



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

November 15, 2022
Honolulu, Hawai'i

Approval of the Stream Diversion Works Permit (SDWP.5889.6) Application
Surface Water Use Permit (SWUP.5848.6) Application for New Uses, Thomas Bashaw,
For New Diversified Agriculture, Irrigation, and Domestic Use for 4,450 gpd
Wailuku River, 'Āao Surface Water Management Area, Maui, TMK: (2) 3-3-018:007

AND

Request Approval of Standard Surface Water Use Permit Conditions for New and Existing Uses

APPLICANT

Thomas Bashaw
P.O. Box 1298
Wailuku, HI 96793

LANDOWNER

Same

SUMMARY OF REQUEST

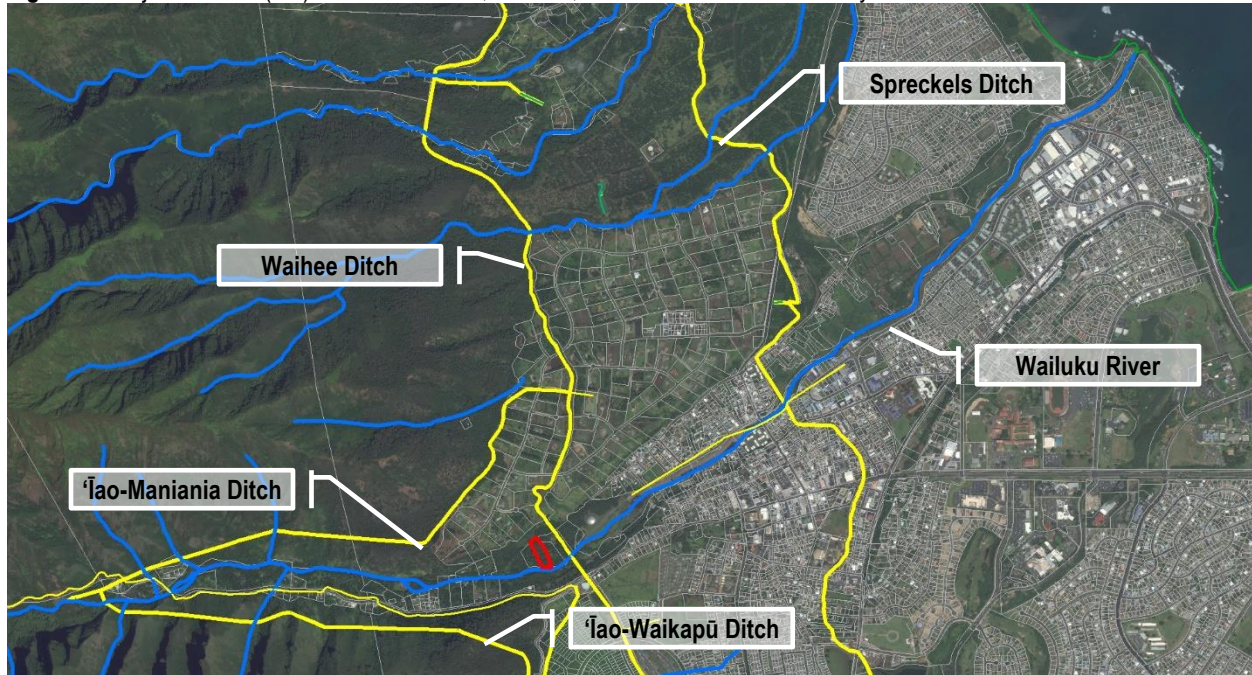
Approve the following:

1. Stream Diversion Works Permit (SDWP.5889.6) Application consisting of a two-inch diameter, 73-gallon per minute (gpm) portable submersible pump estimated to pump twice per week to fill two (2) existing rain catchment storage tanks totaling 30,000 gallons.
2. Surface Water Use Permit (SWUP.5848.6) Application in the amount of 4,450 gallons per day (gpd) from a new diversion in the Wailuku River. The proposed use is for 3,250 gpd for irrigation and diversified agriculture on 1.3 acres and 1,200 gpd of domestic use for two (2) homes.
3. Surface Water Use Permit standard conditions for new and existing uses. Previously, surface water use permits were approved in CCH-MA 15-01, Surface Water Use Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream

Flow Standards, Na Wai ‘Ehā Surface Water Management Areas of Waihe‘e, Waiehu, Wailuku, and Waikapū Streams, Maui, Findings of Fact, Conclusions of Law, and Decision & Order, dated June 28, 2021 (D&O). The Surface Water Use Permit standard conditions were not part of the D&O process. Standard surface water use permit conditions in this submittal were compiled from numerous sources including ground water use permits, stream diversion works permits, and the D&O.

LOCATION: Wailuku River, Wailuku, Maui. See **Figure 1**.

Figure 1: Subject location (red) on Wailuku River, Wailuku, Maui. Ditches are shown in yellow.



BACKGROUND

On June 6, 2022, the Commission on Water Resource Management (Commission) received the complete SDWP.5889.6 Application and SWUP.5848.6 Application. The Stream Diversion Works Permit Application is on the Commission’s website at https://files.hawaii.gov/dlnr/cwrm/swreview/SDWP_5889_6.pdf. See **Exhibit 1**. The Surface Water Use Permit Application (**Exhibit 2**) and Public Notice (**Exhibit 3**) are on the Commission’s website at <https://files.hawaii.gov/dlnr/cwrm/notice/2022/nt20220727.pdf>. The public notice was also published in the Maui News on August 3 and 10, 2022.

STREAM DESCRIPTION

Wailuku River occurs within the ‘Iao surface water hydrologic unit (6024). Both the National Hydrography Dataset and the Division of Aquatic Resources classify Wailuku River as perennial. The total drainage area of Wailuku River is 10.9 square miles with a maximum basin elevation of 5,790 feet, mean annual precipitation of 122 inches, and the longest flow path is 8.74 miles. On the basis of 22 years of complete records (climate years 1984-2005) at USGS

stream-gaging station 16604500 on Wailuku River near an altitude of 780 feet and above all diversions, the minimum daily mean flow (Q₁₀₀) was 7.1 million gallons per day (mgd) (the minimum flow occurred on 29 days, an average of about 1.3 days per year); the Q₉₅ flow was 11 mgd; the Q₉₀ flow was 12 mgd; the Q₇₀ flow was 17 mgd; and the Q₅₀ flow was 25 mgd.

The two main diversions on Wailuku River are (1) ‘Īao-Waikapū/‘Īao-Maniania Ditches near an altitude of about 780 feet (there is also a small privately owned pipe farther downstream), and (2) Spreckels Ditch near an altitude of about 260 feet, about 2.4 miles downstream from the ‘Īao-Waikapū/‘Īao-Maniania Ditches. The Wailuku River Flood Control Project starts about 2.5 miles above the mouth of Wailuku River and consists of a debris basin, a concrete channel that runs from the debris basin to just downstream of North Market Street, a 20-foot vertical drop, a broadened but unlined channel running to Waiehu Beach Road, and concrete wing walls running about one-half of the distance from the Waiehu Beach Road to the mouth of the stream.

Additional information on Wailuku River can be found in the D&O and can be viewed on the Commission website at: <https://files.hawaii.gov/dlnr/cwrp/cch/cchma1501/CCHMA1501-20210630-D&O.pdf>.

PROJECT DESCRIPTION

On the left bank looking downstream, the proposed diversion will consist of a two-inch diameter, 73-gallon per minute (gpm) portable submersible pump estimated to pump twice per week to supplementally fill two (2) existing rain catchment storage tanks totaling 30,000 gallons. The proposed use is for 3,250 gpd for diversified agriculture and irrigation on 1.3 acres and 1,200 gpd of domestic use for two (2) homes. Irrigation practices include trickle, spray, drip, and multiple sprinklers. Estimated acreages have taken into account driveways, easements, and dwelling footprints.

Table 1. Summary of Water Use Request.

TMK Parcel	Water Use Category	Units or Net Acreage	GPD/Unit or GPD/Acre	Requested Quantity of Use
(2) 3-3-018:007	Domestic: Single & Multi Low-Rise & High-Rise Household	2 units	600	1,200 GPD
(2) 3-3-018:007	Agriculture: Crops & Processing	1 acre	2500	2,500 GPD
(2) 3-3-018:007	Agriculture: Ornamental & Nursery Plants	0.3 acre	2500	750 GPD
			TOTAL REQUESTED:	4,450 GPD

Figure 2: Subject location (aqua) on Wailuku River, Wailuku, Maui. Approximate location of the submersible pump is indicated by the arrow.



Figure 3: Hand-drawn sketch of subject property with Zones 1 to 14 identified (circled) and depicted in Figures 4 and 5.

