STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES | KA 'OIHANA KUMUWAIWAI 'ĀINA
COMMISSION ON WATER RESOURCE MANAGEMENT | KE KAHUWAI PONO
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

August 15, 2023
Honolulu, Hawai'i

Approval of the Stream Diversion Works Permit (SDWP.5931.6) Application,
Installation of a Portable Submersible Pump;
Find that a Petition to Amend the Interim Instream Flow Standard is Not Required; and
Approval of Surface Water Use Permit (SWUP.5928.6) Application for New Use,
With Special Conditions, Mark Juergensmeyer,
3,850 gpd for Diversified Agriculture and Domestic Use;
Wailuku River, 'Īao Surface Water Management Area, Maui, TMK: (2) 3-3-018:008

APPLICANT
Mark Juergensmeyer
30 Hau'oli Street, Unit 106
Wailuku, HI 96793

LANDOWNER
Same

SUMMARY OF REQUEST

Approve the following:

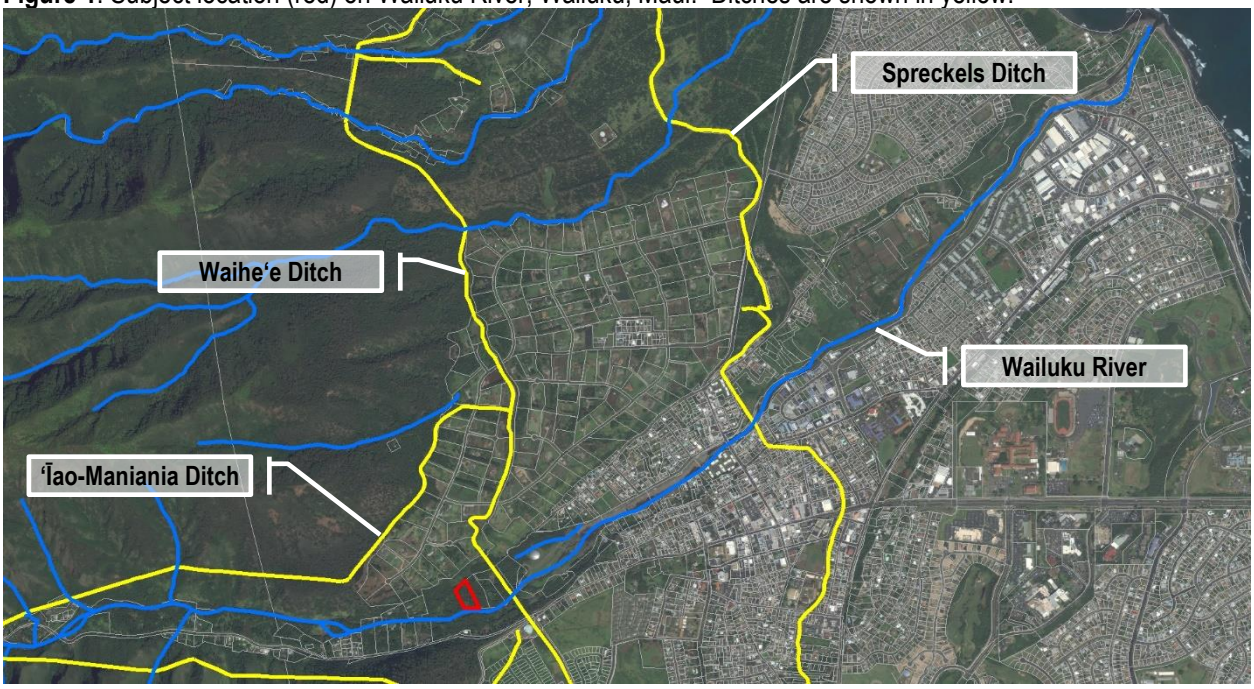
Stream Diversion Works Permit (SDWP.5931.6) Application consisting of a three-inch diameter, 73-gallon per minute (gpm) portable submersible pump installed in the Wailuku River estimated to pump daily to supplementally fill an existing 15,000 gallon rain catchment storage tank.

Surface Water Use Permit (SWUP.5928.6) Application for new use in the amount of 3,850 gallons per day (gpd) consisting of 3,250 gpd (1.3 acres x 2,500 gpd/acre (gad)) for diversified agriculture and irrigation, and 600 gpd (1 unit x 600 gpd) for domestic use.

Find that a petition to amend the Interim Instream Flow Standard (IIFS) is not required under HRS 174C-71 and HAR 13-169-36 because 3,850 gpd is less than 5-percent (5%) of the gaged flow readings, is within the stream's natural variability, and is considered a de minimis amount.

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 August 18, 2022, the Commission on Water Resource Management (Commission) received the complete SDWP.5931.6 Application and SWUP.5928.6 Application. The Stream Diversion Works Permit Application is on the Commission's website at https://files.hawaii.gov/dlnr/cwrm/swreview/SDWP_5931_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://dlnr.hawaii.gov/cwrm/newsevents/notices/. The public notice was also published in the Maui News on April 23 and May 3, 2023.

