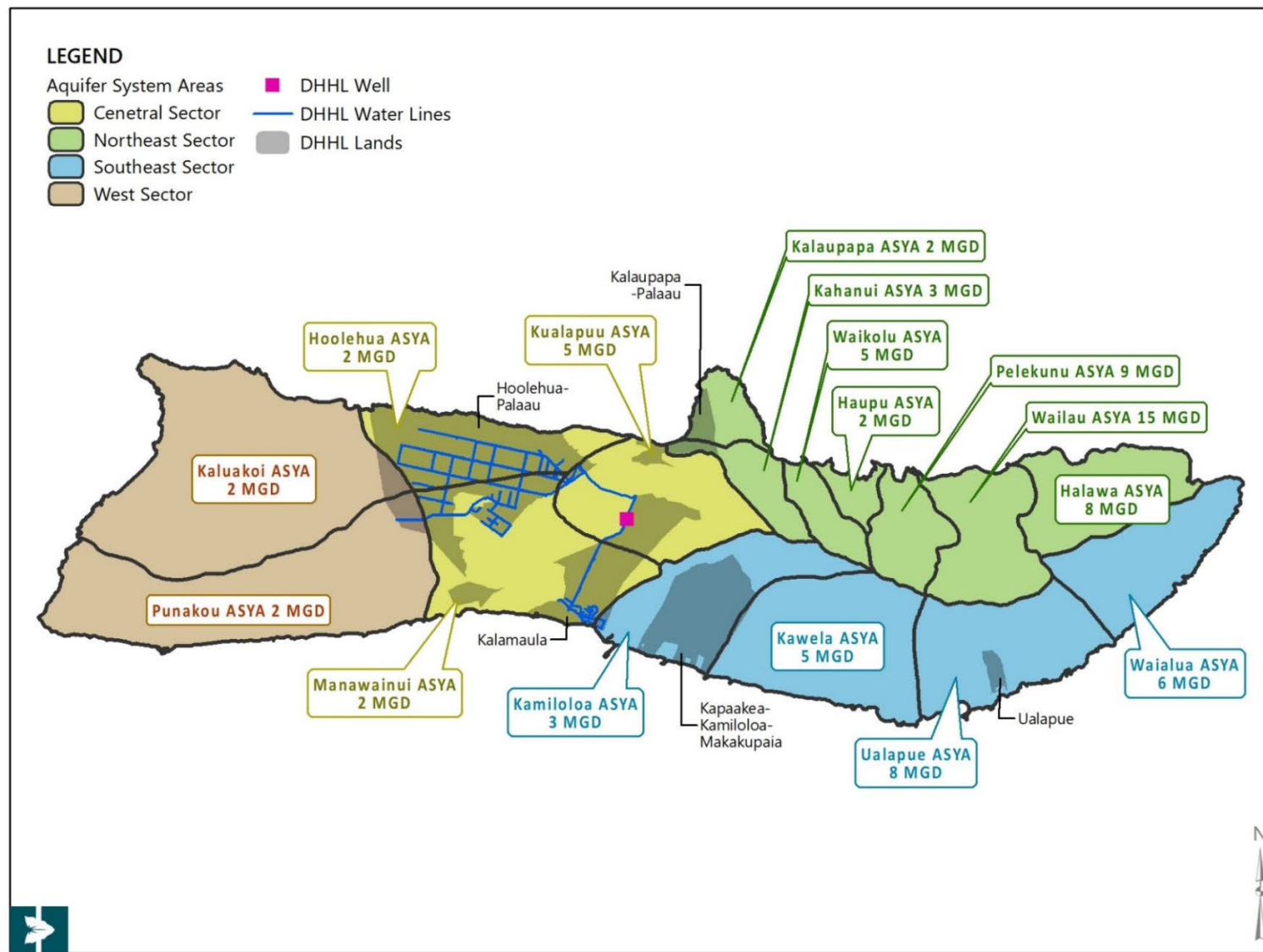
Conclusion

These points are of concern to DHHL and we ask for specific action on our requests. Mahalo for the opportunity to respond

Ms. Suzanne D. Case, Chairperson
June 10, 2020
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to this WUPA. If you have any questions or require additional information, please contact Andrew Choy, Acting Planning Program Manager at (808) 620-9485 or by email at: andrew.h.choy@hawaii.gov.

