



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

July 19, 2022
Honolulu, Oahu

Finding of Violation against Sea Grace LLC (landowner) and American Drilling (contractor)
for Well Construction and Pump Installation Without Permits in July 2020;
Makila Kai Well (Well No. 6-5138-002), TMK (2) 4-7-012:007,
Launiupoko Aquifer System Area, Lahaina Aquifer Sector, Maui

Well / Land owner

Mr. Greg Brown
Sea Grace, LLC
P.O. Box 1060
Lahaina, HI 96767
gregbrown@bdmaui.com

Contractor

Mr. Paul Frandsen
American Drilling
91-209 Ho'okaulike Place
'Ewa Beach, HI 96706
License Number C-13131
Ameriandrilling1985@gmail.com

SUMMARY OF REQUEST:

Staff requests that the Commission find the driller and landowner in violation of HRS §174C-84 and HAR §13-168-12, and authorize the Chair to later accept the construction of the well and installation of the pump as complete, upon submission of a pump test and a satisfactory analysis by staff.

LOCATION MAP: See Exhibit 1

BACKGROUND:

September 30, 2016 – Wailani Drilling Services Inc. C-57 license expires and is not renewed.

August 29, 2017 – Mr. Tom Nance Water Resource Engineering (TNWRE) submitted an application for the subject well.

September 13, 2017 – CWRM informs TNWRE that the application cannot be accepted without a driller's signature, but staff can route the application for review comments and permits can be issued after the review, if a contractor is selected.

December 20, 2017 – CWRM completes review and informs TNWRE that permit can be issued pending driller selection.

February 22, 2020 – Mr. Greg Brown of Sea Grace, LLC (landowner) informs Mr. Charley Ice of CWRM staff that he authorizes Mr. Paul Frandsen to sign the application to have the permit issued to American Drilling (refer to Exhibit 2).

March 3, 2020 – Mr. Michael Robertson (Wailani Drilling) informs Mr. Ice that some changes have been made to the design of the well, and Mr. Frandsen is ready to come to the office to sign the application so that the permit can be issued to Mr. Frandsen.

July 10, 2020 – Mr. Brown sends Mr. Ice an e-mail asking him to send copies of the well and pump applications, and reiterating Mr. Robertson’s conversation with Mr. Ice that Mr. Frandsen would sign the permit applications.

July 14, 2020 – Wailani Drilling drills well without a permit.

July 16, 2020 – Wailani Drilling installs pump without a permit.

September 10, 2020 – Mr. Roy Hardy of CWRM staff directs the permits to be prepared for signature by the Deputy.

September 11, 2020 – Deputy Director Kaleo Manuel asks staff about area covered by well, and if it was factored into the design of the pump.

September 21, 2020 – After some e-mail discussion, Deputy Director Manuel directs Mr. Hardy to take this well construction and pump installation application to the CWRM for approval.

November, 2020 – Mr. Ice retires.

January 21, 2021 – Mr. Brown submits well completion reports to Commission staff indicating that Mr. Robertson drilled the well and installed the pump under his expired license, though Paul Frandsen signed the completion reports (refer to Exhibit 3).

March 10, 2021 – Mr. Hardy routes well completion reports to staff for review.

June 2021 – Mr. Hardy retires.

STATUTORY AUTHORITY

State Water Code

[§174C-84] Permits for well construction and pump installation. (a) No well construction and no installation of pumps and pumping equipment shall commence without appropriate permit from the commission. An application for a permit for well construction shall be required for all areas of the State including water management areas and shall be made by the well driller who will construct the well. An application for a permit for installation of a pump and pumping equipment shall be made by the pump installation contractor who will install the pump and pumping equipment.

Hawaii Administrative Rules

§13-168-3 Penalties. (a) Any person who violates any provision of this chapter or any permit condition or who fails to comply with any order of the commission may be subject to a fine imposed by the commission. Such fine shall not exceed \$5,000 per violation. For a continuing offense, each day's continuance is a separate violation.

§13-168-12 Well construction and pump installation permits. (a) No well shall be constructed, altered, or repaired and no pump or pumping equipment shall be installed, replaced, or repaired without an appropriate permit from the commission. Each application for a well construction or pump installation permit shall be accompanied by a non-refundable filing fee of \$300.00, excepting government agencies, and shall be required for all areas of the state, including water management areas. The owner of a well shall make application or cause an application to be made by the well driller who will construct the well or by the pump installation contractor who will install the pump and pumping equipment, as the case may be.

ANALYSIS/ISSUES:

Work done without a permit

It's acceptable for one driller (in this case, Mr. Robertson) to do work under another driller's (in this case, Mr. Frandsen) license.

However, Mr. Frandsen did not obtain well construction and pump installation permits. Also, the well completion reports identify that the work was done under Mr. Robertson's license, which staff assumes was a paperwork mistake since the previous conversations appeared to indicate that the intention was for Mr. Robertson to do the work under Mr. Frandsen's license.

Mr. Robertson no longer resides in Hawai'i. Mr. Frandsen still does, and his license remains valid.

On the date that the work was done, Mr. Frandsen was very close to getting a permit and it is clear that staff knew that Mr. Robertson would be doing the work under Mr. Frandsen's license.

