

CARLSMITH BALL LLP

CRAIG G. NAKAMURA 2062  
CATHERINE L. M. HALL 9973  
One Main Plaza, Suite 400  
2200 Main Street, P.O. Box 1086  
Wailuku, Maui, HI 96793-1086  
Tel No. 808.242.4535  
Fax No. 808.244.4974

Attorneys for  
WAHI HO'OMALU, LP

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications,  
Integration of Appurtenant Rights and  
Amendments to the Interim Instream Flow  
Standards, Na Wai Eha Surface Water  
Management Areas of Waihee, Waihehu, Iao and  
Waikapu Streams, Maui

Case No. CCH-MA 15-01

WAHI HO'OMALU, LP'S EXCEPTIONS  
TO HEARINGS OFFICER'S PROPOSED  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, & DECISION AND ORDER;  
CERTIFICATE OF SERVICE

**WAHI HO'OMALU, LP'S EXCEPTIONS TO HEARINGS OFFICER'S PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION AND ORDER**

WAHI HO'OMALU, LP ("Wahi Ho'omalulu"), by and through its attorneys, Carlsmith Ball LLP, submits the following written exceptions to Hearings Officer's Proposed Findings of Fact, Conclusions of Law, Decision and Order, as relates to the new use permit identified as SWUPA 2351N, and recognition and quantification of Wahi Ho'oomalulu's appurtenant water rights.

Wahi Ho'omalulu submits written exceptions to sections b, c, g, h(14), and k, of both the Findings of Fact (**FOF**) 461, and Conclusion of Law (**COL**) 339, as set forth more fully below.

Text to be deleted has been struck through, and text to be added has been underlined.

The notes in bold italic are for reference only, and are not suggested to be included.

b. Wahi Ho'omaluu acquired ~~the land~~ Parcel 1 from Wailuku Agribusiness Co., Inc., ~~in 2003~~ on November 26, 2003, by deed recorded as Document No. 2003-259898. Wahi Ho'omaluu acquired Parcel 26 from Wailuku Agribusiness Co., Inc., April 23, 2004, by deed recorded as Document No. 2004-090433. The ~~deed~~ title report for Parcel 26 (Exhibit No. 2351-Wahi-14) states that the water rights were ~~had been reserved~~ conveyed to HC&S by Bill of Sale dated December, 24, 1924; and there was no reservation of the water rights in the 1924 deed to HC&S.

***NOTE: The water rights for this Parcel 26 were conveyed to HC&S by bill of sale dated December 24, 1924. There is no evidence in the record of any reservation of water rights, nor is the 1924 deed to HC&S evidence entered into the record. The conveyance of the water rights to HC&S in 1924 as noted in the title report did not sever the appurtenant water rights to Parcel 26. (See Exhibit No. 2351-Wahi-14).***

c. Parcels 1 and 26 include about 19 LCAs along South Waiehu Stream and several LCAs along Wailuku River. Irrigation water for watering the macadamia trees on Parcel 1 would be supplied from the Waihe'e Ditch via reservoir 37 and from Wailuku River via the 'Iao-Maniania Ditch and reservoir 45, or could be taken directly from the South Waiehu Stream. Irrigation water for wetland farming of taro would be supplied form the Waihe'e Ditch via reservoir 37 and from Wailuku River via the 'Iao-Maniania Ditch and reservoir 45, or could be taken directly from the South Waiehu Stream.

***NOTE: Parcel 1 and various LCAs within Parcel 1 are adjacent to South Waiehu Stream. During the hearing, Wahi Ho'omaluu requested the right to take water directly off the stream. See Tr. 7/19/16 (Hall) at 118:7-11).***

g. Of the original 18 LCAs Wahi Ho'omalulu had claimed had appurtenant rights, it did not pursue the LCA that had been denied (LCA 3459:4) and withdrew its request for 2 (LCAs 1806:3 and 3275E:4) of the 5 LCAs that had not yet been determined (LCAs 1806:3; 2468:1; 3275E:2; 3275E:4 in Parcel 1, and LCA 3456 in Parcel 26) ~~because it was not able to quiet their~~ titles. Of the remaining 15, LCA 3456 in Parcel 26 is also a portion of the same land awarded in LCA 2468:1. In the event appurtenant rights to Parcel 26's LCA 3456 has been extinguished, Wahi Ho'omalulu would pursue that portion of LCA 2468:1 that remains in Parcel 1.

