



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

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

**FORM SWUPA-N**  Application for New use  
 Application to Modify SWUP No. \_\_\_\_\_

For Official Use Only:  
**RECEIVED**  
**COMMISSION ON WATER**  
**RESOURCE MANAGEMENT**  
**2009 APR 23 PM 4:03**  
 SWUP. 2214

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

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

<b>1. APPLICANT'S NAME</b> ALAN BIRNIE		Applicant's Contact		<b>2. SOURCE LANDOWNER'S NAME</b> AVERY CHUMBLEY		Source Landowner's Contact	
Applicant's Mailing Address, or Principal Place of Business 175 W. WAIKO ROAD WAILUKU, HI 96793				Source Landowner's Mailing Address, or Principal Place of Business 363 W. Waiko Road Wailuku, HI 96793			
Applicant's Phone		Applicant's Fax		Source Landowner's Phone		Source Landowner's Fax	
[REDACTED]		[REDACTED]		[REDACTED]		Source Landowner's E-mail abc@aloha.net	

**SOURCE INFORMATION**

3. SURFACE WATER HYDROLOGIC UNIT: Island: MAUI Hydrologic Unit: WAIKAPU Hydrologic Unit Code: 6001

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

5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS:  Yes  No  
 Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit:  
 N/A - no IFS have been set for Waikapu; SEE ATTACHMENT

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 5 - 0 0 4 : 0 1 8  
Zone Sec Plat Parcel

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 5 - 0 1 2 : 0 1 0  
Zone Sec Plat Parcel

7a. PROPOSED STREAM DIVERSION. How will water be diverted from the stream to your property? Check all that apply.  
 Pipe  Pump  Ditch/auwai  Other Describe: Hoses run from the 'auwai to my property; SEE ATTACHMENT

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 . \_\_\_\_\_  
 No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below  
 PLEASE SEE ATTACHMENT

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

9. TOTAL QUANTITY OF WATER REQUESTED: 1,350 gallons per day. See Table 1, Item 4.

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

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

**PROPOSED USER INFORMATION**

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: N/A; no current "operator".  No

14. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use from the Commission?  
 Yes. List the file reference name(s): DODD EM  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.

<b>16. APPLICANT</b>  Signature ALAN BIRNIE Print Date 4/4/09		<b>17. SOURCE LANDOWNER</b> _____ Signature _____ Print Date	
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FILE ID: SWUP. 2214. C  
 DOC ID: 3218 ✓

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

**TABLE 1: LAND USE CONSISTENCY / EFFICIENCY**  
(Attach additional copies of Table1 if necessary.)

LAND USE CONSISTENCY					EFFICIENCY OF USE								
1	2				3	4	5	6	7	8	9	10	11
PURPOSE / WATER USE CATEGORY	TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.				STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (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>													
	Zone	Sec	Plat	Parcel		<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	
	Zone	Sec	Plat	Parcel		<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	
	Zone	Sec	Plat	Parcel		<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	
	Zone	Sec	Plat	Parcel		<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>GPD</b>	
<b>Uses that do not require potable water</b>													
AGRC	3	5	0 1 2	0 1 0	URBAN	<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	0.0045	300,000/ACRE	1,350	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	SEE ATTACHMENT
	Zone	Sec	Plat	Parcel		<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	
	Zone	Sec	Plat	Parcel		<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	
	Zone	Sec	Plat	Parcel		<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>											1,350	<b>GPD</b>	
<b>TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =</b>											1,350	<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 N/A.													

