

# ORIGINAL



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

For Official Use Only  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
**2009 APR 29 PM 3:2**

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

FORM SWUPA-N

- Application for New use  
 Application to Modify SWUP No. \_\_\_\_\_

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

The following must be attached before this application is accepted as complete:

- Portion of 7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion location and the quad map name.
- Property tax map showing the stream or diversion location and location of water use referenced to established property boundaries. See Exhibit "1"
- Photograph(s) of the surface water source, diversion and end use, if applicable. See Exhibits "2" and "3"

**APPLICANT INFORMATION:** NOTE: In accordance with HRS §174C-51(1)(B), in the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land which is the water source of the permitted water, applies for a water permit, the landowner shall be stated as a joint applicant for the water permit.

1. APPLICANT'S NAME Hale Mua Properties, LLC		Applicant's Contact Sterling Kim, Manager	2. SOURCE LANDOWNER'S NAME Wailuku Water Co., LLC		Source Landowner's Contact Avery Chumbley
Applicant's Mailing Address, or Principal Place of Business 250 Alamaha Street, Suite N18 Kahului, HI 96732			Source Landowner's Mailing Address, or Principal Place of Business 255 E. Waiko Road Wailuku, HI 96793		
Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone	Source Landowner's Fax	Source Landowner's E-mail
		yanoo@com			

**SOURCE INFORMATION**

3. SURFACE WATER HYDROLOGIC UNIT: Island: Maui Hydrologic Unit: Wailuku Stream Hydrologic Unit Code: 6023

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

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

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: [ ] - [ ] - [ ] : [ ] Parcel

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 3 - 0 0 2 : 0 3 1 Parcel

7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all that apply.  
 Pipe  Pump  Ditch/auwai  Other Describe: Waihee Ditch - Reservoir 37

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?  
 Yes. How much water will be returned?  
 No

8. PROPOSED FLOW MEASUREMENT INFORMATION:  
 Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts?  
 Yes. List the manufacturer and describe the device: Meinecke Flow Meter WP/Dynamic 6" or similar  
 No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below.

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

9. TOTAL QUANTITY OF WATER REQUESTED: 1,800,000 gallons per day. See Table 1, Item 14.

10. PROPOSED USE: Check all that apply.  Agriculture  Domestic  Industrial  
 Irrigation  Military  Municipal SEE ATTACHED LETTER

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

**PROPOSED USER INFORMATION**

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

13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system?  
 Yes. List the name of the system operator: County of Maui, Dept. of Water Supply  No

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

15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from the Commission?  
 Yes. List the permit number(s):  No

NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) if necessary, additional information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited to, any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.

16. APPLICANT   Sterling Kim Manager April 29, 2009 Date Print Manager		17. SOURCE LANDOWNER  N.A. Signature Date Print	
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**APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE**

**TABLE 1: LAND USE CONSISTENCY / EFFICIENCY**  
(Attach additional copies of Table 1 if necessary.)

LAND USE CONSISTENCY						EFFICIENCY OF USE				
1	2	3	4	5	6	7	8	9	10	11
PURPOSE / WATER USE CATEGORY	TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Properly tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.	STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	SUB-METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 9. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 2.
<b>Uses that require potable (drinking) water</b>										
Domestic	3 - 3 - 002 : 031	AG	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	AG	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	238 AC	3,350	800,000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	201G Affordable & market housing project (466-lots) See Exhibit "A"
Municipal	C O U N T Y O F : M A U I		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	County of Maui		1,000,000	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Public use, distributed & managed by Department of Water Supply See Exhibit "B"
			<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
								<b>TOTAL POTABLE USE</b>	<b>1,800,000<sup>12</sup></b>	<b>GPD</b>
<b>Uses that do not require potable water</b>										
			<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No			<b>- 0 -</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Not Applicable
			<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
								<b>TOTAL NON POTABLE USE</b>	<b>- 0 -<sup>13</sup></b>	<b>GPD</b>
<b>TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =</b>								<b>1.8mil<sup>14</sup></b>	<b>GPD</b>	
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(5) HRS										

**APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE**

**TABLE 2: IRRIGATION INFORMATION**

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

1	2	2	4	5	6	7	8
TMK OF PROPOSED LOCATION OF USE (Attach TMK map outlining area and photos for each proposed use.)	CROP	TOTAL ACREAGE	NET IRRIGATED ACREAGE	BEGIN GROWTH PERIOD (Month)	END GROWTH PERIOD (Month)	IRRIGATION SYSTEM (Refer to instructions.)	IRRIGATION PRACTICE (Refer to instructions.)
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>				NOT APPLICABLE			
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
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<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							
<div style="display: flex; justify-content: space-between;"> <span>Zone</span> <span>Sec</span> <span>Plat</span> <span>Parcel</span> </div>							