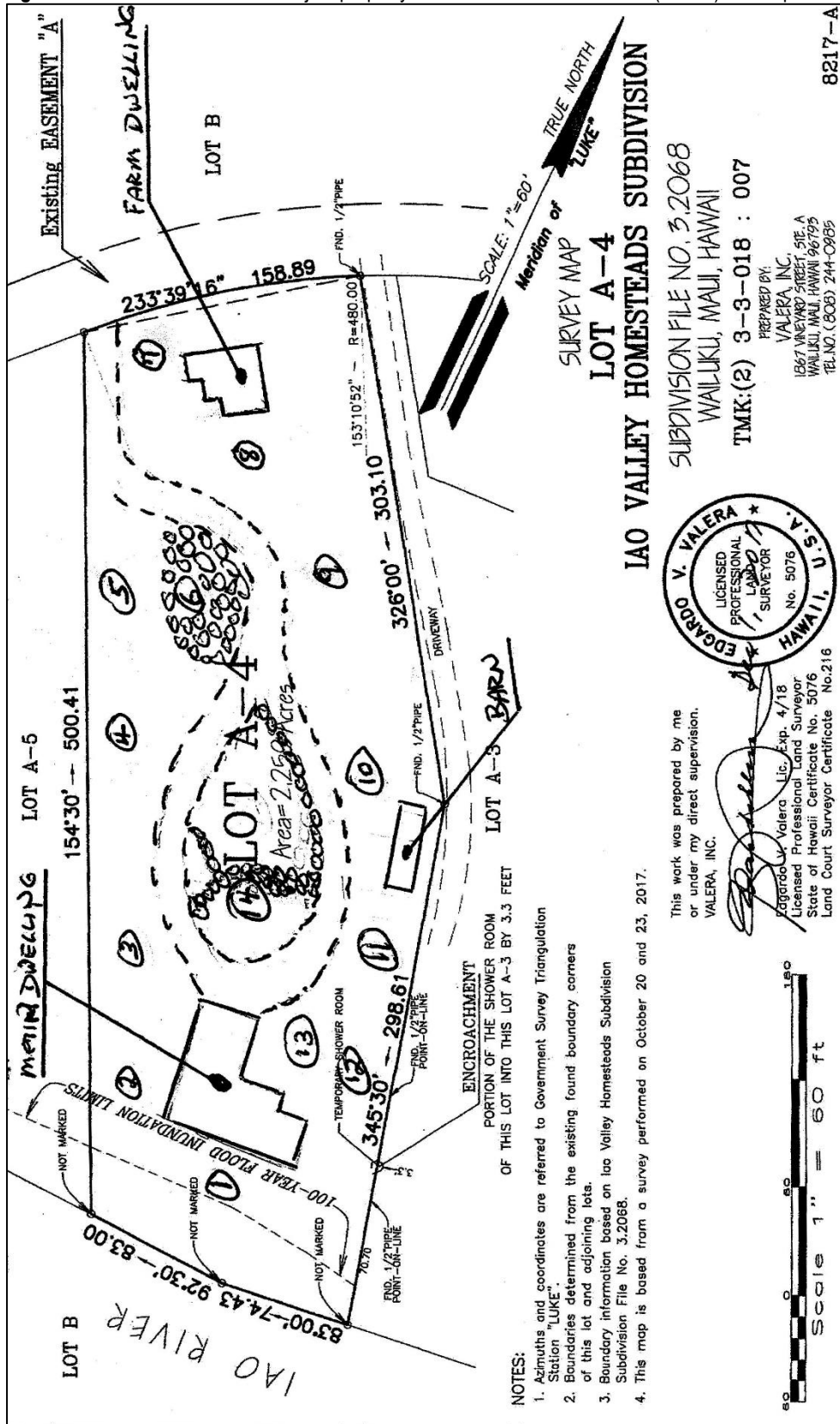


Figure 4: Zones 1 to 7 as identified in hand-drawn sketch of subject property in Figure 3.

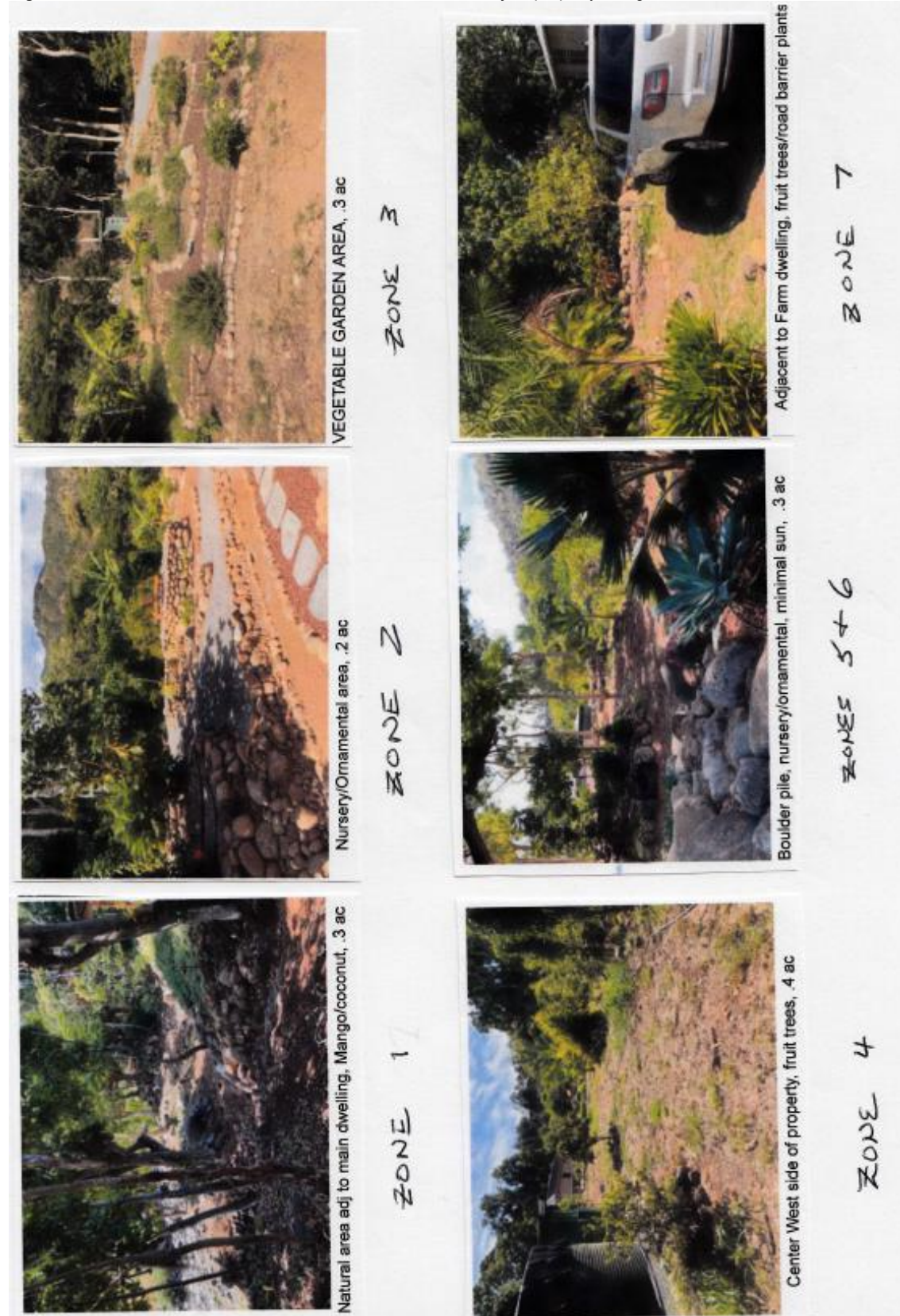
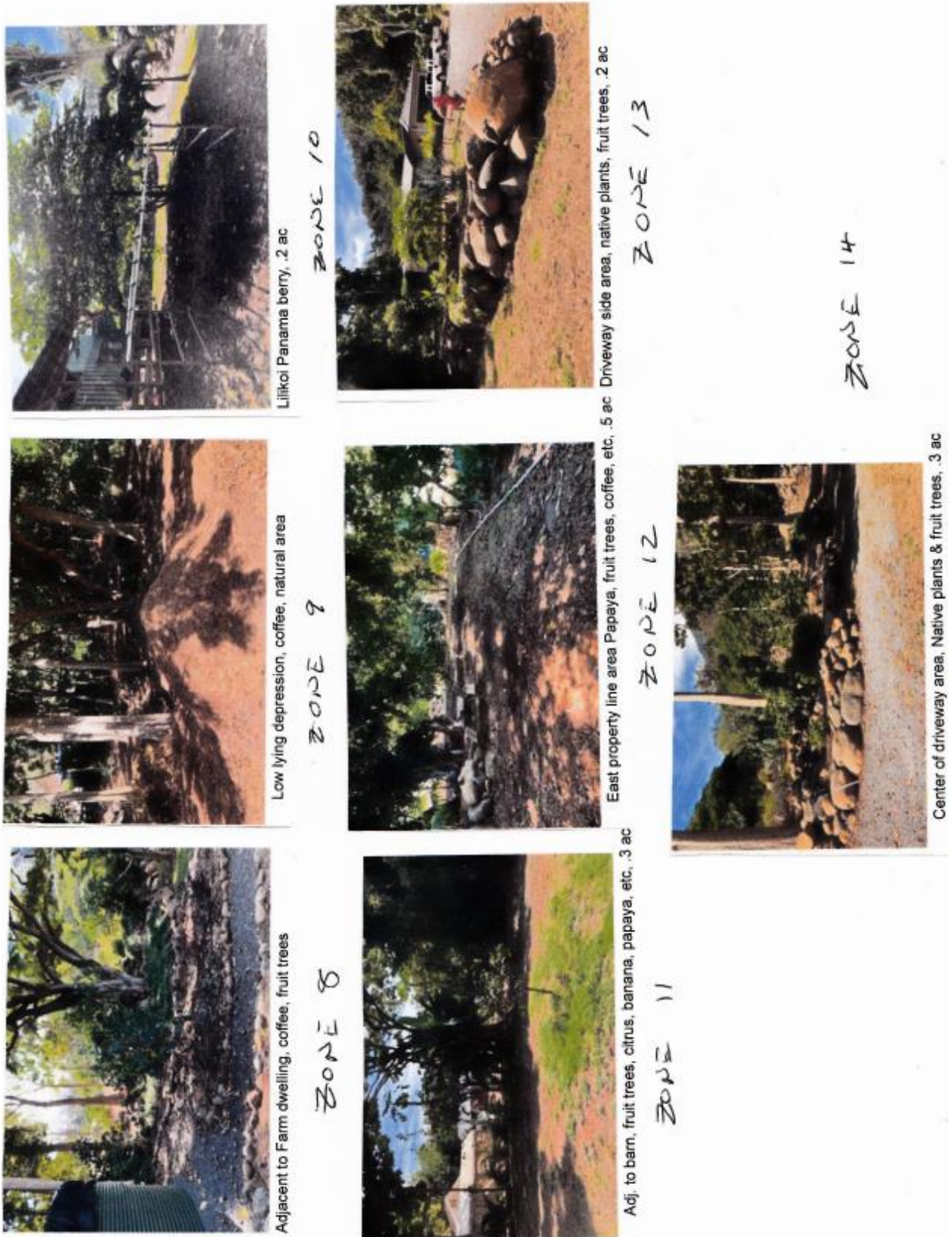


Figure 4: Zones 8 to 14 as identified in hand-drawn sketch of subject property in Figure 3.



