



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

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

FORM SWUPA-N Application for New use
 Application to Modify SWUP No. _____

For Official Use Only:
RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 23 PM 4:24
 SWUP.2253.6

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 CLIFFORD & CRISTAL KOKI		Applicant's Contact Cristal Koki	2. SOURCE LANDOWNER'S NAME WAILUKU WATER CO. LLC		Source Landowner's Contact Avery Chumbley
Applicant's Mailing Address, or Principal Place of Business PO Box 442 Wailuku, HI 96793			Source Landowner's Mailing Address, or Principal Place of Business 255 East Waiko Road Wailuku, HI 96793		
Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone	Source Landowner's Fax	Source Landowner's E-mail
			808-244-7079	808-242-7068	abc@aloha.net

SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT: Island: MAUI Hydrologic Unit: WAIHEE 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:
 See attachment I

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 2 - 0 1 4 : 0 0 1
Zone Sec Plat Parcel

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 2 - 0 0 3 : 0 2 4
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: see attachment I

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

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

9. TOTAL QUANTITY OF WATER REQUESTED: 220,800 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): Koki, 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 instreamflow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.

16. APPLICANT Signature CLIFFORD KOKI Signature CRISTAL KOKI Print CLIFFORD KOKI Date 4/19/09	17. SOURCE LANDOWNER Signature _____ Print _____ Date _____
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FILE ID: SWUP 2253.6
 DOC ID: 3258V

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	TITLE FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.				STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	SUB-METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 9. If applicable, attach sheets to show how the number was calculated. For irrigation uses, fill in Table 2.
Uses that require potable (drinking) water													
	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	
TOTAL POTABLE USE											0	¹²	GPD
Uses that do not require potable water													
AGRCP	3	2	0 0 3	0 0 4	RU	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	RU0.5	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	0.5	300,000	150,000	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See attachment 1
AGRCP	3	2	0 0 3	0 3 7	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	0.076	300,000	22,800	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See attachment 1
AGRCP	3	2	0 0 3	0 3 2	RU	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	RU0.5	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	0.16	300,000	48,000	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See attachment 1
	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	
TOTAL NON POTABLE USE											220,800	¹³	GPD
TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =											220,800	¹⁴	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 3 : 0 0 4 <small>Zone Sec Plat Parcel</small>	Wetland Taro	0.5	0.5	Annual	Annual	Flood (Taro)	Irrigate to Field Capacity
3 - 2 - 0 0 3 : 0 3 7 <small>Zone Sec Plat Parcel</small>	Wetland Taro	0.608	0.076	Annual	Annual	Flood (Taro)	Irrigate to Field Capacity
3 - 2 - 0 0 3 : 0 3 2 <small>Zone Sec Plat Parcel</small>	Wetland Taro	0.16	0.16	Annual	Annual	Flood (Taro)	Irrigate to Field Capacity
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
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<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							

9. COMMENTS:

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS

	A. Analysis of Potable Alternatives (Attach additional sheets if necessary.)	B. Analysis of Non-Potable Alternatives (Attach additional sheets if necessary.)
Municipal sources	N/A	See attachment 1
Wastewater reuse	N/A	See attachment 1
Ditch system	N/A	See attachment 1
Desalinization	N/A	See attachment 1
Ground water	N/A	See attachment 1
Other (specify)	N/A	See attachment 1

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 1

2. Explain below how your proposed new use(s) will not interfere with any existing legal use(s).
see attachment 1

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 1

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, or contacting us at 587-0234, or by email at: dlnr.cwrm@hawaii.gov. The current application forms are also available at: 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: (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.

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/
- 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**

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

2. USE TMK: The Tax Map Key number of the parcel over which the water 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.*

ATTACHMENT 1

NEW USE INFORMATION: Attached as **EXHIBIT 1** is a true and correct copy of a USGS map labeled with Waihe`e River and diversion names. Attached as **EXHIBIT 2** is a true and correct copy of a property tax map showing the location of intended water use. Attached as **EXHIBIT 3A-C** are true and correct copies of photographs taken on or about October 12, 2008 which depict our ditch diversion and proposed area of water use. **EXHIBIT 4** is described below.

