



**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 Official Use Only:

**RECEIVED**  
**COMMISSION ON WATER**  
**RESOURCE MANAGEMENT**

**2009 APR 23 PM 3:47**

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

Event ID: SWUP.2224.6

SWUP NO. 28

|   |                 |   |   |   |                           |
|---|-----------------|---|---|---|---------------------------|
| <b>APPLICANT INFORMATION:</b> Note: in accordance with §174C-51(1)(B), HRS, in the event a lessee, licensee, developer, or any other person with a farmable 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.   |                 |   |   |   |                           |
| <b>1. APPLICANT'S NAME</b><br>James Phillip Dodd  |                 | Applicant's Contact   |   | <b>2. SOURCE LANDOWNER'S NAME</b><br>Avery Chumbley |                           |
| Applicant's Mailing Address, or Principal Place of Business<br>P.O. Box 351<br>Wailuku, HI 96793  |                 | Source Landowner's Mailing Address, or Principal Place of Business<br>363 W. Waiko Rd.<br>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 |
| <b>EXISTING SOURCE INFORMATION</b>  |                 |   |   |   |                           |
| The following must be attached before this application is accepted as complete:<br>• Portion of 7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion locations and quad map name.<br>• Property Tax Map Key (TMK), showing stream or diversion location, end location of water use referenced to established property boundaries.<br>• Photograph(s) of the surface water diversion works and end use.   |                 |   |   |   |                           |
| <b>3. SURFACE WATER HYDROLOGIC UNIT AND CODE:</b> <input type="checkbox"/> Waihee/6022 <input type="checkbox"/> Waiehu/6023 <input type="checkbox"/> Iao/6024 <input checked="" type="checkbox"/> Waikapu/6001  |                 |   |   |   |                           |
| <b>4a. TMK OF STREAM DIVERSION LOCATION:</b> <u>3</u> - <u>5</u> - <u>004</u> : <u>018</u><br><small>Zone Sector Plat Parcel</small>  |                 |   |   |   |                           |
| <b>4b. TMK OF DITCH DIVERSION LOCATION:</b> <u>3</u> - <u>5</u> - <u>012</u> : <u>001</u><br><small>Zone Sector Plat Parcel</small>   |                 |   |   |   |                           |
| <b>5. STREAM DIVERSION:</b> How is water diverted from the stream to your property? Check all that apply.<br><input checked="" type="checkbox"/> Pipe <input type="checkbox"/> Pump <input checked="" type="checkbox"/> Ditch/euwai <input checked="" type="checkbox"/> Other Describe: two 5/8th in. hoses from 'auwai; see addendum for more information.<br>Is the diverted water returned to the stream or ditch? <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No. If yes, how much water is returned?   |                 |   |   |   |                           |
| <b>6. FLOW MEASUREMENT INFORMATION:</b><br>Does the stream diversion have a flowmeter with totalizer or other device to measure diverted amounts?<br><input type="checkbox"/> Yes. Enter the installation date:<br>Describe the device and enter measured amounts in Table 1.<br><input checked="" type="checkbox"/> No. Explain how you are measuring flow to justify amounts shown in Table 1 in the space below<br>I used a modified bucket method to measure the flow rate from my two hoses. See addendum for more information.  |                 |   |   |   |                           |
| <b>EXISTING USER INFORMATION</b>  |                 |   |   |   |                           |
| <b>7. APPURTENANT RIGHT:</b> Do you claim an appurtenant right for your water use? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No<br>If yes, has the appurtenant right been established by the courts or the Commission? <input type="checkbox"/> Yes <input type="checkbox"/> No  |                 |   |   |   |                           |
| <b>8. END USER INFORMATION:</b> Are you an end user on an existing water system? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>If yes, who is the operator of the water system? N/A; no operator   |                 |   |   |   |                           |
| <b>9. REGISTRATION AND DECLARATION OF WATER USE:</b> Do you have a Registration and Declaration of Water Use with the Commission?<br><input checked="" type="checkbox"/> Yes. List the file reference name(s): J. Dodd<br><input type="checkbox"/> No   |                 |   |   |   |                           |
| <b>10. STREAM DIVERSION WORKS PERMIT (SDWP):</b><br>Have you ever been issued a SDWP by the Commission?<br><input type="checkbox"/> Yes. List the permit number(s):<br><input checked="" type="checkbox"/> No   |                 |   |   |   |                           |
| <b>NOTE:</b> 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. |                 |   |   |   |                           |
| <b>11. APPLICANT</b><br><br><br>Signature<br>James Phillip Dodd.<br>Print<br>Date <u>4-4-09</u>   |                 |   | <b>12. SOURCE LANDOWNER</b><br><br>Signature<br>Print<br>Date |   |                           |

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 FILE ID: SWUP.2224.6  
 DOC ID: 3229✓