AGENCY REVIEW COMMENTS

Maui County, Department of Water Supply. No comments received.

Maui County, Mayor's Office. No comments received.

Maui County, Planning Department: The Department does not see any form of impact on the Zone X area. This will not add water to the floodplain, and will not cause a change to the floodway hydraulics. No objections regarding both SDWP.5889.6 and SWUP.5848.6.

CWRM Staff Response: Staff agrees with Maui County, Planning Department comments.

Department of Hawaiian Home Lands (DHHL): No comments received.

Department of Land and Natural Resources (DLNR), Aha Moku: No comments received.

DLNR, Aquatic Resources: The proposed stream diversion is not expected to have any adverse impacts on the aquatic environment.

DLNR, Engineering: No comments received.

DLNR, Forestry and Wildlife (DOFAW): No comments received.

DLNR, Historic Preservation: No historic properties affected.

*CWRM Staff Response: Staff believes that SHPD review is satisfied. See **Exhibit 4**.*

DLNR, Land Division: No comments received.

DLNR, State Parks: No comments received.

Dept. of Health (DOH), Clean Water Branch: The DOH standard comments can be reviewed on the DOH website at: <https://health.hawaii.gov/cwb/files/2018/05/Memo-CWB-Standard-Comments.pdf>.

CWRM Staff Response: The lead agency for the protection of water quality is the Department of Health, Clean Water Branch, which administers the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and the State Water Pollution Act (HRS Ch. 342D; HAR Ch. 11-54 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control). HAR §11-54-1 through §11-54-8 defines Best Management Practices and water quality criteria applicable to inland and nearshore waters and are based on the Federal Clean Water Act. HAR Ch. 11-55 Appendix C defines discharges of storm water associated with construction activity. HRS 174C-66 states that the DOH oversees the State's water quality control program.

Office of Hawaiian Affairs: No comments received.

U.S. Army Corps of Engineers: No comments received.

U.S. Fish and Wildlife Service (FWS): No objections regarding both SDWP.5889.6 and SWUP.5848.6.

PUBLIC COMMENTS

No public comments were received.

TRADITIONAL AND CUSTOMARY PRACTICES

In its D&O in contested case hearing CCH-MA15-01, the Commission concluded that, “the required elements to qualify as a constitutionally protected traditional and customary practice have been established through testimony that kalo growing existed throughout all four watersheds prior to November 25, 1892, that the practice is related to family needs for subsistence, and that the manner in which the practice is conducted is consistent with tradition and custom. *Pratt I*, 124 Hawaii at 352-54, 243 P.3d at 312-15. Therefore, existing and/or new water use permits for traditional and customary practices associated with growing kalo are issued in this case to any applicant who qualifies as a Native Hawaiian within the guidelines set forth in *PASH* and who do *not* intend to grow kalo for a *commercial purpose*” (COL 181).

- 1) The identity and scope of cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

The Applicant stated, “Traditionally, Iao Valley was a primary native Hawaiian farming area, as settlers moved to Maui and generations aged and changed, farming began to wane. Primary water source was from Kalani Ditch to these small farms. Large agricultural companies later acquired water rights and operated large plantations eliminating the small farms. In the mid 60’s Kalani Ditch was abandoned, mostly due to little use. Today only small native Hawaiian farmers grow kalo and other crops for subsistence with some selling excess crops to local.”

CWRM Staff Response: Cultural, historical, and natural resources in which traditional and customary native Hawaiian rights rely on are known to exist throughout ‘Īao Valley. No comments were received by DLNR ‘Aha Moku. No comments were received from the public. There were no historic sites identified at the subject diversion intake site.

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

The Applicant stated, “Since the property borders Wailuku River and the amount of water to be removed from the river is minimal, with use for domestic and agricultural use, native Hawaiian rights should not be impacted. There are currently no native farms within a mile of our property. Water flow of Wailuku River is constant as it flows past the property. Native farming in the close proximity of us is done by small subsistence

farmers with some slightly larger farmers selling some of their crops.”

CWRM Staff Response: There are no anticipated impacts to traditional and customary practices or upstream/downstream movement of native macrofauna due to the project’s negligible effect on the streambed and flow.

- 3) What feasible action, if any, could be taken by the Commission in regards to this application to reasonably protect native Hawaiian rights.

The Applicant stated, “Since the requested amount of water diversion is minimal, it is doubtful any negative impact would affect native Hawaiian Rights. Therefore, no feasible action should need to be taken by the commission.”

CWRM Staff Response: While staff don’t anticipate any impacts on traditional and customary practices because the use quantity is insubstantial and diversion is a small pump, there may be times of drought that may limit or impact stream flow that traditional and customary practices rely on. Therefore, the submission of an individual water shortage plan and participation in the Commission’s future water planning process are feasible actions that the applicant can take.

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

Under Hawaii Revised Statutes (HRS) §343-5(a), an EA shall be required for actions, as summarized in part below, that propose:

- (1) use of state land or county lands, or the use of state or county funds;
- (2) use within any land classified as a conservation district;
- (3) use within a shoreline area;
- (4) use within any historic site as designated in the National Register or Hawaii Register;
- (5) use within the Waikiki area of O‘ahu;
- (6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
- (7) any reclassification of any land classified as a conservation district;
- (8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
- (9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

CWRM Staff Response: The proposed action does not trigger an EA.

STAFF REVIEW (Stream Diversion Works Permit Application)

HAR §13-168-32(d) sets out the general criteria for ruling on Stream Diversion Works Permit applications.

- (1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.

CWRM Staff Response: The proposed use of 4,450 gpd will have a de minimis impact on streamflow. It is less than 5-percent (5%) percent of the gaged flow readings, within the stream's natural variability and considered an insubstantial amount. Therefore, staff estimates that the quantity of stream water or stream ecology is not adversely affected.

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to HAR Chapter 13-169, no permit should be granted for any diversion works which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.

CWRM Staff Response: HRS §174C-71, requires the Commission to protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. The identified instream uses include fish habitat, lo'i kalo, and streamflow contribution to the nearshore waters, among others. Through the D&O (Order no. 23, p. 299), the Commission set the interim instream flow standard (IIFS) for the Wailuku River as follows:

- a. *Above all diversions near an altitude of 780 feet, the flow will remain as designated on December 10, 1988, estimated by U.S. Geological Survey (USGS) as Q_{90} of 12 mgd, Q_{70} of 17 mgd, and Q_{50} of 25 mgd.*
- b. *10 mgd measured at USGS station 16605500 on Wailuku River at 'Īao Valley Road.*
- c. *The special provisions for Maui Department of Water Supply and the kuleana users of the 'Īao-Waikapū Ditch are rescinded, and they will receive water through the priority system established for all permittees.*
- d. *Provisions will be made to maintain mauka to makai flow as much as possible at the Wailuku Water Company diversion to 'Īao-Waikapū and 'Īao-Māniania ditches.*
- e. *When the mean daily flow of Wailuku River measured at USGS station 16604500 drops below 15 mgd for three consecutive days, then the IIFS is seventy percent (70%) of the streamflow measured at USGS 16604500.*
- f. *When the USGS station 16605500 on Wailuku River at Iao Valley Road indicates that at least 10 md is flowing in Wailuku River, streamflow is adequate to provide for 5 mgd at Waiehu Beach Road. Only when there is water in excess of 10 mgd, measured at USGS station 16605500 on Wailuku River at 'Īao Valley Road, may the water in excess of 10 mgd be diverted at the Spreckels Ditch intake operated by Mahi Pono.*

The requested amount of 4,450 gpd is less than 5-percent (5%) of the gaged flow readings, is within the stream's natural variability, and is considered an insubstantial amount. The water quantity and quality appear unchanged. Commission staff finds that a petition to amend the instream flow standard is not required under HRS 174C-71 and HAR 13-169-36.

- (3) The proposed diversion works shall not interfere substantially and materially with existing instream or non-instream uses or with diversion works previously permitted.

CWRM Staff Response: The proposed diversion is not anticipated to have any impact to diversions located upstream. There are three (3) surface water use permit holders located about 2.5 miles downstream of the applicant. They get their water from spring sources connected to the river. The request of 4,450 gpd is considered an insubstantial amount compared to water availability and the IIFS, and is not anticipated to affect downstream permit holders.

STAFF REVIEW (Surface Water Use Permit Application)

Hawaii Revised Statutes (HRS) Section 174C-49(a) establishes seven (7) criteria that must be met to obtain a water use permit. An analysis of the proposed permit to these criteria follows:

- (1) Can be accommodated with the available water source.

CWRM Staff Response: The D&O created a priority system of uses. Priority 1 uses are legally recognized appurtenant rights, traditional and customary Native Hawaiian rights, domestic uses of the general public, the Department of Hawaiian Home Lands reservations, and the Maui Department of Water Supply uses. Priority 2 are other existing uses. Priority 3 is diversified agriculture, including commercial lo'i kalo. Priority 4 are new uses not based on appurtenant rights.

The applicant proposes to use 1,200 gpd for domestic needs. This is recognized as a Priority 1 use. Therefore, the balance of uses, 3,250 gpd for diversified agriculture is recognized as a Priority 3 use.

Commission staff considers the amount of water being requested insubstantial and can be accommodated with the available water source.

A summary of surface water use permits approved in the D&O located in the 'Āao Surface Water Management Area are shown in **Table 2**.

Table 2: Surface Water Use Permits, 'Īao Surface Water Management Area.