ADDITIONAL INFORMATION FOR SWUPA-N BOXES:

2. SOURCE LANDOWNER:

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

4. INSTREAM FLOW STANDARDS:

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

6a. STREAM DIVERSION LOCATION:

Although the `auwai that runs along River Road currently receives water diverted from TMK No. 3-2-014:001, we would like the `auwai to resume receiving water directly from Waihe`e River at TMK No. 3-2-004:001, as it historically did.

7 (a&b). PROPOSED STREAM DIVERSION:

We are kuleana users along the North Waihe`e Valley kuleana `auwai. Water is diverted from Waihe`e River at the Waihe`e and Spreckels diversions (see attached USGS topo map). All the water from the Spreckels diversion enters the Spreckels Ditch, as does some water from the Waihe`e diversion. The North Waihe`e Valley kuleana `auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open `auwai on the north side of Waihe`e River. The water continues makai in the ditch and pipes along River Road until we divert some water via a pipe and ditch for our lo`i kalo and other crops. The water is diverted from the Barrett's land (TMK No. 3-2-003:024), flows through their lo`i kalo in open ditches and pipes, then flows onto and through our land in ditches and pipes.

Although we currently use some water for our domestic plants (see concurrently filed SWUPA-E), we do not have enough water to grow kalo. For generations, our land was covered with lo`i kalo up to our doorstep, but the lack of water has forced us to stop growing any kalo on our land. We were forced to stop growing kalo on TMK No. 3-2-003:004 in about 1994 due to the lack of water and we were forced to stop our kalo cultivation on TMK No. 3-3-003:032 in 2006 or 2007 for the same reason. We seek to return to our historic levels of kalo cultivation.

After flowing through our lo'i, all of the water except for what evaporates and seeps into the soil of our lo'i kalo will be returned to the North Waihe'e Valley kuleana 'auwai system via an open ditch to our neighbor's lo'i kalo (TMK No. 3-2-003:002), and eventually back to Waihe'e River.

8. FLOW MEASUREMENT INFORMATION: Please see explanation for **TABLE 2** below.

12. APPURTENANT RIGHT:

Our property has appurtenant rights because our land was in kalo cultivation at the time of the Māhele of 1848. In fact, we historically used the ancient lo'i kalo to cultivate wetland kalo in the traditional manner (see concurrently filed SWUPA-E) and we seek to resume cultivating kalo in the ancient lo'i on our land. Attached as **EXHIBIT 4** are true and correct copies of Māhele records for Land Commission Award No. 4377, Royal Patent No. 4105 and Land Commission Award No. 4405E, Royal Patent No. 5274 with accompanying testimonies indicating the land was in kalo. This land has been in our 'ohana since the time of the Māhele and we have no evidence, indication, or any other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

TABLE 1. 11. JUSTIFICATION FOR REQUESTED QUANTITY:

We estimated that we will need 220,800 gallons of water per day to resume our wetland kalo cultivation by multiplying the amount of land we intend to restore to wetland kalo cultivation (all of TMK Nos. 3-2-003:004 and 3-2-003:032 and about 1/8 of TMK No. 3-2-003:037, or a total of 0.736 acres) by 300,000 gallons, the average amount of water we understand is required to grow healthy wetland kalo.

TABLE 3: B. ALTERNATIVES ANALYSIS:

Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative source of water. Our appurtenant right is for stream water, not to water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law. Similarly, our traditional and customary right as Native Hawaiians is to cultivate kalo on our land in the traditional manner, not in some other manner using alternative, non-traditional sources, and this traditional and customary right is constitutionally protected. We would effectively be denied our appurtenant right and traditional and customary right to grow kalo on our land.