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

**TABLE 2: IRRIGATION INFORMATION**

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

1	2	2	4	5	6	7	8
TMK OF PROPOSED LOCATION OF USE (Attach TMK map outlining area and photos for each proposed use.)	CROP	TOTAL ACREAGE	NET IRRIGATED ACREAGE	BEGIN GROWTH PERIOD (Month)	END GROWTH PERIOD (Month)	IRRIGATION SYSTEM (Refer to instructions.)	IRRIGATION PRACTICE (Refer to instructions.)
3 - 5 - 0 1 2 : 0 1 0 Zone - Sec - Plat Parcel	KALO	0.27	0.0045	YEAR ROUND	YEAR ROUND	FLOOD	FIELD CAPACITY.
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							
Zone - Sec - Plat Parcel							

**9. COMMENTS:**

N/A

**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	N/A.	SEE ATTACHMENT.
Wastewater reuse	N/A.	SEE ATTACHMENT.
Ditch system	N/A.	SEE ATTACHMENT.
Desalinization	N/A.	SEE ATTACHMENT.
Ground water	N/A.	SEE ATTACHMENT.
Other (specify)	N/A.	SEE ATTACHMENT.

**C. ADDITIONAL REQUIREMENTS:**

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

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

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

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

# APPLICATION FOR SURFACE WATER USE PERMIT PROPOSED NEW USE

## INSTRUCTIONS

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

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

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

### REQUIREMENTS FOR A COMPLETE APPLICATION

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

### ADDITIONAL REQUIREMENTS FOR A COMPLETED APPLICATION

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

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

\*HRS §174C-3 of the State Water Code states: "Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest.

\*\*HRS §174C-2(c) of the State Water Code states that: (t)he state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other 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.

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

### LINE BY LINE INSTRUCTIONS ON APPLICATION

#### APPLICANT INFORMATION

In accordance with the Hawaii Water Code, both the applicant and the person who owns the property where the water source is located are required to apply for a water use permit. §174C-51(1)(B), HRS, states, *In the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit.*

1. **APPLICANT'S NAME:** Fill in the information for the applicant. This should be the person who will be responsible for all conditions of the water use permit.
2. **SOURCE LANDOWNER'S NAME:** Fill in the information for the landowner of the property where the existing surface water diversion works is located.

#### SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Enter the appropriate island, hydrologic unit name, and hydrologic code where the proposed source is located. The "source" is the stream from which water is diverted to the user. For information on hydrologic unit names and unit codes please refer to the *Surface Water Hydrologic Unit: A Management Tool for Instream Flow Standards* report available on the CWRM website at: <http://www.hawaii.gov/dlnr/cwrm/>, or contact CWRM staff at (808) 587-0234. You may also contact CWRM toll-free from Maui at: 984-2400, ext. 70234.

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

4. **INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT:** Provide Instream Flow Standard (IFS) for hydrologic unit if available.
5. **CAN YOUR PROPOSED USE BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS:** Check "Yes" or "No". Explain how your proposed use(s) can be accommodated within the Instream Flow Standard (IFS) for the above hydrologic unit.
- 6a. **TMK OF PROPOSED STREAM DIVERSION LOCATION:** Fill in the Tax Map Key (TMK) number of the tax parcel where the stream diversion will be located. Each tax parcel is issued a TMK number by the county property tax office and is defined as follows: 1st digit = (Island code), 2nd digit = Zone, 3rd digit = Section, Digits 4-6 = Plat, Digits 7-10 = Parcel, e.g. (1) 1-1-001:001. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: [www.mauipropertytax.com/](http://www.mauipropertytax.com/)
- 6b. **TMK OF PROPOSED DITCH DIVERSION LOCATION:** Fill in the Tax Map Key (TMK) number of the parcel where the proposed ditch diversion will be located.
- 7a. **PROPOSED STREAM DIVERSION:** How will water be diverted from the stream to your property? Check all the appropriate box(es).
- 7b. **WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?** Check "Yes" or "No." If yes, enter the amount of water to be returned.
8. **PROPOSED FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No". If yes, please describe the measuring device. A flowmeter with a totalizer will directly measure the total use for the source (similar to a car's odometer). If no, explain how stream diversion will be measured or estimated to justify amounts requested.