STREAM DESCRIPTION

Wailuku River occurs within the 'Īao 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 (Q_{100}) 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 Q_{95} flow was 11 mgd; the Q_{90} flow was 12 mgd; the Q_{70} flow was 17 mgd; and the Q_{50} 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/ʻĪao-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. There are numerous kuleana users diverting off of the stream and all users are summarized in **Table 2** below.

PROJECT DESCRIPTION

On the left bank looking downstream, the proposed diversion will consist of a three-inch diameter, 73-gpm portable submersible pump estimated to pump daily to supplementally fill an existing 15,000 gallon rain catchment storage tank. The applicant notes that the submersible pump will only run for a maximum of one hour per day and that water will not be impounded within the stream channel. The proposed use is for 3,850 gpd consisting of 3,250 gpd (1.3 acres x 2,500 gad) for diversified agriculture, irrigation or ornamental plants, and 600 gpd (1 unit x 600 gpd) for domestic use. Irrigation practices include trickle, spray, and drip. Estimated acreages have taken into account driveways, easements, dwelling and out-building footprints. See **Table 1** for a summary of the water use request.

Table 1. Summary of Water Use Request.

TMK Parcel	Water Use Category	Units or Net Acreage	GPD/Unit or GPD/Acre	Requested Quantity (GPD)
(2) 3-3-018:008	Agriculture: Crops & Processing	1.0 acre	2500	2,500
(2) 3-3-018:008	Agriculture: Ornamental & Nursery Plants	0.3 acre	2500	750
(2) 3-3-018:008	Domestic	1 unit	600	600
			Total:	**3,850**

See **Figure 2** for a photo of the subject property (taken from the County of Maui website). See **Figure 3** for a generalized map showing layout of domestic and diversified agriculture on the subject parcel. See **Figure 4** for site photos.

Figure 2: Subject location (blue) on Wailuku River, Wailuku, Maui. Approximate location of the submersible pump is indicated by the arrow. Photo date 6.28.2022. From the County of Maui website.

Figure 3: Generalized map showing layout of domestic and diversified agriculture on the subject parcel.

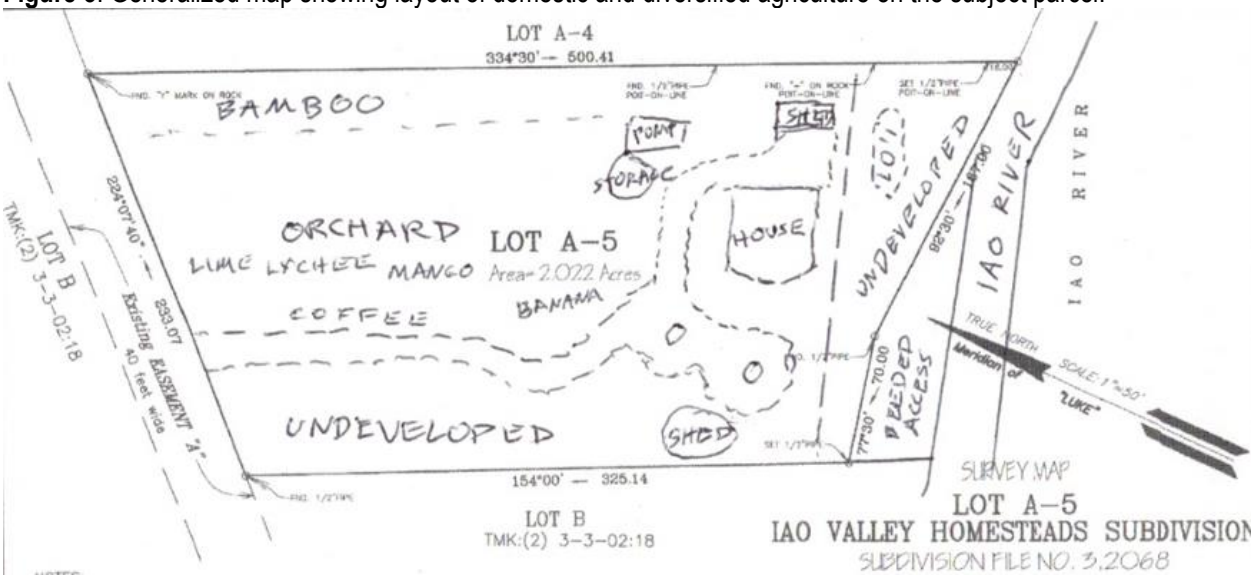


Figure 4: Site photos.

Agricultural dwelling.


Wailuku River, adjacent water source.


Rain catchment storage tank.


Rain catchment system.


Papaya trees.


Mango and banana trees.


Coffee trees.


Lychee, orange, and lime trees.

AGENCY REVIEW COMMENTS

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

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

Maui County, Planning Department: No objections.