***NOTE: There is no evidence that Wahi Ho'omalulu was "unable to quiet title" to any LCA within Parcel 1, and any statement stating such would be a mischaracterization of what the evidence supports. Furthermore, Wahi Ho'omalulu's title report for Parcel 1 (Exhibit 2351-Wahi-13) states that Wahi Ho'omalulu "further confirmed" title to various LCAs.***

h.

14. LCA 3456: 0.886 acres described as 3 sections, taro pauka, 25 taro patches, 3 taro patches or kalo land and 3 lo'i, for which it claims appurtenant rights for all .886 acres if the deed for Parcel 26 survives the conveyance of water rights water reservation to HC&S made in 1924, and the reservation of water rights by the Grantee to Wahi Ho'omalulu made in 2004.

k. Appurtenant rights for LCA 3456 were not extinguished when Parcel 26's water rights were conveyed to HC&S reserved in 1924. Because this LCA is a duplicate, the water rights are determined to be attached to LCA 2468:1 in Parcel 1.

***NOTE: Wahi Ho'omalulu notes that the water rights for LCA 3456 were conveyed to HC&S by bill of sale dated December 24, 1924. There is no reservation of water rights in the 1924 deed, nor is the 1924 deed in the record. The conveyance of the water rights would not have***

*extinguished the appurtenant water rights; however, Wahi Ho'omalua is not objecting to the water rights attaching to LCA 2468:1 in Parcel 1, as opposed to LCA 3456.*

Dated: Wailuku, Maui, Hawaii, December 26, 2017.



---

CRAIG G. NAKAMURA  
CATHERINE L. M. HALL  
Attorneys for Wahi Ho'omalua, LP

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications,  
Integration of Appurtenant Rights and  
Amendments to the Interim Instream Flow  
Standards, Na Wai Eha Surface Water  
Management Areas of Waihee, Waihehu, Iao and  
Waikapu Streams, Maui

Case No. CCH-MA 15-01

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I hereby certify that on December 26, 2017, WAHI HO'OMALU, LP'S EXCEPTIONS TO HEARINGS OFFICER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION AND ORDER; CERTIFICATE OF SERVICE was served on the Commission on Water Resource Management, by US mail and electronic service, and on the parties listed below, by electronic service.

SERVICE BY MAIL

Commission on Water Resource Management  
1151 Punchbowl Street, Room 227  
Honolulu, HI 96813  
(by email: [kathysyoda@hawaii.gov](mailto:kathysyoda@hawaii.gov))

ELECTRONIC SERVICE

Douglas Bell  
1420 Honua Place  
Waikapu, HI 96793

[sandi.doug@hawaiiantel.net](mailto:sandi.doug@hawaiiantel.net)

Doyle Betsill  
c/o Betsill Brothers  
P.O. Box 1451  
Wailuku, HI 96793

[teresa@bbcmaui.com](mailto:teresa@bbcmaui.com)

Francisco Cerizo  
PO Box 492  
Wailuku, HI 96793

[cerizof@gmail.com](mailto:cerizof@gmail.com)

Heinz Jung and Cecilia Chang  
P.O. Box 1211  
Wailuku, HI 96793

[cici.chang@hawaiiantel.net](mailto:cici.chang@hawaiiantel.net)

Jordanella (Jorrie) Ciotti  
484 Kalua Road  
Wailuku, HI 9679

[jorrieciotti@gmail.com](mailto:jorrieciotti@gmail.com)

Fred Coffey  
1271 Malaihi Road  
Wailuku, HI 96793

[hawaii50peleke@yahoo.com](mailto:hawaii50peleke@yahoo.com)