SWUP No.	Permittee	IIFS Amount (gpd)	Total Amount (gpd)	Priority 1 Amount (gpd)	Notes
2304	DLNR State Parks		4,200	4,200	River with ho'i
		10,000,000			USGS gage 16604500 above 'Īao-Waikapū and 'Īao-Māniania Ditches
'Īao-Māniania Ditch					
2189 / 2190	WCEIC		680,186	171,450	184 individuals
2196	WCEIC		78,155	5,655	5 lots in common area
2215 / 2216	Brito		6,150	6,150	
'Īao-Waikapū Ditch					
2178 / 2179	County – Maui DWS		3,200,000	3,200,000	
2339	Yamaoka		1,950	0	
2188	L. Vida Jr.		6,250	6,250	
2292 / 2293	Vida		2,400	2,400	
2303	Pinto		2,750	2,750	
2183	Kihei Garden		33,261	0	
3671	Sloan		2,167	0	
3665	Ota		5,668	0	
4442	Hee		1,668	0	
4444	Takitani		2,833	0	
4445	SPV Trust		1,668	0	
2207 / 2208	Makani Olu Partners		138,201	138,201	
2204	McLean		150,350	150,350	
2191	Dando		250	250	
Subtotal			4,318,107	3,687,656	
		10,000,000			USGS gage 16605500 at 'Īao Valley Road
Wailuku River or Spring					
2243 / 2244	Ho'oululāhui		455,000	455,000	River with ho'i
2370	Ornellas		213,750	213,750	River with ho'i
2371	Lozano		29,678	29,678	Spring
2206	Mahi Pono		High flows only		River
2275	Sevilla		50,700	1,200	Spring
3623	Almeida		2,728	2,728	Spring
Subtotal			751,856	702,356	
5848	Bashaw		4,450	1,200	River
		5,000,000			At Waiehu Beach Road

(2) Is a reasonable-beneficial use as defined in section 174C-3.

CWRM Staff Response: Section 174C-3, HRS defines reasonable-beneficial use 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 the public interest”.

I. Purpose of Use

CWRM Staff Response: The applicant is requesting the use of non-potable water for diversified agriculture and domestic use. The Declaration of Policy section, §174C-2(c) HRS, states that the Water Code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for various purposes including industrial and irrigation uses.

II. Quantity Justification

CWRM Staff Response: The applicant is requesting a new use of 3,250 gpd (1.3 acres x 2,500 gpd) for diversified agriculture and 1,200 gpd for domestic use for two (2) homes. These amounts are consistent with 2,500 gpd for diversified agriculture and 600 gpd for domestic use standards per the D&O.

III. Efficiency of Use

CWRM Staff Response: The applicant states that its operations are as water efficient as possible because his irrigation practices include trickle, spray, drip, and multiple sprinklers. We recommend the applicant consult with the University of Hawai'i Maui (UH Maui), College of Tropical Agriculture and Human Resources (CTAHR) Extension Office and/or the U.S. Department of Agriculture (USDA), Natural Resources Conservation Services (NRCS) to determine and utilize best practices for irrigation and cultivation.

IV. Analysis of Practical Alternatives

The applicant stated the following:

- a) Municipal. Use of municipal water hook up would be cost prohibitive as water from the County Department of Water Supply is unavailable.
- b) Wastewater. Unavailable.
- c) Ditch system. Unavailable.
- d) Desalinization. Non-existent.
- e) Catchment. Two (2) existing 15,000 gallon tanks on property.

CWRM Staff Response: The water use will supplement natural rain fall as an alternative to meet the applicant's domestic and irrigation needs. Storage tanks and irrigation methods described above make stream water the most practical alternative.

The use is reasonable and beneficial. It meets the purpose, quantity justification, efficiency, and there are no practical alternatives.

- (3) Will not interfere with any existing legal use of water.

CWRM Staff Response: There are 20 surface water use permittees who receive water

from the 'Īao-Maniania Ditch/'Īao-Waikapū Ditch diversion located upstream of the applicant. There are three (3) permittees located downstream of the applicant whose source are springs next to and were considered as part of the IIFS. The requested amount of 4,450 gpd is considered an insubstantial amount and will not interfere with the IIFS and existing permit holders.

- (4) Is consistent with the public interest.

CWRM Staff Response: The public interest is defined under HRS §174C-2(c) "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."

The interpretation of the state water code to obtain maximum beneficial use of water from the state includes agriculture and domestic uses as requested by this application. There were no public comments or objections to this application. Because the use falls under irrigation and other agricultural uses, this applicant meets the criteria to satisfy public interest

- (5) Is consistent with state and county general plans and land use designations.

CWRM Staff Response: The Water Resource Protection Plan (WRPP), updated in 2019, provides an outline for the conservation, augmentation, and protection of statewide ground and surface water resources, watersheds, and natural stream environments. The legal framework of the Code for the issuance of Water Use Permits (both ground and surface water), is covered in more detail and context in the WRPP, Appendix D, and Appendix I, Section I.2. The proposed use is consistent with the Hawai'i Water Plan.

The proposed uses are located in the State Agricultural District, and county zoning is also Agriculture. The proposed uses are consistent with the state and county land use designations.

- (6) Is consistent with County land use plans and policies.

CWRM Staff Response: The Maui Department of Water Supply updated the Maui Island Water Use and Development Plan in 2022. The use of non-potable water for agricultural use 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.

CWRM Staff Response: The Department of Hawaiian Home Lands (DHHL) has no water reservations on the Wailuku River. The DHHL reviewed this application and made no comments or objections. All water use permits are subject to the rights of DHHL. Therefore, this application will not interfere with DHHL.

Standard Water Use Permit Conditions For New And Existing Uses

Surface water use permits were approved in the D&O. However, standard water use permit conditions were not part of this process. Standard surface water use permit conditions for new and existing uses in this submittal were compiled from numerous sources including ground water use permits, stream diversion works permits, and the D&O and will be applicable for new and existing uses.

RECOMMENDATION

That the Commission:

1. Approve Stream Diversion Works Permit (SDWP.5889.6) Application subject to the standard stream diversions works permit conditions in **Exhibit 5**.
2. Approve Surface Water Use Permit (SWUP.5848.6) Application for new use of 1,200 gpd for domestic use and 3,250 gpd for irrigation and diversified agriculture, subject to the standard water use permit conditions in **Exhibit 6** and the following special conditions.
 - a) This permit is invalid if the use as described in Table 1 changes. This includes, but is not limited to: types of use, location of use, land use classification changes, or anything that varies from the application.
 - b) The applicant shall consult with the University of Hawai‘i Maui (UH Maui), College of Tropical Agriculture and Human Resources (CTAHR) Extension Office and/or the U.S. Department of Agriculture (USDA), Natural Resources Conservation Services (NRCS) to determine and utilize best practices for irrigation and cultivation.
3. Approve the standard surface water use permit conditions for new and existing uses in **Exhibit 6**.

Ola i ka wai,



M. KALEO MANUEL
Deputy Director

Exhibits:

1. Stream Diversion Works Permit Application
2. Surface Water Use Permit Application
3. Public Notice, dated July 27, 2022
4. State Historic Preservation Division Letter.
5. Standard Stream Diversion Works Permit Conditions
6. Standard Surface Water Use Permit Conditions

APPROVED FOR SUBMITTAL

Suzanne D. Case

SUZANNE D. CASE
Chairperson



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
STREAM DIVERSION WORKS
PERMIT APPLICATION

For Official Use Only:

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT

2022 APR 14 AM 11:35

Instructions: Please print in ink or type and send one (1) completed hardcopy and one (1) digital copy of the application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Applications must be accompanied by a non-refundable filing fee of \$25.00 payable to the Department of Land and Natural Resources. The Commission may not accept incomplete applications without the required signatures. For assistance, call the Stream Protection and Management Branch at 587-0234. For further information and updates to this application form, visit <http://dlnr.hawaii.gov/cwrm>.

Check here to allow Commission staff to communicate primarily via e-mail.
Legally required and other key correspondence will still be transmitted via postal mail.

PERMIT TYPE		
1. Permit Status:	<input checked="" type="checkbox"/> New	<input type="checkbox"/> After-The-Fact
2. Type of Construction:	<input checked="" type="checkbox"/> Installation	<input type="checkbox"/> Modification <input type="checkbox"/> Removal / Abandonment
APPLICANT INFORMATION		
3. APPLICANT'S NAME / COMPANY	Applicant's Contact Person	Applicant's Phone
Thomas W Bashaw		
Applicant's Mailing Address	Applicant's E-mail Address	
PO Box 1298, Wailuku, Hi 96793	fijitom@icloud.com	
<input type="checkbox"/> Check here if project will impact multiple landowners. If project impacts multiple landowners, skip Item 4 below, then complete and attach Form LND-APP to identify and verify landowner's approval of proposed stream diversion work.		
4. LANDOWNER'S NAME / COMPANY	Landowner's Contact Person	Landowner's Phone
Thomas and Carrie Bashaw	Thomas or Carrie Bashaw	
Landowner's Mailing Address	Landowner's E-mail Address	
PO Box 1298, Wailuku, Hi 96793		
5. CONSULTANT'S NAME / COMPANY	Consultant's Contact Person	Consultant's Phone
N/A		
Consultant's Mailing Address	Consultant's E-mail Address	
6. CONTRACTOR'S NAME / COMPANY	Contractor's Contact Person	Contractor's Phone
N/A		
Contractor's Mailing Address	Contractor's E-mail Address	
STREAM INFORMATION		
7. Island: (Check only one)	<input type="checkbox"/> Kauai	<input type="checkbox"/> Oahu <input type="checkbox"/> Molokai <input type="checkbox"/> Lanai <input type="checkbox"/> Maui <input type="checkbox"/> Hawaii
8. Tax Map Key(s) List all affected tax map key parcels.	3-3-0018-007	
9. Stream / Gulch Name(s) List all affected streams and/or gulches.	Wailuku River	
FOR OFFICIAL USE ONLY:	SWHU ID: _____	FILE ID: _____
LAT: _____	GWHU ID: _____	DOC ID: _____
LON: _____	REACH ID: _____	