Therefore, staff is recommending that the Commission find American Drilling (Mr. Frandsen) in violation of §174C-84 and is recommending a one-time fine of \$5,000. Because Mr. Brown, as landowner, was aware, and typically the landowner is joint and severable in findings of violation, staff is also recommending a one-time fine of \$5,000 to Sea Grace, LLC.

However, there remains the question of which contractor was actually responsible for doing the work. The completion reports indicated Mr. Robertson. The intention was for Mr. Robertson to do the work under Mr. Frandsen's license. But because no permits were issued, the responsibility is not clear. Therefore, since that issue is unresolved, staff is recommending that Mr. Brown be allowed to pay the fine on behalf of the driller.

Staff recommends that the Commission require the total \$10,000 fine to be paid before approving the well for use.

Adherence to the Hawaii Well Construction and Pump Installation Standards

The review of the well design indicates that it was constructed in accordance with the Hawaii Well Construction and Pump Installation Standards (HWCPIS).

According to the HWCPIS, the installed pump capacity of 385 gallons per minute requires a 48-hour pump test. The driller only performed a 24-hour pump test. It appears that the drawdown was immediately 0.3' and was constant during the 24-hour period.

Lahaina Aquifer Sector and Launiupoko Aquifer System Area designation

At the June 2022 Commission meeting, the Commission designated the Lahaina Aquifer Sector, which includes the Launiupoko Aquifer System Area. Subsequent process will involve all users, whether existing or new, to apply for Ground Water Use Permits. Therefore, this well owner will need to apply for a water use permit, following that yet-to-be-determined process.

Other permit review issues

a. Chapter 343 HRS – Environmental Assessment (EA) Compliance

EA Triggers

In accordance with §HRS 343-5(a), the applicant's proposed action does not trigger the need for an EA, as none of the items below are applicable.

Potential triggers: (1) use of state land; (2) use of county land; (3) use of state funds; (4) use of county funds; (5) use of conservation district lands; (6) use with shoreline setback area; (7) use of historic site designated on the National register; (8) use of historic site designated on the Hawaii register; (9) use of land in the Waikiki Special District; (10) amendment to county general plan which results in designations other than agriculture, conservation or preservation not initiated by the county; (11) proposes any reclassification of conservation land by LUC; (12) relationship to the construction/modification of helicopter facilities that may affect conservation district lands/a shoreline setback area/a historic site; (13) proposal to build (a) wastewater treatment units (except IWS or WTU serving <50 SFR dwellings or the equivalent, (b) waste-to-energy facility (c) landfill, (d) oil refinery, (e) power generating facility.

b. Traditional and Customary Practices

Ka Pa'akai Analysis

In *Ka Pa'akai O Ka'aina v. Land Use Commission*, the Hawai'i Supreme Court recognized that the State has an obligation to protect Hawaiian traditional and customary practices to the extent feasible, and that the proponent of an action must show sufficient evidence that these types of practices are protected, if they exist in the location in question. This "Ka Pa'akai framework" was created by the Court "to help ensure the enforcement of traditional and customary native Hawaiian rights while reasonably accommodating competing private development interests." The Commission is obligated to conduct a "Ka Pa'akai analysis" of a proposed action requiring CWRM approval independent of the entity proposing the action. This analysis should be used to inform any decision on the impact of the proposed action on traditional and customary practices.

Consequently, the Court required an assessment of the following:

(1) "the identity and scope of 'valued cultural, historical, or natural resources' in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;

(2) "the extent to which those resources -- including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action;" and

(3) “the feasible action, if any, to be taken ... to reasonably protect native Hawaiian rights if they are found to exist”

Refer to Exhibit 4 for the applicant’s response, prepared by their counsel, Jeffrey Ueoka.

Based on the applicants Ka Pa’akai analysis, staff recognize that water withdrawal via well development will reduce the water flow or discharge along the coast that may have an impact on ground water dependent ecosystems, including the nearshore fisheries, resources, and practices referenced in the applicant’s analysis. Staff will analyze the results of the pump test to determine if there are any adverse impacts that may result. If impacts are identified, then the pump capacity of the well may be limited or reduced in order to mitigate impacts. Additionally, this Ka Pa’akai analysis of the potential impacts and any mitigation strategies must be further addressed when the well owner submits a water use permit for the newly designated Lahaina Ground Water Management Area, which may include requirements for long-term monitoring.

RECOMMENDATION:

Staff recommends that the Commission:

- 1) Find the landowner, Sea Grace, LLC, and the contractor, American Drilling, in violation of HRS §174C-84 and HAR §13-168-12.
- 2) Levy a fine of \$5,000 against American Drilling, and \$5,000 against Sea Grace, LLC, payable within 30 days, with the option for Sea Grace, LLC to pay the entire amount.
- 3) Require the landowner to hire a licensed contractor to complete the pump test in accordance with the Hawaii Well Construction and Pump Installation Standards.
- 4) Authorize the Chair to accept the well as complete, subject to the following conditions:
 - a) The fine must be paid in full.
 - b) The pump test must be run in accordance with the Hawaii Well Construction and Pump Installation Standards.
 - c) Staff determination that the pump test results show no adverse impacts.