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

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

**PROPOSED USER INFORMATION**

12. **APPURTENANT RIGHT:** An appurtenant water right is a legally recognized right to a specific amount of surface freshwater – usually from a stream – on the specific property that has that right. This right traces back to the first time the land was converted to fee simple title; i.e., the Great Mahele and the issuance of either a Land Commission Award or Royal Patent. The quantity of water under the appurtenant right is the amount that was being used on the land shortly before or at the time of the Mahele. Do you claim an appurtenant right for your proposed water use? Check "Yes" or "No." If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
13. **PROPOSED END USER INFORMATION:** Will you be an end user on an existing water system? Check "Yes" or "No." If yes, please list the name of the water system operator.
14. **REGISTRATION AND DECLARATION OF WATER USE:** Do you have a Registration and Declaration of Water Use from the Commission? Check "Yes" or "No". If yes, list the name of the registrant(s).
15. **STREAM DIVERSION WORKS PERMIT (SDWP):** Have you ever been issued a SDWP by the Commission? If yes, please list the permit number(s). Otherwise, check "No."
16. **APPLICANT:** Sign and print your name, and date your application.
17. **SOURCE LANDOWNER:** Sign and print your name, and date your application. The landowner of the source shall be a joint applicant in the event the applicant is a lessee, licensee, developer, or any other person with a terminable interest or estate in the land which is the water source of the permitted water. §174C-51(1)(B)

**TABLE I: LAND USE CONSISTENCY / EFFICIENCY OF USE**

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

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

**AGRICULTURE**

AGRAQ	Aquatic Plants & Animals
AGRCP	Crops & Processing
AGRLI	Livestock & Processing, and Pasture
AGRON	Ornamental & Nursery Plants
AGROTH	Other

**DOMESTIC**

DOM	Single & Multi Low-Rise & High-Rise Household
DOMN	Domestic (Non-residential)
DOMNCB	Commercial Businesses
DOMNRI	Religious Institutions
DOMNHOS	Hospitals
DOMNHOT	Hotels
DOMNOB	Office buildings
DOMNOTH	Domestic Non-Residential – Other
DOMNSC	Schools

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

<b>INDUSTRIAL</b>	
INDEL	Geothermal, Thermolectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
<b>IRRIGATION</b>	
IRRG	Golf Course
IRRHM	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRSC	Schools
<b>MILITARY</b>	
MIL	Military
<b>MUNICIPAL</b>	
MUNCO	County
MUNPR	Privately owned and operated but defined as a public system by the Department of Health
MUNST	State

2. USE TMK: The Tax Map Key number of the parcel over which the water will be applied. There should only be one parcel for each line. Also, attach a TMK map(s) for the lots showing the boundaries of irrigated acreage, etc., as well as a photograph of the area of use.
3. STATE LAND USE DISTRICT: To find out the current Land Use District, contact the Land Use Commission at 587-3822.
4. CDUP REQUIRED: If a Conservation District Use Permit (CDUP) is required, check "Yes" and enter the date CDUP was approved if you have a CDUP applicable to this project; or check "Yes, not acquired". If a CDUP is not required, check "No." To find out if your parcel is in the Conservation District, contact the Land Use Commission at 587-3822. If your parcel is in a Conservation District, contact the Department of Land and Natural Resources Office of Conservation and Coastal Lands at 587-0328 to find out if a CDUP is required.
5. COUNTY ZONING CODE: To find out the Zoning Code for Na Wai Eha, contact Maui County Department of Planning at 270-6279 or 270-7253.
6. SMAP REQUIRED: If a Special Management Area Permit (SMAP) is required, check "Yes" and enter the date SMAP was approved if you have a SMAP applicable to this project; or check "Yes, not acquired". If a SMAP is not required, check "No." To find out if your parcel is in a Special Management Area and requires an SMAP, contact Maui County at 270-8205.
7. UNITS OR NET ACREAGE: This is the value and category as the basis for calculating the duty. "Duty" means the amount of water requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling unit, or number of people, or animals. Some examples of this category include: 400 dwelling units, 500 people, and 3.74 acres.
8. GPD/UNIT or GPD/ACRE (GPD=gallons per day): Enter the gallons per day or gallons per acre for each water use category listed in Column #1.
9. REQUESTED QUANTITY OF USE (GPD): Enter the requested quantity of use in gallons per day (GPD) at build out after all phases of your project have been completed. The build out amount may differ from the four-year cumulative projected demand if your build out date extends beyond the cumulative projected four-year demand.
10. SUBMETERED? Is there a second measuring device or meter for another user? Check "Yes" or "No" if the specific use will be submetered or not. Submetering is specific to each line item.
11. APPLICANT'S JUSTIFICATION FOR QUANTITY OF REQUESTED USE FOR ITEM #9: Explain how you are justifying the amount(s) you are requesting for Item #9. Attach additional copies of Table 1 if necessary to show how this number was calculated. For irrigation uses, fill in Table 2.
12. TOTAL POTABLE USE: Add the quantities listed in the column above for potable water and enter the total potable use in gallons per day (GPD) here.
13. TOTAL NON-POTABLE USE: Add the quantities listed in the column above for uses that do not require potable water and enter the total non-potable use in gallons per day (GPD) here.
14. TOTAL QUANTITY OF WATER REQUESTED: Add the requested amounts listed on Box 13 and Box 14 and enter the total requested amount of both potable and non-potable uses here.
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. HRS §174C-51(5)