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

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

DLNR, Aquatic Resources: This request will require a pump be added directly to the stream, therefore, we are concerned that there could be some minor impacts that should be mitigated. We would like to make sure that no alteration to the stream bed is made in order to pond up water for easy pumping. The natural stream habitat and flow patterns should not be altered in anyway to allow for the placement and use of the pump. We would also like to see screening used around the pump and/or some other type of effort to prevent aquatic animals from being sucked into the pump. Finally, we do feel it is appropriate to meter the flow of water removed in order for the department to fully understand the extent of water diversions on this stream. If these actions are all taken, the request for up to 3,850 gpd as needed to supplement an existing water catchment system should not have any significant impact to the stream ecosystem.

> *CWRM Staff Response:* The applicant states no changes to the bed and banks of the stream will be made, that the pump has a built-in filter and that he will also have a screen around the pump. All permittees are required to report their water use on a monthly basis.

DLNR, Engineering: No comments.

DLNR, Forestry and Wildlife (DOFAW): The State listed ʻŌpeʻapeʻa or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight. The State listed Nēnē or Hawaiian Goose (*Branta sandvicensis*) could potentially occur in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. The project area is within the range of the State listed Blackburn's Sphinx Moth (*Manduca blackburni)* or BSM. Larvae of BSM feed on many nonnative hostplants, which includes tree tobacco (*Nicotiana glauca*), that grow in disturbed soil. We recommend contacting the Hawaiʻi Island Branch DOFAW office at (808) 974-4221 for further information about where BSM may be present and whether a vegetation survey should be conducted to determine the presence of plants preferred by BSM. DOFAW recommends removing plants less than one meter in height or during the dry season to avoid harm to BSM. If you intend to either remove tree tobacco over one meter in height or to disturb the ground around or within several meters of these plants, they must be thoroughly inspected by a qualified entomologist for the presence of BSM eggs and larvae. The project work on or at ʻIao Stream could affect endangered native Hawaiian damselflies (*Megalagrion spp.*) that may be present. DOFAW therefore recommends a survey be conducted by a qualified entomologist to determine if listed damselflies are present in the project area and to assess any potential impacts to those species.

DOFAW recommends minimizing the movement of plant or soil material between worksites. Soil and plant material may contain detrimental fungal pathogens (e.g., Rapid ʻŌhiʻa Death), vertebrate and invertebrate pests (e.g., Coqui Frogs, Little Fire Ants, etc.), or invasive plant parts (e.g., Miconia, Mullein, etc.) that could harm our native species and ecosystems. We recommend consulting the Maui Invasive Species Committee (MISC) at (808) 573-6472 to help plan, design, and construct the project, learn of any high-risk invasive species in the area, and ways to mitigate their spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species. To prevent the spread of Rapid ʻŌhiʻa Death (ROD), DOFAW requests that the information and guidance at the following website be reviewed and followed if ʻōhiʻa trees are present at the project site that will be removed, trimmed, or potentially injured: https://cms.ctahr.hawaii.edu/rod.

We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to near-shore waters and marine ecosystems. We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible.

CWRM Staff Response: Added as a special condition by reference. See **Exhibit 4**.

DLNR, Historic Preservation: On July 26, 2023, Historic Preservation determined that no historic properties affected and that the permit issuance process may continue. See **Exhibit 5**.

CWRM Staff Response: Concur.

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.

US Army Corps of Engineers: No comments received.

US Fish and Wildlife Service (FWS): No comments received.

Public Comments: No comments 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, "Although the property does not contain any sites or artifacts that are revered in Native Hawaiian culture, the property is part of a land grant given to Native Hawaiians by King Kamehameha III for agricultural use. For this reason, and for my general respect for the traditional Hawaiian trusteeship of the ʻāina throughout the Hawaiian islands, care has been given to respect the land and provide a native Hawaiian character to it. Since I was the founding dean of the School of Hawaiian, Asian and Pacific Studies at the University of Hawai'i at Manoa, I have some understanding of the importance of the ʻāina for Native Hawaiian culture. For this reason I have tried to preserve as much of the land in an undeveloped state as possible, and to respect native plants throughout the property. At the outset of my stewardship of this property I held a blessing ceremony led by a native Hawaiian kahuna. Another Hawaiian blessing ceremony with a native Hawaiian kahuna was held at the commencement of the construction of the dwelling and outbuildings on the property. The main dwelling and outbuildings have been designed in traditional Polynesian style. The main building is entirely bamboo. There are no walls or glass windows; only screens and bamboo shutters. It was designed by a local architect who has studied Bali and Polynesian style architecture in the creation of 100% bamboo structures. At its completion it was featured in the Maui Times as an example of the use of native construction materials to create sustainable ecological architecture."