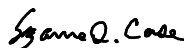
Respectfully submitted,



M. KALEO MANUEL
Deputy Director

- Exhibits:
- 1) Location Map
 - 2) E-mail from Greg Brown 2/22/20
 - 3) Well Completion Reports
 - 4) Ka Pa’akai Analysis
 - 5) 201E Resolution

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson

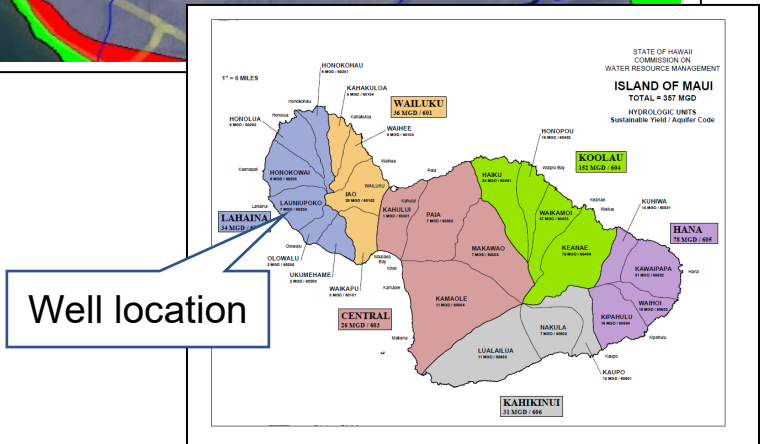
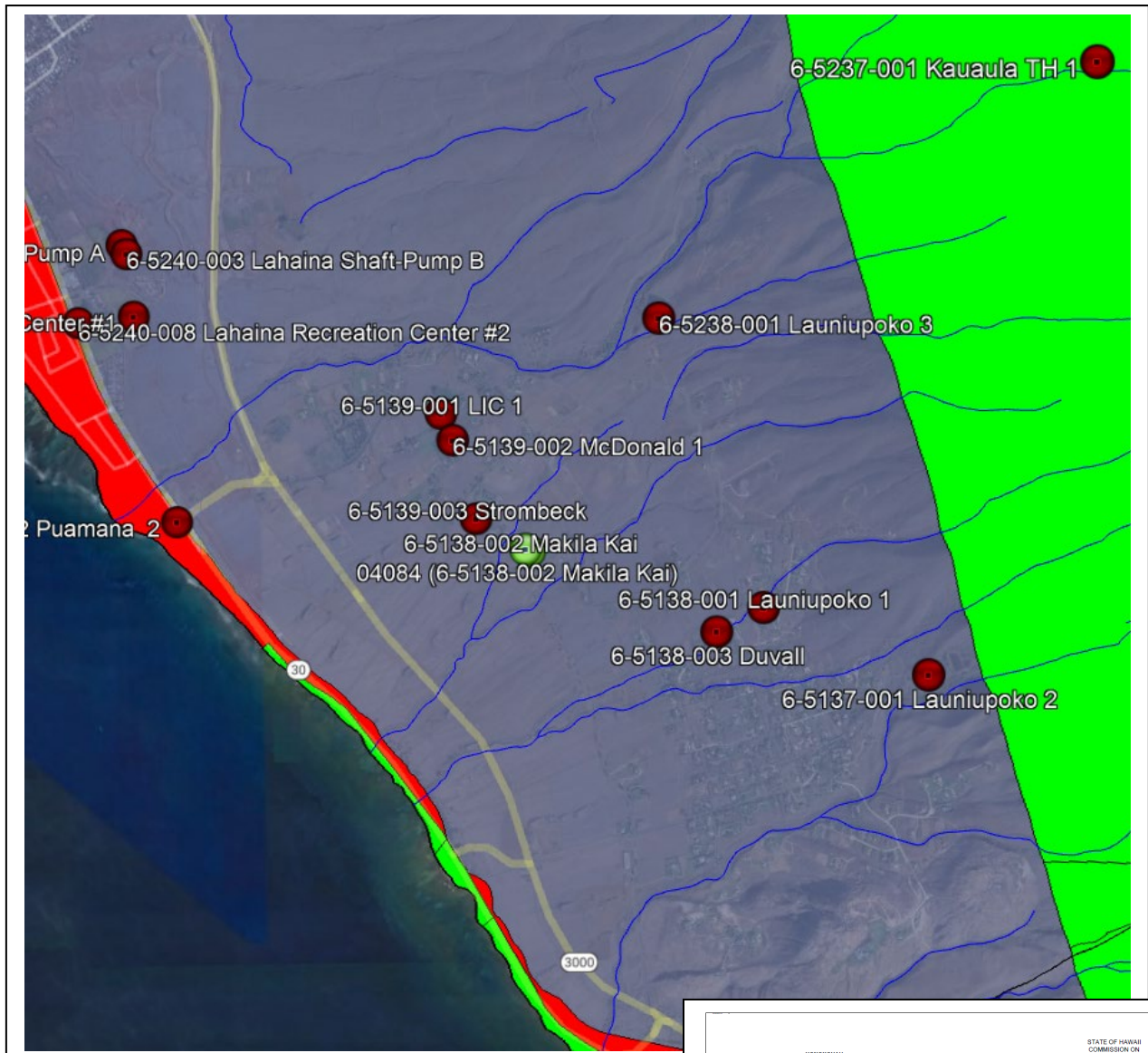


EXHIBIT 1: LOCATION MAP

Ice, Charley F

From: Greg Brown <gregbrown@bdmaui.com>
Sent: Saturday, February 22, 2020 9:10 AM
To: Ice, Charley F
Cc: Wailani Waters; Dan Lum (daniellumgeol@gmail.com)
Subject: [EXTERNAL] Makila Farms well permit # 5138-002
Attachments: Frandsen Letterfinal for CWRM signed.pdf

Charlie,

Please see the attached doc authorizing Paul Frandsen to sign on behalf of my well permits.