Moreover, even if we did not have protected rights to water from Waihe'e River, there is no potentially available alternative source that is economically practicable. We want to cultivate kalo on our land at our historic levels for cultural and subsistence purposes. An alternative water source that would require us to pay for the volumes of constantly flowing water in our lo'i necessary to keep temperatures cool and support healthy kalo, would make our use economically impossible. 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 does not have the capacity to deliver the volumes of water we require for kalo. Even if the Maui

County Department of Water Supply were willing to provide municipal water for kalo cultivation by installing 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 we would still be required to pay for large volumes of flowing water. As a small user engaged in traditional uses and domestic 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 the existing uses on our system, including our own uses. 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 traditional uses and domestic 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 to provide flowing water for kalo cultivation would be unprecedented and extremely burdensome. As a small user engaged in traditional uses and domestic gardening, we do not have the means to install and maintain such infrastructure.

TABLE 3: ADDITIONAL REQUIREMENTS:

1. How proposed new use will maximize beneficial use and is in the public interest:

Generally, "water use for diversified agriculture on land zoned for agriculture is consistent with the public interest." In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i, 97, 162, 9 P.3d 409, 474 (2000) ("Waiāhole I"). Further, HRS § 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." The water we are requesting is for kalo cultivation. We will grow our kalo in the traditional way and use it for subsistence purposes. We feel it is important to perpetuate these agricultural traditions for current and future generations. Additionally, we seek to reestablish our land in kalo to maintain proper ecological balance and scenic beauty. Without a reliable source of water, we cannot sustain our traditional and cultural agriculture practices, and the ecological balance and scenic beauty provided by lo'i kalo will be lost. Accordingly, we are requesting a "new use" permit to allow us to resume our historic practices.

In addition, because our water use is based on appurtenant rights, it is also a protected public trust purpose. Waiāhole I, 94 Haw. at 136 n.34, 9 P.3d at 448 n.34. Further, kalo cultivation by Native Hawaiians is a protected public trust purpose. Waiāhole I, 94 Haw. at 137, 9 P.3d at 449; see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights).

Our “new use” will also be a reasonable and 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 new use of stream water is consistent with state and county land use plans and the public interest. It will also be “economic and efficient” because we will only use the amount we need. We will take steps to make our water use efficient. For instance, we use pipes where appropriate to minimize water loss, and our property is terraced to prevent erosion and runoff. Our farming practices include the use of mulch and volunteer cover crops. Therefore, our use is “reasonable-beneficial.”

2. How proposed use will not interfere with any existing legal use:

Our use will not interfere with existing legal uses. As kuleana users, we have first priority by law. We believe the flow of Waihe`e River is able to accommodate our “new use.” Also, as mentioned above, most of the water we will use will go back to the `auwai and eventually to Waihe`e River. Thus, our 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. How proposed uses 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 River. 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 “new use” will actually help to protect DHHL’s rights because the vast majority of the water that we have requested will be returned to the stream, and if it remains in the stream, it will recharge the aquifer, protecting the health of the aquifer system for DHHL’s present and future ground water uses.

