



**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 **RECEIVED**  
**COMMISSION ON WATER**  
**RESOURCE MANAGEMENT**  
**APR 23 PM 3:51**  
 SWUP.2222.6

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.
- 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.

1. APPLICANT'S NAME CORDELL CHANG		Applicant's Contact Same	2. SOURCE LANDOWNER'S NAME WAILUKU WATER COMPANY, LLC		Source Landowner's Contact AVERY CHUMBLEY
Applicant's Mailing Address, or Principal Place of Business 2315 KAHEKILI HWY. WAILUKU, HI 96793			Source Landowner's Mailing Address, or Principal Place of Business 225 EAST WAIKO ROAD WAILUKU, HI 96793		
Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone (808) 244-7079	Source Landowner's Fax (808) 242-7068	Source Landowner's E-mail abc@aioha.net

**SOURCE INFORMATION**

3. SURFACE WATER HYDROLOGIC UNIT: Island: MAUI Hydrologic Unit: WAIHE'E Hydrologic Unit Code: 6022

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:  
 NO IFS EXISTS FOR WAIHE'E RIVER; See Attachment A

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 2 - 014 : 001  
Zone Sec Plat Parcel

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 2 - 006 : 004  
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: N/A See Attachment A

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?  
 Yes. How much water will be returned? See Attachment A  
 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.  
 See Attachment A

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

9. TOTAL QUANTITY OF WATER REQUESTED: 150,000 gallons per day. See Table 1, Item 14.

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: Wailuku Water Company  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): CHANG, C  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.

18. APPLICANT  <i>Cordell Chang</i> Signature Cordell Chang Print 4/19/09 Date	17. SOURCE LANDOWNER  Signature  Print  Date	FILE ID: SWUP 2222.6 DOC ID: 3226
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**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	OPD/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>											0	<sup>12</sup>	GPD
<b>Uses that do not require potable water</b>													
AGRCP	3	2	0 0 6	0 0 4	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	0.50 acres	300,000	150,000	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See Attachment A
	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>											150,000	<sup>13</sup>	GPD
<b>TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =</b>											150,000	<sup>14</sup>	GPD
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 - 2 - 0 0 6 : 0 0 4 Zone - Sec - Plat Parcel	Wetland Taro	1.29	0.50	Year round	Year round	Flood (Taro)	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:**  
See Attachment 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	Not Applicable	See Attachment A
Wastewater reuse	Not Applicable	See Attachment A
Ditch system	Not Applicable	See Attachment A
Desalinization	Not Applicable	See Attachment A
Ground water	Not Applicable	See Attachment A
Other (specify)	Not Applicable	Not Applicable

**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 A

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

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 A

# 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: (1)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.

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 1: 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 Developmant
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
IRRS	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.*

**ATTACHMENTS**

This Water Use Permit Application incorporates the following attachments:

**Attachment A** – Supplemental Responses

**Attachment B** – TMK Map

**Attachment C** – Photographs

**Attachment D** – Documentation Establishing Appurtenant Rights

**Attachment E** – 7.5-minute series (1:24,000) USGS Topographic Map showing Waihe`e Stream, with the Waihe`e Ditch Diversion and Spreckels Ditch Diversion labeled.

**NOTE:** Because my existing use of water as of April 30, 2008 was limited by the lack of availability of sufficient water, my use on that date was less than used previously on this land, and less than I plan to use in the future if water is restored. Accordingly, I am submitting this application for a new use in addition to my application for an existing use. The quantity of water requested herein is in addition to the amount of our existing use as of April 30, 2008.

**ATTACHMENT A**  
**SUPPLEMENTAL RESPONSES**

**Box 2: Source Landowner**

Not applicable pursuant to HRS § 174C-51(1)(B), because we do not have a terminable interest in the land which is the source of the permitted water. According to the Water Commission's records, which I have not independently verified, Wailuku Water Company, LLC claims to be the source landowner.

**Boxes 4&5: Instream Flow Standards**

There currently are no Instream Flow Standards for Nā Wai `Ehā, or Waihe`e Stream in particular, and a petition to upwardly amend the Interim Instream Flow Standards is pending. There is sufficient water upstream of all diversions to accommodate our proposed use.

**Box 7 (a&b): Proposed Stream Diversion**

We are kuleana users along the kuleana `auwai that runs to the south of Waihe`e River. Water is diverted from Waihe`e River at the Waihe`e and Spreckels diversions (see USGS Topographical Map, Attachment E). All the water from the Spreckels diversion enters the Spreckels Ditch, as does some water from the Waihe`e diversion. The South Waihe`e kuleana `auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open `auwai on the south side of Waihe`e River. The water continues makai in the `auwai, and a 3" pipe brings water from the `auwai to our land, where we use it for our existing diversified agriculture and propose to use it to resume wetland kalo cultivation in lo`i that were actively cultivated until the 1980s (after the 3" pipe was installed, which serves another kuleana parcel as well, there was insufficient water for kalo cultivation on our kuleana parcel). After flowing through our lo`i, most of the water used for wetland kalo cultivation will leave our land at the northeast corner and flow into an `auwai that shares the water with other kuleana users. The amount of water that will be returned to the `auwai after flowing through our lo`i will depend, in part, on daily climate conditions.