**TABLE 2: IRRIGATION INFORMATION**

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

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

TRICKLE, DRIP  
TRICKLE, SPRAY  
MULTIPLE SPRINKLERS

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

SPRINKLER, CONTAINER NURSERY  
SPRINKLER, LARGE GUNS  
SEEPAGE, SUBIRRIGATION  
CROWN FLOOD  
FLOOD (TARO)  
OTHER – Please describe in the space provided for Comments.

8. IRRIGATION PRACTICE: Enter one of the following:

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

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

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

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

Surface water is defined in §174C-3, HRS as: *...both contained surface water—that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to state jurisdiction—and diffused surface water—that is, water occurring upon the surface of the ground other than in contained waterbodies. Water from natural springs is surface water when it exits from the spring onto the earth's surface.*

C. ADDITIONAL REQUIREMENTS

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

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

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

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

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

**Alan Birnie, SWUPA-N**

**Exhibits**

Appended hereto as Exhibit 1 are copies of the Māhele documents establishing that my property was in kalo in 1848 and had appurtenant rights at one time. Exhibit 2 is a copy of the 7.5 minute-series USGS topographic map with the Waikapū Stream and Waikō Road 'auwai diversion labeled. Exhibit 3(a) is a TMK map showing the location of our property, Exhibit 3(b) is a close-up of the property showing the locations of our 'auwai diversion, cultivated area, and proposed kalo cultivation area. Exhibit 4 contains copies of true and correct photographs of our 'auwai diversion.

**2. Source Landowner**

Not applicable pursuant to HRS § 174C-51(1)(B), because applicant does not have a terminable interest in the land which is the source of the permitted water. According to the Water Commission's records, which have not been verified, Avery Chumbley claims to be the source landowner.

**4 & 5: Instream Flow Standards**

There currently are no Instream Flow Standards for Nā Wai 'Ehā, and a petition to upwardly amend the Interim Instream Flow Standards is pending. There is sufficient water upstream of all diversions in Waikapū Stream to accommodate my proposed use.

**7a & 7b. Proposed Stream Diversion**

I use water from the 'auwai that runs along Waikō Road. Water is diverted into the 'auwai from the stream through a traditional po'owai (intake made with stones) near Ione Shimizu's house (see attached USGS topo map). The water continues makai in pipes and ditches until it passes my property where I divert some water via three 5/8" garden hoses on a daily basis to irrigate my non-commercial garden, including vegetables, herbs, fruit trees, and tropical flowers. I also use some water on my small lawn. I am filing this new use application to expand my existing use so that I can cultivate a small plot of wetland kalo. My diverted water does not currently return to the ditch or stream, and neither will the water I would like to divert for my future lo'i.

**8. Proposed Flow Measurement**

See explanation for Table 1 Box 11, below.

