



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 4:41
 SWUP.2263,6

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 KALANI & TERA PALEKA		Applicant's Contact TERA PALEKA		2. SOURCE LANDOWNER'S NAME WAILUKU WATER COMPANY LLC		Source Landowner's Contact Avery Chumbley	
Applicant's Mailing Address, or Principal Place of Business PO Box 342 Wailuku, HI 96793				Source Landowner's Mailing Address, or Principal Place of Business 255 East Waiko Road Wailuku, HI 96793			
Applicant's Phone (808) 244-0281		Applicant's Fax (808) 244-6601		Applicant's E-mail [REDACTED]		Source Landowner's Phone (808) 244-7079	
				Source Landowner's Fax (808) 242-7068		Source Landowner's E-mail sbc@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 addendum

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 5 : 0 4 1
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 addendum

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?
 Yes. How much water will be returned? See addendum
 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 part of addendum titled "Table 1, Box 11"

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

9. TOTAL QUANTITY OF WATER REQUESTED: 42,569 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 We claim traditional & customary Native Hawaiian rights to grow kalo

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): See addendum section titled "Box 14" No

15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from the Commission?
 Yes. List the permit number(s): No

NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) if necessary, additional information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited to, any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.

16. APPLICANT Signature Tera Kalani Paleka Print Date 4/19/09	17. SOURCE LANDOWNER Signature Print Date
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FILE ID: SWUP.22636
 DOC ID: 2769 ✓

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

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

LAND USE CONSISTENCY					EFFICIENCY OF USE					
1	2	3	4	5	6	7	8	9	10	11
PURPOSE / WATER USE CATEGORY	TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.	STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	SUB-METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 9. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 2.
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								¹²	GPD	
Uses that do not require potable water										
AGRCP	3 - 2 - 0 0 5 : 0 3 5 Zone Sec Plat Parcel	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	0.16 acres	300,000	9,569	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See addendum
AGRCP	3 - 2 - 0 0 5 : 0 4 1 Zone Sec Plat Parcel	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	0.11 acres	300,000	33,000	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See addendum
	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 NON POTABLE USE								¹³ 42,569	GPD	
TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =								¹⁴ 42,569	GPD	
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(5) HRS Not applicable										

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 5 : 0 3 5 <small>Zone Sec Plat Parcel</small>	Wetland Taro	0.26 acres	0.16 acres	N/A - annual	N/A - annual	Flood (taro)	Field capacity
3 - 2 - 0 0 5 : 0 4 1 <small>Zone Sec Plat Parcel</small>	Wetland Taro	0.13 acres	0.11 acres	N/A - annual	N/A - annual	Flood (taro)	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>							

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	Not applicable	See addendum
Wastewater reuse	Not applicable	See addendum
Ditch system	Not applicable	See addendum
Desalinization	Not applicable	See addendum
Ground water	Not applicable	See addendum
Other (specify)	Not applicable	See addendum

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 addendum

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

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 addendum

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 I and enter the amount in Box I4, "Total Use Requested."
- 10. **PROPOSED USE:** Check all the boxes that apply for the proposed use. Refer to the instructions for Table I: Land Use Consistency/Efficiency of Use, Item I: Purpose/Water Use Category below to determine which water use category to use.
- 11. **LOCATION OF PROPOSED WATER USE:** Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps and show the location of the proposed use.

PROPOSED USER INFORMATION

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

TABLE I: LAND USE CONSISTENCY / EFFICIENCY OF USE

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

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

AGRICULTURE

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

DOMESTIC

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

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INDUSTRIAL	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
IRRIGATION	
IRRG	Golf Course
IRRH	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRS	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.*

ADDENDUM TO SWUPA-E

Appended hereto as Exhibit 1 is a TMK map showing the location of our property, the location of the 'auwai diversion, and the area of our proposed use. Exhibit 2 is a copy of the 7.5 minute-series USGS topographic map with Waihe'e River and the stream diversions labeled. Exhibit 3 is a photo of where the 'auwai comes onto our property. Exhibit 4 depicts a portion of the area where we intend to cultivate wetland kalo. Exhibit 5 is described below.