Form SDWP-APP 04/01/2021

GENERAL PROJECT INFORMATION				
10. Diversion No: (if already assigned)		11. Diversion Name: none (residential pump)		
12. Project Site Location(s): Provide site coordinates of downstream-most point of project in degrees, minutes, seconds (NAD83).				
Latitude: 20 ° 53 ' 18.59 "	Longitude: 156 ° ' 30 "	4.79	Elevation: 435	ft. above mean sea level
13. Diversion Structure Type: (Check all that apply)				
<input type="checkbox"/> Unlined channel	<input type="checkbox"/> Hand-built rock	<input type="checkbox"/> Concrete masonry	<input type="checkbox"/> Dam/weir	<input type="checkbox"/> Pipe
<input type="checkbox"/> Metal	<input type="checkbox"/> Plastic	<input type="checkbox"/> Wood	<input checked="" type="checkbox"/> Pump	<input type="checkbox"/> Direct use
<input type="checkbox"/> Other - Describe:		Portable Submersible 1HP)		
STREAM DIVERSION WORKS SPECIFICATIONS (For Abandonments, skip to Legal Requirements section, Item #32.)				
14. Structure Dimensions: (feet)		Width: N/A using a		
Provide generalized dimensions for the entire project / structure area. If the project includes a pipe (e.g., culvert, drain, etc.), provide the pipe diameter.		Height: submersible		
		Length: pump		
		Diameter:		
15. Diversion Location:		<input checked="" type="checkbox"/> Left bank (downstream view)		
Provide the general location of the diversion intake structure in relation to the streambank.		<input type="checkbox"/> Right bank (downstream view)		
		<input type="checkbox"/> Across entire stream channel		
16. Intake Dimensions: (feet)	Width:	Height:	Length:	Diameter: 2" p/u
17. Average diversion amount: (cubic feet per second) approximately 0.162644 CFS average twice weekly				
18. Diversion is part of a system of diversions: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
19. Diverted flow can be controlled: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
Control Dimensions: (feet)	Width:	Height:	Length:	Diameter: 2" p/u
20. Water will be pumped from the stream:		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, identify pump capacity: (gallons per minute) 73 GPM		(estimated twice weekly) Daily average pumping time: (hours) 1 hour		
21. Water will be impounded in the stream channel:		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
22. Water diversion capacity will be measured daily:		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No measures when pump fills tank		
23. Water will be returned to the stream:		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If yes, average amount of return flow: (cubic feet per second)				
24. Water will be stored off-stream:		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Storage capacity: (gallons) 40,000 gallons		
Describe storage facility: 2 - 15,000 metal tanks & 1 - 1000 plastic tank				
25. State Land Use Classification: (Check all that apply) <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Conservation <input type="checkbox"/> Rural <input type="checkbox"/> Urban				
WATER USE INFORMATION				
Check all water use categories below that are intended for the proposed diversion, then describe the proposed use in more detail.				
<input checked="" type="checkbox"/> 26. Agriculture				
<input checked="" type="checkbox"/> 27. Domestic				
<input type="checkbox"/> 28. Industrial				
<input checked="" type="checkbox"/> 29. Irrigation				
<input type="checkbox"/> 30. Military				
<input type="checkbox"/> 31. Municipal				
LEGAL REQUIREMENTS				
If required, the permits or approvals below must be obtained before the Commission on Water Resource Management can legally issue a permit. Visit the Commission's Applications & Forms webpage (http://dlnr.hawaii.gov/cwrms/info/forms) for links to agency websites/contact information.				
32. Conservation District Use Permit (CDUP): To find out if your stream diversion works is located in a Conservation District (CD), you may visit to the Land Use Commission (LUC) website at http://luc.hawaii.gov/maps to view Land Use District Boundary maps. If the stream diversion works will be located in a CD, contact the Department of Land and Natural Resources' Office of Conservation and Coastal Lands (OCCL) at (808) 587-0377 to determine if a CDUP is required.				
<input type="checkbox"/> Stream diversion works is in a Conservation District.				
<input type="checkbox"/> Required. CDUP #: _____ Date CDUP approved: _____				
<input type="checkbox"/> Not Required. Attach documentation from Office of Conservation and Coastal Lands (OCCL), Department of Land and Natural Resources.				
<input type="checkbox"/> I have not checked with the OCCL about whether or not a CDUP is required.				
<input checked="" type="checkbox"/> Stream diversion works is <u>not</u> in a Conservation District.				

33. Special Management Area Permit (SMAP): To determine if an SMAP is necessary, contact your County Planning Department.

Required. SMAP #: _____ Date SMAP approved: _____

Not Required. Attach documentation from applicable County agency.

I have not checked with the County about whether or not an SMA Permit is required.

34. State Historic Preservation Division (SHPD), Department of Land and Natural Resources: If the parcel(s) affected by the stream alteration has been reviewed by the State Department of Land and Natural Resources Historic Preservation Division (SHPD or through an OEQC Environmental Review, Special Management Area Permit, etc.), check "yes" and attach any relevant documentation from SHDP. If the affected parcel(s) has not undergone SHDP review, attach a photograph of the affected area, a schematic diagram (showing the location, access road and infrastructure for the alteration), and a short description of the prior use(s) of the land on which the alteration resides.

**Please note: You are strongly advised to contact the SHPD to obtain a pre-review of your project. In the event that you do not get an HP pre-review and if during the course of either review or the permit itself it is determined that you need SHPD's concurrence, your application or permit may be held in abeyance or denied until issues with HP are resolved. To contact SHPD, please call (808) 692-6015.*

I have consulted the SHPD regarding potential impacts of stream channel alteration activities on historic sites. I have attached applicable documentation from the SHPD. (awaiting review)

I have not consulted with the SHPD regarding potential impacts of stream channel alteration activities on historic sites.

35. Chapter 343, Hawaii Revised Statutes, Hawaii Environmental Policy Act:

An Environmental Assessment was completed, and

An Environmental Impact Statement was required and has been accepted (attach letter of acceptance).
Publication date in The Environmental Notice: _____

A Finding of No Significant Impact has been determined (attach letter).
Publication date in The Environmental Notice: _____

This project proposes:

<input type="checkbox"/> Use of state or county lands, or use of state or county funds	<input type="checkbox"/> A wastewater treatment unit
<input type="checkbox"/> Use within a state conservation district	<input type="checkbox"/> Waste-to-energy facility
<input type="checkbox"/> Use within a shoreline setback area	<input type="checkbox"/> Landfill
<input type="checkbox"/> Use within a national or Hawaii registered historic site	<input type="checkbox"/> Oil refinery
<input type="checkbox"/> Use within the Waikiki Special District	<input type="checkbox"/> Power-generating facility
<input type="checkbox"/> The construction, expansion or modification of helicopter facility	<input checked="" type="checkbox"/> None of the above 11 items

OTHER REGULATORY REQUIREMENTS

If the proposed stream channel alteration is subject to the following permits or approvals, indicate by checking the appropriate box below and submit either the approval letter from the appropriate agency or attach a copy of the application form. If the proposed stream channel alteration is not subject to the following permits or approvals, indicate by checking the "N/A" (Not Applicable) field.

	Attached	N/A
36. U.S. Army Corps of Engineers (Harbors and Rivers Act, Section 404, Clean Water Act)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
37. State Department of Health, Clean Water Branch (Section 401, Clean Water Act, Water Quality Certification, Best Management Practices Plan)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
38. Right-of-Entry or Right-of-Way Permit if the proposed stream channel alteration includes State lands. (Chapter 171, Hawaii Revised Statutes)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
39. Hawaii Environmental Policy Act (Chapter 343, Hawaii Revised Statutes; Title 11, Chapter 200, Hawaii Administrative Rules)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
40. Soil and Water Conservation District	<input type="checkbox"/>	<input checked="" type="checkbox"/>
41. County Certification of "No-Rise"	<input type="checkbox"/>	<input checked="" type="checkbox"/>
42. County Grading Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>
43. County Discretionary Permit(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

CULTURAL IMPACTS

Articles IX and XII of the State Constitution, other state laws, and the courts of the State, require government agencies to promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups. If there is not enough space available, please make a note in the field (e.g., "See attached") and attach all information with this application as requested.

44. Please provide the identity and scope of cultural, historical, and natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

Traditionally, Iao Valley was a primary native Hawaiian farming area, as settlers moved to Maui and generations aged and changed, farming began to wane. Primary water source was from Kalani Ditch to these small farms. Large agricultural companies later acquired water rights and operated large plantations eliminating the small farms. In the mid 60's Kalani Ditch was abandoned, mostly due to little use. Today only small native Hawaiian farmers grow kalo and other crops for subsistence with some selling excess crops to local.

45. Identify the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action.

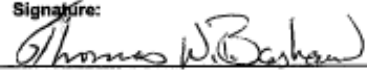
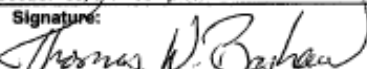
Since the property borders Wailuku River and the amount of water to be removed from the river is minimal, with use for domestic and agricultural use, native Hawaiian rights should not be impacted. There are currently no native farms within a mile of our property. Water flow of Wailuku River is constant as it flows past the property. Native farming in the close proximity of us is done by small subsistence farmers with some slightly larger farmers selling some of their crops.

46. What feasible action, if any, could be taken by the Commission on Water Resource Management in regards to your application to reasonably protect Native Hawaiian rights?

Since the requested amount of water diversion is minimal, it is doubtful any negative impact would affect native Hawaiian Rights. Therefore, no feasible action should need to be taken by the commission.