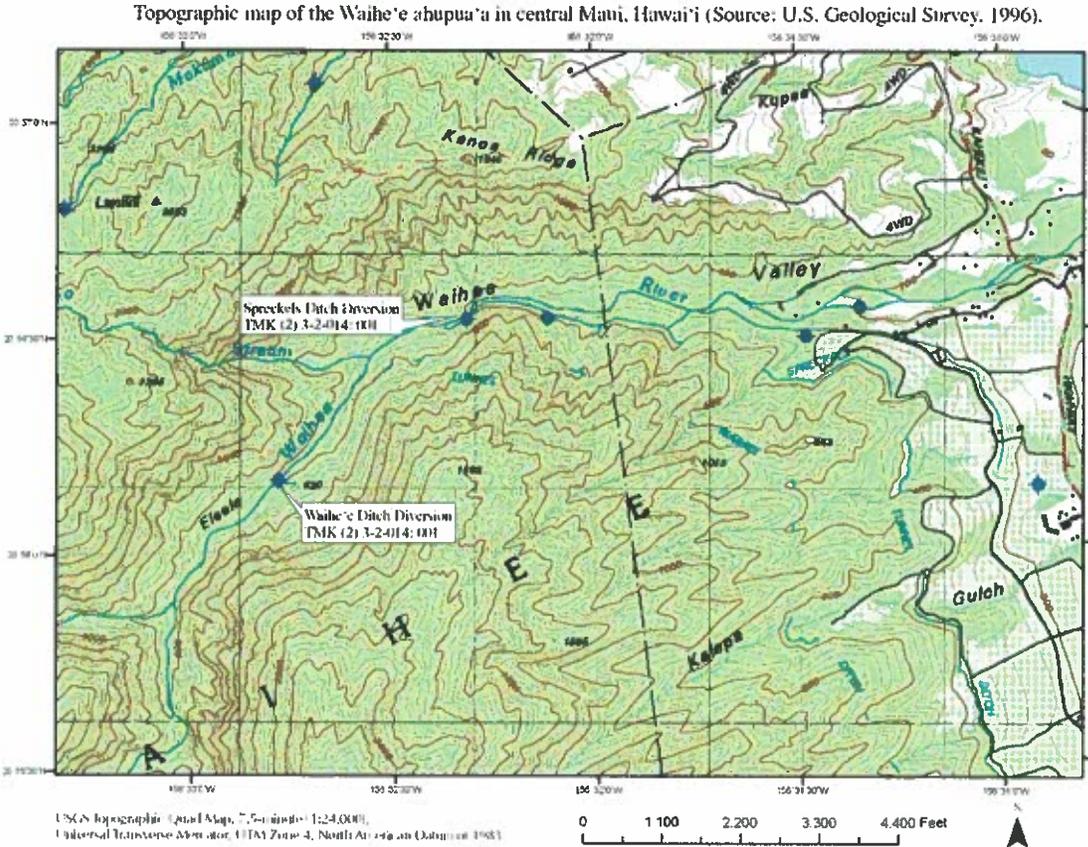


EXHIBIT 1

USGS topographic map labeled with Waihe'e River and diversion locations

