



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

APPLICATION FOR SURFACE WATER USE PERMIT
 FOR EXISTING USE IN THE NA WAI EHA, MAUI, SURFACE
 WATER MANAGEMENT AREAS

FORM SWUPA-E (NA WAI EHA, MAUI)

For detailed instructions on filling out this application, refer to the attached instructions.

For Official Use Only:
RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 23 PM 3:55
 Event ID: 2217

SWUP No. 24

APPLICANT INFORMATION: Note: In accordance with §174C-51(1)(B), HRS, 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 John Minamina Brown Trust		Applicant's Contact Crystal Alboro, Trustee	2. SOURCE LANDOWNER'S NAME Wailuku Water Company LLC		Source Landowner's Contact Avery Chumbley
Applicant's Mailing Address, or Principal Place of Business 727 Waive'e Street, Suite 104 Lahaina, Hawaii 96761			Source Landowner's Mailing Address, or Principal Place of Business 255 East 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

EXISTING SOURCE INFORMATION

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 locations and quad map name.
 • Property Tax Map Key (TMK), showing stream or diversion location, and location of water use referenced to established property boundaries.
 • Photograph(s) of the surface water diversion works and end use.

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Waiehee/6022 Waiehu/6023 Iao/6024 Waikapu/6001

4a. TMK OF STREAM DIVERSION LOCATION: 3 - 5 - 003 : 001
Zone Sector Plat Parcel

4b. TMK OF DITCH DIVERSION LOCATION: 3 - 6 - 006 : 025
Zone Sector Plat Parcel

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply.
 Pipe Pump Ditch/auwai Other Describe: See Attachment A
 Is the diverted water returned to the stream or ditch? Yes. No. If yes, how much water is returned? See attachment 7

6. FLOW MEASUREMENT INFORMATION:
 Does the stream diversion have a flowmeter with totalizer or other device to measure diverted amounts?
 Yes. Enter the Installation date:
 Describe the device and enter measured amounts in Table 1.
 No. Explain how you are measuring flow to justify amounts shown in Table 1 in the space below
 See attachment A

EXISTING USER INFORMATION

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

8. END USER INFORMATION: Are you an end user on an existing water system? Yes No
 If yes, who is the operator of the water system? Wailuku Water Company

9. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use with the Commission?
 Yes. List the file reference name(s): Elaine Pahial'i Mullaney
 No

10. STREAM DIVERSION WORKS PERMIT (SDWP):
 Have you ever been issued a SDWP by 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, further 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.

11. APPLICANT

 Signature
CRYSTAL ALBORO
 Print
 Date 4-19-09

12. SOURCE LANDOWNER
 Signature
 Print
 Date

FILE ID: SWUP.2217.6
 DOC ID: 3221V

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

**TABLE 1: 12-MONTH AVERAGE DAILY USE
Measured or Calculated Use of Water at the Source or End Use
As of the Effective Date of Designation, April 30, 2008**

MONTH / YEAR	AVERAGE DAILY USE FOR THE MONTH IN GALLONS PER DAY (GPD)	Check one item per box				OTHER Please describe
		METERED	ESTIMATED	ACTIVE BUT UNKNOWN	INACTIVE	
May 2007	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	90,300	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	1,083,600	GPD				
AVERAGE DAILY USE (Average of the above)	90,300	GPD				

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY
(Attach additional copies of Table 2 if necessary)

LAND USE CONSISTENCY					EFFICIENCY OF USE				
1. PURPOSE / WATER USE CATEGORY	2. USE TMK ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE LAND USE DISTRICT	4. CDUP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SMAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)	8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE	10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 3.
Uses that require potable (drinking) water									
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
TOTAL POTABLE USE						0	GPD		
Uses that do not require potable water									
AGRCP	3 - 6 - 06 : 25 Zone Sector Plat Parcel	Urban	No	Ag	No	45,000	No	0.15	See attachment A
DOM	3 - 6 - 06 : 25 Zone Sector Plat Parcel	Urban	No	Ag	No	120	No	0.04	See attachment A
AGRCP	3 - 6 - 06 : 29 Zone Sector Plat Parcel	Urban	No	Ag	No	45,000	No	0.15	See attachment A
DOM	3 - 6 - 06 : 29 Zone Sector Plat Parcel	Urban	No	Ag	No	180	No	0.06	See attachment A
TOTAL NON-POTABLE USE						90,300	GPD		
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						90,300	GPD		
If total use requested is not equal to the total monthly average in Table 1, please explain. N/A									
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. N/A									

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 3: IRRIGATION INFORMATION

List all crops as separate line items and include landscape and golf course irrigation, grown in the 12 months prior to April 30, 2008. Attach additional copies of Table 3 if necessary.