**9. COMMENTS:**

**APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE**

**TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS**

	<b>A. Analysis of Potable Alternatives (Attach additional sheets if necessary.)</b>	<b>B. Analysis of Non-Potable Alternatives (Attach additional sheets if necessary.)</b>
Municipal sources	None available per Department of Water Supply	N.A.
Wastewater reuse	N.A.	N.A.
Ditch system	N.A.	Requested per application
Desalinization	N.A.	N.A.
Ground water	Tao Aquifer has reached its sustainable yield per the Water Commission and is not available for new use.	N.A.
Other (specify)	None	N.A.

**C. ADDITIONAL REQUIREMENTS:**

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

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

See attached letter from Hale Mua Properties, LLC (Exhibit "C")

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

Pending

3. Explain below how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act. See attached letter from the Department of Hawaiian Home Lands ("DHHL") dated April 8, 2009. As noted in the letter, DHHL estimates that it will need approximately 900,000 gallons per day of potable water to satisfy its 20-year future needs in Central Maui. DHHL requires potable water, which is typically drawn from ground wells, while Hale Mua is requesting non-potable water, which is usually drawn from surface water. Thus, Hale Mua's proposed new use of non-potable surface water should not interfere with DHHL's rights and projected need for potable water in Central Maui. It should be noted that Hale Mua has included in its Application a 1,000,000 gallon per day ("GPD") allocation for the County of Maui. Hale Mua's intention is to build a surface water treatment plant to treat water and provide the County of Maui with 1,000,000 GPD of treated, potable water. This potable water could then, in turn, be available to the County of Maui to provide, as needed, to DHHL in accordance with DHHL's rights. Understandably, DHHL supports Hale Mua's affordable housing project. (See Exhibit "D")