EXHIBIT B



ISLAND OF MOLOKA'I

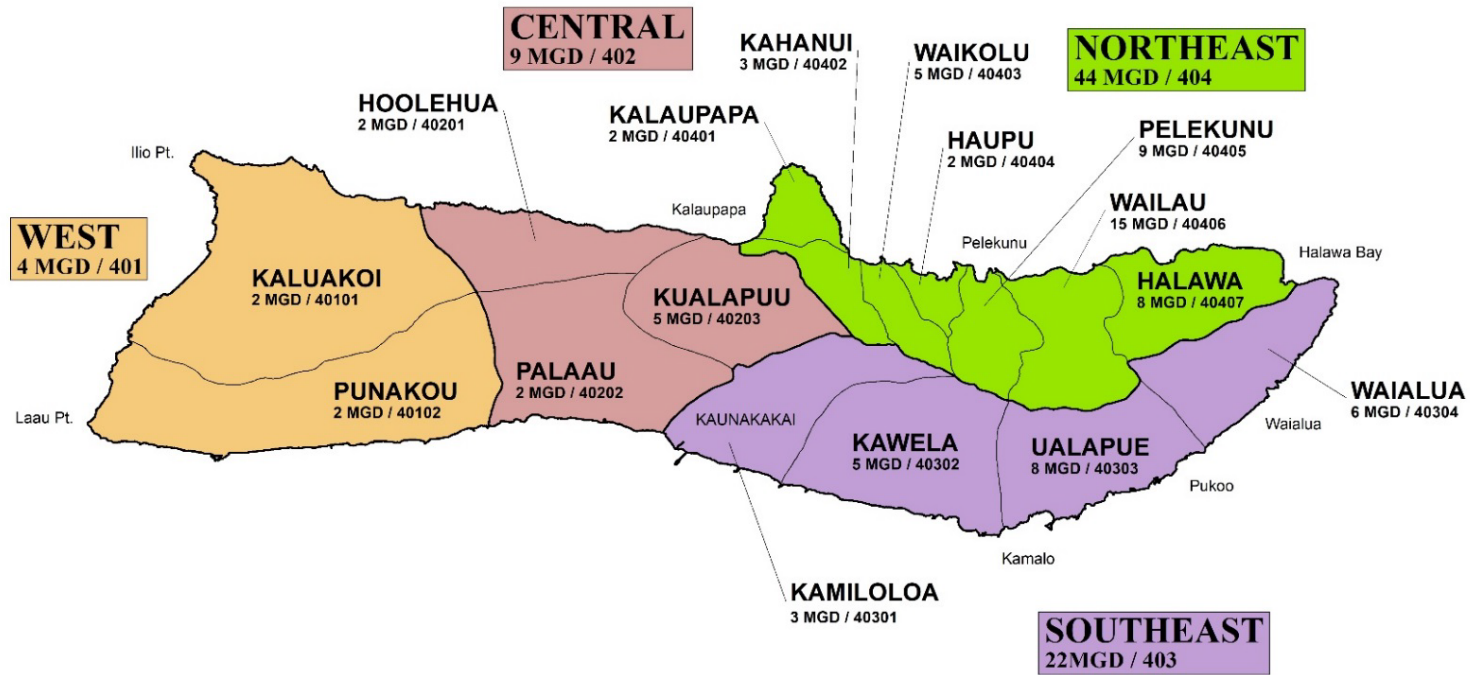
N
1" = 5 MILES

STATE OF HAWAII
COMMISSION ON
WATER RESOURCE MANAGEMENT

ISLAND OF MOLOKAI

TOTAL = 79 MGD

HYDROLOGIC UNITS
Sustainable Yield / Aquifer Code





Report Parameters

WUP Type: Water Use Permit, Administrative Modification, Reservation, Transfer, CWRM Decision and Orders,
Court Orders, Other
Island: Molokai
Applicant: All
Well # Prefix: All
Date: All
Issued Date: All
Date Accepted: All
Aquifer Sector: All
Aquifer: All
Source or End Use TMK: All
Aquifer Type: Alluvial, Basal, Caprock, Dike, Perched, Not Specified
Water Quality: Fresh, Brackish, Potable, Non-Potable, Not Specified
Not Salt
Proposed Use: All