James Dodd  
P.O. Box 351  
Wailuku, HI 96793

[jimdodd47@gmail.com](mailto:jimdodd47@gmail.com)

Kathy De Hart  
P.O. Box 1574  
Wailuku, HI 96793

[kdehart17@gmail.com](mailto:kdehart17@gmail.com)

John V. & Rose Marie H. Duey  
Houululahui LLC  
575 A Iao Valley Rd.  
Wailuku, HI 96793  
cc: Nani Santos

[jduey@maui.net](mailto:jduey@maui.net)

[nanisantos808@gmail.com](mailto:nanisantos808@gmail.com)

Stanley Faustino  
c/o Kanealoha Lovato-Rodrigues  
384 Waihee Valley Road  
Wailuku, HI 96793

[kanealoha808@gmail.com](mailto:kanealoha808@gmail.com)

William Freitas  
c/o Kapuna Farms LLC  
2644 Kahekili Highway  
Wailuku, HI 96793

[kapunafarms@gmail.com](mailto:kapunafarms@gmail.com)

Diannah Goo  
c/o April Goo  
2120 C Kahekili Hwy.  
Wailuku, HI 96793

[ag2517@aol.com](mailto:ag2517@aol.com)

Nicholas Harders on behalf of:  
Karl & Lee Ann Harders  
1422 Nuna Pl.  
Wailuku, HI 96793

[waikapu@me.com](mailto:waikapu@me.com)

Theodore & Zelig Harders  
T&Z Harders FAM LTD PTNSHP  
Theodore and Zelig Harders Family Ltd. Partnership  
1415 Kilohi St.  
Wailuku, HI 96793

Greg Ibara  
227 Kawaiipuna Street  
Wailuku, HI 96793

[gregibara56@gmail.com](mailto:gregibara56@gmail.com)

Evelyn Kamasaki  
Cynthia Ann McCarthy  
Claire S. Kamasaki  
1550 Nukuna Place  
Wailuku, HI 96793

[cmcmaui@live.com](mailto:cmcmaui@live.com)

Charlene E. and Jacob H. Kana, Sr.  
PO Box 292  
Wailuku, HI 96793

[char1151@hawaii.rr.com](mailto:char1151@hawaii.rr.com)

Kimberly Lozano  
P.O. Box 2082  
Wailuku, HI 96793

[pauahi808@aol.com](mailto:pauahi808@aol.com)

Renee Molina  
P.O. Box 1746  
Wailuku, HI 96793

[myoheo@yahoo.com](mailto:myoheo@yahoo.com)

Douglas Myers  
1299 Malaihi Road  
Wailuku, HI 96793

[upperwaiehu@yahoo.com](mailto:upperwaiehu@yahoo.com)

Lorrin Pang  
166 River Road  
Wailuku, HI 96793

[pangk005@hawaii.rr.com](mailto:pangk005@hawaii.rr.com)

Victor and Walette Pellegrino  
c/o Hokuao Pellegrino  
213 West Waiko Road  
Waikapu, HI 96793

[hokuao.pellegrino@gmail.com](mailto:hokuao.pellegrino@gmail.com)

L. Ishikawa  
Piko Ao, LLC  
2839 Kalialani Circle  
Pukalani, HI 96768

[lorilei@hawaii.edu](mailto:lorilei@hawaii.edu)

Michael Rodrigues  
2518 W. Main Street  
Wailuku, HI 96793

[mikerodmaui@yahoo.com](mailto:mikerodmaui@yahoo.com)



Burt Sakata  
107 Waihee Valley Rd.  
Wailuku, HI 96793

[waihee89@yahoo.com](mailto:waihee89@yahoo.com)

Bryan Sarasin, Sr.  
c/o Bryan Sarasin, Jr.  
P.O. Box 218  
Wailuku, HI 96793

[mauifishfarm@hawaiiantel.net](mailto:mauifishfarm@hawaiiantel.net)

Duke & Jean Sevilla & Christina Smith  
702 Kaae Road  
Wailuku, HI 96793

[sevillad001@hawaii.rr.com](mailto:sevillad001@hawaii.rr.com)