   CWRM Staff Response: Cultural, historical, and natural resources in which traditional and customary native Hawaiian rights rely on are known to exist throughout ʻĪao Valley. There are 17 out of 25 surface water use permittees whose source of water is the Wailuku River that have Priority 1 uses consisting of domestic, appurtenant and traditional and cultural rights. See **Table 2**. No comments were received by DLNR ʻAha 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, "Although the property does not contain any sites or artifacts that are revered in Native Hawaiian culture, the property is part of a land grant given to Native Hawaiians by King Kamehameha III for agricultural use. For this reason, and for my general respect for the traditional Hawaiian trusteeship of the ʻāina throughout the Hawaiian islands, care has been given to respect the land and provide a native Hawaiian character to it. Since I was the founding dean of the School of Hawaiian, Asian and Pacific Studies at the University of Hawai'i at Manoa, I have some understanding of the importance of the ʻāina for Native Hawaiian culture. For this reason I have tried to preserve as much of the land in an undeveloped state as possible, and to respect native plants throughout the property. At the outset of my stewardship of this property I held a blessing ceremony led by a native Hawaiian kahuna. Another Hawaiian blessing ceremony with a native Hawaiian kahuna was held at the commencement of the

construction of the dwelling and outbuildings on the property. The main dwelling and outbuildings have been designed in traditional Polynesian style. The main building is entirely bamboo. There are no walls or glass windows; only screens and bamboo shutters. It was designed by a local architect who has studied Bali and Polynesian style architecture in the creation of 100% bamboo structures. At its completion it was featured in the Maui Times as an example of the use of native construction materials to create sustainable ecological architecture."

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 de minimis 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, "Although the property does not contain any sites or artifacts that are revered in Native Hawaiian culture, the property is part of a land grant given to Native Hawaiians by King Kamehameha III for agricultural use. For this reason, and for my general respect for the traditional Hawaiian trusteeship of the 'āina throughout the Hawaiian islands, care has been given to respect the land and provide a native Hawaiian character to it. Since I was the founding dean of the School of Hawaiian, Asian and Pacific Studies at the University of Hawai'i at Manoa, I have some understanding of the importance of the 'āina for Native Hawaiian culture. For this reason I have tried to preserve as much of the land in an undeveloped state as possible, and to respect native plants throughout the property. At the outset of my stewardship of this property I held a blessing ceremony led by a native Hawaiian kahuna. Another Hawaiian blessing ceremony with a native Hawaiian kahuna was held at the commencement of the construction of the dwelling and outbuildings on the property. The main dwelling and outbuildings have been designed in traditional Polynesian style. The main building is entirely bamboo. There are no walls or glass windows; only screens and bamboo shutters. It was designed by a local architect who has studied Bali and Polynesian style architecture in the creation of 100% bamboo structures. At its completion it was featured in the Maui Times as an example of the use of native construction materials to create sustainable ecological architecture."

CWRM Staff Response: While staff don't anticipate any impacts on traditional and customary practices because the quantity of use is insubstantial and the 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 to mitigate any impacts.

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 3,850 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. Staff estimates that both the quantity and quality 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. Per the D&O, Order no. 23, the IIFS for the Wailuku River is:

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 ʻĪao Valley Road.
c. The special provisions for Maui Department of Water Supply and the kuleana users of the ʻĪao-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 ʻĪao-Waikapū and ʻĪao-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 ʻĪao 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 ʻĪao 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 3,850 gpd is less than 5-percent (5%) of the gaged flow readings, is within the stream's natural variability, and is considered a de minimis 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 is one (1) permit holder located adjacent to and downstream of the applicant and three (3) surface water use permit holders located about 2.5 miles downstream of the applicant. The three downstream permit holders receive their water from spring sources connected to the river. The subject request of 3,850 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 (COL no. 174).

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 loʻi kalo. Priority 4 are new uses not based on appurtenant rights.

Per the D&O (Order no. 23), the IIFS for the Wailuku River is 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 ʻĪao Valley Road.
c. The special provisions for Maui Department of Water Supply and the kuleana users of the ʻĪao-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 ʻĪao-Waikapū and ʻĪao-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 ʻĪao 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 ʻĪao Valley Road, may the water in excess of 10 mgd be diverted at the Spreckels Ditch intake operated by Mahi Pono.

The request of 3,850 gpd is less than 5-percent (5%) of the gaged flow readings, is within the stream's natural variability, and is considered a de minimis 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.

A summary of surface water use permits located in the ʻĪao Surface Water Management Area are shown in **Table 2**.

Table 2: Surface Water Use Permits, ʻĪao Surface Water Management Area.