Box 2: Source Landowner

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

Box 4 & 5: Instream Flow Standards

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

Box 7(a&b): Proposed Stream Diversion

We access water from the kuleana 'auwai that runs to the south of Waihe'e River and adjacent to our land. 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 South Waihe'e kuleana 'auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open 'auwai on the south side of Waihe'e River. The water continues makai in the ditch and pipes until it passes adjacent to our property where we divert some water via an open ditch for our lo'i kalo and other crops (see our concurrently filed SWUPA-E). We intend to use additional water from the same 'auwai for the lo'i kalo we intend to open. After flowing through our lo'i, most of the water is returned to the South Waihe'e kuleana 'auwai via a lined ditch.

Box 12: Appurtenant Rights

Our land had appurtenant rights because it was in kalo at the time of the Māhele of 1848. There are ancient rock walls and terraces on our land that we wish to restore to kalo cultivation. A portion of our land is a poalima and the rest was awarded to Kaakina by Land Commission Award No. 3510, apana 1, Royal Patent No. 4118. True and correct copies of these documents, including the testimony in support of the claim are attached hereto as Exhibit 9. However, Wailuku Sugar Company "reserved" the water rights in 1963, and, as a result, it appears our property's appurtenant rights may be extinguished, although we reserve the right to claim appurtenant rights in the future based on further information.

Regardless of whether we have appurtenant rights, we are a Native Hawaiian 'ohana, and pursuant to Article XII, Section 7 of the Hawai'i Constitution, we have a right to grow kalo on our land in a traditional manner.

Box 14: Prior Water Use Declaration:

A prior owner filed a water use declaration on parcel 35. The file reference name is "SANTOS JF."

Table 1, Boxes 3 through 5:

Our application seeks to use water on land zoned agricultural. The cultivation of traditional Native Hawaiian crops, including wetland kalo, is consistent with state and county general plans and land use designations. Additionally, our use is consistent with county land use plans and general policies.

Table 1, Box 11: Justification for Requested Quantity

We seek to cultivate wetland kalo on an additional 0.27 acres of our land. We estimated that we will need a total of 81,000 gallons per day for our 0.27 acres of lo'i kalo by multiplying 0.27 by 300,000 gallons, the average amount of water we understand is required to grow healthy wetland kalo. Because we estimate that we currently use about 60,651 gallons per day for our 0.074 acres of lo'i kalo (see our concurrently filed SWUPA-E), we believe we can use about 38,451 gallons per day ($0.074 \text{ acres} \times 300,000 \text{ gallons per day} = 22,200 \text{ gallons}$; $60,651 \text{ gallons} - 22,200 \text{ gallons} = 38,451 \text{ gallons}$) of our existing water flow for the area we intend to cultivate. Accordingly, we are requesting an additional 42,549 gallons per day for our new use.

Table 3, Box B: Alternatives Analysis

Our exercise of our traditional and customary right as Native Hawaiians to cultivate kalo on our land in the traditional manner is constitutionally protected, and by definition should not be required to use alternative, non-traditional sources. Even if such a requirement applied, there is no potentially available alternative source that is economically practicable. We cultivate kalo on our land for cultural and subsistence purposes; the kalo we grow feeds our 'ohana and is shared with neighbors and community members. An alternative water source that would require us to pay for volumes of constantly flowing water in our lo'i necessary to keep temperatures cool and support healthy kalo, would make our practice economically impossible. We would effectively be denied our traditional and customary right to grow kalo on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected right.

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. 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, 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 (see our concurrently filed SWUPA-E), although water is not available consistently and in sufficient amounts to support the existing uses on our system, including our own uses, necessitating this SWUPA-N. 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, 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 non-commercial gardening, we do not have the means to install and maintain such infrastructure.

Table 3, Section C: Additional Requirements

1) Our proposed new use will maximize beneficial use and is in the public interest

Our Proposed 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 traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." Our proposed water use is for kalo cultivation. We grow our kalo in traditional ways and use it for home, ceremonial, and educational purposes. We also grow several varieties of fruits. We are Native Hawaiians engaged in traditional agricultural practices, and our crops help maintain ecological balance and scenic beauty. As such, our existing use of stream water is consistent with the public interest.