**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<br>Please describe |
|---|--|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
|   |  | METERED                  | ESTIMATED                           | ACTIVE BUT UNKNOWN       | INACTIVE                 |                          |
| May 2007  | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| June 2007                                       | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| July 2007                                       | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| August 2007                                     | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| September 2007                                  | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| October 2007                                    | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| November 2007                                   | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| December 2007                                   | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| January 2008                                    | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| February 2008                                   | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| March 2008                                      | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| April 2008                                      | 4113   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| <b>SUM OF AVERAGE DAILY USE FOR THE MONTH</b>   | 49,356   | <b>GPD</b>               |                                     |                          |                          |                          |
| <b>AVERAGE DAILY USE (Average of the above)</b> | 4113; see addendum                                       | <b>GPD</b>               |                                     |                          |                          |                          |

**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<br>ATTACH THE FOLLOWING:<br>• Property tax map, showing use location in reference to established property boundaries<br>• Photograph of the area of use | 3. STATE LAND USE DISTRICT | 4. CDUP REQ'D<br>Enter either: Yes and Date approved, or Yes and not acquired, or No | 5. COUNTY ZONING CODE | 6. SMAP REQ'D<br>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 MEY ACREAGE | 10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7.<br>If applicable, attach sheets to show how this number was calculated.<br>For irrigation uses, fill in Table 3. |  |  |
| <b>Uses that require potable (drinking) water</b>   |  |                            |  |                       |  |  |                             |                         |  |  |  |
|   | - - - - -<br>Zone      Sector      Plat      Parcel  |                            |  |                       |  |  |                             |                         |  |  |  |
|   | - - - - -<br>Zone      Sector      Plat      Parcel  |                            |  |                       |  |  |                             |                         |  |  |  |
|   | - - - - -<br>Zone      Sector      Plat      Parcel  |                            |  |                       |  |  |                             |                         |  |  |  |
|   | - - - - -<br>Zone      Sector      Plat      Parcel  |                            |  |                       |  |  |                             |                         |  |  |  |
| <b>TOTAL POTABLE USE</b>  |  |                            |  |                       |  |  |                             |                         |  |  |  |
|   |  |                            |  |                       |  |  | <b>GPD</b>                  |                         |  |  |  |
| <b>Uses that do not require potable water</b>   |  |                            |  |                       |  |  |                             |                         |  |  |  |
| DOM   | 3 - 5 - 012 : 005<br>Zone      Sector      Plat      Parcel  | URB                        | NO   | AG                    | NO   | 4113   | NO                          | 0.26 acres              | See addendum.  |  |  |
|   | - - - - -<br>Zone      Sector      Plat      Parcel  |                            |  |                       |  |  |                             |                         |  |  |  |
|   | - - - - -<br>Zone      Sector      Plat      Parcel  |                            |  |                       |  |  |                             |                         |  |  |  |
|   | - - - - -<br>Zone      Sector      Plat      Parcel  |                            |  |                       |  |  |                             |                         |  |  |  |
| <b>TOTAL NON-POTABLE USE</b>  |  |                            |  |                       |  | 4113   |                             |                         |  |  |  |
|   |  |                            |  |                       |  |  | <b>GPD</b>                  |                         |  |  |  |
| <b>TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =</b>   |  |                            |  |                       |  | 4113   |                             |                         |  |  |  |
|   |  |                            |  |                       |  |  | <b>GPD</b>                  |                         |  |  |  |
| If total use requested is not equal to the total monthly average in Table 1, please explain.<br>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.<br>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)<br>Attach map outlining area and photo. | 2. CROP        | 3. TOTAL ACREAGE | 4. NET IRRIGATED<br>ACREAGE | 5. BEGIN ROWTH<br>PERIOD (Month) | 6. END GROWTH<br>PERIOD (Month) | 7. IRRIGATION SYSTEM<br>(Refer to instructions.) | 8. IRRIGATION<br>PRACTICE<br>(Refer to instructions.) |
|--|----------------|------------------|-----------------------------|----------------------------------|---------------------------------|--|---|
| 3 - 5 - 012 : 005<br><small>Zone Sector Plat Parcel</small>      | Diversified Ag | 0.32             | 0.26                        | year round                       | year round                      | other: hoses and sprinklers                      | field capacity  |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |
| - - - : -<br><small>Zone Sector Plat Parcel</small>              |                |                  |                             |                                  |                                 |  |   |

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

**TABLE 4: ALTERNATIVES ANALYSIS**

|                   | <b>Potable Alternatives</b><br>Attach additional sheets if necessary. | <b>Non-Potable Alternatives</b><br>Attach additional sheets if necessary. |
|-------------------|---|---|
| Municipal sources | n/a   | see attachment  |
| Wastewater reuse  | n/a   | see attachment  |
| Ditch system      | n/a   | see attachment  |
| Desalinization    | n/a   | see attachment  |
| Ground water      | n/a   | see attachment  |
| Other (specify)   | n/a   | 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 addendum for more information.