Regards,

Greg Brown RB
BDHawaii.com
Brown Development LLC
Lic #: BC 31541
PO Box 1060
Lahaina, HI 96767
PH: 808.662.3879
FX: 808.662.3870
Cell:808.283.8326





State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
WELL COMPLETION REPORT - PART I
Well Construction

For Official Use Only
 RECEIVED
 COMMISSION ON WATER
 RESOURCE MANAGEMENT
 2021 JAN 21 PM 12:54

Instructions: Please print in ink or type and send completed report (with attachments, if applicable) to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete reports. This form shall be submitted within 60 days of the completion of work. For assistance, please consult the Hawaii Well Construction and Pump Installation Standards or call the Regulation Branch at 587-0225. For updates to this form or additional information, please visit our website at <http://www.state.hi.us/dlnr/cwrm/>

- State Well No.: 6-5138-002 Well Name: Makila Farms Island: Maui
- Well Location Address: 480 Hanlu, Lahiana, HI 96761 Tax Map Key: 2-4-7-012:007
- Drilling Company: Wailani Drilling Services, Inc, 1181 Freitas Place, Makawao, HI 96768
- Drilling method used during construction: Rotary Percussion Other (describe)
- Date Well Construction (drilled, cased, grouted) completed: 7/14/2020
month/day/year
- Was the subject well cored? Yes No
- Step-Drawdown Test completed? No Yes Attach Step-Drawdown Test form (12/17/97 SDPTD Form)
- Constant Rate Aquifer Test completed? No Yes Attach Constant Rate Aquifer Test form (12/17/97 CRPTD Form)

Water Level Data:	Reference point elevation	Depth to water (feet)	Water Level ft. above mean sea level (see note below)	Date/time of measurement
9. Initial encountered during drilling (this should also be filled in on the driller's log)	Ground <u>285.71</u> ft. msl	285.70	6.51	7/1/20 11am
10. Just prior to casing installation	Ground <u>285.71</u> ft. msl	285.70	6.51	7/6/20 9am
11. After casing installation (this information should be before any pump tests are performed with casing installed) Chloride: <u>120</u> ppm, Temperature: <u>73</u> °F	If this reference point is not the benchmark, the difference between the benchmark and this point is: <u>3.11</u> ft.	285.82	<u>6.39</u>	<u>7/9/20 3pm</u>

note: for all elevations referenced to mean sea level, take the ground elevation (surveyed or estimated if survey not required at this time) and subtract the depth to the water level.

- As-built section filled in completely (refer to attached sheet)
- Driller's Log filled in completely (refer to attached sheet)
- Well location info filled in completely (refer to attached sheet)
- Well elevation certification filled in completely (refer to attached sheet)
- Photograph of well and concrete pad showing benchmark on concrete pad attached
- If a pump is not planned to be installed, please describe (below in the remarks section) how well is secured to prevent unauthorized access (example: lockable cover, threaded coupling, etc.)
- Remarks: _____

Licensed Driller (print) American Drilling C-57 Lic. No. 57-13131
 Signature [Signature] Date 1-8-2021

EXHIBIT 3: WELL COMPLETION REPORTS



State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
WELL COMPLETION REPORT - PART II
Pump Installation

For Official Use Only:
 COMMISSION ON WATER
 RESOURCE MANAGEMENT
 2021 JAN 21 PM 12:53

Instructions: Please print in ink or type and send completed report (with attachments, if applicable) to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete reports. This form shall be submitted within 60 days of the completion of work. For assistance, please consult the Hawaii Well Construction and Pump Installation Standards or call the Regulation Branch at 587-0225. For updates to this form or additional information, please visit our website at <http://www.hawaii.gov/dlnr/cwrm/>

1. State Well No.: 6-5138-002 Well Name: Makila Farms Island: Maui

2. Well Location Address: 480 Haniu St., Lahaina, HI Tax Map Key: 2-4-7-012:007

3. Pump Installation Company: American Drilling

4. Date Pump Installed: 7/16/20
month/day/year

5. PERMANENT PUMP INFORMATION

Pump Type, Make, Serial No.: Franklin Electric SSR-13 Stage 304SSS 6"

Rated Capacity: 385 gpm at head of: 330 ft.