1. USE TAX MAP KEY (TMK) Attach map outlining area and photo.	2. CROP	3. TOTAL ACREAGE	4. NET IRRIGATED ACREAGE	5. BEGIN ROWTH PERIOD (Month)	6. END GROWTH PERIOD (Month)	7. IRRIGATION SYSTEM (Refer to instructions.)	8. IRRIGATION PRACTICE (Refer to instructions.)
3 - 6 - 06 : 25 Zone Sector Plat Parcel	Wetland Kalo	0.62	0.15	Year Round	Year Round	Flood (Kalo)	Irrigate to Field Capacity
3 - 6 - 06 : 25 Zone Sector Plat Parcel	Diversified Agriculture	0.62	0.04	Year Round	Year Round	Other (Hand water with hose)	Irrigate to Field Capacity
3 - 6 - 06 : 29 Zone Sector Plat Parcel	Wetland Kalo	0.63	0.15	Year Round	Year Round	Flood (Kalo)	Irrigate to Field Capacity
3 - 6 - 06 : 29 Zone Sector Plat Parcel	Diversified Agriculture	0.63	0.06	Year Round	Year Round	Other (Hand water with hose)	Irrigate to Field Capacity
- - - - : Zone Sector Plat Parcel							
- - - - : Zone Sector Plat Parcel							
- - - - : Zone Sector Plat Parcel							
- - - - : Zone Sector Plat Parcel							
- - - - : Zone Sector Plat Parcel							
- - - - : Zone Sector Plat Parcel							

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 4: ALTERNATIVES ANALYSIS

	Potable Alternatives Attach additional sheets if necessary.	Non-Potable Alternatives Attach additional sheets if necessary.
Municipal sources	N/A	See attachment A
Wastewater reuse	N/A	See attachment A
Ditch system	N/A	See attachment A
Desalinization	N/A	See attachment A
Ground water	N/A	See attachment A
Other (specify)	N/A	N/A

PUBLIC INTEREST

§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.

Explain below how the uses in your application are consistent with the public interest as described above. Attach additional sheets if necessary.

See attachment A

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

INSTRUCTIONS FOR FILLING OUT FORM SWUPA-E

This application form is to be used for actual existing uses as of the effective date of designation, April 30, 2008, for the Na Wai Eha Surface Water Management Areas. Based on the State Water Code, Section 174C, Part IV Regulation of Water Use, a completed application must be filed with the Commission on Water Resource Management (CWRM) no later than April 30, 2009, to qualify as an existing use. Failure to meet the filing deadline may cause your application to be considered a new use and require you to file an Application for Surface Water Use Permit for New Use.

If you are applying for a new surface water use, which are proposed uses after the date of designation, please use the Application for Surface Water Use Permit for New Use, Form SWUPA-N.

Information about surface water management areas and the current application forms are available at our website: <http://www.hawaii.gov/dlnr/cwrm/>; by contacting the Stream Protection and Management Branch at 587-0234; or sending an email to: dlnr.cwrm@hawaii.gov.

REQUIREMENTS FOR A COMPLETE APPLICATION Information must be legible. Therefore, please type or clearly print all information in ink.

- a. Fill in the most recent application form.
- b. Fill in every line on the application.
- c. Enclose a check for the non-refundable filing fee of \$25 payable to: Department of Land and Natural Resources.
- d. Pay for the cost of publishing any required public notices related to your application.
- e. Mark the source and end use locations on the appropriate USGS quad map and TMK map and attach to your application.
- f. Attach photos showing your existing diversion, measuring device (if applicable) and end use areas.
- g. Sign the application form. Both the applicant and the landowner of the source must sign the application form.
- h. Submit one original and 15 copies of the application form; one original and 15 copies of the attachments (instructions, maps, photos and any additional attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

The applicant must establish that the existing use of water is a reasonable and beneficial use. According to §174C-3 of the State Water Code: *"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.*

Furthermore, public interest is described in §174C-2(e) of the State Water Code which 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.*

LINE BY LINE INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

APPLICANT INFORMATION

1. **APPLICANT'S NAME:** Fill in the information for the applicant. This should be the entity that 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. Note: in accordance with §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 also be stated as a joint applicant for the water permit.*

EXISTING SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Check the appropriate box for the hydrologic unit name and hydrologic code where the source is located. The "source" is the stream, ditch, or conduit 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.
- 4a. **TMK OF STREAM DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the stream diversion is located if applicable. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/
- 4b. **TMK OF DITCH DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the ditch diversion is located, if applicable.
5. **STREAM DIVERSION:** How is water diverted from the stream to your property? Check the appropriate box(es). Is the diverted water returned to the stream or ditch? Check "Yes" or "No." If yes, enter the amount of water returned.
6. **FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No". If you have a working flowmeter with a totalizer, answer "Yes" to this question, and fill in the date that the flowmeter was installed and any other information you may have (manufacturer, serial number, etc.). A totalizer directly measures the total use for the source (similar to a car's odometer). Otherwise, answer "No" and explain how stream diversion is measured or estimated to justify amounts requested in Table 1

EXISTING USER INFORMATION

7. **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 water use? Check "Yes" or "No." If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
8. **END USER INFORMATION:** Are you an end user on an existing water system? Check "Yes" or "No". If yes, please list the name of the water system operator.
9. **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, please list the name of the registrant(s).
10. **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."
11. **APPLICANT:** Please sign and print your name, and date your application.
12. **LANDOWNER:** Please sign and print your name, and date your application. The landowner shall be the 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)

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

TABLE 1: 12-MONTH AVERAGE DAILY USE - Measured or calculated use of water at the source or end use as of the effective date of designation, April 30, 2008.

Please fill out Table 1 to calculate your existing use as of the effective date of the designation, April 30, 2008, of the Na Wai Eha Surface Water Management Areas. The effective date of designation is the date of the publication of the public notice of the Commission designation action. The qualifying dates have been filled in for this application. Fill in as completely as possible.

The 12-month average is the average daily use^a of 12 months of consecutive use^b from the last month^c of the period.