PROJECT DESCRIPTION
<p><i>Please complete the following sections by providing detailed information on the project components identified below. If there is not enough space available, please make a note in the field (e.g., "See attached") and attach all information with this application as requested.</i></p>
<p>47. Describe the overall project scope and objectives.</p> <p>Our property is a total of approximately 2.23 acres, much of which is very rocky and covered with large boulders. We use rain catchment as our primary water source but need a supplemental source in order to grow a reasonable amount of food crops. Rain catchment meets all our current needs during most of the year except during prolonged dry periods.</p>
<p>48. Describe existing stream channel dimensions and median streamflow conditions at the site of the proposed stream diversion works.</p> <p>As Wailuku River flows along our property line of approximately 150', the average flow width is approximately 25'. Minimum flow width during the past 3 years has been roughly 15'. Depth varies considerably as the river bed is very rocky.</p>

49. Identify and describe the project components outlined below
A. Materials N/A
B. Quantities N/A
C. Excavation N/A
D. Fill N/A
E. Disposal N/A
F. Construction methods N/A
G. Temporary facilities Pump and pick up inlet
H. Expected period of time required for construction N/A
I. Liability during construction N/A

50. Describe the project's consistency with county zoning and development plans. Property is zoned AG-2 and has met all county development codes, ie., 1 barn, 1 farm dwelling and 1 main dwelling, 2 separate septic systems and 3 water catchment systems (tanks)		
51. Identify potential alternatives (sources of water) to the project and describe the relative costs and benefits of each alternative. There are none and no future county plans to connect to county water.		
SUBMITTALS		
<i>Please submit the following plans, maps, or drawings in legible form, preferably on 8.5" by 11" sheets.</i>		
52. Location Map: Provide a location map of the proposed project relative to major roadways.		
53. Plans / Elevations / Sections: Provide a plan view of the proposed stream diversion works structure in relation to the stream channel and property boundaries. Elevation and section views of the diversion structure in relation to the stream channel should also be provided if available.		
SIGNATURES		
Signing below indicates that the signatories understand and swear that the information provided is accurate and true to the best of their knowledge. Further, the signatories understand that if the permit requested is granted by the Commission on Water Resource Management (Commission), the permit shall be subject to the following conditions:		
<ol style="list-style-type: none"> 1) The proposed work is to be completed within two (2) years from the date of permit approval. 2) The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion. 3) The permittee shall submit a set of as-built plans and photographs to the Commission upon completion of the project. 4) The permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months. 5) If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard. 		
54. APPLICANT		
Print Name: Thomas W Bashaw	Signature: 	Date: April 6, 2022
55. CONSULTANT		
Print Name:	Signature:	Date:
56. CONTRACTOR		
Print Name:	Signature:	Date:
57. LANDOWNER (If multiple landowners, skip Section 53, then complete and attach Form SCAP-LND with appropriate landowner signatures.)		
Print Name: Thomas W Bashaw	Signature: 	Date: April 6, 2022



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
2:08 pm, January 18, 2022

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		2. SOURCE LANDOWNER'S NAME		Source Landowner's Contact	
Thomas Bashaw		Thomas Bashaw			
Applicant's Mailing Address, or Principal Place of Business					
PO Box 1298, Wailuku, HI 96793					
Source Landowner's Mailing Address, or Principal Place of Business					
SAME					
Applicant's Phone		Source Landowner's Phone		Source Landowner's Fax	
[REDACTED]		same		same	
Applicant's Fax		Source Landowner's E-mail		Source Landowner's E-mail	
[REDACTED]		same		same	
SOURCE INFORMATION					
3. SURFACE WATER HYDROLOGIC UNIT: Island: <u>MAUI</u> Hydrologic Unit: <u>Iao River</u> Hydrologic Unit Code: <u>6024</u>					
4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT IF APPLICABLE: 10					
5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit: <u>See attachment A</u>					
6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: Zone: <u>3</u> - <u>3</u> - <u>0</u> 1 <u>8</u> : <u>0</u> 0 <u>7</u>					
6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: Zone: <u> </u> - <u> </u> - <u> </u> <u> </u> <u> </u> : <u> </u> <u> </u> <u> </u>					
7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all that apply. <input checked="" type="checkbox"/> Pipe <input checked="" type="checkbox"/> Pump <input type="checkbox"/> Ditch/auger <input type="checkbox"/> Other Describe: _____					
7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH? <input type="checkbox"/> Yes. How much water will be returned? <input checked="" type="checkbox"/> No					
8. PROPOSED FLOW MEASUREMENT INFORMATION: Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts? <input type="checkbox"/> Yes. List the manufacturer and describe the device: _____ <input checked="" type="checkbox"/> No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below. <u>See SWUP supplement attachment A</u>					
PROPOSED USE INFORMATION HRS §174C-51(4), (5), (6)					
9. TOTAL QUANTITY OF WATER REQUESTED: 6200 gallons per day. See Table 1, Item 14.					
10. PROPOSED USE: Check all that apply. <input checked="" type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Industrial See Table 1, Item 1. <input checked="" type="checkbox"/> Irrigation <input type="checkbox"/> Military <input type="checkbox"/> 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. See attachments B and C.					
PROPOSED USER INFORMATION					
12. APPURTENANT RIGHT: Do you claim an appurtenant right for your proposed water use? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <u>See attachment A</u> If yes, has the appurtenant right been established by the courts or the Commission? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system? <input type="checkbox"/> Yes. List the name of the system operator: _____ <input checked="" type="checkbox"/> No					
14. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use from the Commission? <input type="checkbox"/> Yes. List the file reference name(s): _____ <input checked="" type="checkbox"/> No					
15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from the Commission? <input type="checkbox"/> Yes. List the permit number(s): _____ <input checked="" type="checkbox"/> 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 <u>Thomas W. Bashaw</u> Signature Thomas W Bashaw Nov 24, 2021 Print Date			17. SOURCE LANDOWNER <u>Thomas W. Bashaw</u> Signature Thomas W Bashaw Nov 24, 2021 Print Date		

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY

LAND USE CONSISTENCY			EFFICIENCY OF USE				TOTAL POTABLE USE		TOTAL NON POTABLE USE		TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	
1	2	3	4	5	6	7	8	9	10	11	12	13
PURPOSE/ WATER USE CATEGORY	TRK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property line map, showing proposed location of use • Photograph of the area of proposed use.	STATE LAND USE DISTRICT	COMP RECORD Check and write in the date approved, if applicable.	COUNTY ZONING CODE	SWUP RECORD Check and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD QUANT OF GPD/ACRE (gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	IS METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEMS. If applicable, attach sheets to show how the number was calculated. For irrigation uses, fill in Table 2.		
Uses that require potable (drinking) water												
	Zone Sec PLOT		<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 PLOT		<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 PLOT		<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 PLOT		<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												GPD
Uses that do not require potable water												
DOM	Zone Sec PLOT	Ag	<input type="checkbox"/> Yes, date approved / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	Ag	<input type="checkbox"/> Yes, date approved / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	2 units	600	1200	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Land Use estimate see attachment A		
AGRCP	Zone Sec PLOT	Ag	<input type="checkbox"/> Yes, date approved / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	Ag	<input type="checkbox"/> Yes, date approved / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	1 acre	2500	2500	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Land Use estimate see attachment A		
AGRON	Zone Sec PLOT	Ag	<input type="checkbox"/> Yes, date approved / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	Ag	<input type="checkbox"/> Yes, date approved / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	.3 acre	2500	750	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Land Use estimate see attachment A		
	Zone Sec PLOT		<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 checked="" type="checkbox"/> No			
TOTAL NON POTABLE USE												GPD
TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =												GPD
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(6) HRS												GPD
None												

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.)
Zone	3 - 3 - 0 1 B : 0 1 0 7	fruit trees	.5	.5	year round	year round	trickle/spray	apply fixed depth irrigation
Zone	3 - 3 - 0 1 B : 0 1 0 7	Native plants	.3	.3	year round	year round	trickle/drip	apply fixed depth irrigation
Zone	3 - 3 - 0 1 B : 0 1 0 7	Veg garden	.2	.2	year round	year round	multiple sprinklers	apply fixed depth irrigation
Zone	3 - 3 - 0 1 B : 0 1 0 7	nursery/orna- mentals	.3	.3	year round	year round	trickle/drip	apply fixed depth irrigation
Zone	3 - 3 - 0 1 B : 0 1 0 7	Existing trees	.93	0	n/a	n/a	n/a	n/a
Zone								
Zone								
Zone								
Zone								
Zone								
Zone								
Zone								
Zone								
Zone								
Zone								
Zone								

9. COMMENTS:

- There is no existing county water service to the parcel
- Fruit trees includes: banana, papaya, avocado, mango, lilikoi, blueberry, Pakistan berry, mulberry, Panama berry, lemon, lime, mandarin orange, mountain apple, abiu, sapote, ulu, lychee, coffee, grapefruit
- Native plants includes: ohia, a'ai'i, koa, ti
- Vegetable garden includes: tomato, lettuce, beans, eggplant, chili peppers, pineapple, radish, basil, rosemary, thyme, pineapple, sweet potato, strawberry, mint
- Existing trees includes: Kukui, monkeypod, opima, african tulip, java plum, banyan, and require no irrigation
- Estimated irrigated acreages have taken into account driveways, easements and dwelling footprints

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	use of municipal water hook up would be cost prohibitive	water or non potable use in unavailable from county
Wastewater reuse	waste water re-use is not legal and there is no district system from central Maui treatment plant	
Ditch system	Non Existent	Non Existent
Desalinization	Non Existent	Non Existent
Ground water	cost prohibitive and permit unobtainable	cost prohibitive and permit unobtainable
Other (specify) rain catchment	2- 15000 gal catchment tanks w/triple filtration and UV light	2- 15000 gal catchment tanks w/triple filtration and UV light

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 preservation 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 attached supplement A, table -3-C-1
2. Explain below how your proposed new use(s) will not interfere with any existing legal use(s).
see attached supplement A, table -3-C-1
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 attached supplement A, table -3-C-1

ATTACHMENT A - SUPPLEMENT TO SWUPA-N

APPLICANTS: Thomas and Carrie Bashaw

Source Information:

Item 5. *Explain how your proposal uses(s) can be accommodated within the existing IFS for the above hydrologic unit:*

Since our request is for the minimal daily use requirements estimated for domestic use (600 gpd per dwelling) and state required agricultural plantings and necessary irrigation needs (2500 gpd per div ag acre), the conveyance of this minimal amount for irrigation and domestic water supplies should have no discernible effect to downstream points of diversion or the IFS. Further, while rain amounts during the rainy season, November through April, vary widely, it is likely water diversion amounts would be minimal perhaps as little as zero gpd during these months and done only upon storage tank depletion to about 25%.

Item 7a. Proposed Stream Diversion: *Pipe/Pump/Ditch-auwai:*

Due to elevation change from the river bed and the property irrigation needs of the property, it is likely only a portable submersible pump would be used in order to supplementally fill existing rain catchment tanks, as needed. No permanent pump or piping is anticipated as replenishment would occur only as needed during long periods without adequate rain.