## 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](mailto: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(c) of the State Water Code which states that: *(i)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.*

### 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/](http://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<sup>a</sup> of 12 months of consecutive use<sup>b</sup> from the last month<sup>c</sup> 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.

|                    |   |
|--------------------|---|
| <b>AGRICULTURE</b> |   |
| AGRAQ              | Aquatic Plants & Animals  |
| AGRCP              | Crops & Processing  |
| AGRLI              | Livestock & Processing, and Pasture   |
| AGRON              | Ornamental & Nursery Plants   |
| AGROTH             | Other   |
| <b>DOMESTIC</b>    |   |
| 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   |
| <b>INDUSTRIAL</b>  |   |
| INDEL              | Geothermal, Thermoelectric Cooling, Power Development                                   |
| INDFP              | Fire Protection   |
| INDMI              | Mining, Dust Control  |
| INDOTH             | Industrial – Other  |
| <b>IRRIGATION</b>  |   |
| IRRGC              | Golf Course   |
| IRRHM              | Habitat Maintenance   |
| IRRHOT             | Hotel   |
| IRRLA              | Landscape/Water Features  |
| IRROTH             | Other   |
| IRRPCA             | Parks   |
| IRRSC              | Schools   |
| <b>MILITARY</b>    |   |
| MIL                | Military  |
| <b>MUNICIPAL</b>   |   |
| MUNCO              | County  |
| MUNPR              | Privately owned and operated but defined as a public system by the Department of Health |
| MUNST              | State   |

2. **USE TMK:** The Tax Map Key number of the parcel over which the water 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 12<sup>th</sup> 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.*

## **Water Use Permit Application Attachment**

### **Existing Source Information and other Exhibits**

Appended hereto as Exhibit 1 is a copy of the 7.5 minute-series USGS topographic map with the Waikapū stream and Waikō Road diversion labeled. Exhibit 2 is a TMK map showing the location of our property as well as a close-up of the property showing locations of our `auwai diversion and end uses. Exhibit 3 contains copies of photographs of our `auwai diversion and end uses. Exhibit 4 contains copies of Māhele documents establishing that our land was in kalo at the time of the Māhele.

### **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, Avery Chumbley claims to be the source landowner.

### **Box 5: Stream Diversion**

We are existing water users from the kuleana `auwai that runs along Waikō Road. Water is diverted into the `auwai from the stream through a traditional po`owai (intake made with stones) near Ione Shimizu's house (see attached USGS topo map). The water continues makai in pipes and ditches until it passes Patricia Federcell's property (TMK # 3-5-012:001) where we divert some water via two 5/8 inch hoses to irrigate our dryland kalo, ti leaves, a variety of herbs, flowers, and fruit trees for subsistence purposes. We also have a small lawn. See Exhibit 3. Our diverted water does not return to the stream.

Aunty Pat Federcell has allowed me to access the `auwai from her property for years and supports my application for a water use permit. If you have any questions, you can contact her at: 135 Waiko Road, Wailuku HI 96793 or (808) 242-8382.

**Box 6:** See explanation for Table 2 Box 10, below.

### **Box 7:**

My property had appurtenant rights, as documented in Land Commission Award 460. However, Edmund Rogers assigned the "water rights" to Wailuku Sugar in 1967. As a result, it appears my property's appurtenant rights may be extinguished, although I reserve the right to claim appurtenant rights in the future based on further information.

### **Table 1: 12-Month Average Daily Use**

As explained below in my response to Table 2, Box 10, our existing water use is not gauged. To complete Table 1, we used a modified bucket method to estimate our 12-month average daily use. Therefore, our best estimate of water use is 4,113 gallons per day (GPD).

**Table 2, Box 10: Justification for Requested Quantity**

I used a modified “bucket method” to measure the flow rate from my two hoses. On October 11, 2008, each of my 2 hoses filled a 1-quart jar in 7 seconds. Based on those figures, I calculated the amount of water flowing over a 24-hour period as 4,113 gallons per day. My irrigation application varies, depending on the season. During the wet, winter months, I may not irrigate at all. But, during the hot summer months, I sometimes irrigate continuously over a 24-hour period, rotating my sprinklers to various parts of my garden and yard. Based on many years of water use, I believe that over a 12-month period, I irrigate using my hoses about 2/3 of the time. So, I estimate my average water use as 2/3 of 6,170 gallons per day or 4,113 gallons per day.

**Table 4. Alternatives Analysis**

Our existing riparian use is constitutionally protected. See Haw. Const. Art. XI § 7. We have a small non-commercial garden, including dryland kalo, ti leaves, a variety of herbs, flowers, and fruit trees for subsistence purposes. The fruits, vegetables, and flowers we grow feed our `ohana and are shared with neighbors and community members. As shown below, each potentially available alternative water source imposes a cost on continuing our existing riparian use.