**Box 8: Proposed Flow Measurement Information**

The amount of water required for our proposed new use is an estimate. We plan to resume cultivation of wetland kalo in lo`i that are currently fallow due to lack of water. I estimated our proposed new water use for wetland kalo cultivation by multiplying the 0.50 acres that we plan to cultivate by 300,000 gallons per acre per day, which we understand to be the amount of water required to grow healthy kalo.

**Box 12: Appurtenant Right**

This property has an appurtenant right to water because it was in kalo cultivation at the time of the Māhele of 1848. Appended to this application as ATTACHMENT D are true and correct copies of Land Commission Award 3805 and Royal Patent No. 5352, along with the testimony indicating that the land was in kalo at the time of the Māhele. We have no evidence, indication, or other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

**Table 1: Land Use Consistency/Efficiency**

**Boxes 3 & 5** – Our application is for kalo cultivation on land zoned agricultural. The cultivation of traditional Native Hawaiian crops, including kalo, is consistent with state and county general plans and land use designations. Additionally, this use is consistent with county land use plans and general policies.

**Box 11** – See supplemental response for Box 8.

**Table 3: 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 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 kuleana land in the traditional manner, not in some other manner using alternative, non-traditional sources, and this traditional and customary right is constitutionally protected.

Moreover, even if we did not have protected rights to water from Waihe`e Stream, there is no potentially available alternative source that is economically practicable. I plan to cultivate kalo on our land for cultural and subsistence purposes; the kalo we grow will feed our `ohana and be shared with neighbors and community members. Our lo`i kalo will also help to provide educational and other experiences through our non-profit Lokelani `Ohana, an organic farming program for people with disabilities. 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 wetland kalo would make our kalo cultivation economically impossible. We would effectively be denied our appurtenant right and traditional and customary right to grow kalo on our kuleana. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights.

**Municipal Sources** – Our domestic water service is a typical residential service and may not have the capacity to deliver the volumes of water we require. Even if the Maui County Department of Water Supply were willing to provide municipal water for kalo cultivation and install a larger water meter, the cost of using municipal water for such purposes would be

prohibitive. Additionally, water from the Maui County Department of Water Supply is chlorinated, which is detrimental and unsuitable for wetland kalo.

**Wastewater reuse** – Reusing wastewater is impracticable because I would still be required to pay for water. Moreover, as small users who plan to engage in a traditional, non-commercial use, we 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 Spreckels Ditch via an existing kuleana 'auwai that passes near our land. Getting water from other ditch systems is not practicable, because there is no other ditch that passes near our kuleana land and we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. In any event, another ditch diverting water from Waihe'e Stream would not be an alternate water source. Constructing a ditch system to deliver water from another stream does not appear technically feasible given the topography and distance, and would be cost prohibitive.

**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 was able to secure the permits necessary to drill a well and pump ground water for our use, installing and operating such a well would be extremely burdensome. As small users who plan to engage in a traditional, non-commercial use, we do not have the means to install and maintain such infrastructure.

### **Table 3, Section C: Additional Requirements**

#### **1. (a) Our Proposed Use Will Maximize Beneficial Use and is in the Public Interest**

We are Native Hawaiians who seek to exercise our appurtenant and traditional and customary rights to cultivate kalo in the traditional manner on our kuleana land, and our lo'i help maintain ecological balance and scenic beauty. Pursuant to HRS § 174C-2(c), the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." As such, our proposed use of stream water is consistent with the public interest.

#### **(b) Our Proposed Use is a Protected Public Trust Purpose**

Kalo cultivation by Native Hawaiians is also a protected public trust purpose. In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 137, 9 P.3d 409, 449 (2000) ("Waiāhole I"); 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). Additionally, because much of the water we use will be returned to the 'auwai, our proposed use will support other public trust purposes such as: (1) water for domestic purposes; and (2) the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

**(c) Our Proposed 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 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 will only use the amount we need.