- a. Average daily use. This is the average daily use for one month in gallons per day (GPD). To calculate this average, take the total use (in gallons) for the month, and divide this amount by the number of days in the month.
- b. 12 months of consecutive use. To calculate the average monthly withdrawal for 12 consecutive months of use, add the average daily use for all 12 months and divide that amount by 12.
- c. Last month. The last month of the period is the effective date of designation, April 30, 2008.

Check only one of the following boxes per row in Table 1:

- Metered – data is based on an operational meter with a totalizer.
- Estimated – data is based on some indirect measurement technique (e.g. measured flow rate multiplied by time of operation).
- Active but unknown – source is active, but there is no means to measure or estimate flow coming from source.
- Inactive – source was not pumped or diverted for the month.
- Other – describe how water use was measured or calculated in this box.

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY

1. **PURPOSE / WATER USE CATEGORY:** Choose one of the following purpose or category codes listed below for each row in Table 2. There may be several purpose/categories on a single TMK, and each purpose or category must be listed in a separate row. Attach additional copies if necessary.

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
INDUSTRIAL	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
IRRIGATION	
IRRG	Golf Course
IRRH	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPC	Parks
IRRSC	Schools
MILITARY	
MIL	Military
MUNICIPAL	
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 is 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, enter either: "Yes" and the date the CDUP was approved if you have a CDUP applicable to this project; or "Yes" and "not acquired" in this box. If a CDUP is not required, enter "N" for no in this box. To check 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 your property, call Maui County Planning Department at 270-6279, or 270-7253
6. **SMAP REQUIRED:** If a Special Management Area Permit (SMAP) is required for this project, enter either: "Y" and the date SMAP was approved; or "Y" and "not acquired" in this box. If a SMAP is not required, enter "N" for no in this box. To find out if your property is in a Special Management Area and requires an SMAP, call Maui County Planning Department at 270-8205.
7. **QUANTITY OF USE:** Enter the quantity of use in gallons per day (GPD). Justification for the quantities requested may depend on your answers to items 8 and 9, and you should describe the justification in item 10.
8. **SUBMETERED? (Y/N):** If the specific use is submetered, enter "Y" for yes here. If it is not submetered, enter "N" for no. Submetering is specific to each line item.
9. **UNITS OR ACREAGE:** This is the value and category as the basis for calculating the duty. "Duty" is the amount of water used or requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling units, or number of people, or animals. Examples to fill in for this category are: 400 dwelling units, 500 people, 3.74 acres.
10. **APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7:** Explain how you are justifying the amount you are requesting. Attach additional sheets if necessary.

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

TABLE 3: IRRIGATION INFORMATION

If you have grown crops in the year prior to the date of designation, please list all the crops (including landscape and golf course irrigation) that you have grown. Enter a single crop and single TMK per line. If you have multiple crops, list them all as separate line items. Attach additional copies of Table 3 if necessary.

1. USE TAX MAP KEY (TMK): Enter the parcel number where the crop is being grown. Attach a map outlining irrigated area(s) and photos.
2. CROP: Enter the crop type.
3. TOTAL ACREAGE: Enter the total acreage of the parcel listed.
4. NET IRRIGATED ACREAGE: Enter the acreage for the specific crop grown.
5. BEGIN GROWTH PERIOD (MONTH): This is the month of the start of the growth cycle. For perennial crops, list the 12th month prior to the date of designation.
6. END GROWTH PERIOD (MONTH): This is the month of the end of the growth cycle. For perennial crops, list the month of the date of designation.
7. IRRIGATION SYSTEM: Enter one of the following:
 - TRICKLE, DRIP
 - TRICKLE, SPRAY
 - MULTIPLE SPRINKLERS
 - SPRINKLER, CONTAINER NURSERY
 - SPRINKLER, LARGE GUNS
 - SEEPAGE, SUBIRRIGATION
 - CROWN FLOOD
 - FLOOD (TARO)
 - OTHER – Please describe.
8. IRRIGATION PRACTICE: Enter one of the following:
 - IRRIGATE TO FIELD CAPACITY
 - APPLY A FIXED DEPTH PER IRRIGATION
 - DEFICIT IRRIGATION
 - OTHER – Please describe.

TABLE 4: ALTERNATIVES ANALYSIS

Please address every alternative listed in Table 4 and whether or not they are available, for both potable and non-potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc.

Surface water is defined in §174C-3 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.

PUBLIC INTEREST

Explain how the uses in your application are consistent with the public interest as described in §174C-2(c): *(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.*

ATTACHMENT A

Exhibit 1A:

Appended hereto as Exhibit 1 is a copy of the 7.5 minute-series USGS topographic map with Waikapū Stream and the South Waikapū Diversion labeled.

Exhibits 2A and 2B:

Property Tax Map Key (TMK) maps showing the location of our property and the locations of our 'auwai diversions and areas of existing use.

Exhibits 3A, 3B, and 3C:

True and correct copies of photos of our 'auwai diversions and areas of existing use.

Exhibit 4A:

True and correct copies of Land Commission Award No. 2577 to Hakiki and the translated native testimony of Hakiki's claim. True and correct copies of Royal Patent No. 3119 to Waiho and the native testimony in support of Waiho's claim.

Box 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, Wailuku Water Company claims to be the source landowner.

