

ORIGINAL



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 [X] Application for New use [] Application to Modify SWUP No.

For Official Use Only:

RECEIVED COMMISSION ON WATER RESOURCE MANAGEMENT

2009 APR 30 AM 8:5

FILE ID: SWUPA-2314.6 DOC ID: 3446v

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: CHARLENE E. KANA, JACOB H. KANA SR.
2. SOURCE LANDOWNER'S NAME: WAILUKU WATER COMPANY, LLC
Source Landowner's Contact: Avery Chumbley
P.O. Box 292, Wailuku, HI 96793
255 East Weiko Road, Wailuku HI 96793
Source Landowner's Phone: 808 244-7079, Fax: 808 242-7068, E-mail: abc@aloha.net

SOURCE INFORMATION

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

4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT IF APPLICABLE: N/A

5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: [] Yes [] No
Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit: See Attachment A

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 2 - 014 : 001

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 2 - 006 : 018

7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all that apply.
[X] Pipe [] Pump [X] Ditch/auwai [] Other Describe: N/A See Attachment A

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?
[X] Yes. How much water will be returned? See Attachment A
[] No

8. PROPOSED FLOW MEASUREMENT INFORMATION:
Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts?
[] Yes. List the manufacturer and describe the device.
[X] No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below. See Attachment A

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

9. TOTAL QUANTITY OF WATER REQUESTED: 320,799 gallons per day. See Table 1, Item 14.

10. PROPOSED USE: Check all that apply. [X] Agriculture [] Domestic [] Industrial [] 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? [X] Yes [] No
If yes, has the appurtenant right been established by the courts or the Commission? [] Yes [X] No

13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system?
[X] 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?
[X] Yes. List the file reference name(s): Chang-, C; Kahalehau, R [] No

15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from the Commission?
[] Yes. List the permit number(s): [X] 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 of Charlene E. Kana and Jacob H. Kana Sr. Date: 4/14/09

17. SOURCE LANDOWNER: Signature and Date

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. // 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 | | | | | | | | | | | N/A | ¹² | GPD |
| Uses that do not require potable water | | | | | | | | | | | | | |
| AGRCP | 3 | 2 | 0 0 6 | 0 0 1 | 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 | 0.257 acres | 300,000 | 77,100 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | See Attachment A |
| AGRCP | 3 | 2 | 0 0 6 | 0 1 8 | 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 | 0.81233 acres | 300,000 | 243,699 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | See Attachment A |
| | Zone | Sec | Plat | Parcel | | <input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No | | <input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| | Zone | Sec | Plat | Parcel | | <input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No | | <input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| TOTAL NON POTABLE USE | | | | | | | | | | | 320,799 | ¹³ | GPD |
| TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) = | | | | | | | | | | | 320,799 | 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 6 : 0 0 1 <small>Zone - Sec - Plat Parcel</small> | Wetland Taro | 0.32 acres | 0.257 acres | Year round | Year round | Flood (Taro) | Field Capacity |
| 3 - 2 - 0 0 6 : 0 1 8 <small>Zone - Sec - Plat Parcel</small> | Wetland Taro | 1.25 acres | 0.81233 acres | Year round | Year round | 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> | | | | | | | |
| <small>Zone - Sec - Plat Parcel</small> | | | | | | | |
| <small>Zone - Sec - Plat Parcel</small> | | | | | | | |

9. COMMENTS:
See Attachment A.

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 A |
| Wastewater reuse | N/A | See Attachment A |
| Ditch system | N/A | See Attachment A |
| Desalination | N/A | See Attachment A |
| Ground water | N/A | See Attachment A |
| Other (specify) | N/A | See Attachment A |

C. ADDITIONAL REQUIREMENTS:

PUBLIC INTEREST Hawaii Revised Statutes §174C-2(c) states that: *The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

1. Explain below how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code above.
See Attachment A

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

3. Explain below how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.
See Attachment A

APPLICATION FOR SURFACE WATER USE PERMIT PROPOSED NEW USE

INSTRUCTIONS

This application form is for **new surface water uses** or for a modification of a previously approved water use permit in designated surface water management areas. New surface water uses are proposed uses after the effective date of designation of the surface water management area. Please check the appropriate box.

Do not use this form for existing surface water use applications. Existing surface water uses are actual uses before the effective date of designation. Please use Form SWUPA-E for existing uses.

Most questions can be addressed by visiting our website at: www.hawaii.gov/dlnr/cwrm, 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: (t)he state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.

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, Thermolectric 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.*

As Kanaka Maoli, Hawai'i's native people, we proclaim our inherent sovereignty and question whether the State of Hawai'i has jurisdiction to regulate our water uses. In an abundance of caution, we are filing this Water Use Permit Application to protect our rights and interests as Kanaka Maoli and as kuleana water users

ATTACHMENTS

This Water Use Permit Application incorporates the following attachments:

Attachment A – Supplemental Responses

Attachment B – TMK Map

Attachment C – Photographs

Attachment D – Documentation Establishing Appurtenant Rights

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

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

ATTACHMENT A

SUPPLEMENTAL RESPONSES

Box 2 (and 17): Source Landowner

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

Boxes 4& 5: Instream Flow Standards

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

Box 7 (a&b): Proposed Stream Diversion

We are existing kuleana users along the kuleana `auwai that runs to the south of Waihe`e River. Water is diverted from Waihe`e River at the Waihe`e and Spreckels diversions (see USGS Topographical Map, Attachment E). All the water from the Spreckels diversion enters the Spreckels Ditch, as does some water from the Waihe`e diversion. The South Waihe`e kuleana `auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open `auwai on the south side of Waihe`e River. The water continues makai in the `auwai, until it reaches our neighbor Cordell Chang's property (TMK 3-2-006:004). Although our property used to have its own intake, when Wailuku Agribusiness converted to macadamia nuts, it changed our intake so that we now share a single 3" pipe with Cordell; this significantly limits the amount of water available for both of our uses. The 3" pipe brings water from the `auwai to our land, where we use it for our lo`i kalo. After flowing through our lo`i, nearly all of the water returns to the kuleana `auwai makai of our property from the southeastern-most corner of our parcel. The amount of water flowing into our lo`i and the amount that flows out and is returned to the `auwai both depend on the flow in the South Waihe`e kuleana `auwai, which fluctuates. The amount that flows out also depends, in part, on daily climatic conditions. Since the South Waihe`e kuleana `auwai also runs past our property, we would like to take our water directly from the `auwai on TMK 3-2-006:018 and plan to do so once we receive a water use permit.

Box 8: Proposed Flow Measurement Information

The amount of water required for our proposed new use is an estimate. We plan to resume cultivation in lo`i kalo that are currently fallow due to lack of water. Our existing use is 0.084 acres, because that is all the water we have. We plan to cultivate an additional 1.06933 acres of kalo, for a total of 1.15333 acres. We estimated our proposed new water use for wetland

kalo cultivation by multiplying the 1.06933 acres that we plan to add by 300,000 gallons per acre per day, which we understand be the amount of water required to grow healthy kalo.

Box 12: Appurtenant Right

Our property has an appurtenant right to water because it was in kalo cultivation at the time of the Māhele of 1848. In fact, the stream water we currently use and the additional stream water we are seeking by this application is for ancient lo`i kalo that we have restored. Appended to this application as ATTACHMENT D are true and correct copies of Land Commission Award 3963 and Royal Patent No. 6457, along with the testimony indicating that the land was in kalo at the time of the Māhele. We have no evidence, indication, or other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

Table 1, Land Use Consistency/Efficiency

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

Box 11 – See supplemental response for Box 8.

Table 3: Alternatives Analysis

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

Moreover, even if we did not have protected rights to water from Waihe`e Stream, there is no potentially available alternative source that is economically practicable. 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 the volumes of constantly flowing water in our lo`i necessary to keep temperatures cool and support healthy kalo would make our kalo cultivation economically impossible. We would effectively be denied our appurtenant right and traditional and customary right to grow kalo on our kuleana land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights.

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

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

Ditch system. We are currently using water from an existing 'auwai that passes near our kuleana land. Getting water from other ditch systems is not practicable. There is no other ditch that passes near our kuleana land and we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As small users engaged in a traditional, non-commercial use, 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 small users engaged in a traditional, non-commercial use, we do not have the means to install and maintain such infrastructure.

Table 3, Section C: Additional Requirements

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

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

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

Kalo cultivation by Native Hawaiians is also a protected public trust purpose. In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 137, 9 P.3d 409, 449 (2000) ("Waiāhole I"); see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights); HRS § 174C-101(c) (specifically protecting the right to cultivate kalo on one's

own kuleana). Additionally, because much of the water we use will be returned to the `auwai, our proposed use will support other public trust purposes such as water for domestic purposes and the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

(c) Our Proposed Use is a “Reasonable-Beneficial Use”

“Reasonable-beneficial use” is defined as “the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest.” HRS § 174C-3. As indicated, our proposed use of stream water is consistent with state and county land use plans and the public interest. It is also “economic and efficient” because we will only use the amount we need.

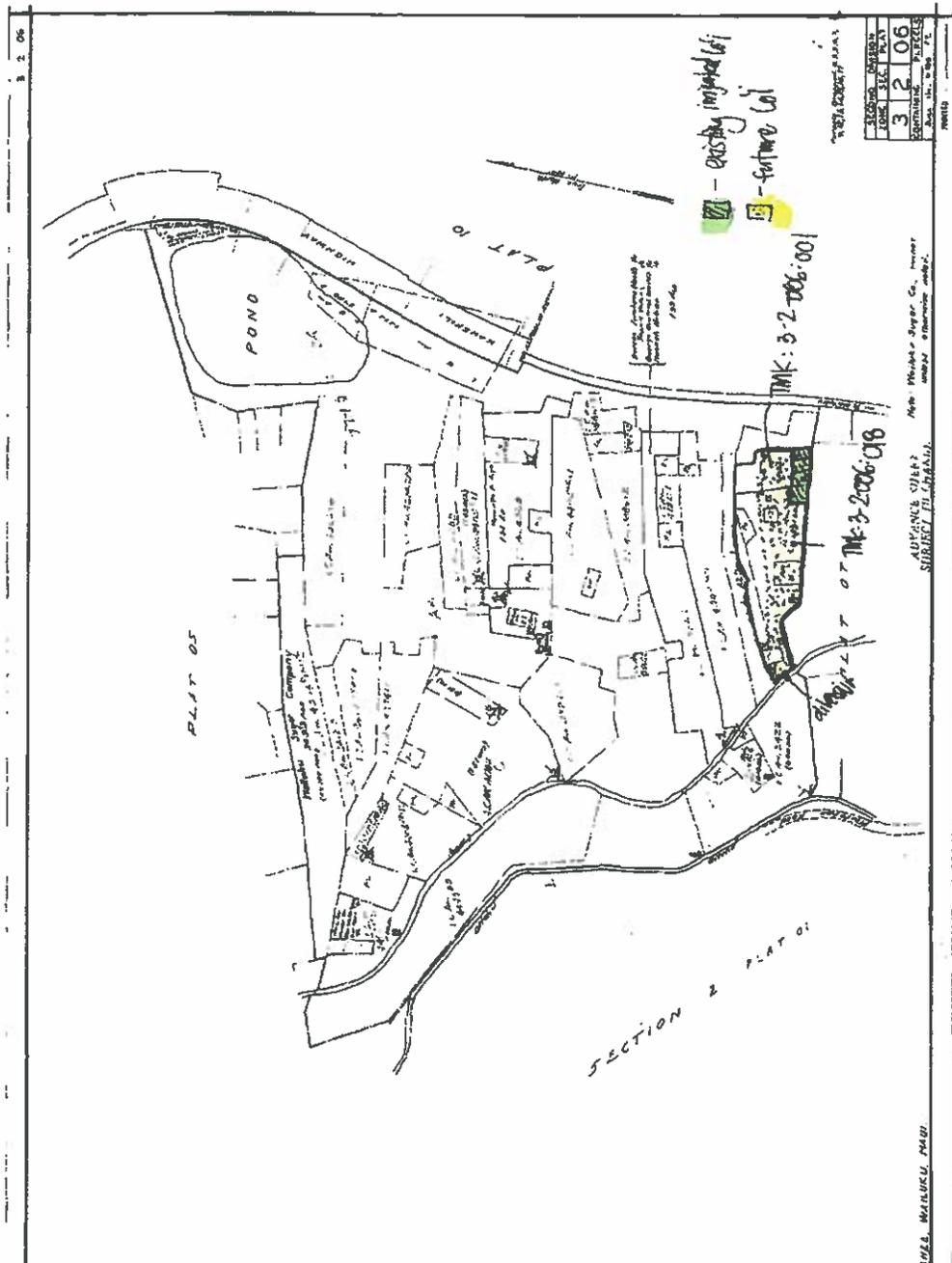
2. Our Proposed Use Will Not Interfere With Any Existing Legal Use

Our proposed use will not interfere with existing legal uses. As kuleana users, we have first priority by law. We believe that the flow of Waihe`e Stream is able to accommodate our new use. In fact, our use of water from Waihe`e Stream has been severely restricted by large diversions upstream of the Spreckels Ditch Diversion, which supplies our `auwai with water, and this has limited the acreage that we can cultivate, necessitating this new use application.

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

We are not aware of any DHHL lands using water from Waihe`e Stream. To the best of our knowledge, DHHL has not filed an application to use water from this source. While we are aware that DHHL has outstanding reservations for municipal water meters in Central Maui, our use will not interfere with those reservations, which are largely served by ground water sources. Instead, our proposed use will actually help to protect DHHL’s rights because all of the water we are requesting will remain in the watershed where it will recharge the aquifer, protecting the health of the aquifer system for DHHL’s present and future groundwater uses.

ATTACHMENT B: TMK MAP



This is a true and correct copy of TMK No. 3-2-006: 001 and TMK No. 3-2-006: 018. Our end uses and diversion points are approximate, and are not drawn to scale.

ATTACHMENT C: PHOTOGRAPHS



This is a true and correct photograph taken on October 12, 2008 that accurately depicts the condition of the southern end of TMK No. 3-2-006: 018, facing south. This area is considered the middle area of the Kana's property (taken as a whole) where future lo'i will be cultivated.



This is a true and correct photograph taken on October 12, 2008 that accurately depicts the condition of the middle area of the Kana's property (3-2-006: 018) facing north where future lo'i will be cultivated.

KANA, CHARLENE AND JACOB
TMK: 3-2-006-018; 3-2-006-001
WATER USE PERMIT APPLICATION – NEW USE
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This is a true and correct photograph taken on October 12, 2008 that accurately depicts the condition of future lo'i with the lo'i walls and pipes already in place.



This is a true and correct photograph taken on October 12, 2008 that accurately portrays the condition of TMK No. 3-2-006: 001, considered the southern and lower portion of the Kana's property, where future lo'i will be cultivated.

140
 Kapa, Kauhūma, Māhala Kōi
 Kōpū Kaulana Nā Kōpūma.

3962 Napukaha Dek. 29, 1968.
 Ili aia, Kaulane 57 loi
 Oo Kūhūlani, māi Kōi, 1 loi Kaulana
 10 Pūhala, 2 Kūle, 10a Kōkōi i Kōi
 Kōmāpōno ake i Kōi Kōmāhema, i
 Nā Napukaha

3963 Kāoa Dek. 29, 1968.
 Ili aia o Pūhala 45 loi
 Oo Kōkōi Kōi, 1 Kōi aia oia
 Kōpūma Nā Kāoa

3969 Kōkōi Kōpū Januai 11, 1968.
 Aheia Kōkōi o mā Kōkōi
 Kōkōi aia, he Kōkōi ake māi aia i
 Kōi māi Kōkōi aia mā Kōkōi
 he māi Kōkōi aia mā Kōkōi
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 māi aia. Eia mā Kōkōi māi aia
 Kōkōi aia, 1. Kōkōi, 2. Kōkōi
 3. Kōkōi, 4. Kōkōi
 Eia mā Kōi māi Kōkōi māi
 mā Kōkōi, Kōkōi Kōkōi, he māi
 Kōkōi aia Kōkōi, he māi loi
 Kōkōi Kōkōi, 2. Kōkōi aia māi
 uli ihe, Kōkōi Kōkōi, Kōkōi Kōkōi
 20 loi Kōkōi, 1. Ili Kōkōi o Pūhala
 māi, he ili Kōkōi. Eia mā Kōkōi,
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 Kōkōi, 2. Kōkōi, 3. Kōkōi
 Oo Kōkōi māi Kōkōi aia māi
 Eia mā Kōkōi aia māi, he

Maui 31

C. 354a Kaohua

Location Sec. The Old land consists of 4 pieces in Kaohua, Maui.
 A¹ is 9 hrs in the is. of Papiauna
 2
 3
 4 and a pocket patch in Chua
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The Claimant received A¹ 12 from S. Laniwai in 1829
 and 1830, and A² 34 from Papiauna in 1829. His title has never
 been disputed.

A¹ is bounded: Maui, by the is. of Paunui, Kahakulua,
 by the is. of Papiauna in Maui, by the Waimea is. Kahakulua, by
 Maui's land.

A² is bounded: Maui, by Maui's land, Kahakulua,
 by the Pali, Maui, by Maui's land, Kahakulua, by the Waimea land.

A³ is bounded: Maui, by Maui's land, Kahakulua,
 by the Pali, Maui, by Maui's land, Kahakulua, by the Coast.

A⁴ is bounded: Maui, by the Pali, Kahakulua, by the
 same, Maui, by the Coast of Maui, Kahakulua, by Maui's
 land.

C. 396a Maui

Location Sec. The Old land consist of one piece of hale land in the is. of
 Pahoa, Maui

The Claimant received it from Laniwai in 1829. His title
 has never been disputed. There are 4 provisions in it.

It is bounded: Maui, by Maui's land, Kahakulua, by Maui's
 land, Maui, by Maui's land, Kahakulua, by Maui's land.

C. 444a Maui

Location Sec. The Old land consists of two pieces in the is. of
 Pahoa, Maui

A¹ is a piece of hale land
 A² is a piece of hale land

No. 4278 Kuaheva (cont.)

Section 4 - 6 Taro patches and pasture at Puhauolu
 Mauka Land enclosure
 Kahakuloa Poalima
 Makai Large ditch
 Wailuku Kaale

No. 3510 Kaakina July 25, 1849

Kahimu sworn He has seen 4 sections in the ilis of Waihee. The two sections at Papaina 1 and 2 are from Z. Kaauwai in 1829 and 1830. The sections in 3-4 in Ohia are from Pupuka in 1829. No objections.

Section 1 - 9 Taro patches at Papaina 1
 Mauka Paulani ili
 Kahakuloa Papaina 2 ili
 Makai Poalima
 Wailuku Kuumoo's land

Section 2 - 3 Taro patches at Papaina 2
 Mauka Akihewa
 Kahakuloa Pali
 Makai Wahalua
 Wailuku Poalima

Section 3 - 7 Taro patches and pasture at Ohia
 Mauka Keoili
 Kahakuloa Hale's land
 Makai Pupuka's land
 Wailuku Stream

Section 4 - Wanke pasture at Ohia
 Mauka, Kahakuloa Pali
 Makai Land enclosure
 Wailuku Napela

No. 3963 Naoa July 25, 1849

Maubue sworn He has seen 1 section of land at Puhanolu ili in Waihee. Land from Kekana'i in 1829, no objection. 5 Poalimas there.

Mauka Kaale
 Kahakuloa Mahoe's land
 Makai Kapoho ili
 Wailuku Keoniu

No. 4442 Kapu July 25, 1849

Kaekauhema sworn He has seen 2 sections in Pahihi ili in Waihee. Land from Kapu's parents at the time of Kam II, no one objected.

Section 1 - Taro moo
 Mauka Palulu
 Kahakuloa Naoho
 Makai Poalima
 Wailuku Palalilaha ili

Section 2 - Taro moo and house and pasture
 Mauka Land enclosure
 Kahakuloa Pahaalsle ili
 Makai Poalima
 Wailuku Palulu

ATTACHMENT E