**Municipal Sources.** As long as I can remember, we have always used the `auwai water for our non-commercial gardening. Requiring us to pay for municipal water instead would impose an unfair and impracticable cost on our existing use.

**Wastewater reuse.** Reusing wastewater is impracticable because, as a small existing user engaged in 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, although water is not available consistently and in sufficient amounts to support all of the existing uses on our system. 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 engaged in non-commercial gardening, the cost of taking water from or constructing another ditch is not practicable.

**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 would be unprecedented

and extremely burdensome. As a small user engaged in non-commercial gardening, we do not have the means to install and maintain such infrastructure.

**Table 4, Public interest section:**

**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”). Further, HRS § 174C-2(c) provides that the protection of agriculture and the maintenance of proper ecological balance and scenic beauty are “in the public interest.” As such, our existing use of stream water for non-commercial gardening is consistent with the public interest.

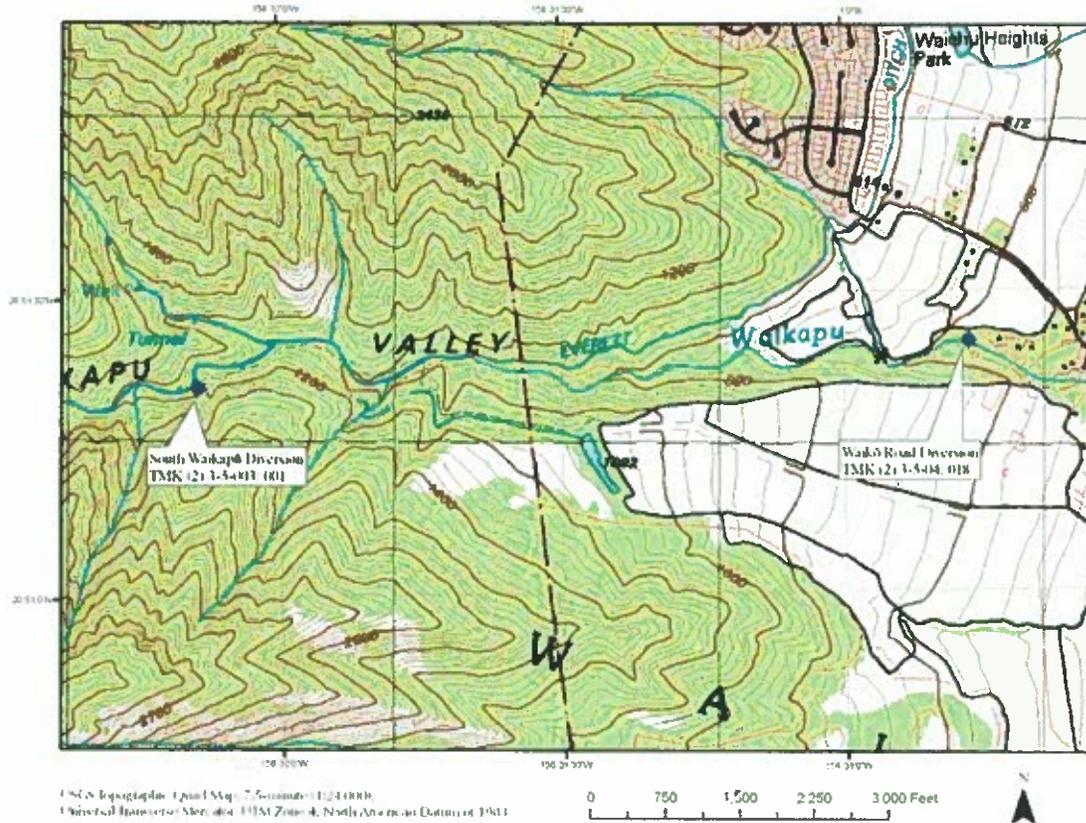
**Our Existing Use is a “Reasonable-Beneficial Use”**

“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 hoses to minimize water loss, and our farming practices include the use of mulch to protect the soil from erosion and minimize the use of water. Therefore, the water we use is a “reasonable-beneficial use.”