Supplemental Information for Box 5: Stream Diversion

We are kuleana users along the **South Side Waikapū kuleana 'auwai**. Water is diverted from Waikapū Stream by Wailuku Water Company's intake (see attached "South Waikapū Diversion" on USGS map), then continues to Reservoir #1 via pipes and ditches. Some water continues makai in the kuleana 'auwai via pipes and ditches until it passes our property (TMK No. 3-6-006:025) where we divert some water via 'auwai and pipes for our lo'i kalo and other non-commercial gardening (see photo exhibits). The water flows under an access road and onto our adjoining parcel (TMK No. 3-6-006:029) via a pipe (see photo exhibits). After flowing through our lo'i, water is returned to Waikapū Stream via an open ditch. The amount of water returned to the stream varies, depending on a number of factors including crop needs, weather, etc.

Supplemental Information for Box 6: Flow Measurement Information

See explanation for Table 2, Box 10, below.

Supplemental Information for Box 7: Appurtenant Rights

Our property has appurtenant rights, because it was in kalo cultivation at the time of the Māhele of 1848. TMK No. 3-6-006:025 is 0.62 acres and was granted to Hakiki in the Māhele. Our 'ohana continues to cultivate wetland kalo and, thus far, we have already restored 11 ancient lo'i for our home use and as part of cultural education and Hawaiian language immersion programs for Kanaka Maoli to learn about and perpetuate our culture. Attached hereto as Exhibit 4A are true and correct copies of Land Commission Award No. 2577 to Hakiki and the translated native

testimony in support of Hakiki's claim. The second parcel, TMK No. 3-6-006:29, is 0.63 acres. The parcel was granted to Waiho at the time of the Māhele by Land Commission Award No. 3277. Attached hereto as Exhibit 4B are true and correct copies of Royal Patent No. 3119 to Waiho and the native testimony in support of Waiho's claim. According to the native testimonies, both parcels were taro land at the time of the Māhele. This land has been in our family continuously since the Māhele, and based on our knowledge of the history of this kuleana and our family, we have no evidence, indication, or any other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

Addendum, Table 2, Box10: Justification for Requested Quantity

Because our water use is not metered, we estimated our existing water use for wetland kalo cultivation by multiplying the amount of land we had in wetland kalo cultivation on April 30, 2008 (0.15 acres for parcel 25; 0.15 acres for parcel 29) by 300,000 gallons, the average amount of water we understand is required to grow healthy wetland kalo.

We estimated our existing domestic water use, including our use of water for our non-commercial garden, by multiplying the 2002 State of Hawai'i Water System Standard for Maui County of 3,000 gallons per acre by 0.1, the amount of land in diversified agriculture (0.04 acres for parcel 25; 0.06 acres for parcel 29) on April 30, 2008.

Based on this information, we estimate our existing water use for our lo'i kalo (90,000 gallons per day (GPD)) and non-commercial garden (300 GPD) as approximately 90,300 GPD.

We are also concurrently filing a separate Water Use Permit Application to expand our existing lo'i kalo.

Addendum, Table 4: Alternatives Analysis

Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative source of water. Our appurtenant right is for stream water, not to water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law. Similarly, our traditional and customary right as Native Hawaiians is to cultivate kalo on our land in the traditional manner, not in some other manner using alternative, non-traditional sources, and this traditional and customary right is constitutionally protected. Finally, we are an existing riparian use on Parcel 29, which is also constitutionally protected. See Haw. Const. Art. XI § 7.

Moreover, even if we did not have protected rights to water from Waikapū Stream, there is no potentially available alternative source that is economically practicable. We cultivate kalo and other crops on our land for cultural, subsistence, and educational purposes; the kalo we grow feeds our 'ohana and is shared with neighbors and community members. An alternative water source that would require us to pay for the volumes of constantly flowing water in our lo'i necessary to keep temperatures cool and support healthy kalo, would make our practice economically impossible. We would effectively be denied our appurtenant right and traditional

and customary right to grow kalo on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights.

Municipal Sources

Neither of our parcels have access to County water; our kuleana 'auwai is the only source of water for our domestic, agricultural, and other needs.

Wastewater reuse

Reusing wastewater is impracticable because we would still be required to pay for large volumes of flowing water. As a small user engaged in traditional uses and non-commercial gardening, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

Ditch system

We are 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, we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user with appurtenant rights engaged in traditional uses and non-commercial gardening, the cost of taking water from or constructing another ditch is not practicable, especially given our appurtenant rights to water from Waikapū Stream.

Desalinization

Desalinization of brackish water is not a practicable alternative because we are 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 we were able to secure the permits necessary to drill a well and pump ground water for our uses, installing and operating such a well to provide flowing water for wetland kalo cultivation would be unprecedented and extremely burdensome. As a small user engaged in traditional uses and non-commercial gardening, we do not have the means to install and maintain such infrastructure.

Addendum, Table 4: Public Interest

Our Existing Use is Consistent with 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"). HRS § 174C-2(c) also 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 existing water we use is predominantly for kalo cultivation. We grow kalo in traditional ways and use it for home, ceremonial, and educational purposes. We also have a non-commercial garden with several varieties of fruits, including papayas. We are Native Hawaiians engaged in traditional agricultural practices, and

our crops help maintain ecological balance and scenic beauty. As such, our existing riparian use of stream water is consistent with the public interest.