## **12. Appurtenant Rights**

My property had appurtenant rights, as documented in Land Commission Award Apana 3105:2 and the supporting documents such as foreign and/or native testimony. I included copies of the relevant documents as Exhibit 1. However, Edmund Rogers assigned the “water rights” to Wailuku Sugar in 1967. As a result, it appears my property’s appurtenant rights may be extinguished, although I reserve the right to claim appurtenant rights in the future based on further information.

### **Table 1: Land Use Consistency Efficiency, Box 11 Applicant’s Justification**

AGRCP (kalo) – Applicant’s Justification: I estimated my proposed water use for wetland kalo cultivation by multiplying the amount of land I would like to cultivate (0.0045 acres) by 300,000 gallons, the average amount of water I understand is required to grow healthy wetland kalo. Multiplying  $300,000 \times .0045$  gives us a result of 1,350 gallons per day.

### **Table 3 Box B: Alternative Analysis**

Our exercise of our traditional and customary right as Native Hawaiians to cultivate wetland kalo on our land is constitutionally protected, and by definition should not be required to use alternative, non-traditional sources. Even if such a requirement applied, there is no potentially available alternative source that is economically practicable. We would like to cultivate a small patch of wetland kalo to feed our family, and teach our children this important cultural practice. An alternative water source that would require us to pay for water would effectively deny our traditional and customary right to grow food on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected right.

**Municipal Sources.** As long as I can remember, I have always used ‘auwai water for my non-commercial gardening. Requiring us to pay for municipal water instead would impose an unfair and impracticable cost on my traditional and customary right.

**Wastewater reuse.** Reusing wastewater is impracticable because, as a small user engaged in traditional uses and non-commercial gardening, I do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

**Ditch system.** I am currently using water from an existing ‘auwai. Getting water from other ditch systems is not practicable. First, the other ditch systems in Nā Wai ‘Ehā do not consistently have enough water to support additional users. Second, I lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user engaged in traditional uses and non-commercial gardening, the cost of taking water

from or constructing another ditch is not practicable and would effectively deny my traditional and customary right.

**Desalinization.** Desalinization of brackish water is not a practicable alternative because I am not aware of any such plant having been built on Maui. According to the County's estimates, a plant is expected to be built in 2013 at the earliest.

**Ground Water.** Even if I were able to secure the permits necessary to drill a well and pump ground water for my uses, installing and operating such a well would be unprecedented and extremely burdensome. As a small user engaged in traditional uses and non-commercial gardening, I do not have the means to install and maintain such infrastructure.

**Table 3 Box C: Additional Requirements:**

**1. My proposed new use will maximize beneficial use and is in the public interest**

Generally, "water use for diversified agriculture on land zoned for agriculture is consistent with the public interest." In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 162, 9 P.3d 409, 474 (2000) ("Waiāhole I"). Further, HRS § 174C-2I provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." Our proposed water use is predominantly for growing food. We are Native Hawaiians engaged in traditional agricultural practices, and growing kalo will help maintain ecological balance and scenic beauty. As such, our proposed new use of stream water is consistent with the public interest.

Additionally, our proposed use is a public trust purpose, and is reasonable and beneficial.

*Our Proposed Use is a Protected Public Trust Purpose*

Article XII Section 7 of Hawai'i's Constitution specifically recognizes the rights of Native Hawaiians to exercise traditional and customary practices for subsistence, cultural, and religious purposes. We are Native Hawaiian and are seeking to use water for traditional, subsistence and cultural purposes. In a time when our global communities are facing food, energy, and economic crises, subsistence has the potential to provide immediate economic and health advantages.

*Our Proposed Use is Reasonable and Beneficial*

"Reasonable-beneficial use" is defined as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest." HRS § 174C-3. As

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indicated, our proposed use of stream water is consistent with state and county land use plans and the public interest. It is also “economic and efficient” because we only use the amount we need. We will also take steps to make our water use efficient. For instance, we currently use and will continue to use hoses to minimize water loss. We will also implement the use of other practices, e.g., mulch and cover crops, to protect the soil from erosion and minimize the use of water. Therefore, our proposed use is “reasonable-beneficial.”