There are currently two 15,000 gallon catchment tanks, one for each dwelling, along with a 1000 gallon catchment tank for the barn/workshop on the property for a total of 40,000 gallons. Rainfall totals vary widely with seasonal and drought conditions requiring additional hydro input from Iao Stream in order to properly irrigate current and future plantings during periods of inadequate rainfall.

During the permitting process for the construction of the main dwelling, state agricultural inspections required adequate agricultural planting in order to gain approval. Inspections were conducted with our plan passed by the State Land Use Planning Department on Maui. Rain catchment totals cannot meet the necessary requirements to adequately irrigate the agricultural requirements from the State of Hawaii. Final building inspection for the main dwelling was completed November 24, 2021.

NOTE: *Historically*, the kama auwai (south side of Iao Stream) and the kalani auwai (north side of Iao Stream) were the main sources of water for kalo and other agricultural uses in the area. The kama auwai became the Mission Ditch and then the Kama Ditch, whose

stream access point was moved further makai from the original access point. This 2nd intake point which resides on subject property was damaged around 1995 and Wailuku Ag decided not to repair it. I understand that a tunnel portion of the kalani auwai caved in around 1960, where Wailuku Ag (C. Brewer) decided not to repair it.

Item 7b. Will the diverted water be returned to the stream?

Since all water pumped into storage tanks would be used for domestic use and diversified agricultural irrigation, it is doubtful very little water would percolate through the soil. Because of the low volume needed for diversity agricultural irrigation and domestic use, it is estimated very little would be returned to the stream.

Item 8. Proposed flow measurement information; *Explain how stream diversion will be measured or estimated to justify amounts requested...*

Since water replenishment to the storage tanks would be accomplished only when water levels are determined to be low (approximately 25% of the total in each storage tank), it is very easy to estimate, with a high degree of accuracy, amounts of water replenishment since the total number of gallons the tanks can hold are a known fixed amount. A log book would be kept noting the dates and amount pumped from the stream which would be calculated by fairly accurately estimating the levels in the tank prior to, and after completing the replenishment of the tanks.

The pump to be used would be a Multiquip 1 HP portable submersible pump, model ST-2037, with a 2" discharge hose reduced to standard 3/4' garden hose for input to tank. The pump is capable of pumping up to 73 gallons per minute at maximum ideal installation conditions. It is calculated that the average daily diversion would be much less than the requested 600 gallons daily per dwelling. Actual estimated average diversion would be equal to approximately 300 gallons per day.

If required by the commission, a flow meter could be installed at the entry point of tanks and connected during replenishment periods.

Item 12. Attached to this application are copies of the deeds dating back to Wailuku Agriculture Company transfer to Horcago, Horcago to Corbett, and Corbett to Bashaw. These items are in the folder titled "Deeds History"

Table 1, item 11; Applicants justification for requested quantity of use for item 9

Domestic Use; While it is highly doubtful each dwelling would consume its 600 gallons daily for domestic use, we are requesting the standard used by the Commission on Water Resource Management estimates for domestic dwellings per day to avoid having to request

future revisions of this application. Also, since determining daily rainfall amounts is impossible, it makes logical sense to request the domestic daily estimate. The actual estimated total average diversion would be approximately 300 gallons per day for domestic use, or 109,500 gallons per year.

NOTE: Estimated irrigated acreages have taken into account driveways, easements, and dwelling footprints.

AGRCP/ACRON Use;

Determining exact irrigation amounts is dependant upon rainfall amounts and frequency. Obviously, the more rainfall the more absorption of water in the soil. Again, it is highly unlikely that 2500 gallons per acre, per day would be necessary but, it is only prudent to request the Water Resource Management standard.

Table 3: Alternatives Analysis and Additional Requirements.

C. Additional Requirements:

C-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.

Our proposed uses are consistent with the Public Interest. Since state and/or county agricultural properties require a certain amount of ag use to obtain building permits, water use for diversified agriculture on land zoned for agriculture is consistent with the public interest." Also, since Maui County does not service the area with county water supply, the authorized and permitted dwellings require adequate water resources which is clearly in the public interest.

In re: Waiahole Ditch Combined Contested Case, 94 Hawai'i 97, 162, 9 P.3d409, 474 (2000) ("Waiahole I"). Further, HRS 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture and the maintenance of proper ecological balance and scenic beauty is "in the public interest."

While we are not native Hawaiians engaging in traditional Hawaiian agricultural practices by planting kalo, we have been residents of Hawaii for the large majority of our lives and maintain an interest in the aina by providing diversified agricultural crops. This would help to provide alternative food sources and help maintain a proper ecological balance, scenic beauty, and lower carbon footprint, while continuing to maintain and enhance a green environment for this portion of Iao Valley, Maui county, and Hawaii as a whole, which is "consistent with the public interest.

Our proposed uses is a Protected Public Trust Purpose.

Most of the water we use supports other existing public trust purposes such as: (1) the maintenance of waters in their natural state; (2) resource protection; (3) water for domestic and agricultural purposes. (3) scenic beauty (4) a positive carbon footprint, (5) a continued habitat for avian and other animal life. (6) the protection of traditional and customary Hawaiian rights.

Our proposed use supports beneficial Instream uses.

By using the water resource to irrigate plant life, and vegetation for food sources while maintaining existing plant life, the following items will be promoted. (1) the maintenance of fish and wildlife habitats as they currently exist; (2) outdoor recreational activities; (3) our maintenance of existing ecosystems of wetlands, and stream vegetation that border our property that runs through the middle of Iao Stream;

Our proposed use is Reasonable and Beneficial.

"Reasonable-beneficial use" is defined as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the State and County land use plans and public interest." HRS 174C-3.

****In terms of economic and efficient utilization, we intend to use only the amount necessary to cultivate agricultural crops consistent with the public interest.*

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

Iao Stream runs through our property so we have riparian rights (see Appurtenant Rights Historical Data folder) which are constitutionally protected, see Haw. Const. Art. XI, 7 (preserving appurtenant rights and existing riparian rights).

C-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.

As far as we know, there is no Hawaiian Home Lands in the district of Wailuku.

PUBLIC NOTICE

**Application for Surface Water Use Permit
Wailuku River, 'Iao Surface Water Management Area, Maui**

The Commission on Water Resource Management received the following Surface Water Use Permit Application. Public Notice is given pursuant to Hawaii Administrative Rules, Section 13-171, "Designation and Regulation of Water Management Areas."

SWUP No. 5848.6

Full application link: <https://dlnr.hawaii.gov/cwrm/newsevents/notices/>

Applicant: Thomas Bashaw
P.O. Box 1298
Wailuku, HI 96793

Landowner: Thomas Bashaw
P.O. Box 1298
Wailuku, HI 96793

Date Application Filed as Complete: June 6, 2022

Surface Water Hydrologic Unit: 'Iao (6024), Maui

Water Source: Wailuku River, Maui
Applicant is simultaneously applying for a Stream Diversion Works Permit (SDWP.5889.6)

Location of Diversion: Tax Map Key: (2) 3-3-018:007

Proposed Use: Agriculture, Domestic

Quantity Requested: 4,450 gallons per day

New/Existing	Description	Location of Water Use	Qty of Use (GPD)
New	Domestic (2 units)	TMK (2) 3-3-018:007	1,200
New	Agriculture, Crops & Processing (Fruit trees, native plants, vegetable garden)	TMK (2) 3-3-018:007	2,500
New	Agriculture, Ornamental & Nursery Plants	TMK (2) 3-3-018:007	750

Written objections or comments on this application may be filed by any person who has property interest in any land within the hydrologic unit of the source of water supply, any person who will be directly and immediately affected by the proposed water use, or any other interested person. Written objections must (1) state the property or other interest in the matter (provide TMK information); (2) set forth questions of procedure, fact, law, or policy, to which objections are taken; and (3) state all grounds for objections to the proposed permit. Written objections must be received by **August 26, 2022**. Objections must be sent to 1) the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809 and 2) the applicant at the above address.

COMMISSION ON WATER RESOURCE MANAGEMENT



M. KALEO MANUEL, Deputy Director for
SUZANNE D. CASE, Chairperson

Dated July 27, 2022

Publish in: Maui News issues of August 3, 2022 and August 10, 2022.



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
KAKUHIWEWA BUILDING
601 KAMOKILA BLVD., STE 555
KAPOLEI, HI 96707

SUZANNE B. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
COASTAL WATERS AND CLAYAL LANDS
CONSERVATION AND RECREATION IMPROVEMENT
PROGRAMS
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAWAIAHI ISLAND RESERVE COMMISSION
LAND
STATE PARKS

September 14, 2022

Kaleo Manuel, Deputy Director
State of Hawaii
Department of Land and Natural Resources
Commission on Water Resource Management (CWRM)
P.O. Box 621
Honolulu, Hawaii 96809
c/o dean.d.uveno@hawaii.gov

IN REPLY REFER TO:
Project No.: 2022PR00951
Doc. No.: 2209IK04
Archaeology

Dear Kaleo Manuel:

**SUBJECT: Chapter 6E-42 Historic Preservation Review –
Stream Diversion Works Permit Application – SDWP.5889.6
Surface Water Use Permit Application – SWUP.5848.6
Thomas Bashaw – Installation of a Portable Submersible Pump
Wailuku Ahupua‘a, Pū‘ali Komohana District, Island of Maui
TMK: (2) 3-3-018:007 por.**

This letter provides the State Historic Preservation Division's (SHPD's) review of the Commission on Water Resource Management (CWRM) Stream Diversion Works (SDWP.5889.5) and Surface Water Use (SWUP.5848.6) Permit Applications. SHPD received the submittal on August 1, 2022, which included a CWRM cover letter, a plat map, a subdivision individual lot map, an HRS 6E Submittal Form, a google map, permit applications, and overview photographs.

The landowner, Thomas Bashaw, proposes to install a two-inch-diameter, 73-gallon-per-minute (gpm) portable submersible pump within 'Iao Stream. Water will be pumped twice a week to fill three existing water catchment tanks totaling 40,000 gallons. The proposed water use will be for 1.3 acres of diversified agriculture and domestic use. There are no proposed ground disturbances.