Our Existing Use is a Protected Public Trust Purpose

Kalo cultivation by Native Hawaiians is a protected public trust purpose. Waiāhole I, 94 Haw. at 137, 9 P.3d at 449; see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights); HRS § 174C-101(c) (specifically protecting the right to cultivate kalo on one's own kuleana). Our exercise of appurtenant rights is also a protected public trust purpose. Waiāhole I, 94 Haw. at 137 n.34, 9 P.3d at 449 n.34. Additionally, because much of the water we use is returned to Waikapū Stream, our use supports other existing public trust purposes such as: (1) the maintenance of waters in their natural state; (2) resource protection; (3) water for domestic purposes; and (4) the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

Our Existing Use Supports Beneficial Instream Uses

Because we return much of the water we divert for kalo cultivation to Waikapū Stream, our existing riparian use also supports beneficial instream uses such as: (1) the maintenance of fish and wildlife habitats; (2) outdoor recreational activities; (3) maintenance of ecosystems such as estuaries, wetlands, and stream vegetation; (4) aesthetic values such as waterfalls and scenic waterways; (5) maintenance of water quality; (6) the conveyance of irrigation and domestic water supplies to downstream points of diversion; and (7) the protection of traditional and customary Native Hawaiian rights. See HRS § 174C-3.

Our Existing Use is a "Reasonable-Beneficial Use"

"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 indicated, our existing 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 take steps to make our water use efficient. For instance, we use pipes and concrete-lined 'auwai where appropriate to minimize water loss, and our farming practices include the use of mulch and green manure to protect the soil from erosion and minimize the use of water. Therefore, our use is "reasonable-beneficial."

EXHIBIT 1A: USGS topographic map labeled with Waikapū Stream and the “South Waikapū Kuleana Diversion” locations.