SWUP No.	Permittee	Total Amount (gpd)	Notes
Source: Wailuku River or Spring (Above IIFS)			
2304	DLNR State Parks	4,200	River with hoʻi; Located above IIFS.
ALLOCATION	Wailuku River Q_{70}: 17 mgd Wailuku River IIFS: 10 mgd Q_{70} – IIFS: 7 mgd or 7,000,000 gpd	**7,000,000**	USGS gage 16604500 above ʻĪao-Waikapū and ʻĪao-Māniania Ditches
Source: ʻĪao-Māniania Ditch			
2189 / 2190	WCEIC	680,186	184 individuals
2196	WCEIC	78,155	5 lots in common area
2215 / 2216	Brito	6,150	
Permitted Use Total for ʻĪao-Māniania Ditch		**764,491**	
Source: ʻĪao-Waikapū Ditch			
2178 / 2179	County – Maui DWS	3,200,000	
2339	Yamaoka	1,950	
2188	L. Vida Jr.	6,250	
2292 / 2293	Vida	2,400	
2303	Pinto	2,750	
2183	Kihei Garden	33,261	
3671	Sloan	2,167	
3665	Ota	5,668	
4442	Hee	1,668	
4444	Takitani	2,833	
4445	SPV Trust	1,668	
2207 / 2208	Makani Olu Partners	138,201	
2204	McLean	150,350	
2191	Dando	250	
Permitted Use Total for ʻĪao-Waikapū Ditch		**3,549,416**	
Wailuku River or Spring			
2243 / 2244	Hoʻoululāhui	455,000	River with hoʻi
2370	Ornellas	213,750	River with hoʻi
5848	Bashaw	4,450	River
2371	Lozano	29,678	Spring
2206	Mahi Pono	High flows only	River
2275	Sevilla	50,700	Spring
3623	Almeida	2,728	Spring
Permitted Use Total for Wailuku River or Spring		**756,306**	
TOTAL PERMITTED USE		**5,074,413**	
ALLOCATION minus TOTAL PERMITTED USE		**1,925,587**	
5928	*Juergensmeyer (pending)*	*3,850*	*River*
REMAINING ALLOCATION AVAILABLE		**1,921,737**	

(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, irrigation of ornamental plants, 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 3,850 gpd consisting of 3,250 gpd (1.3 acres x 2,500 gad) for diversified agriculture and irrigation of ornamental plants, and 600 gpd (1 unit x 600 gpd) for domestic use. These amounts are consistent with 2,500 gpd for diversified agriculture and irrigation, and 600 gpd for domestic use standards per the D&O, Conclusions of Law:

90. "(W)ater use for diversified agriculture on land zoned for agriculture is consistent with the public interest. Such use fulfills state policies in favor of reasonable and beneficial water use, diversified agriculture, conservation of agricultural lands, and increased self-sufficiency of this state. See Haw. Const. art. XI sec. 1 & 3; HRS sec. 174C-2(c)." Waiahole I, 94 Hawaii at 162, 9 P.3d at 474.

95. The Commission therefore does not adopt a higher amount for small farmers versus larger farmers but instead adopts the lesser amount, 2,500 gad, as the maximum irrigation requirement for both large- and small-scale agriculture of all types of crops, including nurseries, orchards, and golf courses. Applicants seeking lesser amounts will not have their permits increased to the maximum requirement of 2,500 gad, and applicants seeking larger amounts will be permitted at the maximum of 2,500 gad, except when the larger requests are justified. Standards such as HDOA's [Hawai'i Department of Agriculture] for specific crops will not be accepted in lieu of specific justifications for amounts larger than 2,500 gad, because they have been shown to generally over-estimate irrigation requirements. (FOF 305-306.)

164. "Domestic use" means any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation. (HRS §174C-3.)

168. Considering both the use of 400 gpd to 600 gpd for combined indoor and outdoor use by the Maui County average typical residential customer and the domestic cultivation standard of 3,000 gad, it is reasonable to: a) assume that 0.1 acre would use 300 gpd; and b) apportion 0.2 acre to the typical residential customer's indoor and outdoor use of 600 gpd (0.2 acre x 3,000 gad = 600 gpd).

169. Domestic cultivation will be capped at 2,500 gad, consistent with the amount allowed for diversified agriculture.

170. The Commission also concludes that:

a. Domestic cultivation will be limited to approximately 1.0 acre at the rate of 2,500 gad.

III. Efficiency of Use

CWRM Staff Response: The applicant states that his irrigation practices include trickle, spray, drip, and sprinklers.

IV. Analysis of Practical Alternatives

The applicant stated the following:

a) Municipal. Non-potable water not available from county.
b) Wastewater. Not available.
c) Ditch system. Not available.
d) Desalinization. Not available.
e) Groundwater. Cost prohibitive and permit unobtainable.
f) Catchment. 15,000 gallon catchment tank from rain.

CWRM Staff Response: The proposed water use is reasonable and beneficial. It meets the purpose, quantity justification, efficiency, and there are no practical alternatives. It will supplement natural rainfall 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.

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

Appurtenant Rights. Per the D&O, Conclusions of Law:

89. Pursuant to *Reppun*, a reservation of water rights contained in any of the applicants' deeds had the effect of extinguishing those rights and those appurtenant rights will not be recognized in this proceeding.

CWRM Staff Response: Land Commission Award (LCA) 7907 makes up the majority of Parcel 8 for which the applicant requested recognition of appurtenant rights. The appurtenant rights for Parcel 8 were extinguished in the deed from Wailuku Agribusiness Co., Inc., in 1990.