Jeff and Ramona Lei Smith  
P.O. Box 592  
Wailuku, HI 96793

[ohianui.ohana@gmail.com](mailto:ohianui.ohana@gmail.com)

Murray and Carol Smith  
P.O. Box 11255  
Lahaina, HI 96761

[murray@jps.net](mailto:murray@jps.net)

Crystal Smythe  
John Minamina Brown Trust  
727 Wainee Street, Suite 104  
Lahaina, HI 96761

[cycl@maui.net](mailto:cycl@maui.net)

Clayton Suzuki  
Linda Kadosaki  
Reed Suzuki Scott  
Suzuki P.O. Box  
2577 Wailuku, HI  
96793

[csuzuki@wailukuwater.com](mailto:csuzuki@wailukuwater.com)

John Varel  
191 Waihee Valley Road  
Wailuku, HI 96793

[jvarel@fusionstorm.com](mailto:jvarel@fusionstorm.com)

Michele and Leslie Vida, Jr.  
135 Pilikana Place  
Wailuku, HI 96793

[mikievida@hotmail.com](mailto:mikievida@hotmail.com)

Leslie Vida, Sr.  
c/o Donna Vida  
125 Pilikana Street  
Wailuku, HI 96793

[dmlavida@yahoo.com](mailto:dmlavida@yahoo.com)

Roger Yamaoka  
Kevin Yamaoka  
1295 Old Waikapu Road Wailuku,  
HI 96793

[rryamaoka@aol.com](mailto:rryamaoka@aol.com)  
[kty@hawaii.rr.com](mailto:kty@hawaii.rr.com)

Gilbert Keith-Agaran  
Takitani Agaran & Jorgenson, LLLP  
24 N. Church St. Ste. 409  
Wailuku, Maui, Hawaii 96793

[earleen@tonytlaw.com](mailto:earleen@tonytlaw.com)

(Ken Ota, Saedene Ota, Kurt Sloan, Elizabeth Sloan, Anthony Takitani, Audrey Takitani,  
Kitagawa Motors, Inc., Spv Trust, and Gerald W. Lau He)

Caleb Rowe, Esq.  
Kristin Tamstrom, Esq.  
County of Maui  
Department of the Corporation Counsel  
200 South High Street  
Wailuku, HI 96793

[caleb.rowe@co.maui.hi.us](mailto:caleb.rowe@co.maui.hi.us)  
[kristin.tamstrom@co.maui.hi.us](mailto:kristin.tamstrom@co.maui.hi.us)  
[susan.pacheco@co.maui.hi.us](mailto:susan.pacheco@co.maui.hi.us)

(County of Maui, Department of Water Supply)

Colin J. Lau, Esq.  
465 S. King Street, Room 300  
Honolulu, Hawaii 96813

[colin.j.lau@hawaii.gov](mailto:colin.j.lau@hawaii.gov)

cc: Russell Kumabe  
Holly McEldowney

[russell.p.kumabe@hawaii.gov](mailto:russell.p.kumabe@hawaii.gov)  
[holly.mceldowney@hawaii.gov](mailto:holly.mceldowney@hawaii.gov)

(Department of Land and Natural Resources, Division of State Parks)

Yvonne Izu, Esq.  
Morihara Lau & Fong LLP 400  
Davies Pacific Center 841 Bishop  
Street  
Honolulu, HI 96813

[yizu@moriharagroup.com](mailto:yizu@moriharagroup.com)

cc: Garret Hew

[ghew@hcsugar.com](mailto:ghew@hcsugar.com)

(Hawaiian Commercial & Sugar Co. (HC&S))

Tina Aiu, Esq.  
Oahu Island Director  
Hawaiian Islands Land Trust, HILT  
P.O. Box 965  
Wailuku, HI 96793

[christina@hilt.org](mailto:christina@hilt.org)

cc: Scott Fisher  
Penny Levin

[scott@hilt.org](mailto:scott@hilt.org)  
[pennysfh@hawaii.rr.com](mailto:pennysfh@hawaii.rr.com)