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

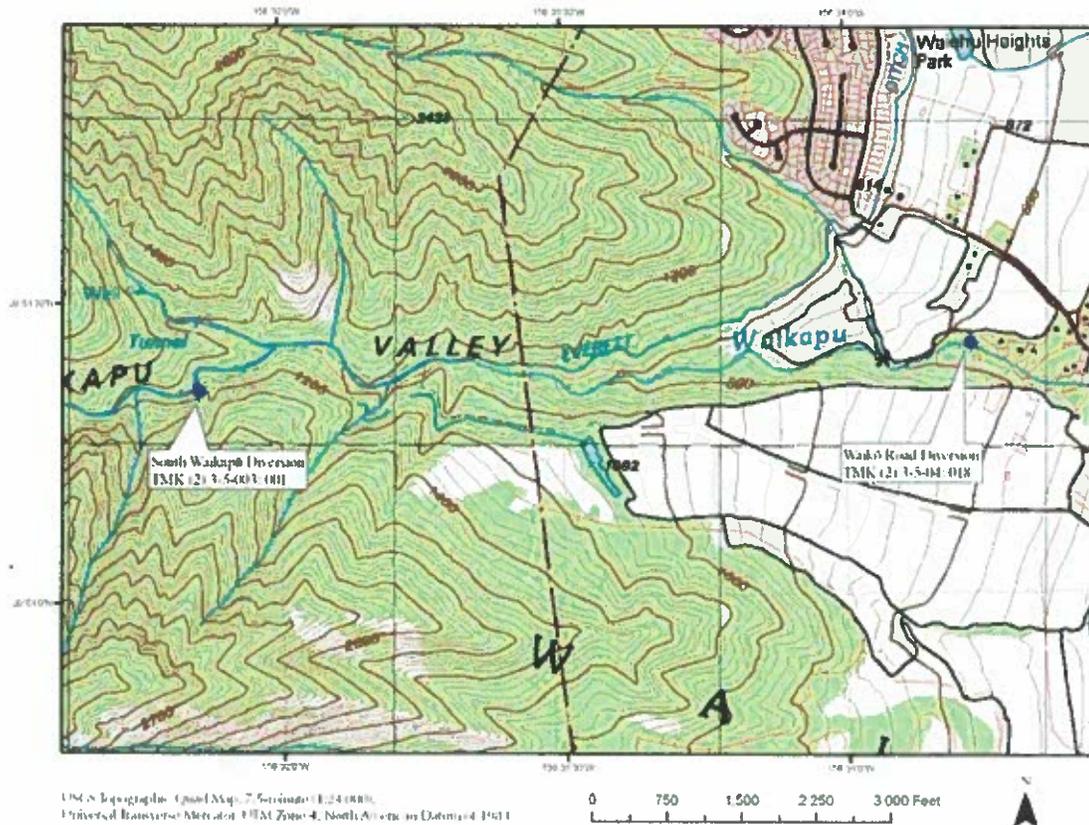
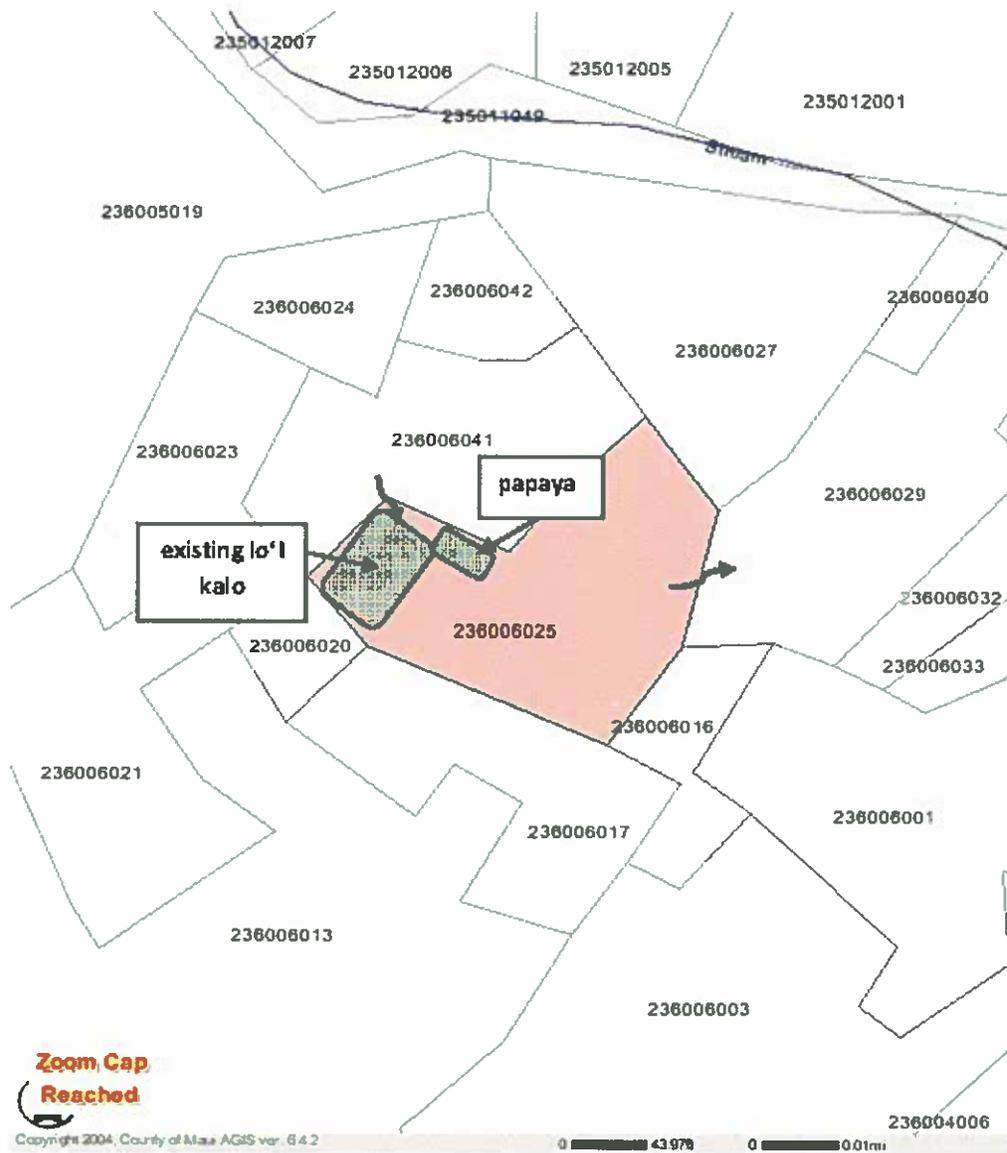
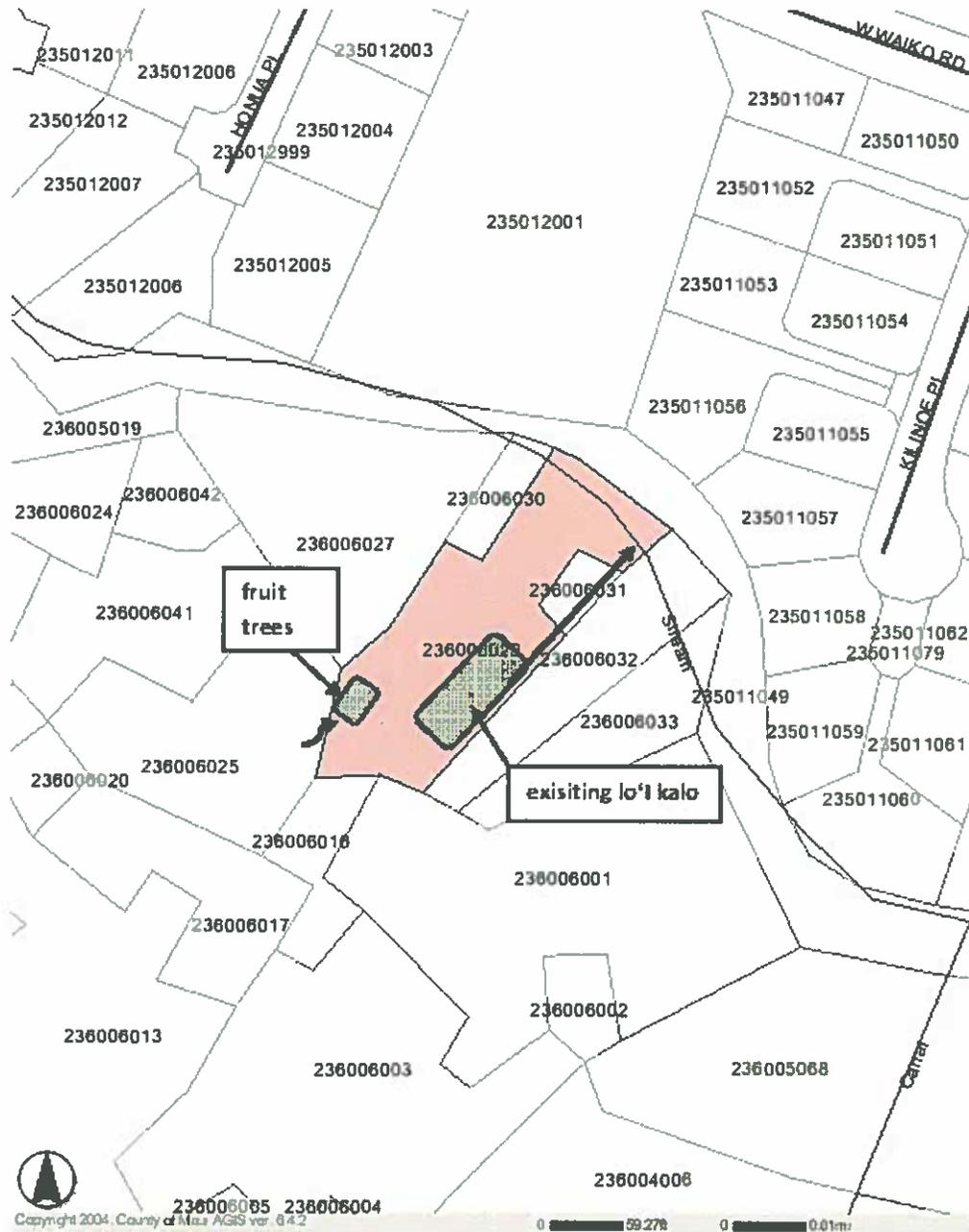