Traditional and Customary Rights. Per the D&O, Conclusions of Law:

29. The requirements for persons claiming a constitutional right to engage in traditional and customary practices are as follows:[38]

a. Qualifying as a Native Hawaiian refers to "those persons who are 'descendants of native Hawaiians who inhabited the islands prior to 1778' and who assert otherwise valid[39] customary and traditional rights"; and

b. (O)nce a (person) qualifies as a native Hawaiian, he or she must then establish that his or her claimed right is constitutionally protected as a customary or traditional native Hawaiian practice."

c. In other words, the right has two parts: a) that it is a customary or traditional native Hawaiian practice; and b) that the practice is constitutionally protected.

(*Hanapi*, 89 Hawai'i at 186-187, 970 P.2d at 495-496.)

30. There are four elements essential to such practices: 1) the purpose is to fulfill a responsibility related to subsistence, cultural or religious needs of the practitioner's family; 2) the practice handed down was an established native Hawaiian custom or tradition prior to 1892; 3) the practice is not for a commercial purpose; and 4) the manner in which the practice is conducted is consistent with tradition and custom and conducted in a respectful way. *Pratt I*, 124 Hawai'i at 352-55, 243 P.3d at 312-15.)

31. In reaffirming that Hawaiian usage must predate November 25, 1892, the Hawai'i Supreme Court also required that "it is established that the *application of a custom has continued in a particular area* (emphasis added)." (*PASH*, 79 Hawai'i at 442, P. 2d at 1263.)

32. The custom does not need to have been continuous since November 25, 1892 and can be established from expert testimony and kama'aina witness testimony. (*PASH*, 79 Hawai'i at 450, 903 P.2d at 1271; *Hanapi* (, 89 Hawai'i at 187, n. 12, 970 P.2d at 495, n. 12.)

33. "In order to meet his or her burden, a practitioner must bring forward evidence that the practice handed down was an established native Hawaiian custom or tradition prior to 1892." (*Pratt I*, 124 Hawai'i at 313, 243 P.3d at 353.)

CWRM Staff Response: There are 17 out of 25 surface water use permittees that have priority 1 uses consisting of domestic, appurtenant and traditional and cultural rights. See **Table 2**. The requested amount of 3,850 gpd is considered a de minimis amount and will not interfere with the IIFS and existing permit holders. The applicant claims an appurtenant right; however, the appurtenant rights were extinguished through a reservation of water rights in the deed from Wailuku Agribusiness Co., Inc., in 1990. The applicant did not claim traditional and customary rights.

(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, irrigation, and domestic uses as requested by the applicant. There were no public comments or objections to this application. Because the use falls under diversified agriculture, irrigation, and domestic use, the application meets the criteria to satisfy the 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 and irrigation 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 from the Wailuku River. No comments or objections were received from DHHL. All water use permits are subject to the rights of DHHL. Therefore, this application will not interfere with DHHL.

RECOMMENDATION

That the Commission:

1. Approve Stream Diversion Works Permit (SDWP.5931.6) Application consisting of a three-inch diameter, 73-gallon per minute (gpm) portable submersible pump estimated to pump daily to supplementally fill an existing 15,000 gallon rain catchment storage tank, subject to the standard stream diversions works permit conditions in **Exhibit 6**.

2. Approve Surface Water Use Permit (SWUP.5928.6) Application for new uses in the amount of 3,850 gpd consisting of 3,250 gpd (1.3 acres x 2,500 gad) for diversified agriculture, irrigation of ornamental plants, and 600 gpd (1 unit x 600 gpd) for domestic use, subject to the standard water use permit conditions in **Exhibit 7** 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 domestic use of 2,500 gpd (1.0 acre x 2,500 gad) for diversified agriculture and 600 gpd (1 unit x 600 gpd) for one house is recognized as a Priority 1 use. 750 gpd (0.3 acres x 2,500 gad) for irrigation of ornamental plants is recognized as a Priority 3 use.

c. The appurtenant rights for Parcel 8 were extinguished in the deed from Wailuku Agribusiness Co., Inc., in 1990.

d. In conformance with the Division of Forestry and Wildlife recommendations, incorporated by reference as **Exhibit 4**, the permittee should observe the recommended construction measures regarding the protection and conservation of native species, and prevent the introduction and spread of invasive species.

3. Find that a petition to amend the Interim Instream Flow Standard (interim IFS) is not required under HRS 174C-71 and HAR 13-169-36 because the recommended amount of 3,850 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.

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 April 26 and May 3, 2023.
4. DLNR, Division of Forestry and Wildlife letter, dated June 7, 2023.
5. DLNR, Historic Preservation letter, dated July 26, 2023.
6. Standard Stream Diversion Works Permit Conditions.
7. Standard Surface Water Use Permit Conditions.