Our Proposed Use is a Protected Public Trust Purpose

Kalo cultivation by Native Hawaiians is also a protected public trust purpose. Waiāhole I, 94 Haw. at 137, 9 P.3d at 449; see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights); HRS § 174C-101(c) (specifically protecting the right to cultivate kalo on one’s own kuleana). Additionally, because the most of the water we use will be returned to the `auwai, our use supports other existing public trust purposes such as the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

Our Proposed Use is Reasonable and Beneficial

“Reasonable-beneficial use” is defined as “the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest.” HRS § 174C-3. As indicated, our proposed use of stream water is consistent with state and county land use plans and the public interest. It is also “economic and efficient” because we only use the amount we need. We take steps to make our water use efficient. For instance, we use pipes and lined `auwai where appropriate 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, our use is “reasonable-beneficial.”

2) Our proposed use will not interfere with any existing legal use

Our proposed use will not interfere with existing legal uses. As Native Hawaiians seeking to grow kalo on our land in ancient lo`i kalo, we have 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. Thus, our use will not interfere with other existing legal uses.

3) Our proposed use(s) 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.

Tera and Kalani Paleka, TMK Nos. 3-2-005:035, 041
 Surface Water Use Permit Application – New
 Page 5 of 13

Exhibit 1: TMK map with arrows depicting our area of proposed use, our intake, and our outflow.