EXHIBIT 2A: Map for TMK: 3-6-006-025, showing water inflow and outflow and existing end uses (diversified agriculture/papaya and kalo). End uses and `auwai are approximate, and not to scale.



TMK: 3-6-006:025

EXHIBIT 2B: Map for TMK: 3-6-006-029 showing water inflow and outflow and existing end uses (diversified agriculture and kalo). End uses and `auwai are approximate, and not to scale.



TMK: 3-6-006:029

EXHIBIT 3A: Photos of Parcel 25 intake and `auwai



The photo above shows our intake for Parcel 25.



The photo above shows our `auwai from the intake in the top photo to the cultivated portions of Parcel 25.

EXHIBIT 3B: Photos of Parcel 25 end uses

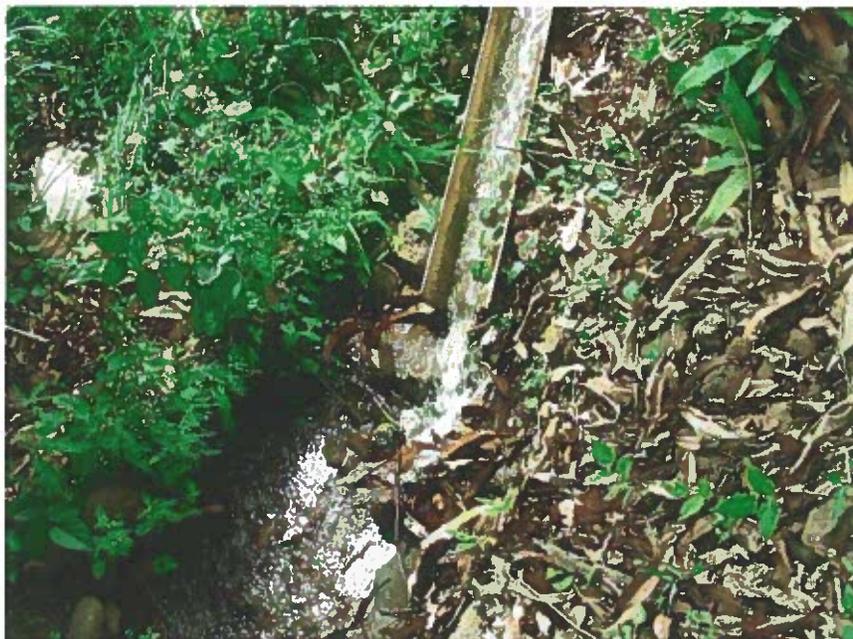


The photo above depicts some of our end uses (kalo) on Parcel 25



The photo above depicts some of our end uses (diversified ag/papaya) on Parcel 25

EXHIBIT 3C: Photos of Parcel 29 intake and end uses



The photo above shows our intake for Parcel 29



The photo above depicts some of our end uses (kalo) on Parcel 29

No. 2577, Hakiki, Waikapu, December 24, 1847
N.R. 562v3

Hear ye, ye Land Commissioners: I hereby state my claim to you. I, Hakiki, have some lo'is. At Waibalulu are 4 lo'i, at Olohe are 9 lo'i. There [sic] are not in one place so as to be able to describe their boundaries. At Kaupala are 11 lo'i and my house is adjacent to some lo'is. They are not gathered together in one place. This is my thought as to my claim.
HAKIKI

F.T. 477-478v7
Cl. 2577, Hakiki

Opanui, sworn, I know the lands of the claimant. They consist of 4 pieces in Waikapu, Maui

- No. 1 is 11 lo'is in Kaepala.
- No. 2 is 7 lo'is in Olohe.
- No. 3 is 3 lo'is in Olohe.
- No. 4 is 4 lo'is in Waialulu.

The claimant received these lands from Kaai in 1839 and his title has never been disputed. There is one poalima loi in No. 1.

No. 1 is bounded:
Mauka by the ili of Panua
Waihee by the Creek of Waikapu
Kula by Kaai's land
Maalaea by Kamakai's land.

No. 2 is bounded:
Mauka by Ehumai's land
Waihee by Hakahumakaa'i's land
Kula by Kaai's land

Maalaea by Ehumui's land.

No. 3 is bounded:

Mauka by Keka's land

Waihee by Peu's land

Kula by Kaai's land

Maalaea by Ekumu's land.

No. 4 is bounded:

Mauka by Kachui's land

Waihee by Kekaloa's land

Kula by Kakui's land

Maalaea by the same.