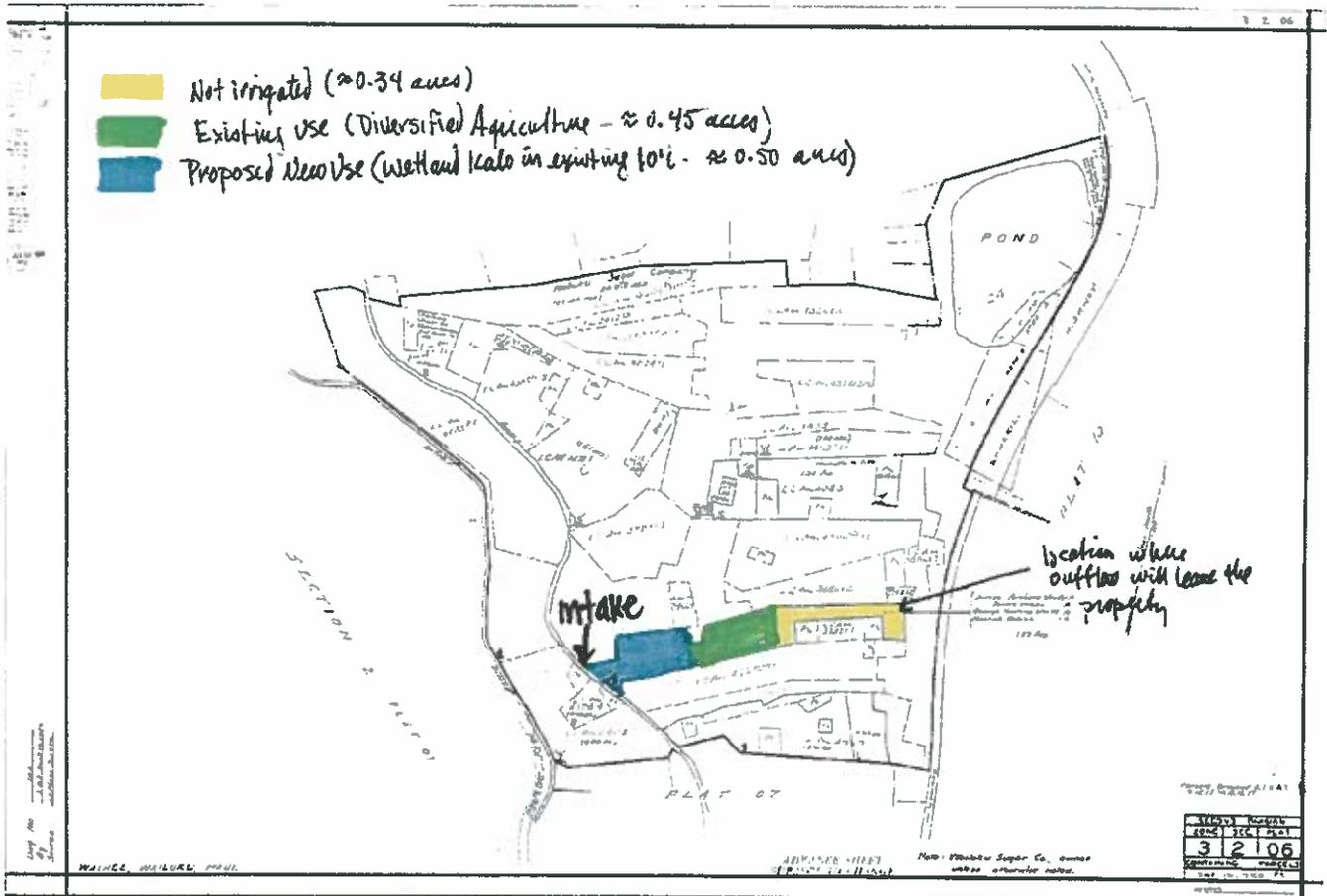
**2. Our Proposed Use Will Not Interfere With Any Existing Legal Use**

Our proposed use will not interfere with existing legal uses. As kuleana users, we have first priority by law. We believe that the flow of Waihe`e Stream is able to accommodate our new use. In fact, our use of water from Waihe`e Stream has been severely restricted by large diversions upstream of the Spreckels Ditch Diversion, which supplies our `auwai with water, and this has limited the acreage that we can cultivate, necessitating this new use application. Also, as mentioned above, most of the water will be passed on to other kuleana users. Thus, our proposed use will not interfere with other existing legal uses because it will not result in a large net loss of water from the stream and larger ecosystem.

**3. Our Proposed Use Will Not Interfere with the Rights of the Department of Hawaiian Home Lands**

We are not aware of any DHHL lands using water from Waihe`e 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. Instead, our proposed use will actually help to protect DHHL’s rights because all of the water we are requesting will remain in the watershed where it will recharge the aquifer, protecting the health of the aquifer system for DHHL’s present and future groundwater uses.

ATTACHMENT B: TMK MAP



This is a true and correct copy of the tax map for Zone 3, Section 2, Plat 6 in the Second Taxation District, with our kuleana parcel, TMK No. (2) 3-2-006: 004, highlighted to show the location of our existing and proposed new uses.

**ATTACHMENT C: PHOTOGRAPHS**



Above are true and correct copies of photographs that accurately depict the condition of the 'auwai (top photo) that feeds our kuleana intake, as well as the actual intake (bottom photo) that provides water to our kuleana and our neighbors.