## **2. Existing Legal Use**

Our proposed use will not interfere with existing legal uses. As Native Hawaiians seeking to exercise our traditional and customary rights, we are a public trust purpose and have priority by law. We believe the flow of Waikapū Stream is able to accommodate our new use. In fact, our use of water from Waikapū Stream has been severely restricted by large plantation diversions upstream of our ‘auwai po’owai (intake), and this has limited the acreage that we can cultivate, necessitating this new use application.

## **3. DHHL**

We are not aware of any DHHL lands using water from Waikapū Stream. To the best of our knowledge, DHHL has not filed an application to use water from this source. While we are aware that DHHL has outstanding reservations for municipal water meters in Central Maui, our use will not interfere with those reservations, which are largely served by ground water sources.

Exhibit 1(a)

Copy of Original Māhele Documents (LCA 3105) - Foreign Testimony

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land.  
 It is bounded to the north by C. 1100's land, to the south by the same land, to the east by Kōpūpū's land, to the west by Kōpūpū's land.

---

C. 1100's land  
 It is bounded to the north by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the south by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the east by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the west by the 1st of the 100 pieces in the 1st of Kōpūpū's land.

The 1st of the 100 pieces in the 1st of Kōpūpū's land is bounded to the north by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the south by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the east by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the west by the 1st of the 100 pieces in the 1st of Kōpūpū's land.

---

C. 1100's land  
 It is bounded to the north by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the south by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the east by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the west by the 1st of the 100 pieces in the 1st of Kōpūpū's land.

---

C. 1100's land  
 It is bounded to the north by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the south by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the east by the 1st of the 100 pieces in the 1st of Kōpūpū's land, to the west by the 1st of the 100 pieces in the 1st of Kōpūpū's land.



**Exhibit 1(c)**

Copy of Original Māhele Documents (LCA 3105) - Native Register

35

3104 Kealemakule  
Ili aina o Ohia; he  
palapala kuleana mo aina a one wa Lii  
a one wa kula. He hui aku nei au i a oukou  
e ma Lina houna kuleana, he mo aina a  
one wa Lii a one kahi kula. He Kapuapuu  
mai koe aina, a make he iu o Kapuapuu  
M. hoc mo koe kōwhiri i kua manawa. He  
33 lōi. O ma palana o koe mo he kahuwai  
ma ka kua, ma he kōwhiri, he mo aina  
o Takapuu, ma ka Akau he palā, he mo  
aina ma ka kōwhiri mo Kawalua  
Aia ma kahi aina o Kōwhiri he kahi  
moa iu iu, He kōwhiri mai, Aole akaka  
loa iu he makahiki i loa mai  
Maikapu Maui Nāi ma Kealemakule  
Januari 3<sup>o</sup> 1848

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Ahuapuaa Maikapu

3105 Keana  
Ili aina o Pūpūpū oia, He hui  
he nei au i a oukou i kōwhiri kuleana aina He I.  
M. Kapuapuu oia mai kōwhiri aina, He iu aina o  
kou mo kōwhiri mai kōwhiri mo a kōwhiri i kua  
manawa e moa nei au, aole moa au i kōwhiri  
ia, he moa moa nei mo wa. Eia ka inoa o ma  
kōwhiri o kōwhiri kuleana aina o I. Kapuapuu oia  
a one Kōwhiri Nāi ma Keana  
Maikapu Maui Dek 25. 1848

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3106 Kapuaiaua  
Ili aina o Kapuaiaua -  
Aloha maikai oukou e ma Lina houna he  
Lina aina: He hui he nei au i a oukou