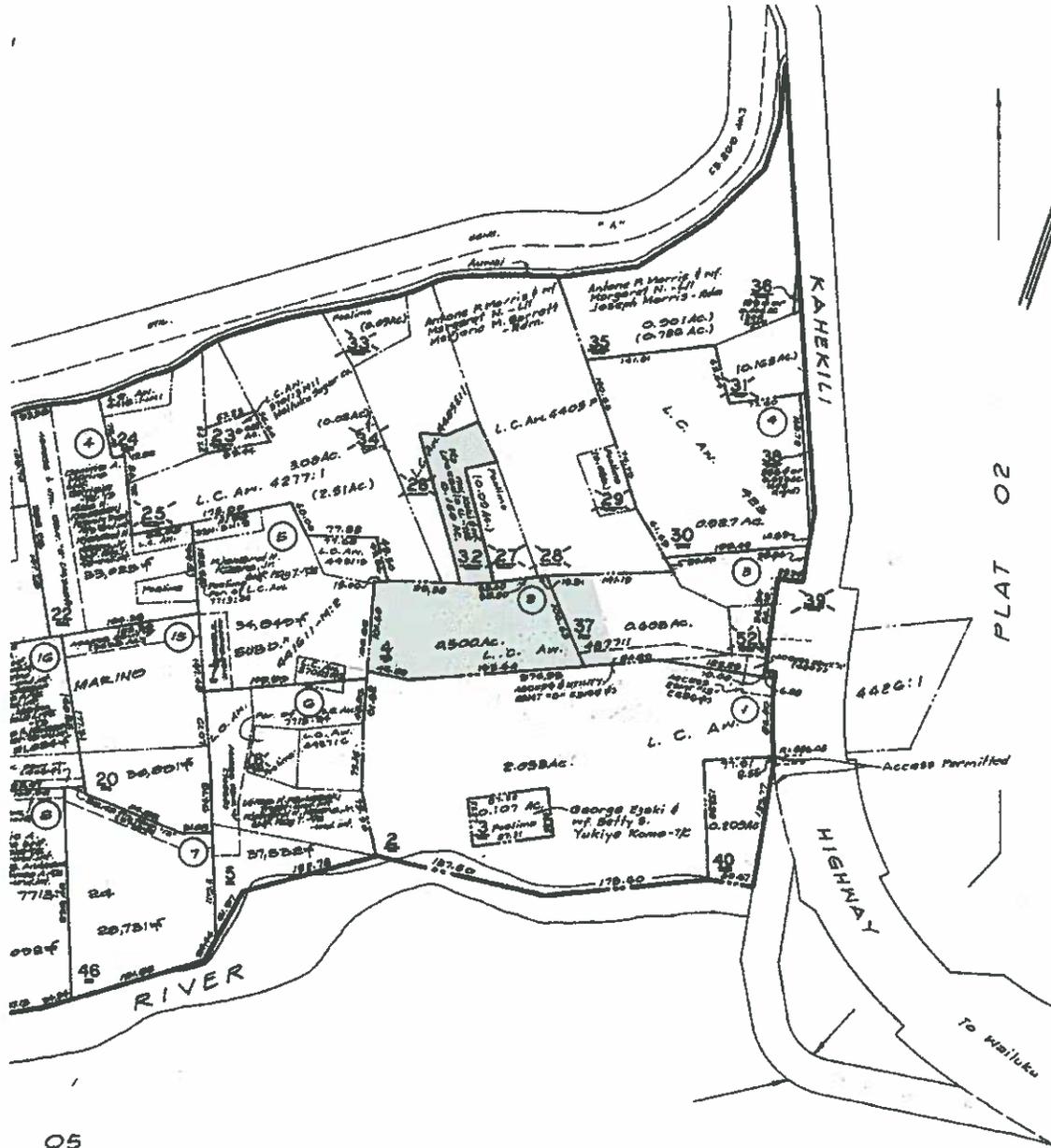


EXHIBIT 2

TMK map depicting the area on which we seek to resume using kuleana water for kalo cultivation