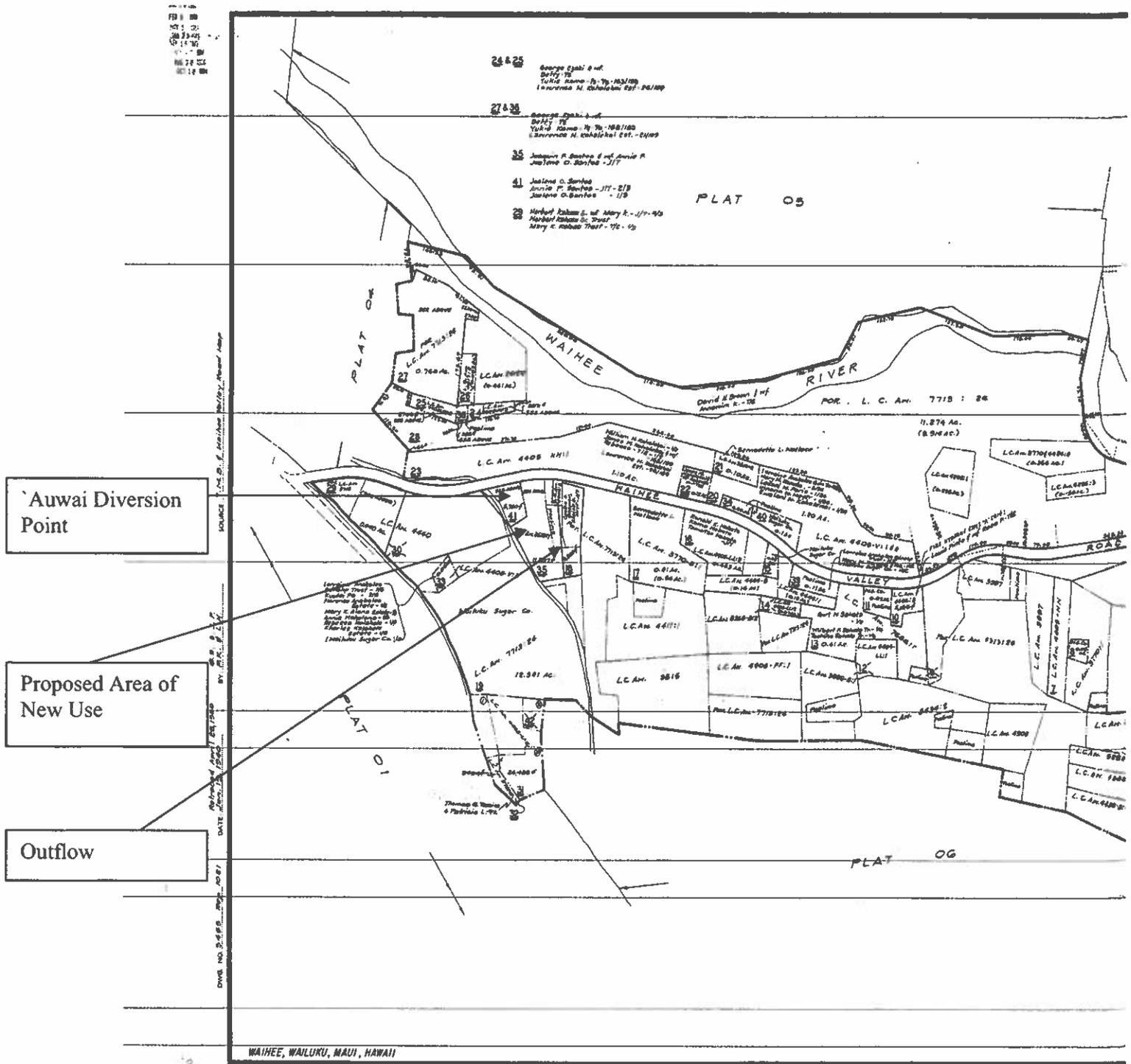


Exhibit 2: USGS Map of Waihe'e and Spreckles Ditch Diversions.

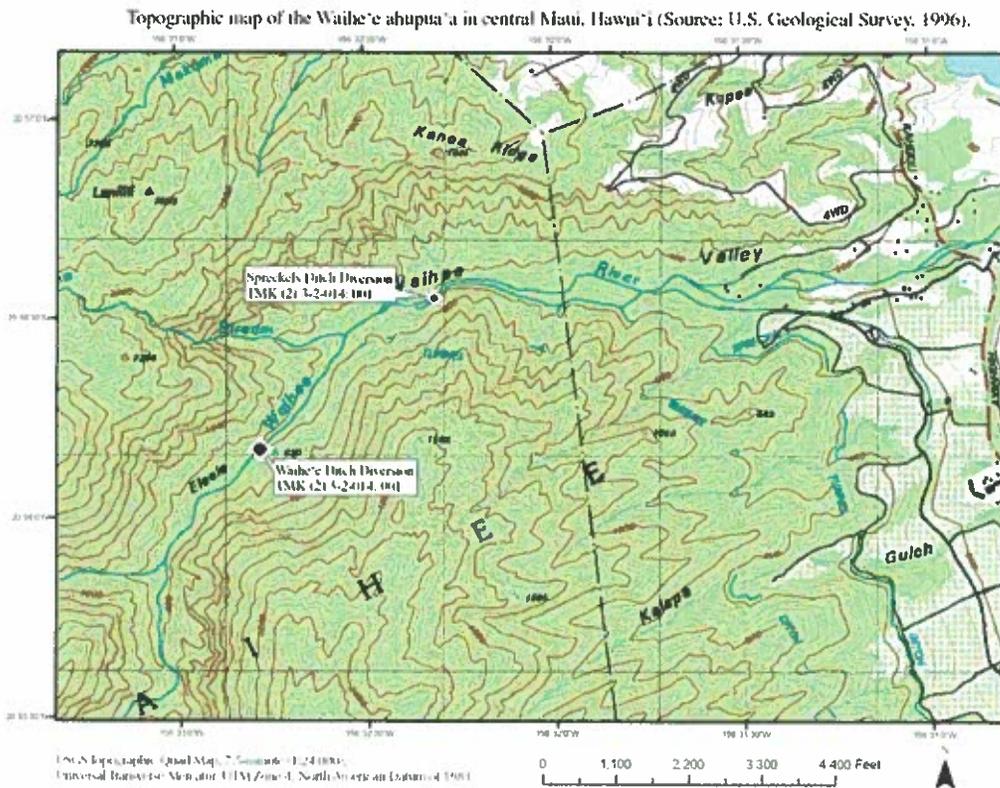


Exhibit 3: Attached is a true and correct copy of a photo taken on October 11, 2008, depicting where the water from the 'auwai runs onto our property.



Exhibit 4: Attached is a true and correct copy of a photo taken on October 11, 2008, depicting a portion of the area where we plan to grow wetland kalo.