Reservoir 37  
Waihee Ditch

238 Acre  
site

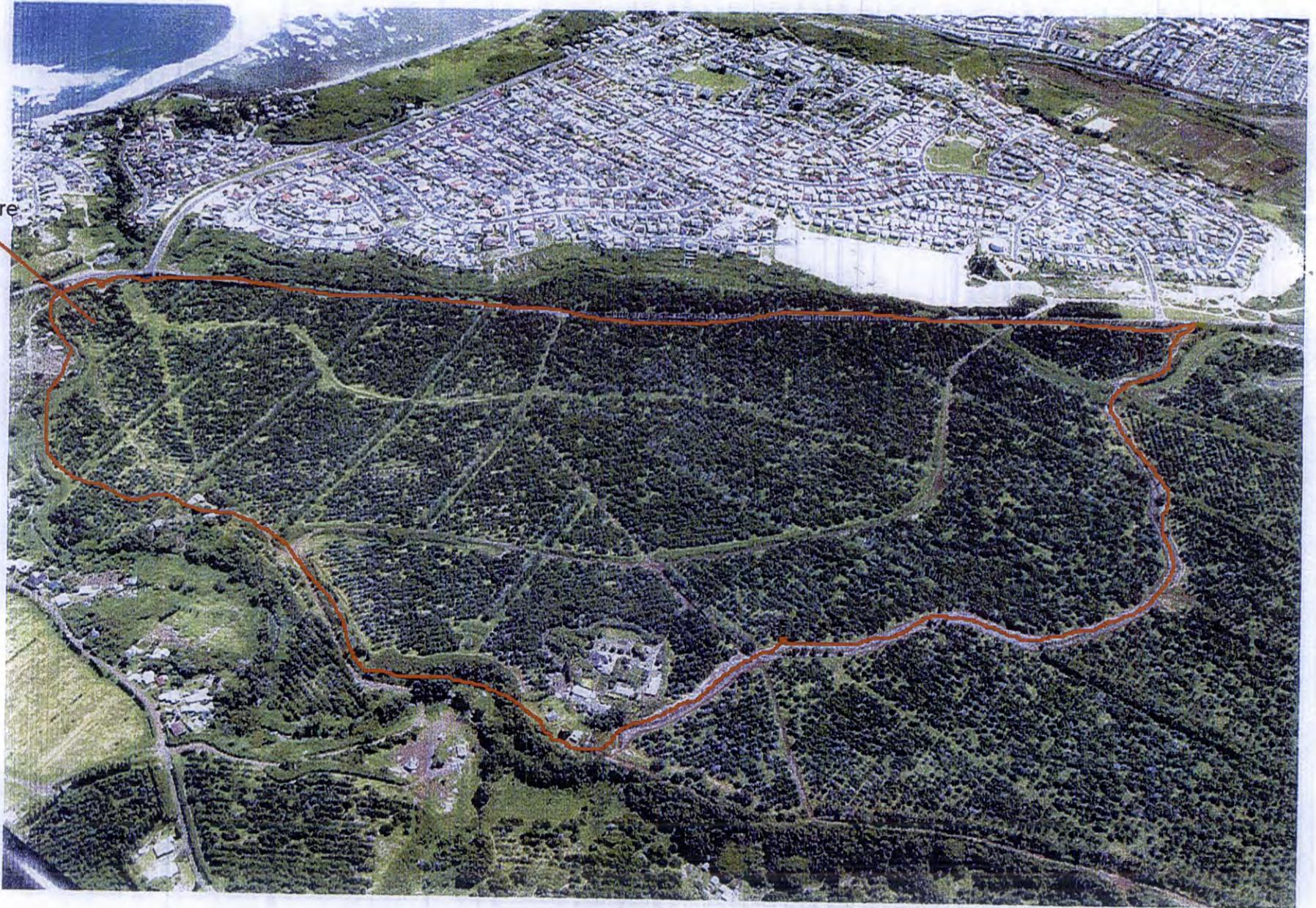


Exhibit "3"



**Exhibit "A"**

**Hale Mua Subdivision  
Estimated Water Usage**

**Hale Mua Phase I**

Large Lots (7)	66.209 acres	2,000 gpa	132,418 gpd
Affordable units (77)	9.659 acres	1,000 gpl	77,000 gpd
Market units (98)	23.676 acres	1,000 gpl	98,000 gpd
Parks (2)	6.584 acres	12,500 gpdpa	82,300 gpd

**Hale Mua Phase II**

Large Lots (12)	55.198 acres	2,000 gpa	110,395 gpd
Affordable units (161)	20.869 acres	1,000 gpl	161,000 gpd
Market units (111)	28.119 acres	1,000 gpl	111,000 gpd
Park (1)	2.231 acres	12,500 gpdpa	27,887 gpd

**Total Water Usage 800,000 gpd**

Abbreviation:

gpd ~ gallons per day

gpa ~ gallons per acre

gpl ~ gallons per lot

gpdpa ~ gallons per day per acre

*Note: The estimated water usage for the "large lots per acre" was derived from DWS standard requirements. Both the "affordable and market units" water estimated of 1,000 gallons day, as a requirement from the Department of Water Supply. The estimated water usage for the three parks were based on 12, 500 gallons per day per acre, from the Department of Parks and Recreation.*

CHARMAINE TAVARES  
Mayor



JEFFREY K. ENG  
Director  
ERIC H. YAMASHIGE, P.E., L.S.  
Deputy Director

**DEPARTMENT OF WATER SUPPLY**  
**COUNTY OF MAUI**  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793-2155  
www.mauiwater.org

March 6, 2009

Mr. Ken C. Kawahara, P.E., Deputy Director  
Commission on Water Resource Management  
State of Hawaii  
Department of Land and Natural Resources  
P.O. 621  
Honolulu, HI 96809

Dear Mr. Kawahara:

**SUBJECT: NEW USE PERMIT FOR HALE MUA SUBDIVISION SURFACE  
WATER TREATMENT FACILITY**

Mr. Sterling Kim is planning to develop a new surface water treatment facility (SWTF) to serve, among other projects, his Hale Mua affordable housing development in Wailuku, Maui. Mr. Kim has offered to design and construct the SWTF to include an allocation of 1.0 mgd of treated water to the Department of Water Supply's public water system to serve its domestic uses.

The Department of Water Supply is in support of Mr. Kim's plans, and it is our understanding that his new use permit will be including the 1.0 mgd for allocation to the Department of Water Supply.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey K. Eng".