WUP = Water Use Permit, 12-MAV = 12 month moving average, Diff = WUP-12-MAV, mgd = million gallons per day

Island of Molokai

Aquifer System Ground Water Management Area: 40402 Kahanui

Sustainable Yield (mgd): 3

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00201	08/04/1993	U.S. National Park Service, Kalaupapa, NPS	4-1058-001	Kalaupapa 1	0.094
Summary for Kahanui (1 detail records)					Total: 0.094
					SY Available: 2.906

Island of Molokai

Aquifer System Ground Water Management Area: 40101 Kaluakoi

Sustainable Yield (mgd): 2

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00869	02/18/2009	Pierluigi Zappacosta (Tellos, L.P.)	4-0916-001	Papohaku Zappacosta	0.008
00878	11/18/2009	Terry & Pam Harris	4-0915-002	Papohaku-Harris	0.008
Summary for Kaluakoi (2 detail records)					Total: 0.016
					SY Available: 1.984

Island of Molokai

Aquifer System Ground Water Management Area: 40301 Kamiloloa

Sustainable Yield (mgd): 3

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00195	08/04/1993	County of Maui Dept. of Parks and Recreation, Central Maui	4-0501-007	Kaunakakai-Parks - Duke Maliu Park	0.075
00312	11/17/1993	Hale Mahaolu Home Pumehana	4-0501-006	Home Pumehana	0.005
00962	09/15/1993	Molokai Properties Ltd, MPL	4-0501-004	Kupa Shaft	0.056
00982	09/15/1993	Molokai Properties Ltd, MPL	4-0601-001	Oloolo	0.075
Summary for Kamiloloa (4 detail records)					Total: 0.211
					SY Available: 2.789



Report Parameters

WUP Type: Water Use Permit, Administrative Modification, Reservation, Transfer, CWRM Decision and Orders,
Court Orders, Other

Island of Molokai

Aquifer System Ground Water Management Area: 40302 Kawela

Sustainable Yield (mgd): 5

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00177	03/14/1995	David W. Curtis	4-0352-010	Kamalo-Curtis	0.012
00184	08/04/1993	Shigenobu Inouye	4-0352-011	3-L Farm	0.004
00206	08/04/1993	Mahealani Ranch	4-0352-009	Kamalo	0.010
00223	03/14/1995	Maui Department of Water Supply, MDWS	4-0457-001	Kawela Shaft	0.333
00266	03/14/1995	John WM. laea, Sr.	4-0456-016	Kawela-laea 3	0.017
00268	03/14/1995	Robert M. Granger	4-0456-017	Kawela-Johnson	0.016
00291	11/17/1993	John N. Urauchi	4-0352-012	Kamalo-Urauchi 1	0.001
00299	04/14/1994	T.T. Meyer, Inc.	4-0354-002	Kamalo-Tt Meyer2	0.040
00300	04/14/1994	T.T. Meyer, Inc.	4-0354-004	Kamalo Tt Meyer4	0.005
00308	04/14/1994	T.T. Meyer, Inc.	4-0354-001	Kamalo-Tt Meyer1	0.029
00338	04/14/1994	Kanukuawa Ranch	4-0354-003	Kamalo-TT Meyer3	0.017
00751	10/21/2005	Harvey A. Teves	4-0354-007	Keonekuino-Teves	0.045
00885	03/03/2011	Kawela Plantation Homeowners' Association	4-0456-004	Breadfruit Shaft	0.285
			4-0456-009	Kawela DW1	
			4-0456-018	Kawela Plantation 2A	
			4-0456-019	Kawela Plantation 3A	
			4-0457-004	Kawela Ag 1	

Summary for Kawela (17 detail records)

Total: 0.814

SY Available: 4.186

Island of Molokai

Aquifer System Ground Water Management Area: 40203 Kualapuu

Sustainable Yield (mgd): 5

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00269	09/15/1993	Maui Department of Water Supply, MDWS	4-1059-001	Waikalae Tunnel	0.036
00359	10/20/1995	Maui Department of Water Supply, MDWS	4-0801-003	Kualapuu Mauka	0.516
00568	03/14/1995	Department of Hawaiian Home Lands, Molokai, DHHL		RESERVATION	2.905
01100	07/20/2021	Department of Hawaiian Home Lands, Molokai, DHHL	4-0801-001	Kauluwai 1	0.595
			4-0801-002	Kauluwai 2	