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Exhibit 1(d) continued  
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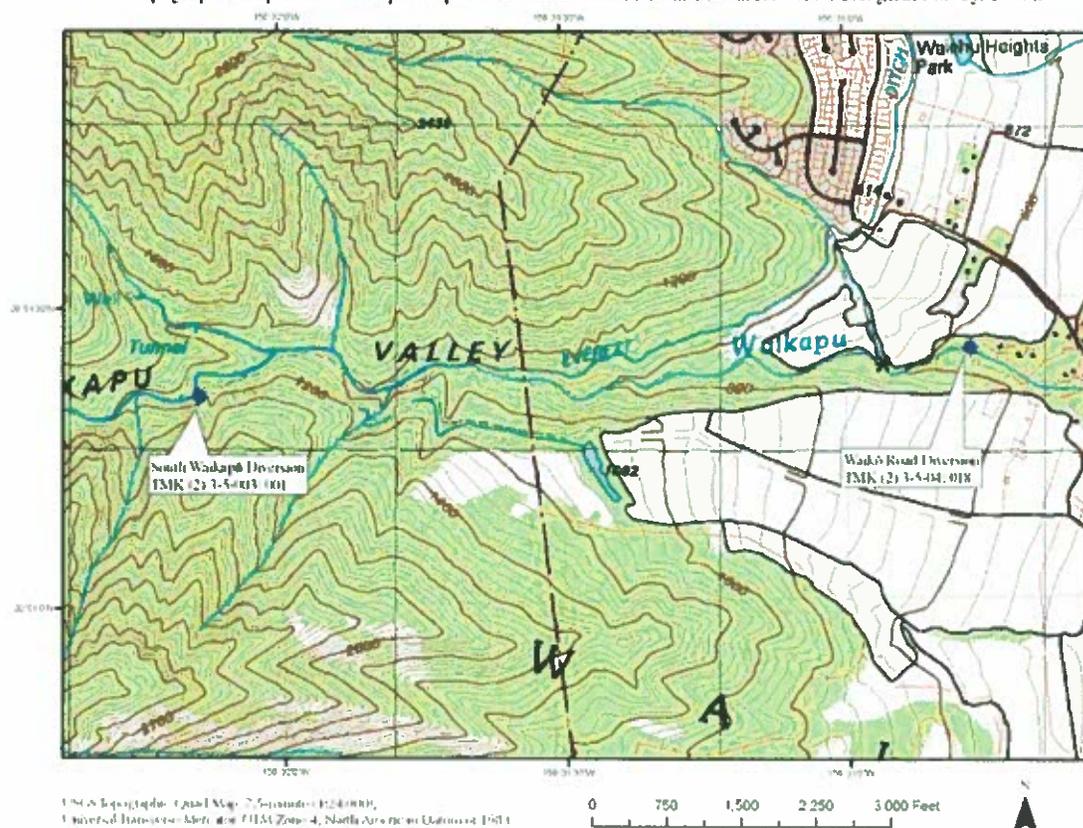
(102)  
-102

Mateko a *Alan Birnie* apono *1976* Eke  
a oi hi aku, a oia ihi mai paha. Ua koo aao i ho nepuni na miao mihonai a me na metala a pau.  
No *Alan*  
ua aia ia i hawaii me ho ANO ALODIO a no kono mau hoolina, a me kono uaihana: ua pii aao  
ho uaihana a ho Poo Ahoolole a koo iho ai me na aia aloho i kolo mauwa i kolo mauwa.  
A i mea a hoo ai, ee koo wau i ho'io laan, a me ho Eke. Nui o ho  
Hawaii Poo Aiaa me Hoolole i kolo ia *1976*  
*Alan Birnie* 1976  
*Alan Birnie*

**Exhibit 2**

**USGS map with Waikapū Stream and the Waikō Road diversion**

Topographic map of the Waikapū ahupua'a in central Maui, Hawaii (Source: U.S. Geological Survey, 1996).