APPROVED FOR SUBMITTAL

DAWN N. S. CHANG
Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

STREAM DIVERSION WORKS PERMIT APPLICATION

For Official Use Only:

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: ☒ New ☐ After-The-Fact

2. Type of Construction: ☐ Installation ☐ Modification ☐ Removal / Abandonment

APPLICANT INFORMATION

3. APPLICANT'S NAME / COMPANY	Applicant's Contact Person	Applicant's Phone
Mark Juergensmeyer	same	[redacted]
Applicant's Mailing Address	Applicant's E-mail Address	
30 Hau'oli St #106, Wailuku HI 96793	[redacted]	

☐ **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
N/A		
Landowner's Mailing Address	Landowner's E-mail Address	

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)* ☐ Kauai ☐ Oahu ☐ Molokai ☐ Lanai ☒ Maui ☐ Hawaii

8. Tax Map Key(s) *List all affected tax map key parcels.*

3 3 018 008 0000

9. Stream / Gulch Name(s) *List all affected streams and/or gulches.*

Iao Stream (aka Wailuku River)

FOR OFFICIAL USE ONLY:	SWHU ID:	FILE ID:
LAT:	GWHU ID:	DOC ID:
LON:	REACH ID:	

Form SDWP-APP 04/01/2021

EXHIBIT 1

GENERAL PROJECT INFORMATION

10. **Diversion No:** *(if already assigned)* 11. **Diversion Name:**

12. **Project Site Location(s):** *Provide site coordinates of downstream-most point of project in degrees, minutes, seconds (NAD83).*

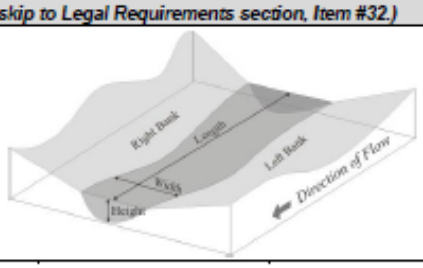
Latitude: 20° 53' 05.6" N Longitude: 156° 30' 55/9" W Elevation: 249 ft. above mean sea level

13. **Diversion Structure Type:** *(Check all that apply)*

☐ Unlined channel ☐ Hand-built rock ☐ Concrete masonry ☐ Dam/weir ☐ Pipe
☐ Metal ☐ Plastic ☐ Wood ☒ Pump ☐ Direct use
☐ Other - Describe:

STREAM DIVERSION WORKS SPECIFICATIONS *(For Abandonments, skip to Legal Requirements section, Item #32.)*

14. **Structure Dimensions:** *(feet)*
Provide generalized dimensions for the entire project / structure area. If the project includes a pipe (e.g., culvert, drain, etc.), provide the pipe diameter.
Width: 3'
Height:
Length: 34"
Diameter: 3"



15. **Diversion Location:** *Provide the general location of the diversion intake structure in relation to the streambank.*
☒ Left bank *(downstream view)*
☐ Right bank *(downstream view)*
☐ Across entire stream channel

16. **Intake Dimensions:** *(feet)* Width: 3" Height: Length: Diameter: 3"

17. **Average diversion amount:** *(cubic feet per second)* 0.1 CFS

18. **Diversion is part of a system of diversions:** ☐ Yes ☒ No

19. **Diverted flow can be controlled:** ☒ Yes ☐ No

Control Dimensions: *(feet)* Width: 1 1/4" hose Height: Length: 100' Diameter: 1 1/4"

20. **Water will be pumped from the stream:** ☒ Yes ☐ No
If yes, identify pump capacity: *(gallons per minute)* **Daily average pumping time:** *(hours)* Max 1 hr/ day

21. **Water will be impounded in the stream channel:** ☐ Yes ☒ No

22. **Water diversion capacity will be measured daily:** ☒ Yes ☐ No

23. **Water will be returned to the stream:** ☐ Yes ☒ No
If yes, average amount of return flow: *(cubic feet per second)*

24. **Water will be stored off-stream:** ☒ Yes ☐ No **Storage capacity:** *(gallons)* 15,000 gal storage tank
Describe storage facility:

25. **State Land Use Classification:** *(Check all that apply)* ☒ Agriculture ☐ Conservation ☐ Rural ☐ 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.

☒ 26. **Agriculture**
☒ 27. **Domestic**
☐ 28. **Industrial**
☐ 29. **Irrigation**
☐ 30. **Military**
☐ 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/cwrm/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 is a CDUP is required.*

☐ Stream diversion works is in a Conservation District.
☐ Required. CDUP #: Date CDUP approved:
☐ Not Required. *Attach documentation from Office of Conservation and Coastal Lands (OCCL), Department of Land and Natural Resources.*
☐ I have not checked with the OCCL about whether or not a CDUP is required.
☒ Stream diversion works is not 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) 692-8015.*

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

☒ 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:

☐ Use of state or county lands, or use of state or county funds
☐ Use within a state conservation district
☐ Use within a shoreline setback area
☐ Use within a national or Hawaii registered historic site
☐ Use within the Waikiki Special District
☐ The construction, expansion or modification of helicopter facility
☐ A wastewater treatment unit
☐ Waste-to-energy facility
☐ Landfill
☐ Oil refinery
☐ Power-generating facility
☒ 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)	☐	☒
37. **State Department of Health, Clean Water Branch** (Section 401, Clean Water Act, Water Quality Certification, Best Management Practices Plan)	☐	☒
38. **Right-of-Entry or Right-of-Way Permit** if the proposed stream channel alteration includes State lands. (Chapter 171, Hawaii Revised Statutes)	☐	☒
39. **Hawaii Environmental Policy Act** (Chapter 343, Hawaii Revised Statutes; Title 11, Chapter 200, Hawaii Administrative Rules)	☐	☒
40. **Soil and Water Conservation District**	☐	☒
41. **County Certification of "No-Rise"**	☐	☒
42. **County Grading Permit**	☐	☒
43. **County Discretionary Permit(s)**	☐	☒

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.**

See attached addendum

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

See attached addendum

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?