Above is a true and correct copy of an April 18, 2009 photograph that accurately depicts the pipe that divides water between our kuleana and the Kana's kuleana, our neighbors.



Above is a true and correct copy of a photograph taken on April 18, 2009 accurately depicting the area we would like to restore to wetland kalo cultivation, which is currently overgrown with haole koa (shown behind the person in this photo).



Above is a photo accurately depicting the ditch that is available to return the water that will flow through our lo'i kalo to the lower 'auwai. This 'auwai (pictured below) runs makai of our property and provides water to other kuleana users. These are true and correct copies of photos taken on April 15, 2009.







Maloko o *Maui* *1.29* *Maui*  
e oi iki aku, a emi hi mai paha. Ua koe nae i ke aupuni na oua i nui e me na metala o pau.

No *Lehua*  
ua aia la i haawia ma ke *Apo Aloha* a oo kua map hoolua, e me kua waihoia, ua pii oia  
ke auna a ke Poe Absolute o *Law* hi ma ua aia aloha i kua mauna i kua mauna.

A I MEA E IKA AI, ua kua wai i kua mauna, a me ka Sila Nui o ke Hawaii Poe  
Aia ma Honolulu i kua la.

*June* 18 *63*  
*Kamohamoha*  
*P. Kamohamoha*

32

The Claimant received these from his parents in the days of Kaunakāhau the title was never disputed.

It is bounded: N. by the land of Pihai, E. by the land of Pihai, S. by the land of Pihai, W. by the land of Pihai.

It is bounded: N. by the land of Pihai, E. by the land of Pihai, S. by the land of Pihai, W. by the land of Pihai.

C. 380 Kanaloa

The land consists of two pieces in Kanaloa.

It is a portion of the land in Kanaloa.

It is bounded: N. by the land of Pihai, E. by the land of Pihai, S. by the land of Pihai, W. by the land of Pihai.

The Claimant is a very old man, a son of the land and has possessed the land ever since in peace until about a week since when he was taken away by disease by the night of June 10. There is a pond in the land.

It is bounded: N. by the land of Pihai, E. by the land of Pihai, S. by the land of Pihai, W. by the land of Pihai.

It is bounded: N. by the land of Pihai, E. by the land of Pihai, S. by the land of Pihai, W. by the land of Pihai.

C. 381 Kanaloa

The land is a piece of land in Kanaloa.

The Claimant received it from his land in 1849, there are 5 ponds in it. The title is not disputed.

It is bounded: N. by the land of Pihai, E. by the land of Pihai, S. by the land of Pihai, W. by the land of Pihai.

No. 4010 Hinaiasele July 25, 1849 Page 270

I.S. Keawe Sworn He has seen 2 sections in the ilis of Waihee. This has been their lands since the time of E. Keawai in 1829, no objection. 1 Poalima in the first section.

Section 1 - Taro pauku and pasture at Holile  
 Mauka Kamaika  
 Kahakuloa Large ditch  
 Makai Hoanapuni  
 Wailuku Kamihana

Section 2 - Taro pauku and house lot at Pahukanila  
 Mauka Kamaika  
 Kahakuloa and makai Poalima  
 Wailuku Kaulahiwa

No. 3805 Leurus July 25, 1849

Keawe sworn He has seen 1 section in Puhanolu ili in Waihee. Land from Hailima in 1829, no objection. 5 Poalimas there.

Mauka Kaele  
 Kahakuloa Pila  
 Makai Land fence  
 Wailuku Palau

No. 4434 Alauka July 25, 1849  
 3770 A

Keawe sworn He has seen 2 sections in the ili of Koihi of Waihee. Land from her (Alauka) husband in 1829, no objection. 2 Poalimas in first section.

Section 1 - Taro pauku  
 Mauka Kuleleumoku  
 Kahakuloa Anadara  
 Makai Kapihe  
 Wailuku Kaamaku

Section 2 - Taro Pauka  
 Mauka Poalima  
 Kahakuloa Stream  
 Makai Kanaikecho  
 Wailuku Poalima

No. 4431 Kaumaka July 25, 1849 Page 271

Kahim sworn He has seen 2 sections in the ilis of Waihee. Section 1 from Kahim in 1829, section 2 from Kaholoaniani in 1829, no objection. 2 Poalimas in the first section.

Section 1 - Taro pauku at Halepahu  
 Mauka Poalima  
 Kahakuloa Kahim's land  
 Makai Poalima  
 Wailuku Stream

Section 2 - 3 Taro patches at Kahilinamaia  
 Mauka Lanima ili  
 Kahakuloa and makai Kaholoaniani's land  
 Wailuku Kanalua

RECEIVED JULY 25 1849

ATTACHMENT E

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