Motor Type, H.P., Voltage, rpm: Centri Pro 6" 50 HP, 460V, 3400 rpm

Pump type (check one):

<input type="checkbox"/> Deep Well Turbine	<input type="checkbox"/> Rotary	<input type="checkbox"/> Propeller
<input checked="" type="checkbox"/> Submersible	<input type="checkbox"/> Rotary-Displacement	<input type="checkbox"/> Reciprocating
<input type="checkbox"/> Centrifugal	<input type="checkbox"/> Rotary-Gear	<input type="checkbox"/> Impulse

6. Method of flow measurement installed:

Flowmeter w/ totalizer Manufacturer Badger Model no. 1000 Turbine Size 4"

Other (salt-water wells only, explain method of approximating pumpage volume)

None (I understand that I must inform the land owner that it is their responsibility to install a flowmeter at a later date)

7. As-built section filled in completely (refer to attached sheet)

8. Well location and current ownership information filled in completely (refer to attached sheet)
(note: this section does not need to be filled in if the WCR Part I is submitted at the same time as this form)

9. Attached the rating curve for the installed pump.

10. Attached photographs of: 1) the benchmark on the concrete pad; 2) the well head with landmark in background; 3) the totalizer register (date taken 12/23/20); and 4) location of meter relative to well head.

11. Remarks _____

Pump Installation Contractor (print) American Drilling C-57/C-57a/A Lic. No. 57-13131

Signature [Signature] Date 1-8-2021

EXHIBIT 3: WELL COMPLETION REPORTS

June 19, 2022

Via e-mail to ryan.r.imata@hawaii.gov

Ryan R. Imata, P.E. Hydrologic Program Manager
Ground Water Regulation Branch Commission on Water Resource Management

Re: Ka Pa`akai Analysis for the Makila Farms 201H Project Well Dear Mr. Imata,
The Hawaii Supreme Court in *Ka Pa`akai O Ka`Aina v. Land Use Commission, State of Hawaii*, 94 Hawaii 31, 7 P.3d 1068 (2000), recognized that the State has an obligation to protect Hawaiian traditional and customary practices to the extent feasible, and that the proponent of an action must show sufficient evidence that these types of practices are protected, if they exist in the location in question. This “Ka Pa`akai framework” was created by the Court “to help ensure the enforcement of traditional and customary native Hawaiian rights while reasonably accommodating competing private development interests.” The Commission is obligated to conduct a “Ka Pa`akai analysis” of a proposed action requiring CWRM approval independent of the entity proposing the action. This analysis should be used to inform any decision on the impact of the proposed action on traditional and customary practices:

- 1) The identity and scope of “valued cultural, historical, or natural resources” in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
- 2) The extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and
- 3) The feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.

The Makila Farms Workforce Agricultural Community 201H Project, approved by the Maui County Council via Resolution 19-169, Attachment 1, will be developed by Makila Kai LLC (“MKL”) on approximately 76 acres of land located in Launiupoko, Maui, Hawaii, on real property identified as TMK Nos. (2) 4-7-013:003 thru 005, inclusive (the “Property”). Makila Farms will consist of 34 lots, 19 of which will contain residential workforce housing units for households earning between 50 -100% of area median income. The residential workforce housing units will be deed restricted for 30 years in an effort to keep the units “affordable”.

HISTORICAL BACKGROUND:

Traditionally, the island of Maui was divided into 12 moku (districts) that were controlled or managed by the ali`i (chiefs) who held the land in trust for the gods (SCS, 2017). Smaller subdivisions of land called ahupua`a contained coastal, upland, and mountain environmental zones and associated resources, making each ahupua`a self-sufficient. The Property is located in the ahupua`a of Pola Nui (or Polanui), which literally translates to “large Pola”, within the moku of Lahaina on the western side of the West Maui Mountains (Mauna Kahalawai). Extending from Honokōhau Ahupua`a on the north to Ukumehame Ahupua`a on the south, the Lahaina district served as an important center both politically and socially during the late prehistoric and early historic period. A number of traditional activities took place within the Lahaina district, from fishing and crop cultivation by early Native Hawaiians to residential occupation and recreational use by members of the ali`i (ruling) class (SCS, 2017).

Agricultural development on the leeward side of Maui likely began early in the Expansion Period (AD 1200-1400) and was focused on the coastal regions as well as river valleys. According to Handy and Handy, there was “continuous cultivation on the coastal region along the northwest coast” of Maui. Crops cultivated included coconut, breadfruit, paper mulberry, banana, taro, sweet potato, sugar cane, and gourds (SCS, 2017).

EXHIBIT 4: KA PA`AKAI ANALYSIS

According to Handy and Handy, the Lahaina district is “flanked by excellent fishing grounds.” There are several historical references indicating the importance of fishing to the people living in the coastal areas of Mākila, Pola Nui, and Launiupoko Ahupua‘a, as well as to those living in the upland valleys, the location of the Lele section of Pola Nui (SCS, 2017).

Important types of fish along this coastal region included nehu [*Stolephorus purpureus*, or anchovy, a bait fish used to catch tuna], akule [*Selar crumenophthalmus*, or bigeye scad], uhu ka‘i [scaridae, or parrotfish], and mamali [young ladyfish or bone fish] (Scientific Consultant Services, 2017; 2018). Shark fishing was also of importance in the area, as there are historical references to the ho‘omoemoe fishing method being utilized to catch manō lālākea [whitetip reef shark] and hammerhead sharks in the adjacent Launiupoko Ahupua‘a (SCS, 2018). Other traditional methods used in the fishing grounds in Pola Nui Ahupua‘a included the holoholo and ‘anae fishing methods.