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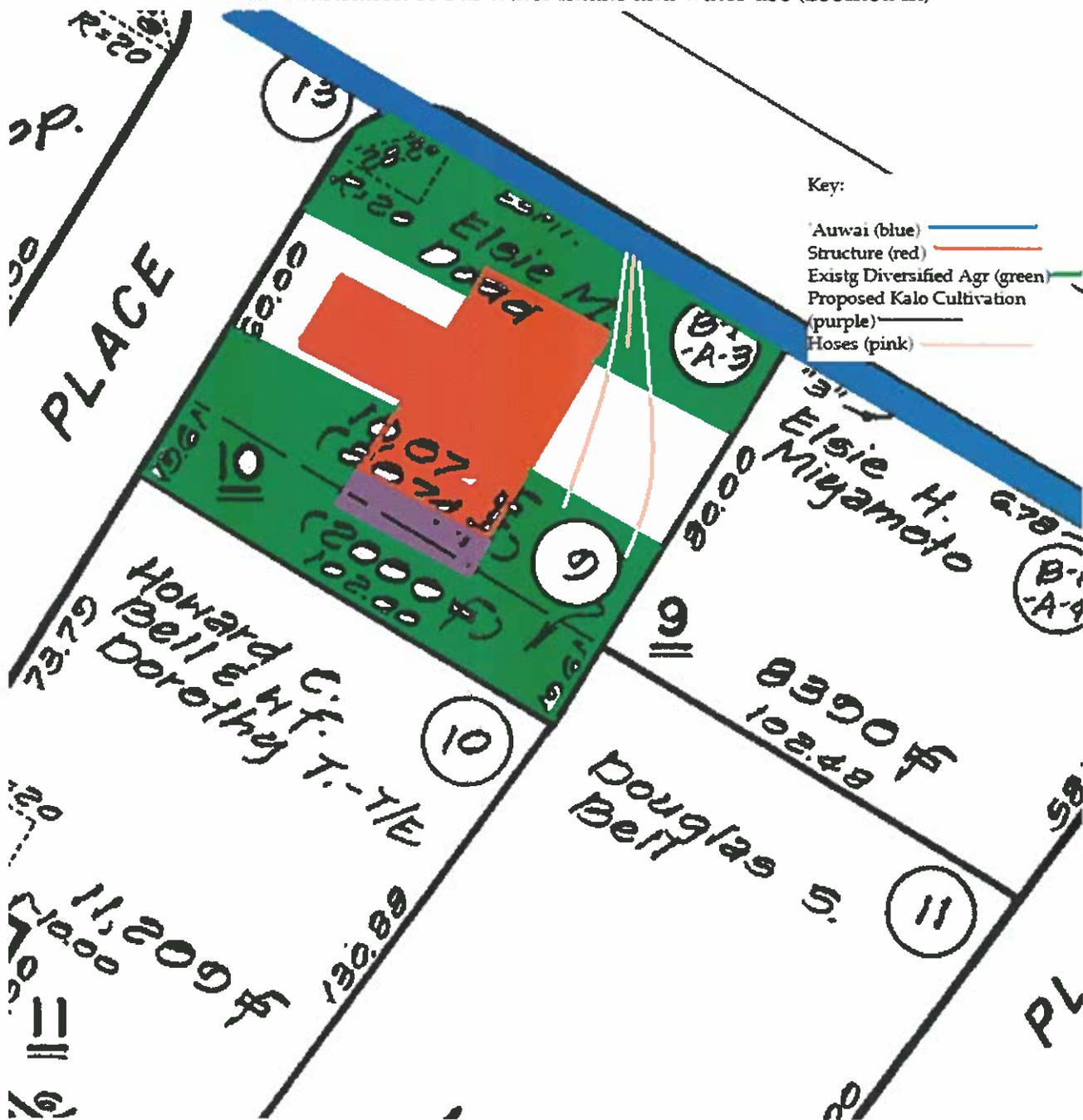
Exhibit 3 (a)  
TMK of relevant parcel highlighted (zoomed out)



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Exhibit 3 (b)

TMK with illustration of our water intake and water use (zoomed in)



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**EXHIBIT 4: Pictures of surface water diversion**

These are true and correct copies of photos taken on March 29, 2009. They accurately depict conditions at the time the photos were taken.

Exhibit 4(a) depicts my current and proposed diversion of water from the North Waikapū Kuleana 'auwai, which runs along Waikō Road. The following two photos depict hoses that currently run from the 'auwai onto my property.



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Exhibit 4(b) depicts the exit hoses that currently bring the water from the North Waikapū Kuleana ‘auwai onto my property. We intend to use the same hoses for our proposed water use.