**EXHIBIT 1**

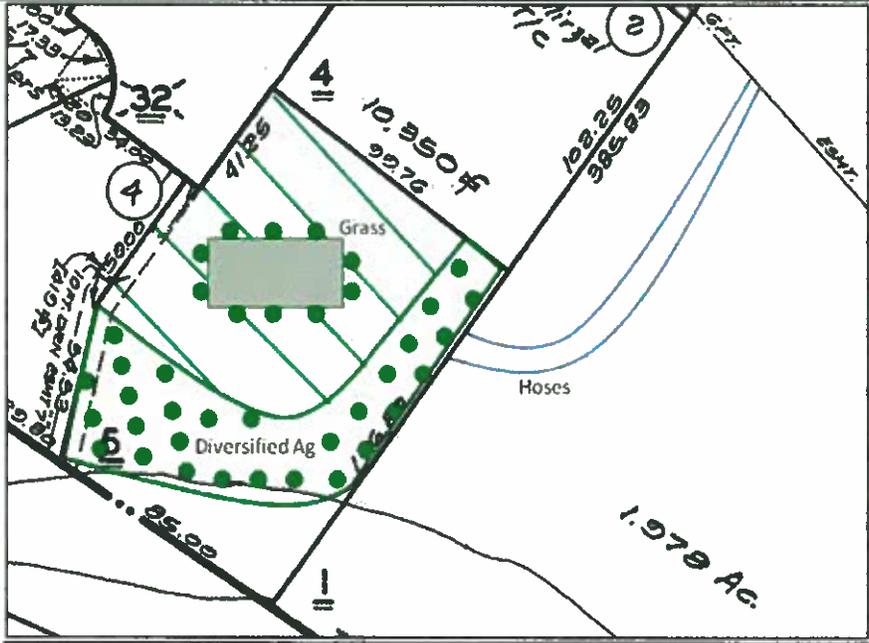
**USGS Map showing Waikapū stream and the Waikō Road diversion location**

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



**EXHIBIT 2**

TMK maps showing diversion locations and water uses referenced; the end uses depicted in the second map are not drawn to scale.



**EXHIBIT 3**

Photographs of surface water diversion and end uses

These are true and correct copies of photos taken on October 11, 2008. They accurately depict conditions at the time the photos were taken.

This is where my neighbor Pat Federcell and I divert water from the North Waikapū Kuleana `Auwai, which runs along Waikō Road. Two of the hoses are hers; two are mine.