There are additional historical references to two fish ponds that were located in Pola Nui Ahupua‘a: the pond near the Armory in Lahaina was called Mokuhihina, and the pond at Māla was named Alanuhi. Based on the successful fishing grounds abutting the shores of Pola Nui and Launiupoko Ahupua‘a, fishing shrines (ko‘a) would have existed in these areas, as well as temporary fishing camps (SCS, 2017).

Lahaina was a favored place among ali‘i, given its abundant natural resources, warm climate, ease of communication with other communities in West Maui, and close proximity to the islands of Moloka‘i and Lāna‘i (SCS, 2018). An infamous chief, Hua, who was born in Lahaina and reigned prior to the 10th century, is credited with the establishment of the first heiau (temple) on Maui and construction of two heiau in Lahaina. Two other notable heiau in the Lahaina district included the Wailehua Heiau, which was a laukini heiau (for human sacrifice) built on the shore of Mākila Ahupua‘a by Kauhi-ai-moku-kama, Kahekili’s eldest son, and Halulukoakoa Heiau, in Wahikuli (SCS, 2017).

Prominent battles between various island chiefs occurred in Lahaina. In the early 1700s, wars occurred between Alapa‘inui of Hawai‘i, in conjunction with Kamehamehanui of Maui, and Kauhi (Kamehamehanui’s brother). In February 1795, Kamehameha I, a chief from Hawai‘i island, invaded Lahaina with a fleet of war canoes that covered the coast from Launiupoko to Māla. Eventually Kamehameha I unified the Hawaiian Islands and in 1802 he constructed the brick palace of Moku‘ula in Lahaina, which served as the capital of the Hawaiian Kingdom until 1850 (SCS, 2017).

The district was known on Maui as a pu‘uhonua, or place of refuge. The pu‘uhonua at Lahaina was associated with Ka‘ahumanu, the wife of Kamehameha I. Her lands of Waipuka in Waihe‘e, Kalau‘aha in Moloka‘i, and Pu‘umau in Lahaina were deemed places where people could be saved from death (SCS, 2017).

Lahaina is traditionally and historically known for its verdant and abundant groves of breadfruit. It is noted as second only to Puna, Hawai‘i, as a favorable location for breadfruit cultivation. In mele (songs) Lahaina is even referred to as ka malu ‘ulu o Lele, “the breadfruit shade of Lele”. It is noted that the district name of Lele was changed to Laha‘ina when it became the home of prophet, Laha‘inaloa from whom all of West Maui was named (SCS, 2017).

Lāhainā is the traditional spelling and pronunciation of what is commonly referred to today as Lahaina. The literal translation of Lāhainā means “cruel sun,” said to be named for a time of terrible droughts. Others contend that the original name for Lahaina was Lele, which is usually the flying piece of a kuleana (small piece of property) near the shore, as Lahaina is situated along the shoreline the name is applicable. Lahaina is associated with the Kaua‘ula wind that caused the destruction of churches and buildings in Lahaina in 1828 and later in 1858 (SCS, 2017).

In the late 18th century, descriptions of Lahaina by Westerners characterized the district’s tranquility and cooperation among the inhabitants. In 1819, J. Arago accompanied Captain Louis de Freycinet to Lahaina and noted:

The environs of Lahaina are like a garden. It would be difficult to find a soil more fertile, or a people who can turn it to a greater advantage; little pathways sufficiently raised and kept in excellent condition ... These are frequently

EXHIBIT 4: KA PA‘AKAI ANALYSIS

divided by trenches, through which a fresh and limpid stream flows tranquilly, giving life to the plantations ... [Handy and Handy 1972:493].

In 1819, the first whaling ship, *Bellina*, arrived in Lahaina Harbor. Lahaina subsequently served as the center of commercial whaling throughout the Pacific until the decline of the whaling industry in the mid-1800s (SCS, 2017).

Sugar would eventually replace whaling as Lahaina's economic base after Chinese brothers Ahung and Atai, of Honolulu's Hungtai Company, arrived in Wailuku in 1828 to establish one of its earliest sugar mills. Sugar cultivation and production then expanded across Maui for over a century, and land use in Pola Nui Ahupua'a in the mid-19th and early 20th centuries was largely devoted to the sugar industry. The Pioneer Mill was founded in Lahaina in 1860 by James Campbell (later joined by Henry Thurton and James Dunbar), who eventually bought out the Lahaina Sugar Company in 1870, thereby consolidating all the sugar interests under one company. Throughout this time, the company's focus was on land acquisition, as kuleana continued to be bought or leased, as were any estate lands belonging to the ali'i and konohiki. Water rights were included with the land acquired by the newly incorporated Pioneer Mill Co., Ltd. (SCS, 2017).

In 1900, when the Pioneer Mill Company was reorganized, the plantation controlled a total of 12,500 acres. According to Condé and Best, the Pioneer Mill Co., Ltd. owned "...2,900 acres of fee simple land, lying between Lahaina and Olowalu" in 1900. A 1928 field map shows cane fields from the Lāhainā side of Launiupoko Stream, including Pola Nui, and continues beyond Kā'anapali (SCS, 2017).