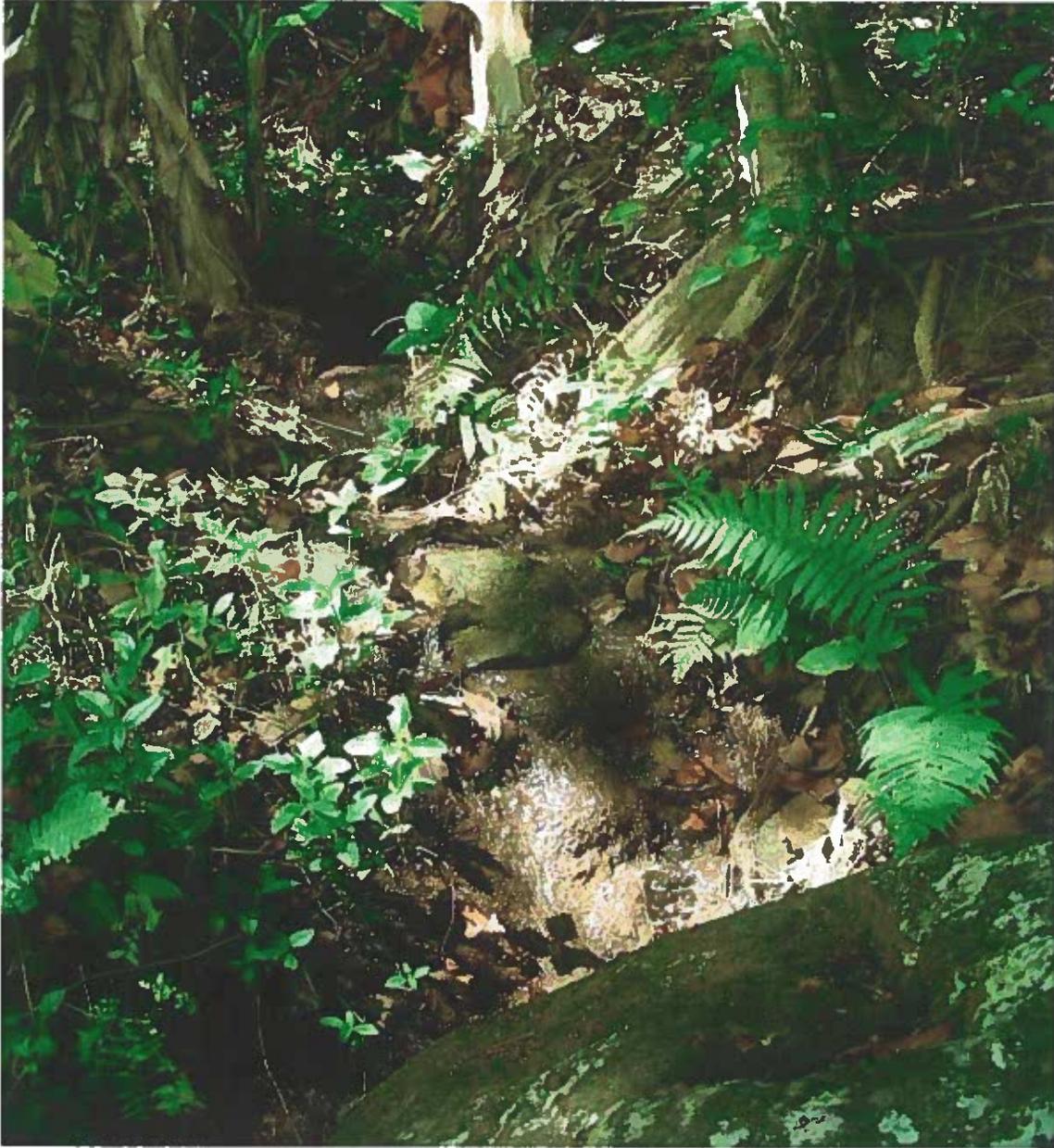


EXHIBIT 3A

Ditch diversion. Beginning of ditch that brings water from the North Waihe`e Valley `auwai to our land at TMK No. 3-2-003:024.



EXHIBIT 3B

Portion of our ancient lo`i kalo in which we seek to resume cultivating wetland kalo.



EXHIBIT 3C

Portion of our ancient lo`i kalo in which we seek to resume cultivating wetland kalo.

210
 Uka Pa Log 5
 P. L. L. L.
 F. M. Robertson
 J. H. Barrett
 J. A. K. K.

Keolu 5180 Kuumaihua Keolu Kona Maui

He palapala hiki i ka ana ana i ka Kahi ana Kulaana. Kuumaihua Sela 5780
 a wahi ana ma ka Palapala i Kuumaihua ana ma ka Kulaana ana ma ka
 Mahealani. Maui.