Exhibit 5: Documents establishing our land was in kalo at the time of the Māhele

Ulu Pan Log # 5
 H. L. Lee
 J. M. Robertson
 J. H. Smith
 J. H. Smith

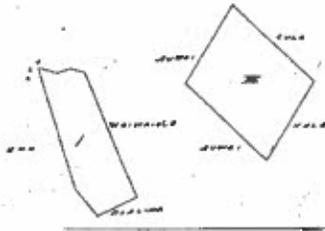
365

Honolulu 27 Oct. 1852
Huli 3512 Kapaia ✓ *Mahele Maui*

Apana I. Ke Kaula. Chomaka ka wai ma ke kiki Kauhane, keia, a pitia ana ma Ke
 Hana 24 1/2; Keia 55 Keia Hana 22 1/2 Hana 52 Keia Hana 16; Keia 38 Keia Hana 56
 Keia 16; Keia ma Hana 27 1/2; Hana 16 Keia; Keia Hana 7; Hana 412 Keia; Hana 15
 Hana 26 Keia; Hana 16; a hiki ma hiki; hana 16; a waike ma apana; 58/100 Keia

Apana II. Ke Kaula. Chomaka ka wai ma ke kiki Kauhane, keia, a pitia ana ma Ke
 Hana 24 1/2; Keia 55 Keia Hana 22 1/2 Hana 52 Keia Hana 16; Keia 38 Keia Hana 56
 Keia 16; Keia ma Hana 27 1/2; Hana 16 Keia; Keia Hana 7; Hana 412 Keia; Hana 15
 Hana 26 Keia; Hana 16; a hiki ma hiki; hana 16; a waike ma apana; 58/100 Keia

Honolulu Aug 18. 1852



John L. Jones
Maui

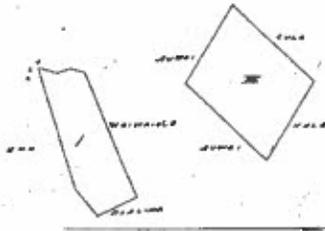
Ulu Pan Log # 6
 H. L. Lee
 J. M. Robertson
 J. H. Smith
 J. H. Smith

Honolulu 27 Oct. 1852
Huli 3510 Kauhane ✓ *Mahele Maui*

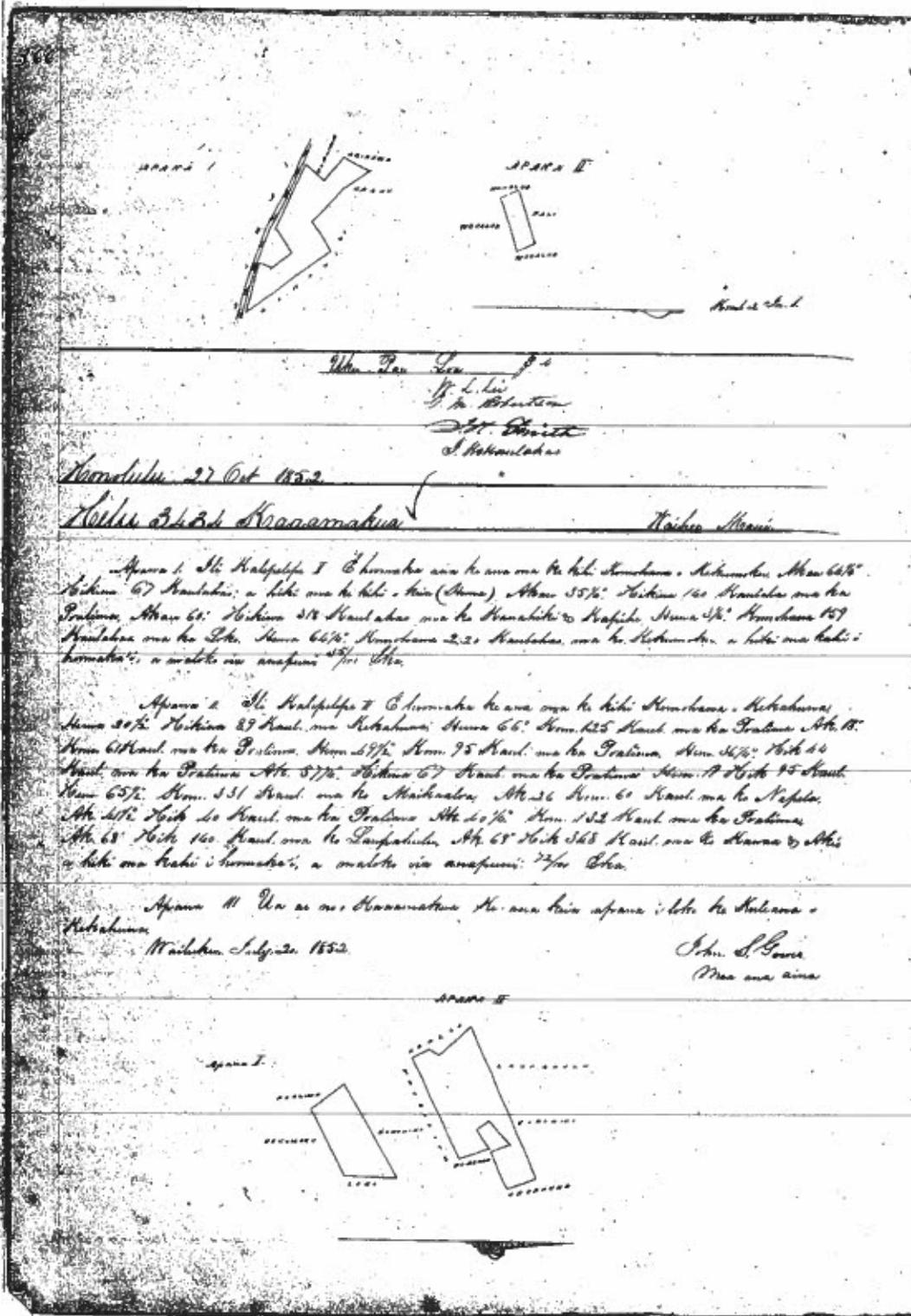
Apana I. Ke Kaula. Chomaka ka wai ma ke kiki Kauhane, keia, a pitia ana ma Ke
 Hana 24 1/2; Keia 55 Keia Hana 22 1/2 Hana 52 Keia Hana 16; Keia 38 Keia Hana 56
 Keia 16; Keia ma Hana 27 1/2; Hana 16 Keia; Keia Hana 7; Hana 412 Keia; Hana 15
 Hana 26 Keia; Hana 16; a hiki ma hiki; hana 16; a waike ma apana; 58/100 Keia