Although the land was believed to be "...the rockiest of the irrigated plantations in Hawaii...", the Pioneer Mill Company developed an extensive and powerful irrigation and water collection system, consisting of tunnels, ditches, and flumes that extended into the valleys of the West Maui Mountains, including Launiupoko. The rockiness of the terrain required that the land be cultivated by hand. The cleared rocks were used to construct walls that formed banks of the cane rows and the areas between the walls were softened and planted. Meanwhile, the soil beneath the rocky layer was very fertile and produced good yields (SCS, 2017). However, by 1930, the fields at Launiupoko were no longer used for sugarcane cultivation due to labor shortages and the difficulty associated with working such rocky fields (SCS, 2018). Thereafter, the fields were used by the Pioneer Mill Company for cattle grazing (ibid.).

Ranching activities in the area began in the 1930s and continued until the mid-1970s, when cattle operations eventually halted due to an extended drought and falling market prices (SCS, 2018). During the post-World War II era, the plantation devoted extensive efforts towards machine tiltability, and subsequent rock clearing programs led to the creation of numerous rock collection mounds in the area. After the rock clearing program, fields in the Property area were once again cultivated in sugar cane until Pioneer Mill ceased operations in 1999 (SCS, 2017).

ARCHAEOLOGICAL INVENTORY SURVEY:

Scientific Consultant Services (SCS) conducted an archaeological inventory survey (AIS) of a 633-acre area in West Maui that includes the Property. The State Historic Preservation Division (SHPD) accepted the AIS in 2006 and recommended an archaeological monitoring plan (AMP) for one site consisting of man-made mounds. SCS prepared an AMP in accordance with SHPD's recommendation. SCS verified that the AIS and AMP include the area of the Property. In 2014, SHPD issued a "no adverse effect" letter for the site containing the man-made mounds.

Attachment 2 contains the: 1) SHPD "no adverse effect" letter for the man-made mounds on the Property; 2) SCS verification letter; and 3) SHPD letter approving the AIS and AMP.

Two archaeological site features occur on the Property, both of which are associated with site number SIHP 50-50-03-5950. Both features are large, man-made mounds located on the southern end of the Property. The mounds consist of boulders, cobbles, and gravel and are likely the result of field clearing for sugarcane production by the former landowner Pioneer Mill Company. Similar mounds are found on surrounding properties. MKL intends to clear the mounds as part of the creation of Makila Farms.

EXHIBIT 4: KA PA'AKAI ANALYSIS

In accepting the AMP, SHDP recommended archaeological monitoring for all ground altering activities, including the clearing of the mounds (rock piles), as SHDP notes the possibility that older structures (i.e., heiau) may exist under the mounds. Based on experience in monitoring removal of other similar mounds in Launiupoko and Mā'alaea, SCS concluded that it is likely that the mounds are simply piled rocks from clearing the lands sugarcane production.

In 2014, SHPD issued a “no adverse effect” letter for site number SIHP 50-50-03-5950. The letter acknowledged that SHPD previously recommended archaeological monitoring, but ultimately determined that, “Further archaeological monitoring of features of SIHP 5950, which has been fully documented, is unnecessary.”

CULTURAL IMPACT ASSESSMENT:

Scientific Consultant Services Inc. (SCS) prepared a Cultural Impact Assessment (CIA) covering the area of the Property in 2012 (SCS, 2012) and also prepared CIAs covering lands immediately surrounding the Property on three sides in 2018 (SCS, 2018), 2017 (SCS, 2017), and 2010 (SCS, 2010). The research and findings of these CIAs are consolidated and summarized below. Attachment 3 contains the complete CIAs and a map showing the location of the area covered by each CIA in relation to the Property.

For the CIA that included the Property, which was conducted for the Lahaina Bypass extension, historical research was conducted and various agencies, organizations, and individuals were consulted (SCS, 2012). One organization and one individual consulted stated that they were not aware of any cultural activities associated with the land corridor proposed for Bypass extension. Another organization consulted stated they were not aware of any sensitive cultural sites or activity areas within the proposed Bypass corridor. They were concerned, however, about maintaining public mauka/makai accessways that connect the coastal areas to the valleys or upland areas and suggested that the Bypass incorporate underpasses at major drainage crossings and streams since those areas would have been used as traditional mauka-makai access by native Hawaiians. As now constructed the Bypass includes an underpass for Punakea Street, (which is adjacent to the Property) to allow for mauka-makai access under the Bypass. Based on historical research and responses received during the consultation process, the CIA concludes that the exercise of native Hawaiian rights, or any ethnic group, related to gathering, access, or other customary activities, will not be affected by development activities along the proposed Bypass extension (SCS, 2012).

For the CIAs that were prepared for the lands immediately surrounding the Property on three sides, historical research was also conducted various agencies, organizations, and individuals were also consulted. No traditional cultural practices or activities were identified in the respective project areas as part of the historical research or during the consultation processes. Thus, the CIAs conclude that no traditional cultural practices are known to be conducted within the respective project areas.

Makila Farms is not anticipated to impact cultural resources. There are no known cultural resources on the Property and in the time since MKL has owned the Property (since 2016) MKL has not received any requests to access the Property for cultural purposes. A mauka-makai trail easement exists along “Lahaina Gulch 3” bordering the south edge of the Property. This trail easement will be maintained as part of the community.