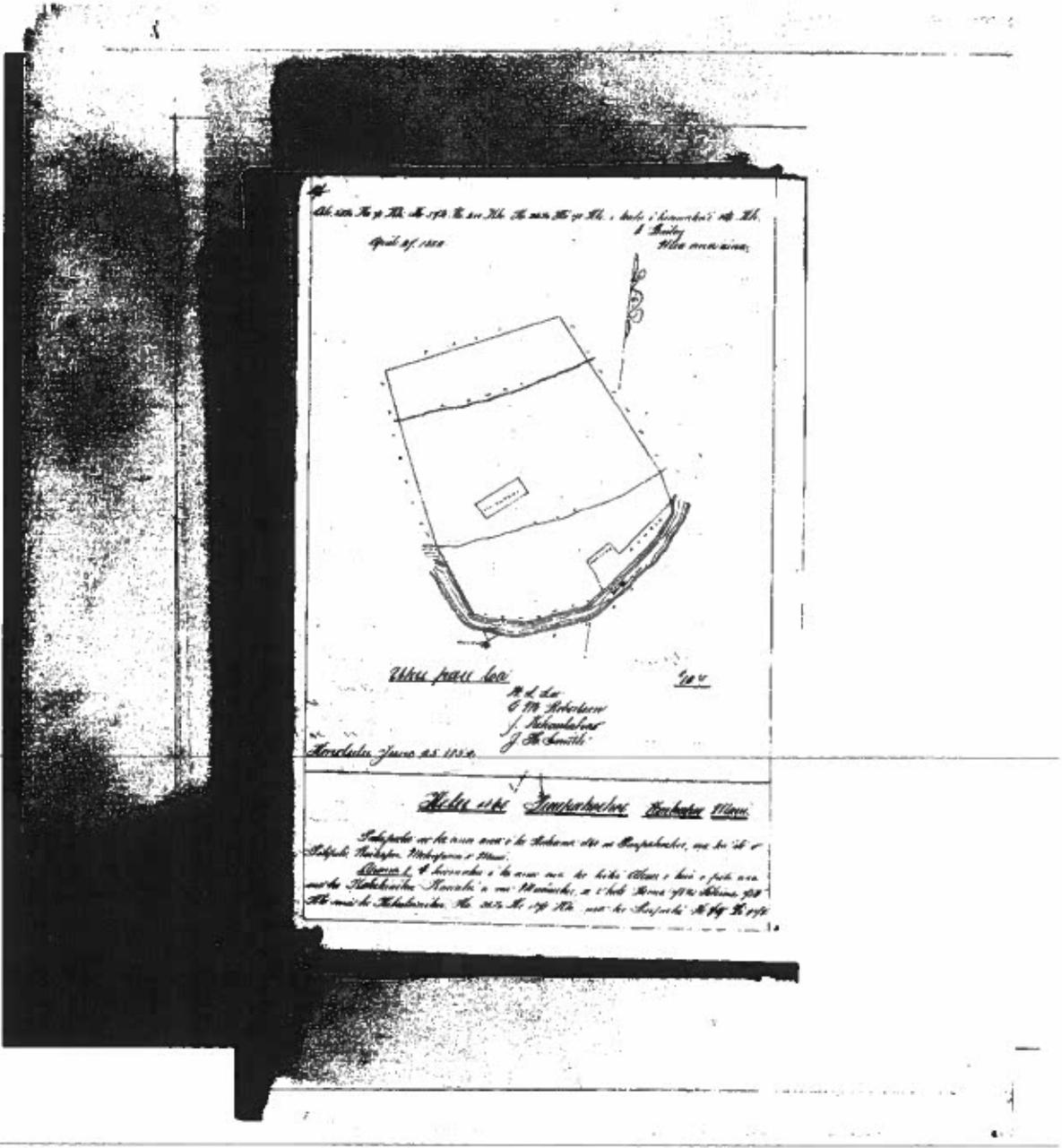


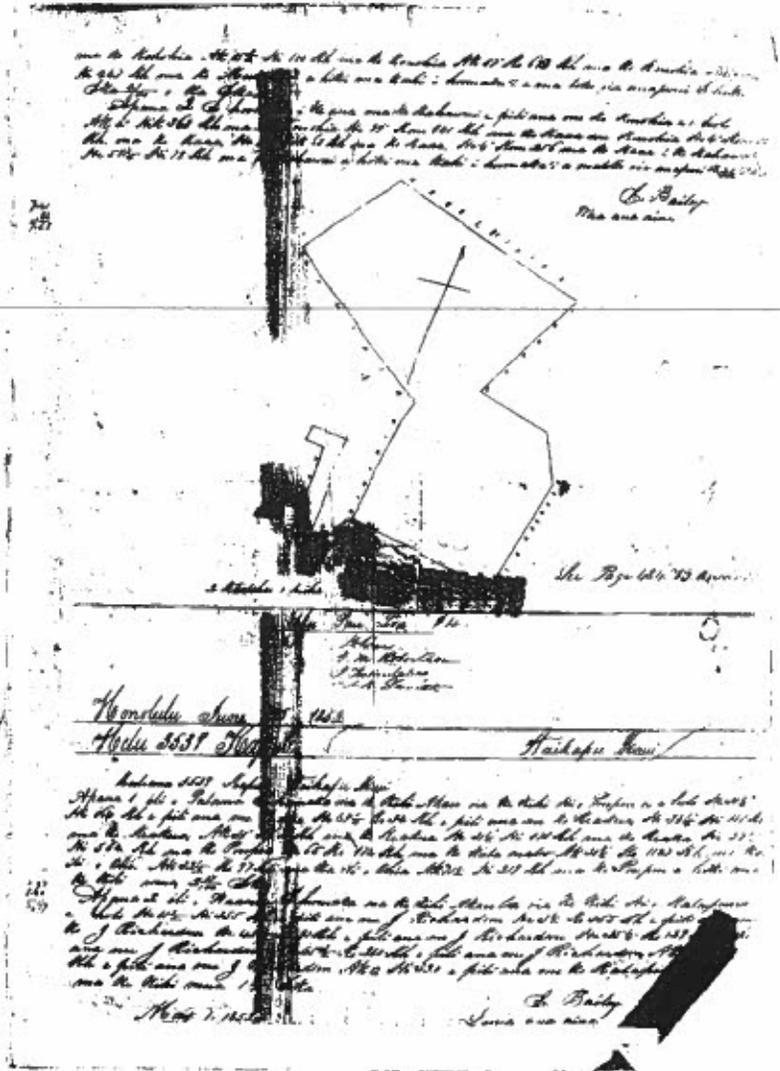
End Uses:











HELU 7937

**Palapala Sila Nui**

A KE ALII, MAMULI O KA OLELO A KA POE HOONA KULEANA.

*No ka Ma,* Un koohele na Luna Hoona i na kumu kuleana nina i ka olelo, he kuleana oiaio ko

*Keupahohoe*

Kuleana Hehu *460*

ma ke **Ano Alodie** iko o kahi i oleloia inala.

Nohiia, un keia Palapala Sila Nui, ko hoko aku nei o **Kalakaus**, ko Alii Kuli a ko Akua i kuuu  
 lokumakahi i hoonoho ai inaluu o ko Hawaii Pae Aina, i na kanaka a pu, i keia la uua ihu a uo  
 kooa unu hope Alii, a un haawi aku oia, ma ko **Ano Alodie** in *Keupahohoe*  
 i keia *Maui* unhi a paa loa ma *Haihaku*  
 ma ka Mokupuni o *Maui* penei un mokuna:

*Alii o Keia Ahilo Haihaku Maui*

*he auu ma ka kahawai ihi Kuuuhana mauka he  
 a o holo*

*Uhi No 50th ma ka pali*

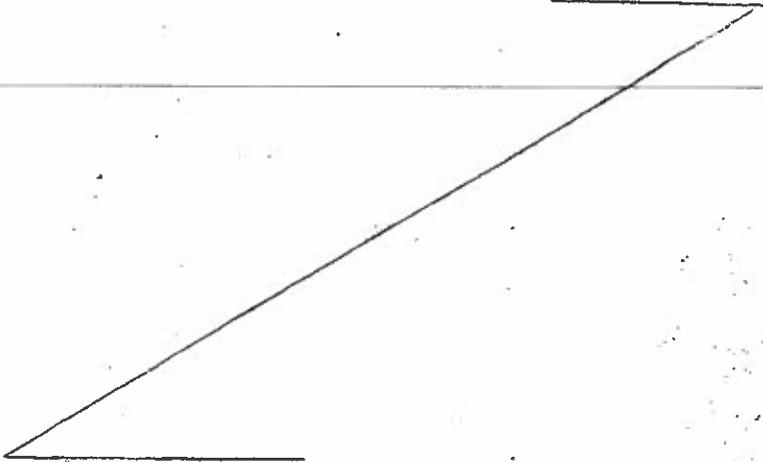
*87° 565*

*No 65 40*

*No 75 No 88*

*he kiki mua*

*kahawai a kiki ma  
 127/100*



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Maloke o 60 147/100 Eka

a oi iki aken, a omi iki nui paha. Ua koe nae i ko Aupuni na niae minerele a me na metela o iao.  
No Seupakohoo  
ua aina la i laawāna ma ke Ane Aloho a no kona mau hoolina, a me kona waihoos; ua pili aue ka aueu  
a ka Poe Ahoololo o kuu liko ai ma na aina aloho i kela manawa keia manawa.

**A i mea e Shee ai,** ua kuu aa i ko'u inoa, a mo ka Sila Nui o ko Howaii Pae  
Aina ma Honolulu i keia la 11 o Januari 1879  
W. Kalakaua

Saml B Wilder

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Helu 429 Kawelohea  
From Page 172  
Hooohikiia o Puupahoe  
Ma ike no au i kahi o Kawelohea e hoopi  
mai nei, he malawauke, aea ma Kahi ki  
ma. Iao, nona no ia wahi mai a hua  
mua ka noho ana, a ia Haluwardhoun  
i kua wa i paipia ka mea ililo ai ia in  
uole au loka ka mea i hemo ai, Ma  
ike au ka nui o ka loaa malaila ia wa  
he mau no ka loaa malaila

Wailuku Feb. 22 1847  
Helu 430 Puupahoe  
Hooohikiia o Eka ma ka lilo a ke  
huan, Ma ike no au ia mau aina a pau  
a Pe hoopi aku nei ia oukou, o Pehia,  
o Pipili, o Hooelakela, o Kaunui, Olohe,  
o kona mau palena, o ke ala a o  
Kaunuike ma ka Hik. ma ka Hema  
o ke Alia a me ke kai, ma ke Koukaha  
ma ke huahii ma ka pou o Waikapu  
he mau kula no iloko o ka pa aina  
He aina o Pipili, he mau loi a ke  
kula kona, o Haamii he aina no ia,  
nona ke huahii ma ka o Waikapu  
he mau loi no malaila a me ke kula  
maloko o ka pa aina o Olohe, he  
loi no malaila a he kula no wa  
kapu ia e kimo i ke ko manua  
o kela mau loi i hoolimalimaa he  
vama ka warwai i lilo malaila,  
a he Honu kahi a me na Kao he  
kanaha, oia ka lilo no kela mau  
loi

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Mai kahiko loa mai no ka loa ana.  
heia mau aina ia Puupahoehae. Aole  
ona mea nana i keakea mai.

Hooikiia. Kahi ma ka ole a ke  
Aha. Ma ike no au i kahi. Puupahoehae  
& hooiki mai nei aia ma Waikapu  
o Ohia, o Pilipili, o Makahelakela  
o Haamui, o Olohe, no kona kua  
ana mai kona. Kalainohini. Ka  
inoa. no Keumoku mai ke Kalai-  
nohina. Ma ike au i ka noho ana  
malaila. ma kahi aua no au o  
Waikapu, a kala kahi mau makahiki  
alaila hoi mai au a noho pu ma ka  
malaila, a ia wa loke au he mau  
aina pono i kela no lakou. he  
/ kahi paakai o Ohia a me ke kula  
a he kahi no hoi mai ke ala ae,  
mai a Kaumuhoe a me na kula  
eae & pili ana ma Waiuku, a he  
kula eae no iloko o ka pa aina o  
Waikapu, no Ohia, a he mau loi  
kahi he mau loi no ke Pilipili  
a he kula no hoi maloko o ka pa  
aina, O Haamui he mau loi no  
kona a me ke kula no, a no  
Haamui no hoi ke Kuahiwi o Waika-  
hu, o Makahelakela, he kula kona,  
o Olohe mau loi no kona a me  
ke kula, aia ma ka Aha, ka  
hale pule, he mau loi no  
kahi o Puupahoehae i hoo limo lima

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ia, he wana he kumu a he hana  
kahi a me na kaa he kanaka, a he  
Mano he kahi i lilo no ka hana ana  
a he ia maoli no kahi i lilo ake  
He ka mea nana i heakea o Haunui  
Ha ae mai no ia no Haunui io no ia  
uina.