N.T. 666v9

No. 2577, Hakiki, July 13, 1849

Opunui, sworn, I know his four parcels of land in Waikapu.

Parcel 1. 11 lo'i and house lot in the 'Ili of Kaopala.

Parcel 2. 7 lo'i and house lot in the 'Ili of Olohe.

Parcel 3. 2 lo'i and house lot in the 'Ili of Olohe.

Parcel 4. 4 lo'i and house lot in the 'Ili of Waihalulu.

All his parcels of land were from Kaai in 1839. No opposition. One po'aima is in Parcel 1.

[No.] 1 is bounded:

Mauka by the 'Ili of Punia

Waihee by Waikapu stream

Kula by Knai

Maalaea by Kamakai.

[No.] 2 is bounded:
Mauka by Eihunui
Waihee by Kahakumakaai
Kula by Kaai
Maalaea by Eihunui.

[No.] 3 is bounded:
Mauka by Hika
Waihee by Pau
Kula and Maalaea by Kaai.

[No.] 4 is bounded:
Mauka by Kaeha
Waihee by Kekuku
Kula and Maalaea by Kukae.

[Award 2577; R.P. 4948; Kaopala, Olohe, Waihalulu Waikapu Wailuku, 3 ap.; 2.9 Acs]

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7. is bounded mauka by Puupahoehoe, Waihee by Pepelaopili, Kula by Kepaa, Maalaea by Manu.
8. is bounded mauka by Kaahue, Honuaula by Kanakao-

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kai, makai by Naanaa, Maalaea by Kuheleloa.
9. is bounded mauka by Holani, Honuaula by Nahuina, makai by Kamalama, Maalaea by Nahuina.

Kuihewa sworn: My knowledge of the boundaries of the Parcels 8 and 9 at Kamaole, Kula is the same as described above.

No. 3277 - Waiho July 13, 1849

Kaai sworn: I know of his two parcels of taro in Kaopala 'Ili in Waikapu

Parcel 1. Taro pauku
" 2. 2 taro lo'i

He got them from my makuakane in the time of Kamehameha I. No opposition.

1. is bounded mauka by Kachi, Waihee by stream, Kula and Maalaea by my land.
2. is bounded mauka by Kamakai, Waihee by Hakiki, Kula by Puhi, Maalaea by my land.

No. 3340 - Nahau

Kaai sworn: I know of two parcels in Nohoana 'Ili in Waikapu. The first parcel is for taro, and the second parcel is a mo'o kula. They are from me, who had them from my makuakane in the time of Kamehameha I. No opposition.

1. is bounded mauka by Keliiolelo, Waihee by Hika, Kula by myself, Maalaea by stream.
2. is bounded mauka by myself, Waihee by stream, Kula by Kaaha, Maalaea by myself.

No. 3520 - Keawe (w)

Kaai sworn: I know of two taro parcels and

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a kula parcel in Punia 'Ili in Waikapu. She had it from my makuakane in the time of Kamehameha I. There are no po'alima, and no opposition to her.

1. is bounded mauka by the 'Ili of Pikoku, Waihee by the po'alima and pa'ahao, Kula by the 'Ili of Kaopala, Maalaea by po'alima.
2. is bounded mauka by Kawawa, Waihee by myself, Kula by the 'Ili of Kaopala, Maalaea by Ihuole (w).
3. is bounded Maalaea side by Government Lot and the other sides by myself.

Coconut:		Road/Path:	No
Coffee:		Burial/Graveyard:	No
Oranges:		Wall/Fence:	No
Bitter Melon/Gourd:		Stream/Mulirua/River:	Yes
Sugar Cane:		Pali:	No
Tobacco:		Disease:	No
Koa/Kou Trees:		Claimant Died:	No
Other Plants:		Other Trees:	
Other Mammals:	No	Miscellaneous:	

No. 3277, Waiho
 N.R. 52-53v6

To you, the Land Commissioners, with aloha: I hereby state my claim for some lo'is. 14 are at Kaopala and Luapuaa. The lo'is at Kaopala are an ancient right from the time of Kamehameha I, and four lo'is at Luapuaa were from Charles Copper/Copp. I go to the work days of the ali'i and the konohiki.

WAIHO

Waikapu, 22 December 1847

F.T. 481v7
 Cl. 3277, Waiho

Kaai, sworn, I know the lands of the claimant They consist of 2 pieces in the ili of Kaopala, Waikapu, Maui.

No. 1 is a section of lo'is.
 No. 2 is 2 lo'is.

The Claimant received these lands from my father, in the days of Kamehameha I. His title is not disputed and never was.

No. 1 is bounded:
Mauka by Kaoh'e's land
Waihee by the creek
On other two sides, by my land.

No. 2 is bounded:
Mauka by Kamakai's land
Waihee by Hakiki's land
Kula by Puh'i's land
Maalaea by my land.

N.T. 669v9
No. 3277, Waiho, July 13, 1849

Kaai, sworn. I know of his two parcels of taro in Kaopala 'Ili in Waikapu.

Parcel 1. Taro pauku.
Parcel 2. 2 taro lo'i.

He got them from my makuakane in the time of Kamehameha I. No op-position.

[No.] 1 is bounded:
Mauka by Kaohi
Waihee by stream
Kula and Maalaea by my land.

[No.] 2 is bounded:
Mauka by Kamakai
Waihee by Hakiki

Kula by Puhi
Maalaea by my land.

[Award 3277; R.P. 3119; Kaopala Waikapu Wailuku, 1 ap., .8 Ac.]