Isaac Moriwake, Esq.  
Summer Kupau-Odo  
Earthjustice  
850 Richards Street  
Suite 400  
Honolulu, HI 96813  
(Hui O Na Wai Eha and Maui Tomorrow Foundation)

[imoriwake@earthjustice.org](mailto:imoriwake@earthjustice.org)  
[skupau@earthjustice.org](mailto:skupau@earthjustice.org)  
[jbrown@earthjustice.org](mailto:jbrown@earthjustice.org)  
[jparks@earthjustice.org](mailto:jparks@earthjustice.org)

Avery & Mary Chumbley  
363 West Waiko Road  
Wailuku, HI 96793  
(Makani Olu Partners LLC)

[abc@aloha.net](mailto:abc@aloha.net)

Jodi Yamamoto, Esq.  
Wil Yamamoto, Esq.  
Yamamoto Caliboso  
1099 Alakea Street  
Suite 2100  
Honolulu, HI 96813  
(MMK Maui, LP, The King Kamehameha Golf Club, Kahili Golf Course)

[jyamamoto@ychawaii.com](mailto:jyamamoto@ychawaii.com)  
[wyamamoto@ychawaii.com](mailto:wyamamoto@ychawaii.com)

Pamela Bunn, Esq.  
Alston, Hunt, Floyd & Ing  
1001 Bishop Street, Suite 1800  
Honolulu, HI 96813  
(Office of Hawaiian Affairs)

[pbunn@ahfi.com](mailto:pbunn@ahfi.com)

Peter A. Horovitz, Esq.  
Kristine Tsukiyama, Esq.  
Merchant Horovitz LLLC  
2145 Wells Street, Suite 303  
Wailuku, HI 96793  
(Waikapu Properties, LLC and MTP (Maui Tropical Plantation) Operating Company, LLC)  
cc: Albert Boyce

[pah@mhmaui.com](mailto:pah@mhmaui.com)  
[kkt@mhmaui.com](mailto:kkt@mhmaui.com)

[albertboyce@gmail.com](mailto:albertboyce@gmail.com)

Brian Kang, Esq.  
Emi L.M. Kaimuloa  
Watanabe Ing, LLP  
First Hawaiian Center  
999 Bishop Street, 23rd Floor  
Honolulu, HI 96813  
(Wailuku Country Estates Irrigation Company (WCEIC))

[bkang@wik.com](mailto:bkang@wik.com)  
[ekaimuloa@wik.com](mailto:ekaimuloa@wik.com)

Paul R. Mancini, Esq.  
James W. Geiger, Esq.  
Paul Mancini, Esq.  
Mancini, Welch, & Geiger LLP  
RSK Building  
305 Wakea Avenue, Suite 200  
Kahului, HI 96732  
cc: Avery Chumbley  
(Wailuku Water Company, LLC)

[pmancini@mrwlaw.com](mailto:pmancini@mrwlaw.com)  
[jgeiger@mrwlaw.com](mailto:jgeiger@mrwlaw.com)

Tim Mayer, Ph.D.  
Supervisory Hydrologist Water Resources  
Branch US Fish and Wildlife Service 911  
NE 11<sup>th</sup> Avenue  
Portland, OR 97232-4181  
cc: Frank Wilson:

[tim\\_mayer@fws.gov](mailto:tim_mayer@fws.gov)

[frank.wilson@sol.doi.gov](mailto:frank.wilson@sol.doi.gov)

Lawrence H. Miike  
Hearings Officer  
1151 Punchbowl Street, Room 227 Honolulu,  
Hawaii 96813

[lhmiike@hawaii.rr.com](mailto:lhmiike@hawaii.rr.com)

Linda L.W. Chow, Esq.  
Deputy Attorney General  
465 S. King Street, Room 300 Honolulu,  
Hawaii 96813

[linda.l.chow@hawaii.gov](mailto:linda.l.chow@hawaii.gov)

DATED: Wailuku, Maui, Hawaii, December 26, 2017.



---

CRAIG G. NAKAMURA  
CATHERINE L. M. HALL

Attorneys for WAHI HO'OMALU, LP