Summary for Kualapuu (5 detail records)

Total: 4.052

SY Available: 0.948

Island of Molokai

Aquifer System Ground Water Management Area: 40202 Palaa



Report Parameters

WUP Type: Water Use Permit, Administrative Modification, Reservation, Transfer, CWRM Decision and Orders,
Court Orders, Other

Island of Molokai

Aquifer System Ground Water Management Area: 40202 Palaau

Sustainable Yield (mgd): 2

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00200	08/04/1993	Kalaiaikamanu Hou Congregational Church, Inc	4-0602-003	Kalaiaikamanu	0.005
00293	11/17/1993	Maui Electric Company, Ltd., MECO	4-0603-007	Naiwa Dug	0.000
00294	11/17/1993	Maui Electric Company, Ltd., MECO	4-0604-003	Naiwa-MECO-Pit	0.000
00607	11/17/1993	Molokai Ranch Honolulu Office	4-0706-002	South Hoolehua	0.864
00770	06/13/2006	Steven Chaikin (Molokai Sea Farms)	4-0605-001	Orca Shaft 1	0.600
			4-0605-002	Orca 2	
00771	06/13/2006	Steven Chaikin (Molokai Sea Farms)	4-0605-003	Orca 3	0.040
00967	11/17/1993	Corn States LLC	4-0603-001	Umipaa	0.046
01106	04/14/1994	Bayer Production Supply LLC	4-0705-005	Naiwa	0.012
Summary for Palaau (9 detail records)					Total: 1.567
					SY Available: 0.433

Island of Molokai

Aquifer System Ground Water Management Area: 40303 Ualapue

Sustainable Yield (mgd): 8

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00214	11/17/1993	Hawaii Sugar Planter's Association	4-0448-001	Mapulehu Shaft 1	0.003
00221	09/15/1993	Maui Department of Water Supply, MDWS	4-0449-001	Ualapue Shaft	0.185
00310	11/17/1993	Pearl Friel Petro	4-0549-001	Mapulehu Tunnel	0.010
00354	03/14/1995	Wren W. Wescoatt (Wescoatt Family Trust)	4-0350-005	Ualapue-Wescoatt	0.004
00461	04/16/1997	Gregory Myron Kerner	4-0448-003	Mapulehu Shaft 3	0.007
00526	07/21/1999	Stanley T. Ort	4-0447-002	PUKO'O FARM	0.003
00841	06/17/1998	Manaba Enterprises, Inc.	4-0350-007	Ualapue-Petro	0.015
00854	02/18/2004	Richard & Kim D Markham	4-0449-006	Markham Farm	0.008
01083	06/17/1998	Jack Spruance	4-0350-007	Ualapue-Petro	0.015
Summary for Ualapue (9 detail records)					Total: 0.250
					SY Available: 7.750

Island of Molokai

Aquifer System Ground Water Management Area: 40304 Waialua

Sustainable Yield (mgd): 6

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00222	06/02/1994	Kainalu Ranch 1	4-0546-002	Puueleluu 2	0.202
00490	11/06/1998	Puu O Hoku Ranch	4-0844-001	Puu O Hoku 1	0.235



Report Parameters

WUP Type: Water Use Permit, Administrative Modification, Reservation, Transfer, CWRM Decision and Orders,
Court Orders, Other

Summary for Waialua (2 detail records)

Total: 0.437

SY Available: 5.563

Island of Molokai

Aquifer System Ground Water Management Area: 40403 Waikolu

Sustainable Yield (mgd): 5

Wup No	Approved	Permittee	Well No	Well Name	WUP (mgd)
00220	01/12/1994	State of Hawaii - DOA - Agricultural Resource Management Division, ARM	4-0855-001	Waikolu Tunnel 1	0.853
			4-0855-002	Waikolu 2	
			4-0855-003	Waikolu 3	
			4-0855-004	Waikolu 4	
			4-0855-005	Waikolu 5	
			4-0855-006	Waikolu 6	

Summary for Waikolu (6 detail records)

Total: 0.853

SY Available: 4.147

Summary for Molokai (55 detail records)

Total: 8.294

Molokai Sustainable Yield: 79

SY Available: 70.71