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 Keia 16; Keia ma Hana 27 1/2; Hana 16 Keia; Keia Hana 7; Hana 412 Keia; Hana 15
 Hana 26 Keia; Hana 16; a hiki ma hiki; hana 16; a waike ma apana; 58/100 Keia

Honolulu Aug 18. 1852



John L. Jones
Maui



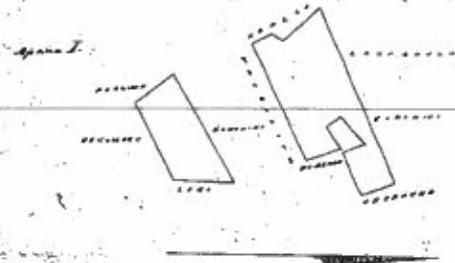
John L. Lewis
 J. H. Johnston
 Honolulu 27 Oct 1852

Waikuku 3438 Kananakua
 Waikuku Maunā

Apaua 1. Ili Kaulapala I. E hōmaka ana he ana ma ke kiki Kōmohana. Kōmohana Maunā 645' Hōkima 67 Kaulapala; a kiki ana ke kiki Kōmohana. Maunā 55 1/2'. Hōkima 160 Kaulapala ma ke Pōhaku Maunā 69'. Hōkima 518 Kaulapala ma ke Kōmohana a Kōpiko Maunā 3 1/2'. Kōmohana 159 Kaulapala ma ke Lika. Maunā 66 1/2'. Kōmohana 220 Kaulapala ma ke Kōmohana. a kiki ana kiki i hōmaka; a maletia ana ana pūma 47' i laka.

Apaua 2. Ili Kaulapala I. E hōmaka ana he ana ma ke kiki Kōmohana. Kōmohana Maunā 30 1/2'. Hōkima 89 Kaul. ma Kōmohana; Maunā 66'. Maunā 125 Kaul. ma ke Pōhaku Maunā 11'. Maunā 61 Kaul. ma ke Pōhaku. Maunā 57 1/2'. Maunā 95 Kaul. ma ke Pōhaku. Maunā 36 1/2'. Hōkima 64 Kaul. ma ke Pōhaku Maunā 57 1/2'. Hōkima 67 Kaul. ma ke Pōhaku Maunā 7' Hōkima 95 Kaul. Maunā 65 1/2'. Maunā 531 Kaul. ma ke Maikōhala Maunā 36 Maunā 61 Kaul. ma ke Kōpiko. Maunā 41 1/2' Hōkima 80 Kaul. ma ke Pōhaku Maunā 20 1/2'. Maunā 153 Kaul. ma ke Pōhaku. Maunā 68' Hōkima 160 Kaul. ma ke Pōhaku Maunā 68' Hōkima 368 Kaul. ma ke Maunā a kiki i hōmaka; a maletia ana ana pūma 47' i laka.