See attached addendum

PROJECT DESCRIPTION
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.
47. Describe the overall project scope and objectives. See attached addendum
48. Describe existing stream channel dimensions and median streamflow conditions at the site of the proposed stream diversion works. See attached addendum

49. Identify and describe the project components outlined below

A. Materials

See attached addendum

B. Quantities

C. Excavation

D. Fill

E. Disposal

F. Construction methods

G. Temporary facilities

H. Expected period of time required for construction

I. Liability during construction

50. Describe the project's consistency with county zoning and development plans.

See attached addendum

51. Identify potential alternatives (sources of water) to the project and describe the relative costs and benefits of each alternative.

See attached addendum

SUBMITTALS

Please submit the following plans, maps, or drawings in legible form, preferably on 8.5" by 11" sheets.

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:

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:	Signature:	Date:
Mark Juergensmeyer		August 19, 2022

55. CONSULTANT

Print Name:	Signature:	Date:
N/A		

56. CONTRACTOR

Print Name:	Signature:	Date:
N/A		

57. LANDOWNER *(If multiple landowners, skip Section 53, then complete and attach Form SCAP-LND with appropriate landowner signatures.)*

Print Name:	Signature:	Date:
Mark Juergensmeyer		August 19, 2022

ATTACHMENT TO

STREAM DIVERSION FORM

APPLICANT: Mark Juergensmeyer and Sucheng Chan, 2565 Mokuhau Rd, Wailuku

CULTURAL IMPACTS

44. 45. 46. – Impact on Native Hawai'ian Rights and Culture

The property is not on, or adjacent to, Native Hawai'ian homelands. Nor does it contain any sites or artifacts that are revered in Native Hawai'ian culture,

The property is, however, a part of a land grant given to Native Hawai'ians by King Kamehameha III for agricultural use. For this reason, and for my general respect for the traditional Hawai'ian trusteeship of the 'aina throughout the Hawai'ian islands, care has been given to respect the land and provide a native Hawai'ian character to it.

Since I was the founding dean of the School of Hawai'ian, Asian and Pacific Studies at the University of Hawai'i at Manoa, I have some understanding of the importance of the 'aina for Native Hawaiian culture. For this reason I have tried to preserve as much of the land in an undeveloped state as possible, and to respect native plants throughout the property. At the outset of my stewardship of this property I held a blessing ceremony led by a native Hawai'ian kahuna. Another Hawai'ian blessing ceremony with a native Hawai'ian kahuna was held at the commencement of the construction of the dwelling and outbuildings on the property.

The main dwelling and outbuildings have been designed in traditional Polynesian style. The main building is entirely bamboo. There are no walls or glass windows; only screens and bamboo shutters. It was designed by a local architect who has studied Bali and Polynesian style architecture in the creation of 100% bamboo structures. At its completion it was featured in the *Maui Times* as an example of the use of native construction materials to create sustainable ecological architecture.

PROJECT DESCRIPTION

47. Overall project scope and objectives

This request is to allow a portable pump to be placed in Iao Steam adjacent to my property for an hour or less per day to complement water from a catchment storage tank for agricultural drip line watering and domestic use. The maximum amount would be to provide for minimual daily use requirements estimated for domestic use (600 gpd for one dwelling) and state required agricultural plantings and necessary irrigation needs (2500 gpd per div ag acre).

The conveyance of this minimal amount from 'Iao Stream for irrigation and domestic water supplies should have no discernible effect to downsteam points of diversion or the IFS. Further, our water storage tank is a rain catchment facility. 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 water from the stream will be taken only when storage tank depletion is 25%.

48. Existing steam dimensions and conditions

The width of 'Iao Stream at the point where it is adjacent to my property varies depending on rainfall. It ordinarily fluctuates from 20-30 feet across. But due to the consistent rain in West Maui mountains that supplies the stream, there is a constant flow all year long, including during the dry periods—such as the abnormally dry summer that Maui is experiencing this year.

The primary use of the water in 'Iao Stream is by the county water district which maintains a pumping station and storage tank downstream of the property. As the amount of runoff downstream of the county water system indicates, there is abundant water throughout the year and the small amount from my property will not affect the water level of the stream. As the historical documents for the site indicates, the property has riparian rights (see Historical Records - Appurtenant Rights folder) which are constitutionally protected, see Haw. Const. