



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 4:18

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 GEORGE S. AND YONEKO HIGA | | Applicant's Contact YONEKO HIGA | 2. SOURCE LANDOWNER'S NAME A VERY CHUMBLEY WAILUKU WATER COMPANY LLC | | Source Landowner's Contact |
| Applicant's Mailing Address, or Principal Place of Business 592 S. PAPA AVENUE KAHULUI, HI 96732 | | | Source Landowner's Mailing Address, or Principal Place of Business 255 East Waiko Road Wailuku, HI 96793 | | |
| Applicant's Phone | Applicant's Fax | Applicant's E-mail | Source Landowner's Phone (808) 244-7079 | Source Landowner's Fax (808) 242-7068 | Source Landowner's E-mail |

SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT: Island: MAUI Hydrologic Unit: WAIKAPU Hydrologic Unit Code: 600I

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:

IFS HAVE NOT BEEN SET FOR WAIKAPU, SEE ADDENDA.

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 5 - 0 0 3 : 0 0 1

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 5 - 0 0 6 : 0 2 5

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 ADDENDA.

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?

- Yes. How much water will be returned?
 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.

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

9. TOTAL QUANTITY OF WATER REQUESTED: 3,000 gallons per day. See Table 1, Item 14.

10. PROPOSED USE: Check all that apply. 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? 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): GEORGE S. AND YONEKO HIGA, A. FUJITA 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 Yoneko Higa 4/19/09 Print Date | 17. SOURCE LANDOWNER Signature Print Date |
|---|---|

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY
(Attach additional copies of Table1 if necessary.)

| LAND USE CONSISTENCY | | | | | EFFICIENCY OF USE | | | | | | | | | |
|---|---|-----|-------|--------|-------------------------|--|--------------------|--|----------------------|--|---------------------------------|--|--|--|
| 1 | 2 | | | | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | |
| PURPOSE / WATER USE CATEGORY | TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use. | | | | STATE LAND USE DISTRICT | CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable. | COUNTY ZONING CODE | SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable. | UNITS OR NET ACREAGE | 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 | | | | | | | | | | | 0 | ¹² | GPD | |
| Uses that do not require potable water | | | | | | | | | | | | | | |
| AGRCP | 3 | 6 | 0 0 6 | 0 0 3 | Urban | <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 | 0.46 | 3,000 | 1,380 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | SEE ADDENDA | |
| AGRCP | 3 | 6 | 0 0 6 | 0 0 4 | Urban | <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 | 0.22 | 3,000 | 660 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | SEE ADDENDA | |
| AGRCP | 3 | 6 | 0 0 6 | 0 0 5 | Urban | <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 | 3,000 | 480 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | SEE ADDENDA | |
| AGRCP | 3 | 6 | 0 0 6 | 0 1 6 | Urban | <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 | 3,000 | 480 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | SEE ADDENDA | |
| TOTAL NON POTABLE USE | | | | | | | | | | | 3,000 | ¹³ | GPD | |
| TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) = | | | | | | | | | | | 3,000 | 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 - 6 - 0 0 6 : 0 0 3 <small>Zone Sec Plat Parcel</small> | Diversified Agriculture | 1.09 | 0.46 | Year Round | Year Round | hand water with hose | field capacity |
| 3 - 6 - 0 0 6 : 0 0 4 <small>Zone Sec Plat Parcel</small> | Diversified Agriculture | 0.22 | 0.22 | Year Round | Year Round | hand water with hose | field capacity |
| 3 - 6 - 0 0 6 : 0 0 5 <small>Zone Sec Plat Parcel</small> | Diversified Agriculture | 0.16 | 0.16 | Year Round | Year Round | hand water with hose | field capacity |
| 3 - 6 - 0 0 6 : 0 1 6 <small>Zone Sec Plat Parcel</small> | Diversified Agriculture | 0.16 | 0.16 | Year Round | Year Round | hand water with hose | field capacity |
| <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:
SEE ADDENDA.

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 ADDENDA |
| Wastewater reuse | N/A | SEE ADDENDA |
| Ditch system | N/A | SEE ADDENDA |
| Desalinization | N/A | SEE ADDENDA |
| Ground water | N/A | SEE ADDENDA |
| Other (specify) | N/A | N/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 ADDENDA.

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

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 ADDENDA.

APPLICATION FOR SURFACE WATER USE PERMIT PROPOSED NEW USE

INSTRUCTIONS

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

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

Most questions can be addressed by visiting our website at: www.hawaii.gov/dlnr/cwrm, or contacting us at 587-0234, or by email at: dlnr.cwrm@hawaii.gov. The current application forms are also available at: www.hawaii.gov/dlnr/cwrm/resources_permits.htm.

REQUIREMENTS FOR A COMPLETE APPLICATION

1. Fill in the most recent application form. A current form is available at our web site or by contacting us at 587-0234.
2. Print in ink or type in the information on the application.
3. Fill in every item in the application form (page 1) and Tables 1, 2, and 3 as it relates to your proposed new use or permit modification.
4. Enclose a check for the non-refundable filing fee of \$25 payable to: Department of Land and Natural Resources. Government agencies are not required to pay the filing fee.
5. Pay for the cost of publishing any required public notices related to your application. The current cost for publishing public notices is approximately \$400.00. Commission staff will provide instructions later in the permit process regarding payment of these costs.
6. Mark the source and end use locations on the appropriate USGS quad map (scale 1:24,000) and property tax (TMK) map and attach these maps to your application.
7. Attach photos showing your existing diversion, measuring device(s) (if applicable) and end use areas.
8. Sign the application form in ink. Both the applicant and the landowner where the source is located must sign the application form.
9. Submit the original application and **15 copies** of the application form and all attachments (maps, photos and any other attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

ADDITIONAL REQUIREMENTS FOR A COMPLETED APPLICATION

Per Hawaii Revised Statutes §174C-49, the applicant must establish that the proposed new use of surface water:

1. Can be accommodated with the available water source.
2. Is a reasonable-beneficial use.*
3. Will not interfere with any existing legal use of water.
4. Is consistent with the public interest.**
5. Is consistent with state and county general plans and land use designations.
6. Is consistent with county land use plans and policies.
7. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.

*HRS §174C-3 of the State Water Code states: "Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest.

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

NOTE: Filling in the application form and Tables 1, 2, and 3 completely will address the requirements of HRS §174C-49.

LINE BY LINE INSTRUCTIONS ON APPLICATION

APPLICANT INFORMATION

In accordance with the Hawaii Water Code, both the applicant and the person who owns the property where the water source is located are required to apply for a water use permit. §174C-51(1)(B), HRS, states, *In the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit.*

1. **APPLICANT'S NAME:** Fill in the information for the applicant. This should be the person who will be responsible for all conditions of the water use permit.
2. **SOURCE LANDOWNER'S NAME:** Fill in the information for the landowner of the property where the existing surface water diversion works is located.

SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Enter the appropriate island, hydrologic unit name, and hydrologic code where the proposed source is located. The "source" is the stream from which water is diverted to the user. For information on hydrologic unit names and unit codes please refer to the *Surface Water Hydrologic Unit: A Management Tool for Instream Flow Standards* report available on the CWRM website at: <http://www.hawaii.gov/dlnr/cwrm/>, or contact CWRM staff at (808) 587-0234. You may also contact CWRM toll-free from Maui at: 984-2400, ext. 70234.

**APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE**

4. **INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT:** Provide Instream Flow Standard (IFS) for hydrologic unit if available.
5. **CAN YOUR PROPOSED USE BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS:** Check "Yes" or "No". Explain how your proposed use(s) can be accommodated within the Instream Flow Standard (IFS) for the above hydrologic unit.
- 6a. **TMK OF PROPOSED STREAM DIVERSION LOCATION:** Fill in the Tax Map Key (TMK) number of the tax parcel where the stream diversion will be located. Each tax parcel is issued a TMK number by the county property tax office and is defined as follows: 1st digit = (Island code), 2nd digit = Zone, 3rd digit = Section, Digits 4-6 = Plat, Digits 7-10 = Parcel, e.g. (1) 1-1-001:001. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/
- 6b. **TMK OF PROPOSED DITCH DIVERSION LOCATION:** Fill in the Tax Map Key (TMK) number of the parcel where the proposed ditch diversion will be located.
- 7a. **PROPOSED STREAM DIVERSION:** How will water be diverted from the stream to your property? Check all the appropriate box(es).
- 7b. **WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?** Check "Yes" or "No." If yes, enter the amount of water to be returned.
8. **PROPOSED FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No". If yes, please describe the measuring device. A flowmeter with a totalizer will directly measure the total use for the source (similar to a car's odometer). If no, explain how stream diversion will be measured or estimated to justify amounts requested.

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

9. **TOTAL QUANTITY OF WATER REQUESTED:** Enter the amount of water requested as gallons per day (GPD). Fill out Table 1 and enter the amount in Box 14, "Total Use Requested."
10. **PROPOSED USE:** Check all the boxes that apply for the proposed use. Refer to the instructions for Table 1: Land Use Consistency/Efficiency of Use, Item 1: Purpose/Water Use Category below to determine which water use category to use.
11. **LOCATION OF PROPOSED WATER USE:** Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps and show the location of the proposed use.

PROPOSED USER INFORMATION

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

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY OF USE

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

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

AGRICULTURE

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

DOMESTIC

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

**APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE**

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

Water Use Permit Application Addenda

Existing Source Information

Appended hereto as Exhibit 1 is a copy of the 7.5 minute-series USGS topographic map with the Waikapū stream and South Waikapū diversion labeled. Exhibit 2 is a TMK map showing the location of our property as well as a close-up of the property showing the locations of our `auwai diversion and end uses. Exhibit 3 contains photos of the kuleana ditch where we hope to access water and our area of proposed new use. Exhibits 4, 5, and 6 contain copies of Māhele documents establishing that our land was in kalo at the time of the Māhele.

Box 2 & 17: Source Landowner

Not applicable pursuant to HRS § 174C-51(1)(B), because the 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, WWC 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 upwardly amend 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 are kuleana users along the kuleana `auwai to the South of Waikapū Stream. Water is diverted from Waikapū stream by an intake (see attached USGS topo map), then continues to Reservoir #1 via pipes and ditches. Historically, the water continued makai in more pipes and ditches until it flowed directly onto our property (TMK 3-6-006-005). My husband, mother and I filed Declarations of Water Use with this Commission in 1989, which included a detailed description and pictures of how the `auwai traditionally brought water to our property. Unfortunately, the `auwai mauka of us was destroyed and it no longer flows onto our property. We would like to once-again use water from the `auwai for a non-commercial vegetable garden and, in order to get water from the `auwai, we now need to access it through the John Minamina Brown Trust's Property (TMK 3-6-006-025), which is adjacent to our land. Crystal Alboro, their trustee, has given us permission to run a pipe and connect to the `auwai on their property. Because of the change in the historic `auwai, our water will no longer be able to return to the traditional `auwai. So, any unused water will be absorbed into the ground.

Box 8: Proposed Flow Measurement Information

See the explanation for Table 1, Box 11 below.

Box 12: Appurtenant Rights

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. Attached hereto as Exhibits 3, 4, and 5 are copies of original Māhele documents indicating our land was in kalo at the time of the Māhele. In 1927, Eleanor Wilcox conveyed the property described as Royal Patent 4115, Land Commission Award 3324, Apanas 1-6 and Royal Patent 4122, Land Commission Award 3397, Apanas 1-2 to my mother, Asano Fujita, subject only to the reservation of the graves and a certain right of way. In 1950, Territorial Tax Collector Alameda sold Grant 1520 (to Keakini) and Grant 1710:2 (to Puhi) to my mother Asano Fujita and her son Naofumi Fujita as joint tenants. In 1952, Wailuku Sugar Company conveyed Grant 1713 to my mother Asano Fujita and Naofumi Fujita as joint tenants. This grant was made without any reservation of rights.

Based on our knowledge of the history of this property, we have no evidence, indication, or any other reason to believe that the appurtenant rights to Land Commission Award 3324, Land Commission Award 3397, Land Commission Award 3523, and Grants 1520, 1710:2, and 1713 have been extinguished. This application should be granted pursuant to HRS § 174C-63.

In 1959, Wailuku Sugar Company conveyed Royal Patent 3141, Land Commission Award 3523:1 and Royal Patent 498, Land Commission Award 236-I:1 to my mother Asano Fujita and Naofumi Fujita. In that grant, Wailuku Sugar Company reserved, however, “all water rights belonging or appertaining to said Parcel B.” Part B refers to the property described as Royal Patent 498, Land Commission Award 236-I:1, granted to my mother Asano Fujita and Naofumi (Saylor N.) Fujita. As a result, it appears that our appurtenant rights for that portion of the property may be extinguished, although we reserve the right to claim appurtenant rights in the future based on further information.

Table 1, Box 11: Justification for Requested Quantity

I estimated my new domestic water use, including my use of water for non-commercial gardening, by multiplying the 2002 State of Hawai'i Water System Standard for Maui County of 3000 gallons per acre by 1.0 acre for a total of 3,000 gallons per day. That amount is comprised of: (1) 0.46 acres from TMK 3-6-006-003, the amount I expect to cultivate not including the approximate square footage of our house; (2) all 0.22 acres of TMK 3-6-006-004; (3) all 0.16 acres of TMK 3-6-006-005; and all 0.16 acres of TMK 3-6-006-006.

Table 3, Box B: Alternatives Analysis

Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative source of water. Our appurtenant right is for stream water, not to water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law.

Moreover, even if we did not have protected rights to water from Waikapū Stream, there is no potentially available alternative source that is economically practicable. The vegetables we want to grow will feed our `ohana and be shared with neighbors and community members. As shown below, each potentially available alternative water source imposes a cost on exercising our protected right.

Municipal Sources. As long as I can remember, we have always used the `auwai water for our non-commercial gardening. As recently as 1989, kalo was cultivated on our property. We are currently requesting the water necessary to maintain a non-commercial vegetable garden only, although we may want to cultivate kalo in the future. Requiring us to pay for municipal water instead would impose an unfair and impracticable cost on this use.

Wastewater reuse. As a small user hoping to engage in non-commercial gardening, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

Ditch system. We would like to use water from an existing `auwai, although water is not available consistently and in sufficient amounts to support the existing uses on our system, including our own uses. Getting water from other ditch systems is not practicable. First, the other ditch systems in Nā Wai `Ehā do not consistently have enough water to support additional users. Second, we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user hoping to engage in non-commercial gardening, the cost of taking water from or constructing another ditch is not practicable.

Desalinization. Desalinization of brackish water is not a practicable alternative because we are not aware of any such plant having been built on Maui. According to the County's estimates, a plant is expected to be built in 2013 at the earliest.

Ground Water. Even if we were able to secure the permits necessary to drill a well and pump ground water for our uses, installing and operating such a well would be unprecedented and extremely burdensome. As a small user engaged in non-commercial gardening, we do not have the means to install and maintain such infrastructure.

Table 3, Section C: Additional Requirements

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

Generally, “water use for diversified agriculture on land zoned for agriculture is consistent with the public interest.” In re Waiāhole Ditch Combined Contested Case, 94 Hawai‘i 97, 162, 9 P.3d 409, 474 (2000) (“Waiāhole I”). Further, HRS § 174C-2(c) provides that agriculture, the maintenance of proper ecological balance, and scenic beauty are “in the public interest.” The water we are requesting will be predominantly for non-commercial gardening. We will grow several varieties of vegetables, which we will consume ourselves or share with `ohana. As such, our proposed use of stream water is consistent with the public interest.

Our Proposed Use is a Protected Public Trust Purpose

Because our water use is based on appurtenant rights, it is a protected public trust purpose. Waiāhole I, 94 Haw. at 137 n.34, 9 P.3d at 449 n.34.

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 will also be “economic and efficient” because we will only use the amount we need. We will take steps to make our water use efficient. For instance, we will use pipes where appropriate to minimize water loss, and we will take appropriate steps to protect the soil from erosion and minimize the use of water. Therefore, the water we have requested is for a “reasonable-beneficial use.”

2) Our proposed use(s) 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 the flow of Waikapū Stream is able to accommodate our new use. In fact, our use of water from Waikapū Stream has been severely restricted by large diversions upstream of our `auwai po`owai (intake) and the alteration of our traditional `auwai. This has limited the acreage that we can cultivate, necessitating this new use application.

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 Waikapū 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.

EXHIBIT 1
USGS Map showing stream diversion location

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

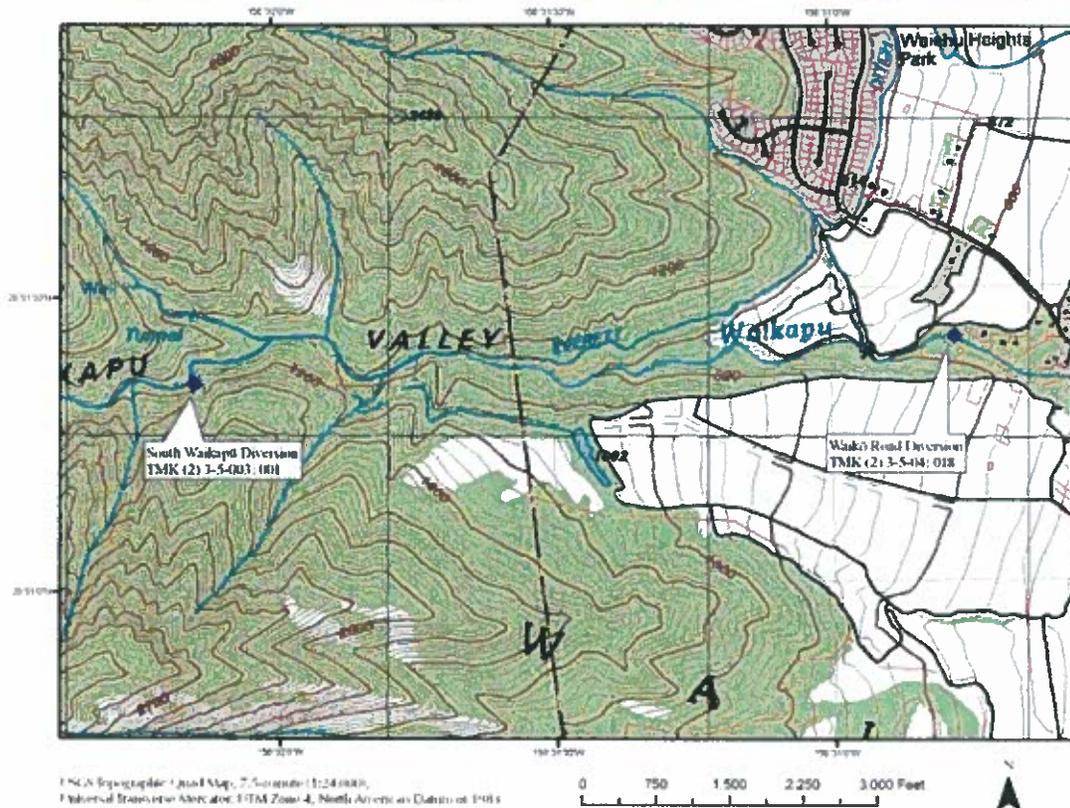


EXHIBIT 2A

TMK map showing our parcels in relation to established property boundaries.

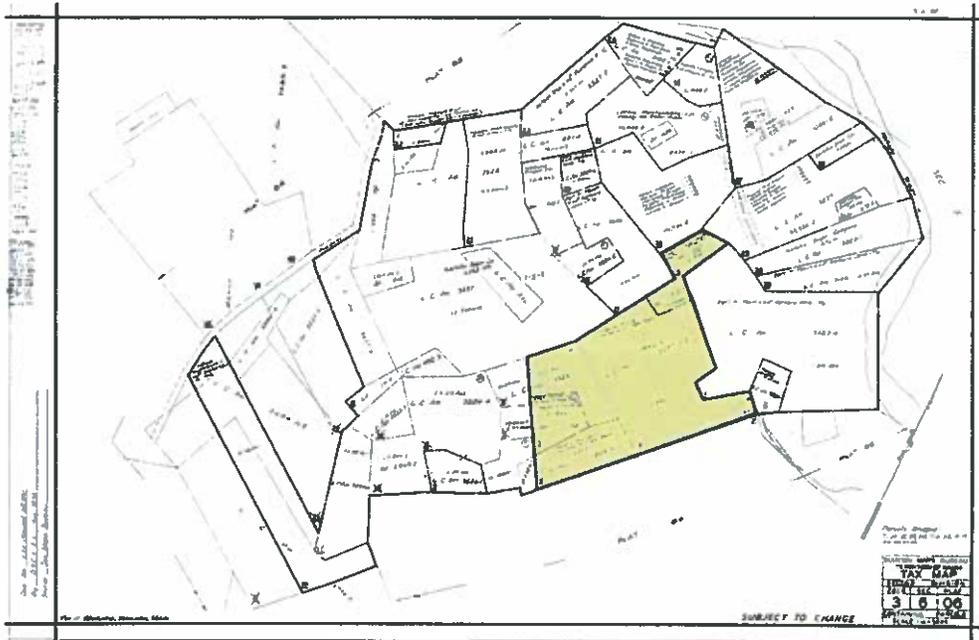


EXHIBIT 2B

This TMK map depicts the area we hope to restore to vegetables and other garden crops (shaded in blue). The line to the bottom left of the page indicates where our traditional 'auwai formerly provided water to our property. The line near the top of our parcel going into TMK 3-6-06:025 shows where we will now need to connect to the existing 'auwai on the John Minamina Brown Trust's property in order to support our proposed new uses (non-commercial gardening).

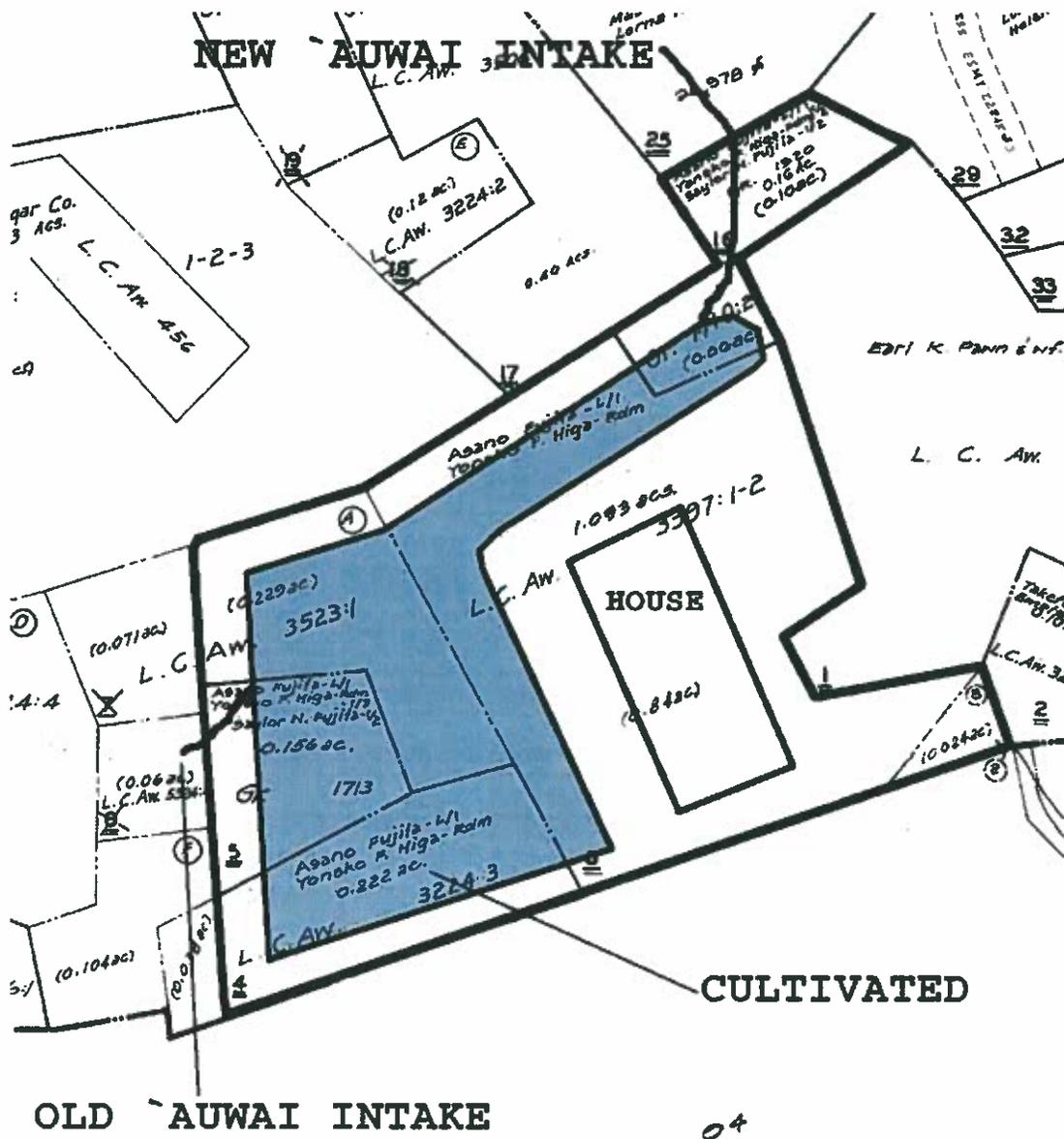


EXHIBIT 3:

Photographs of surface water diversion and end uses

These are true and correct copies of photos that accurately depict conditions at the time the photos were taken.

This is a stretch of the Kuleana `Auwai South of Waikapū Stream, below Reservoir No. 1, which will supply water to our property.



Since the `auwai no longer flows directly onto my property, I hope to access water from the kuleana `auwai on the John Minamina Brown Trust's land (TMK 3-5-006-025), which is next to my property. Possible access is in the general vicinity of the photo provided below.



George and Yoneko Higa
TMK Nos. 3-6-006-003, 3-6-006-004, 3-6-006-005, 3-6-006-016
Water Use Permit Application – New Use
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The photos below depict my areas of proposed new use, where I hope to cultivate a non-commercial vegetable garden.



100

C. 2397. Palu.

Palu is in the hands of the Ct. They are 4 pieces in Waikapa, Hawaii.

It is a section of land in Waikapa.

1. Snow Mt. "

2. Silt and " "

3. "

4. "

The Ct. no. 1, 2, 3, 4 from Keahi in the days of Kamehameha I, and no. 5 from Nipunipunehoe in 1843. The land has never been disputed.

It is bounded Keahi, by my land, Keahi, by Kamehameha's land, Keahi, by Charles Coffin's land, Keahi, by Kamehameha's land.

It is bounded with No. 5 as it joins it.

It is bounded Keahi, by Keahi's land, Keahi, by Keahi's land, Keahi, by the sea, Keahi, by Keahi's land.

C. 2398. Uaoua

Uaoua is in the hands of the Ct. land is one small piece in the hands of Keahi, Keahi, Hawaii. It is included in the Keahi's land. It was of the Keahi this year, and his wife, who was the Keahi, restored the land to Keahi from whom her husband got it.

C. 2399. Waipua

Waipua is in the hands of the Ct. land consist of 6 pieces in Waikapa, Hawaii.

It is a section of land in Waikapa.

1. in Hawaii

2. Keahi

3. Keahi

4. Keahi

5. Snow Mt. in Waikapa

6. Section of land in Waikapa.

The Ct. no. 1, 2, 3, 4, 5, 6 from her parents who got them in the days of Kamehameha I, and no. 7, 8, 9, 10 from her

72

ʻE aporo ma waikua i Maui, ua
 pava e ke kuhuna hui o ke Aupuni
 e H. Kekaulahi. Ma loko ka wahi
 ana o kōu makuā ma keia auwa
 mai ka wa ia kōmohana ma ai a
 hiki ia Loha ke alii. Ma ke kōu
 makuā i ka M. H. 1863. Ma ke kōu
 makuā maoli iāu ka aina, ma loko
 aku o Loha ke alii, a i ka M. H. 1865
 ma loko o Sepatemate, hemo au o
 lilo ka aina ia hoi
 Waikua Na Lani a hōmā
 23 Dec. 1867

3396 ʻElihu waikua

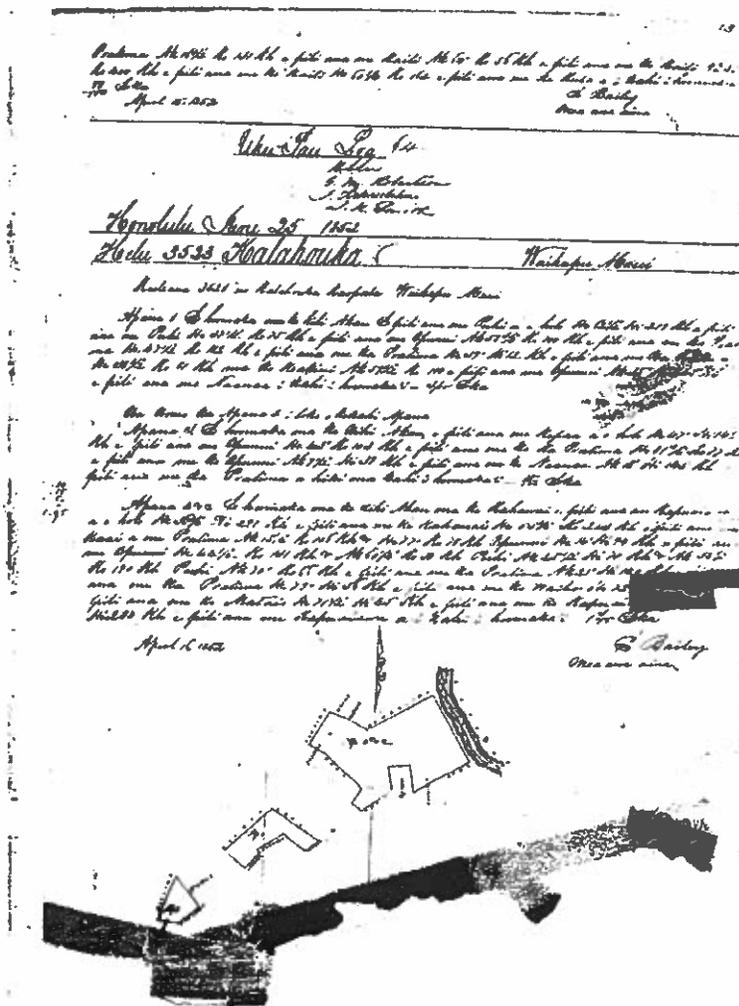
ʻElihu waikua
 Iā oukou oia lūna
 ʻElihu waikua. Aloha ʻElihu waikua
 kōu, aia ma Waikua i Maui, ma
 ka ili aina o Waikua 6 loʻi. Aia
 kekahi Waikua 1 loʻi, a ma Waikua
 1 loʻi. Me ke aloha
 Waikua Na ʻElihu waikua
 23 Dec. 1867

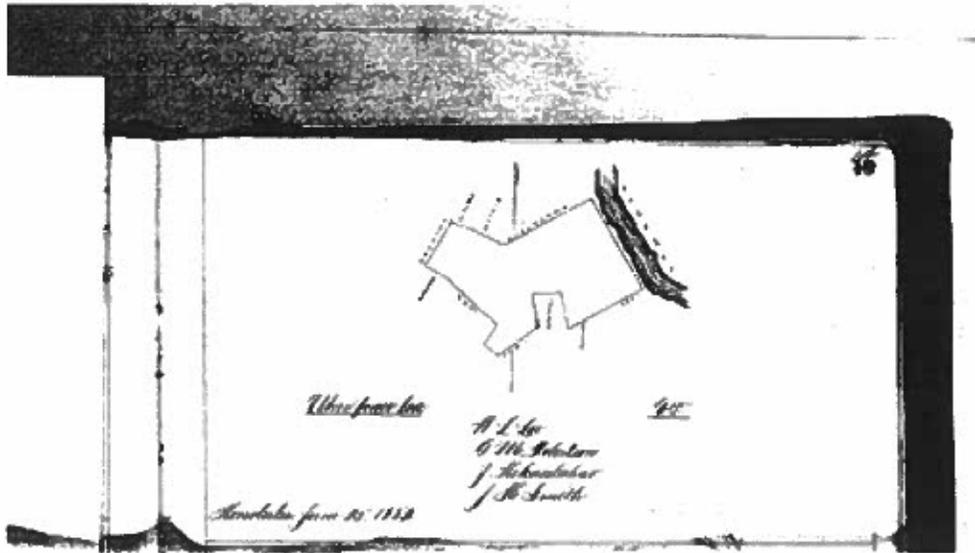
3397 Pahi

Pahi
 Aloha ma Lani Hōma ke
 hoi aku ma ai o kōu kuli ana
 ke 15 loʻi, aia ma Paopala e pili
 ana. me Hōma a me Hōma
 3 moʻo paakai ma Hōma, me
 Paopala ma ai kōu
 Waikua } Me ke Aloha
 23 Dec. 1867 } Na Pahi

EXHIBIT 5

Copies of Original Māhele Documents for Land Commission Award 3523:1





3523 Kalahauka

101

44 Ia nuku na Luma Honua
Alaha. He hui aku nei au i kōu kula
leaga, he onau lōi 88, aia ma ka ʻili aia
i Kāhalaia, Kaapala ma Waikapa, a ma
e pili ana me ʻAmāia a me ʻAkapuaa, he
wahi kahuahale kekahi. Ma a ʻAka
mai kōu onoho ana ka hui, ʻō.
Waikapa 23 Dek. 1867. Na Kalahauka

3524 Kahala

44 Ia nuku na Luma Honua. Alaha
nuku. He hui aku nei au i kōu kula ana
aia ma ka ʻili aia, ma onana ka lōi 189, a ka
lōi 12 anana. Ma ka hui, kōu onaku
hōnōni ma ka ʻili aia ma Waikapa.
Waikapa 22 Dek. 1867. Na Kahala

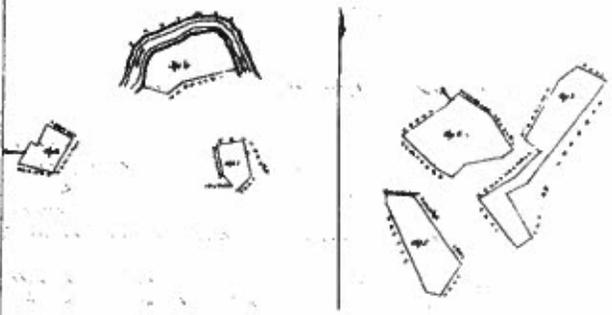
3525 Kahala

44 Ia nuku na Luma Honua me ka
Alaha. He hui aku nei au i kōu kula ana
he ʻili aia i Kāhalaia. Awa kama, a me
ana me ʻAkapuaa ma Waikapa, a ma
ka ʻili aia ma ʻAka onalo aku ʻō ka hui aia
a i kaia ma, i ka kahuahale ma kekahi
ʻili aia, a ma ʻAka, a kōu lōi ma kekahi
ʻili aia, a kōhona ma Waikapa. Ma
ʻAka ma ka onoho ana
Waikapa 23 Dek. 1867. Na Kahala

3526 Kahala

44 Ia nuku na Luma Honua
Alaha. He hui aku nei au i kōu kula ana,
he onau lōi 88 ma Kaapala, 1 lōi ma ka
ʻili aia Kaapala, Ma ka hui ma ʻAka, 5 lōi.

[Faint handwritten text, likely a survey description or notes, including dates and measurements.]



[Handwritten signatures and dates:]
 Made June 25, 1952
 W. L. ...
 G. H. ...
 J. ...
 J. ...
 Made June 25, 1952

X

14 owa aina elua, aia ana ka ili aina i ka pa-
ia o Kalua ana Mailuku i Maui, Puni na
palua, ma ka Akau na loi o Lokuanti, a
ma ka hikiina na loi o Makahonohano, a
ma ka huna owa loi o Maaha, a owa ke lo-
mohana ke Auani, Ma Makahonohano aia
Pakimaa. Ma ka Maaha
Mailuku Na Ohu
Dek. 17, 1847

5224 Opunui

Ma noku owa Luma Koma. Ali.
14 ka noku. He man loi kuleana he 38 ke
alii ma ana ke hauwahi ke a ia wahi
aku. Aia ma Kalua he 16 loi a ma hada
ea 7 loi, a ma Kapaala 14 loi, a ma
Punia, loi ma Paikapu i Puni. Mai ke
honohele mai ka loa ana mai i ka
makaliki 1839 i owa malama owa
Na Opunui
Paikapu Dek. 24, 1847

5225 Opunui

Conakua Koma. Aia ke
kuleana aina ana ka ili aina o Luma
ke i Mailuku. Aia ma palua ma ka Akau
ke Auani, ma ka huna ke kahawai,
ma ka hikiina ka ili aina o Puni, ma
ke honohano ka ana o Luku. Aia
ke kuleana aina malala o Kaniaw
He haku ili aina wau ana ke ili
aina Na Opunui
Mailuku Dek. 29, 1847.