Apaua 3. Ua ana ana Kananakua he ana kiki ana i laka ke Kōmohana. Kōmohana Maunā
 Waikuku July 20 1852
 John L. Lewis
 Maunā ana ana



3510 Kaakina Iona Lina Horna. Aloha oukou
44 He hōpūi aku ou au i kōi Kuleana aina,
aina ma ka ili aina i Kapāia, Pūpūa ma
Pūhūe i Pūhūe. A pūhūe ma pūhūe, ma ka
Pūhūe ma Pūhūe. Hōkūina ma lōi o Kōkūi
Hōma Pūhūe. Hōmōhōma Pūhūe
17 Pūhūe 30 Dek. 1847. Ka Kaakina

3511 Kalāaia Iona Lina Horna Aloha oukou
44 He hōi aku ou au i kōi Kuleana aina
Mrs. Aina, aia ma ka ili aina i Kapāia,
Pūhūe ma Pūhūe aia o George Lina. A o ma
pūhūe ma ka Pūhūe ma lōi, Kōmōhōma Pūhūe,
ma ili aina o Pūhūe, a ma ka Pūhūe ma lōi
o Pūhūe. Hōmōhōma Pūhūe ma lōi
Kaakina 17 Dek. 1847. Kalāaia

3512 Hehau Iona Lina Horna Aloha oukou
44 He hōi aku ou au i kōi Kuleana, he onāu lōi
he 3. Ma ka wa kahiko ma ka onāu ana
i ke au ia Pūhūe ma Pūhūe o Pūhūe ma lōi Pūhūe
ma pūhūe. Aka ma lōi o Pūhūe, Hōkūina ma
Pūhūe. Hōma ma lōi o Pūhūe ma lōi
Hōmōhōma Mrs. Aina o Kōkūi
Pūhūe 17 Dek. 1847. Hehau a Hōmōhōma

3513 Kamakaha Iona Lina Horna Aloha oukou
44 He hōi aku ou au i kōi Kuleana he 13 lōi
in, he lōi ma, ma lōi ma kōi wahi iho,
3 lōi ma ka Pūhūe ma lōi aia, lōi ma
ka lōi. Aia ma ka ili aina i Kapāia, Pūhūe

Waikae
31

C. 356 Kaohina

Leleima, Sr. The Old land consists of 2 pieces in Waikae, Hawaii.
 No. 1 is 9 lbs in the site of Papaiwa
 No. 2 is 7 lbs and a potato patch in Ohia
 No. 3 is a hula waika.
 The Claimant received No. 1 & 2 from S. Laniwai in 1829
 and 1833, and No. 3 from S. Laniwai in 1829. His title has never
 been disputed.
 No. 1 is bounded Waikae, by the site of Pihai, Lihoukua,
 by the site of Papaiwa & Waikae, by the Waikae site, Lihoukua, by
 Laniwai's land.
 No. 2 is bounded Waikae, by Ahikoa's land, Lihoukua,
 by the site of Waikae, by Waikae's land, Waikae, by the Waikae land.
 No. 3 is bounded Waikae, by Ahikoa's land, Lihoukua,
 by the site of Waikae, by Waikae's land, Waikae, by the site.
 No. 4 is bounded Waikae, by the site of Lihoukua, by the
 same, Waikae, by the site of Waikae, by the site of Waikae's
 land.

C. 363 Maara

Leleima, Sr. The Old land consist of one piece of hula land in the site of
 Pihai, Waikae, Hawaii.
 The Claimant received it from Laniwai in 1829. His title
 has never been disputed. There are 2 provisions his in it.
 It is bounded Waikae, by Waikae's land, Lihoukua, by Waikae's
 land, Waikae, by the site of Waikae, by Laniwai's land.

C. 364 Waikae

Leleima, Sr. The Old land consists of two pieces in the site of
 Pihai, Waikae, Hawaii.
 No. 1 is a piece of hula land
 No. 2 is a piece of hula land