A search of our records indicates that an archaeological inventory survey (AIS) has been conducted for a 50-acre area that included the current project area (Haun and Henry 2002). The AIS identified six historic properties and ten component features including SIHP Site #50-50-04-05323 (Kama Ditch), SIHP Site #50-50-04-05324 (Waihee Ditch siphon), SIHP Site #50-50-04-05325 (reservoir), SIHP Site #50-50-04-05326 (Kalani Ditch), SIHP Site #50-50-04-05327 (remains of an oven and pig pen), and SIHP Site #50-50-04-05328 (well). Haun and Henry (2002) assessed all six historic properties significant under Criterion "d" as contributing information to Hawai'i's and Maui's history, indicated they were adequately documented, and recommended no further work. SHPD agreed with the significant assessments and recommendations and accepted the AIS report (Log No. 2003.0938, Doc. No. 0306MK25; Log No. 2003.1791, Doc. No. 0309MK14). Additionally, the immediate vicinity of the subject parcel contains numerous Land Commission Awards (LCAs) situated along 'Iao Stream. Two LCAs within the subject parcel are LCA 3225 to Opunui and LCA 7907 to Kuke.

Based on the information, SHPD's determination is "**No historic properties affected**" for the current project. Pursuant to HAR §13-284-7(e), when the SHPD agrees that the action will not affect any significant historic properties, this is the SHPD's written concurrence and historic preservation review ends. The HRS 6E historic preservation review process is ended. The permit issuance process may proceed.

Kaleo Mammel
9/14/2022
Page 2

Attach to the permit: In the unlikely event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance, and contact the State Historic Preservation Division, at (808) 652-1510.

SHPD requests the opportunity to review future permits involving ground-disturbing activities within the subject parcel.

Please contact 'Iolani Kauhane, Maui Archaeologist III, at iolani.kauhane@hawaii.gov for matters regarding archaeological resources or this letter.

Aloha,

Alan Downer

Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

cc: Thomas Bashaw, fjittom@icloud.com

STANDARD STREAM DIVERSION WORKS PERMIT CONDITIONS
(Revised December 15, 2020)

1. The permit application and staff submittal approved by the Commission at its meeting on the above date shall be incorporated herein by reference.
2. The permittee, owner and/or operator of the stream diversion works shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis to the Commission per HAR §13-168-7 Report of Water Use.
3. The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, endangered species, and floodways. The permittee shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments, including, but not limited to, instream flow standards.
4. The permittee, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the permittee or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
5. The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion. The permittee shall submit a set of as-built plans and photos in pdf format of the completed work to the Commission upon completion of this project. This permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The proposed work under this stream channel alteration permit shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.
6. Before proceeding with any work authorized by the Commission, the permittee shall submit one set of construction plans and specifications in PDF format to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
7. The permittee shall implement site-specific, construction Best Management Practices in consultation with the DOH Clean Water Branch and other agencies as applicable, that are designed, implemented, operated, and maintained by the permittee and its contractor to properly isolate and confine activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting State waters per HRS Ch. 342D Water Pollution; HAR §11-54-1 through §11-54-8 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control, Appendix C.
8. The permittee shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The permittee shall plant or cover lands denuded of vegetation as quickly as possible to prevent erosion and use native plant species common to riparian environments to improve the habitat quality of the stream environment.
9. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the permittee shall stop work in the area of the find and contact the Department's Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.

STANDARD SURFACE WATER USE PERMIT CONDITIONS
FOR NEW AND EXISTING USES

Pursuant to Hawaii's State Constitution, Article XI, Section 7, Hawaii Revised Statutes (HRS), Chapter 174C; Hawaii Administrative Rules (HAR), Chapters 13-167 through 13-171; and Hawaii decisional law and custom, the permittee is hereby authorized to use surface water from the Waihe'e, Waiehu, 'Āao, and Waikapū Surface Water Management Areas, Maui, and in the amount and from and upon the locations described above; subject however, to the requirements of law including, but not limited to, the following conditions:

1. The right to use water is a shared use right.
2. The use(s) authorized by law and by this permit does not constitute ownership rights.
3. The permittee shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and County governments.
4. In the unlikely event that subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance, and contact the State Historic Preservation Division at (808) 652-1510.
5. The permittee, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the permittee or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
6. The water use must at all times meet the requirements set forth in HRS §174C-49(a), which means that it:
 - a) Can be accommodated with the available water source;
 - b) Is a reasonable-beneficial use as defined in HRS §174C-3;
 - c) Will not interfere with any existing legal use of water;
 - d) Is consistent with the public interest;
 - e) Is consistent with State and County general plans and land use designations;
 - f) Is consistent with County land use plans and policies; and
 - g) Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act and HRS §174C-101(a).
7. The permittee shall utilize best irrigation practices to maximize water use efficiency. Excessive preventable waste may result in water use permit modification or revocation.

LOCATION OF USE

8. The water described in this water use permit may only be taken from the location described and used for the reasonable beneficial use described at the location described above. Reasonable beneficial uses means "the use of water in such a quantity as is necessary for economic and efficient utilization which is both reasonable and consistent with State and County land use plans and the public interest." HRS §174C-3.

WATER USE REPORTING

9. In accordance with HAR §13-168-7, each permittee will be required to report their monthly water use to the Commission. All unmetered users, whether receiving water directly from the river/stream or from a ditch/‘auwai, are required to report the following information to the Commission on a monthly basis:
- a. Source and amount of water inflows, where the water is coming from, whether from a stream, spring, ditch/‘auwai, or pipeline.
 - b. Outflow amounts, when relevant, such as for lo‘i kalo. For outflows, reporting shall also include where the water is going, whether to the source ditch/‘auwai, other users, or dispersed without re-use.
- For forms or online reporting, see <https://dlnr.hawaii.gov/cwrp/info/wateruserreport/>.

MODIFICATION OR REVOCATION

10. This permit may be modified or revoked and the amount of water initially granted may be reduced if the Commission determines it is necessary to:
- a) Protect the water sources (quantity or quality);
 - b) Meet other legal obligations including appurtenant rights;
 - c) Insure adequate conservation measures;
 - d) Require efficiency of water uses;
 - e) Reserve water for future uses, provided that all legal existing uses of water as of June, 1987 shall be protected;
 - f) Meet legal obligations to the Department of Hawaiian Home Lands, if applicable; or
 - g) Carry out such other necessary and proper exercise of the State’s and the Commission’s police powers under law as may be required.
- Prior to any reduction or revocation, the Commission shall give notice of its proposed action to the permittee and provide the permittee an opportunity to be heard.
11. The permittee shall request modification of the permit as necessary to comply with all applicable laws, rules, and ordinances that will affect the permittee’s water use.
12. Any modification of the permit terms, conditions, or uses may only be made with the express written consent of the Commission. HRS §174C-57.
13. After a hearing, the commission may suspend or revoke a permit for:
- a) Any materially false statement in the application for the water permit, a modification of a permit term, or any materially false statement in any report or statement of fact required of the user pursuant to this part;
 - b) Any willful violation of any condition of the permit;
 - c) Any violation of any provision of this chapter;
 - d) Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user’s nonuse was due to extreme hardship caused by factors beyond the user’s control. The Commission and the permittee may enter into a written agreement that, for reasons satisfactory to the Commission, any period of nonuse may not apply towards the four-year revocation period. Any period of nonuse which is caused by a declaration of water shortage pursuant to HRS §174C-62 shall not apply towards the four-year period of forfeiture.

The Commission may cancel a permit, permanently and in whole, with the written consent of the permittee. HRS §174C-58.

TRANSFER

14. A permit may be transferred, in whole or in part, from the permittee to another, if:
 - a. The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and,
 - b. The Commission is informed of the transfer within ninety days. HRS §174C-59. Failure to inform the department of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer, which involves a change in any condition of the permit, including a change in use covered in HRS §174C-57, is also invalid and constitutes a ground for revocation.
15. In the event that the landowner or tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the change within thirty (30) days after the permittee files the deed with Bureau of Conveyances or receives notice of the tax map key change.
16. The priority of the permit will be re-evaluated upon transfer or assignment and may be placed in a different priority based on new usage.

FEES

17. The commission shall promulgate a schedule of application and permit fees. The fees shall be used to defray the administrative costs of the permit systems established under this chapter. A public agency shall not be subject to the payment of any fees. Fees may include a pro rata share the cost of the USGS natural flow gage. HRS §174C-61.

DECLARATION OF WATER SHORTAGE

18. All permit conditions may be suspended or modified pursuant to a declaration of water emergency. HRS §174C-62.
19. The commission shall formulate a plan for implementation during periods of water shortage. As a part of the plan, the commission shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof. In accordance with the plan adopted under subsection(a), the commission may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition. HRS §174C-62.

WATER SHORTAGE PLAN

20. All permittees, unless exempted by the commission, shall submit a water shortage plan outlining how it will reduce its own water use in case of a shortage. Every water shortage plan shall be subject to approval or modification by the Commission. HAR §13-171-42(c).
21. The Commission shall use permittee's water shortage plans to identify and determine steps to be taken to reasonably protect water users during a declaration of water emergency, including but not limited to a water shortage.

ACCESS

22. Permittee shall provide access to Commission staff and authorized representatives to gage, meter, and monitor diversion and water usage.

OTHER

23. Permittees who divert water from the stream may be responsible for meeting the Interim Instream Flow Standard (IIFS) located below their diversion, if applicable. If the Commission finds that the actions of the permittee cause the IIFS to fall below a minimum, as established by the Commission, then the permittee may be subject to fines after a hearing.
24. Permittees diverting water from 'auwai are responsible for the proper maintenance of 'auwai on the location of use to ensure the continuity of water supply to other users.
25. The Commission reserves the right to amend or modify permit allocations, recommend system improvements or efficiencies, or amend conditions if water temperature is not sufficient to support kalo cultivation for traditional and customary practices and rights as recognized in the Commission's decision.