Hilikia Kalualani

Hohokua o Kauhua ma ka olelo a he Akua  
Ua ike no au i kahi o Kalualani, aia ma  
Kapaakuhui ma Iao, no'u aku kona noho  
ana malaila, no Mahune mai koe, a  
no ka Mei mai ko Mahune, he kumakolu  
kumamailima aie Ioi i hawi ai, a cha  
ma kahi eae, a huiia he kanakolu kuma  
maieva a pau, ole ona mea nana i he  
heakea mai.

Hohokua o Kuhu ma ka olelo a he Akua  
Ua ike no au i kahi o Kalualani i hohokua mai  
mei ia waha, no'u aku kahi mau Ioi ona  
no Mahune mai koe, a no Kamahameha  
mai ko Mahune, aia ma Kapaakuhui  
kauwahi ona he aina oha no ia, aia  
ma Kaluauhi kahi ona, ole nae au ike  
kono i ka mui o na Ioi malaila, ole  
no hoi he mea ona nana i heakea

aia ke kuleana ma ua wahi nei o kela  
 wahi i kulekule ai ka hale lua o Mahuni  
 Aole i ae aku o Papa ia kulekule ana a ka  
 hune, nui ke lona hoopaapaa ana no ia  
 wahi, me ka ae o aku ma o Papa. Penei ka  
 Mahuni ~~ma~~ ia Papa, nima e imi i wa-  
 hi no mau, aia kahi i hekeiaia, Penei  
 ma aiao, ma ka Ukae ka auwai, ma  
 ka Hekina ka auwai, ma ka Homa  
 ke ala auwai, ma ke Komohama ka  
 lai o Keihelani a me na lai o Apiki;  
 aia na palena o ua wahi nei aia ma ka  
 ili oia o Kealaule keia wahi

Waialeale } Na Niinanihina ke  
 13 Feb 1847 } Kahu o Mileka

Hele 410 Buephakoehe  
 Ma Ema Lusia Botia Waialeale Feb 15 1847

Ke hoi aku nei au ia oia  
 i koi mau kuleana ana ma Waialeale nei  
 Eia na mau kuleana ka au e hoi aku nei  
 ia oia, Oia, no Kealaule nei ma koi  
 aia ma Waialeale nei ia koi kulea-  
 na i noho ai, naka o Kealaule nei, noho no  
 wau ma lala o Kealaule nei, Oia no ma  
 koi kuleana mau, o na palena Oia, o Ke-  
 ala ma ka Paakai, a me ke hoi a nui ke  
 kule, o hamaama, ma ke ala a hiki,  
 Hoanukue ma Hoanukue aku a hiki i  
 Kekekehe na ka palena Oia  
 Oia kuleke, ma kuleana ia e hoi aku  
 nei ia oia o Kealaule a ma Kekekehe  
 a me Hoanukue no Hoanukue ke kuleke ma

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ka pono o Wai'apua ke wahi kula ko  
Pilepili mahe; ka pa aia  
Eia kekahi wahi kula oheia ma  
laha nei o ka pa aia, e pili ana me  
Kuhialuimaka, a me Hoapalaalea  
a me Paloa, Moku o Heaunuihonu o  
Hoakumama no maluna, o wai no  
ke hanaka, Moku o Heaunuihonu o  
Hina no maluna in, a moku o Ki-  
nain o Hoapili W. no maluna ou, Moku  
o Hoapili W. o Heaunuihonu no maluna  
in, a moku o Heaunuihonu o Heaunuihonu  
no maluna in e noho nei; kua ma-  
nawa, o wai a me kua hanaka in o  
Heaunuihonu.

Eia kekahi kula in e noho  
nei o Ohe ke wahi kula no kua ma-  
laha nei o ka pa aia, e pili ana i Pa-  
lalaika a me Palalaika, a me He-  
pili; a me Heaunuihonu.

Oia no kua ma kula ma kua  
ma kua ma kua ma kua.

Eia kekahi kua o kua ma kua  
kua in, (kua 5) ma kua ma kua  
kua in, kua ma kua o kua ma kua  
kua in, a ma kua ma kua ma kua  
kua in, kua ma kua ma kua ma kua  
kua in.

Kua ma Heaunuihonu