JEFFREY K. ENG  
Director of Water Supply

*"By Water All Things Find Life"*

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDD)



**Hale Mua Properties, LLC  
250 Alamaha Street, Suite N18  
Kahului, Hawaii 96732  
Ph: 873-9646**

April 21, 2009

State of Hawaii  
Department of Land and  
Natural Resources  
Kalanimoku Building  
1151 Punchbowl Street, Rm. 227  
Honolulu, Hawaii 96813

Gentlemen:

Hale Mua Properties, LLC's ("Hale Mua") proposed water use for the domestic purposes fits squarely within the public interest as defined by the State Water Code and is consistent with the maximum beneficial uses of State waters for specified State purposes. Hale Mua is developing a residential subdivision (the "Project") that will offer affordable house-and-lot units, market-priced homes and large estate lots on approximately 238 acres of land located in the Wailuku/Waiehu area. Hale Mua is seeking water for domestic purposes to serve its Project, and the State Water Code specifically identifies domestic use as a preferred use. Hale Mua's request for water is efficiently tailored in accordance with Maui Department of Water Supply and Department of Parks and Recreation standards. Thus, Hale Mua is requesting such a quantity of water as is necessary for economic and efficient utilization of water and which is consistent with the public interest as set forth in the State Water Code.

Further, the County of Maui's allocation, which is included as part of Hale Mua's application, will be used for the municipal purposes, which is also a stated public interest purpose. Pursuant to the State Water Code, adequate provision must be made for, among other purposes, the preservation and enhancement of water of the State for municipal uses, public recreation and public water supply. The County of Maui's allocation will likely serve future developments, including but not limited to the projects noted in Table 1 of Hale Mua's application, which will utilize the water for domestic purposes.

  
Sterling Kim, Manager

LINDA LINGLE  
GOVERNOR  
STATE OF HAWAII



MICHAEL KANE  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
  
KAULANA H. PARK  
DEPUTY TO THE CHAIRMAN  
  
ROBERT J. HALL  
EXECUTIVE ASSISTANT

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879  
HONOLULU, HAWAII 96805

April 8, 2009

Mr. Sterling Kim  
Hale Mua Properties LLC  
250 Alamaha Street, Suite N-18  
Kahului, Hawaii 96732

Dear Mr. Kim:

We are in receipt of your request for our opinion as to whether Hale Mua's pending application for a Surface Water Use Permit for the Hale Mua subdivision will or will not interfere with the department's water rights under the State Water Code and Hawaiian Homes Commission Act. Specifically:

"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 [on water resource management] shall incorporate the current and foreseeable development and use needs of the DHHL for water as provided in Section 221 of the HHCA." *State Water Code, Section 174-C-31(q), Emphasis Added.*

"All permits [such as Water Use Permits] issued by the commission [on water resource management] shall be subject to the rights of the DHHL as provided in section 221 of the HHCA, whether or not the condition is explicitly stated on the permit." *State Water Code, Section 174-C-49(e), Emphasis Added.*

It is clearly the State and County agencies' responsibility to ensure that sufficient water is available for future DHHL development and use needs. The burden of proof rests with the water use permit applicant to conduct the analysis necessary to conclude that the proposed use of water "will not interfere with the rights of the DHHL". To assist you, we can provide you with

Exhibit "D"

Mr. Sterling Kim  
April 8, 2009  
Page 2

up-to-date information.

DHHL's current potable water needs in Central Maui (Paukukalo and Waiehu) are being satisfied by the Department of Water Supply, County of Maui (Maui DWS).

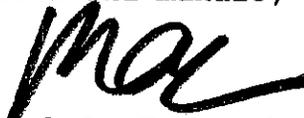
However, the DHHL Maui Island Plan forecasts the need for potable water for development of a portion of Hawaiian home lands at Pulehunui, Puunene, Maui. Specifically, we will need an estimated 900,000 gallons per day to satisfy 20-year future needs in Central Maui. Although we need potable water, it is our understanding that the Maui DWS has plans to treat surface water from Central Maui streams for treatment and potable uses. This is reflected in the recent "Central District Final Candidate Strategies Report - Report Review Draft" (March 2, 2009). Maui DWS water lines service the Pulehunui area.

Your analysis should reflect other current competing requests for surface water from Central Maui and whether this total cumulative demand will interfere with DHHL's need for 900,000 gpd.

I hope that this information is helpful to you. DHHL has supported the Hale Mua affordable housing project, both at the State Land Use Commission and Maui County Council 210-G review. Hale Mua will provide parks and a planned school that will benefit DHHL homesteaders in the area. Further, the affordable housing component will relieve part of the housing crisis on the island to the benefit of the entire community.

If you have any questions, please call Darrell Yagodich of our Planning Office at 620-9481.

Aloha and mahalo,



Micah A. Kane, Chairman  
Hawaiian Homes Commission