hauaka ma ka Kahi Aha. Kuumaihua. Kuumaihua a i hiki ana ana 58'
 Kuumaihua 345 Kaulaha a fili ana ma Kuumaihua 515 Kuumaihua 476 Kaulaha
 a fili ana ma ka Palapala Aha 31 1/2 Kuumaihua 332 Kaulaha a fili ana i ka Palapala
 Aha 48 Kuumaihua 1432 Kaulaha a fili ana ma Kuumaihua Aha 41 1/2 Kuumaihua
 479 Kaulaha a fili ana ma Kuumaihua Aha 57 1/2 Kuumaihua 1238 Kaulaha
 a fili ana ma Kuumaihua Aha 71 1/2 Kuumaihua 374 Kaulaha a fili ana ma Kuumaihua
 Aha 50 Kuumaihua 167 Kaulaha a fili ana ma Kuumaihua Aha 6 1/2
 Kuumaihua 717 Kaulaha a fili ana i ka Kahi Palapala Aha 39 Kuumaihua 661 Kaulaha
 a fili ana ma ka Kahi Palapala Aha 40 Kuumaihua 430 Kaulaha a fili ana
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 Aha 30 Kuumaihua 1230 Kaulaha a fili ana ma Kuumaihua Aha 51 1/2 Kuumaihua
 789 Kaulaha a fili ana ma ka ana. Kahi 20 Kuumaihua Aha 85 1/2 Kuumaihua
 096 Kaulaha a fili ana ma Kuumaihua Aha 70 Kuumaihua 826 Kaulaha a fili
 ana ma Kuumaihua Aha 48 Kuumaihua 550 Kaulaha a fili ana ma Kuumaihua Aha 4 1/2
 Kuumaihua 710 Kaulaha a fili ana ma ka Palapala Aha 48 1/2 Kuumaihua 1278 Kaulaha
 a fili ana ma ka Palapala Aha 45 1/2 Kuumaihua 561 Kaulaha a fili ana
 ma Kuumaihua a fili i Kahi i hiki ana ka Kahi Uka Kuumaihua Aha

U. P. Alexander
 Ma ana ana

He hiki i ka ana ana i ka Kahi ana Kulaana. Kuumaihua Sela 5780
 a wahi ana ma ka Palapala i Kuumaihua ana ma ka Kulaana ana ma ka
 Mahealani. Maui. 17th Oct.

HELU 1865.
PALAPALA OIA KUI.
 A KE ALII, MAULI O KA OLELO A KA POE HOONA KULEANA.

MO KA HAA, Ua hoolaha ma 1,000 Hooma i ma kama kuleana aia i ka oia, ke kuleana oia ke
Kaui *Kahuna Hele 637*
 ma ke Aha Ahohe ike a kei i oia ma ka
 Hele, ma kei Palapa Oia KUI, ke hele oia o Kamehameha IV. ke Ahi ma o ke Aha
 i kei kamahele i kamahele o ke Hele oia Aha, i ke kama o kei, i kei ke oia ma,
 a ke kama ma kei oia, ke kama oia ma ke Aha Ahohe i *Kele*
 i kei oia ma ke *Kaui*

ma ke kamahele o *Kaui* *Kele* ma ka kamahele,
 Ua 1. Chamahele ma ka Hele oia Kamahele, i kei oia ma ke kamahele
 Okahe 57° He 2.74 Kamahele oia ma ke kamahele
 Okahe 59° He 3.31 *Kamahele*
 Kamahele 59° He 2.26 *Ke*
 Okahe 58° He 3.71 *Ke*
 Kamahele 59° He 2.25 *Kamahele*
 Kamahele 58° He 3.35 *Ke*
 Kamahele 57° He 3.70 *Ke*
 Okahe 56° He 2.52 *Ke*

oia ma ke kamahele oia Kamahele oia Kamahele

Ua 2. Chamahele ma ka Hele oia Kamahele oia Kamahele
 Okahe 63° He 2.26 Kamahele ma ke kamahele
 Kamahele 56° He 2.26 *Ke*
 Kamahele 64° He 2.25 *Kamahele*
 Kamahele 52° He 2.78 *Ke*
 Kamahele 57° He 3.70 *Ke*
 Okahe 63° He 2.25 *Ke*

oia ma ke kamahele oia Kamahele oia Kamahele