Modification No. 6 of Resolution 19-169, requires that MKL receive a “will serve” letter from Launiupoko Water Company for its potable water source. Modification No. 7 of Resolution 19-169 prohibits Makila Farms from using any water from Kaua`ula Stream, and Modification No. 5 requires that MKL, “develop a well for non-potable water for irrigation with a sufficient yield to meet the non-potable water demand of all units within [Makila Farms].” These requirements reduce the impacts on Kaua`ula Stream and ensure that Makila Farms will not conflict with any traditional and customary native Hawaiian rights related to uses of the stream.

CONCLUSION:

The construction of a well to serve Makila Farms will not affect or impair any valued cultural, historical, or natural

EXHIBIT 4: KA PA'AKAI ANALYSIS

resources on the Property. The CIAs conducted over the Property and for areas surrounding the Property have not indicated that any traditional and customary native Hawaiian rights are exercised on the Property.

Two archaeological site features occur on the Property, both of which are associated with site number SIHP 50-50-03-5950. Both features are large, man-made mounds located on the southern end of the Property and SHPD determined that, “[f]urther archaeological monitoring of features of SIHP 5950, which has been fully documented, is unnecessary.”

The Punakea Street underpass which serves to address concerns regarding mauka-makai access will not be disrupted Makila Farms.

In addition to the prohibition of the use of water from Kaua`ula Stream, the Maui County Council through other Modifications of Resolution 19-169, protected cultural, historical, and natural resources on the Property and benefitting the broader area of Launiupoko:

- a. Modification No. 12, restricts building heights to one (1) story, which should serve to mitigate impacts to views which could be considered a natural resource.
- b. Modification No. 17, requires that, “a halau resource cultivation area and an animal pasture, or substantially similar agricultural uses, shall be created and maintained on lots 1-19.”
- c. Modification No. 18, requires that five percent of the Makila Farms homeowners association’s dues be donated to the Mauna Kahalawai Watershed Partnership.

We truly appreciate your time and consideration of this Ka Pa`akai Analysis and please let us know if you have any questions or concerns.

Sincerely,

Jeffrey Ueoka

Encl.

Resolution

No. 19-169

APPROVING WITH MODIFICATIONS THE INDEPENDENT
DEVELOPMENT OF THE MAKILA FARMS WORKFORCE AGRICULTURAL
COMMUNITY BY MAKILA KAI LLC PURSUANT TO SECTION 201H-
38,
HAWAII REVISED STATUTES

WHEREAS, Makila Kai LLC, a Hawaii Limited Liability Company, proposes the development of Makila Farms Workforce Agricultural Community (the "Project") for qualified residents on approximately 76 acres located in Launiupoko, West Maui, mauka of Honoapiilani Highway and Lahaina Bypass Highway, on those parcels identified for real property tax purposes as Tax Map Key Nos. (2) 4-7-013:003, 004, and 005; and

WHEREAS, the proposed Project will have a total of nineteen (19) affordable single-family residential workforce housing units, and fifteen (15) market priced agricultural residential lots two acres or slightly larger to be built out over a period of years.

WHEREAS, the affordable single-family residential workforce housing units will be developed and sold to qualified individuals earning within fifty percent to one hundred percent of Maui's median income; and

WHEREAS, the Project will provide needed affordable residential workforce housing units to meet the current and growing demand for housing; and

WHEREAS, on August 27, 2019, the Department of Housing and Human Concerns submitted the preliminary plans and specifications and accompanying application to the Council of the County of Maui ("Council") recommending approval of the Project pursuant to Chapter 201H, Hawaii Revised Statutes ("HRS"); and

WHEREAS, pursuant to Section 201H-38, HRS, the

EXHIBIT 5: 201E RESOLUTION

Council may approve certain exemptions for the Project, and the exemption list is attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, pursuant to Section 201H-38, HRS, the Council shall approve, approve with modifications, or disapprove the Project by resolution within forty-five (45) days after the Department of Housing and Human Concerns has submitted the preliminary plans and specifications for the Project to the Council, which submittal occurred on August 27, 2019; and

WHEREAS, pursuant to Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, the Council is authorized to act by resolution; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That based upon the transmittals and the representations of the Department of Housing and Human Concerns and Makila Kai LLC, the Council approves the Project with the modifications specified in Exhibit "B", including the Project's preliminary plans and specifications, as submitted to the Council on August 27, 2019, pursuant to Section 201H-38, HRS; provided that Makila Kai LLC, shall comply with all statutes, ordinances, charter provisions, and rules of governmental agencies relating to planning, zoning and construction standards for subdivisions, development and improvement of land, and the construction of units thereon, except for the exemptions specified in Exhibit "A" attached hereto and made a part hereof; and

2. That the final plans and specifications for the Project shall be deemed approved by the Council if the final plans and specifications do not substantially deviate, as determined by the Director of Housing and Human Concerns, from the preliminary plans and specifications approved by the Council. Any substantial deviation from the preliminary plans and specifications shall be submitted to the Council for prior approval. The final plans and specifications shall constitute the zoning, building, construction, and subdivision standards for the Project; and

3. That certified copies of this resolution be transmitted to the Director of Public Works, Director of Planning, the Director of Housing and Human Concerns, and Makila Kai LLC.

EXHIBIT 5: 201E RESOLUTION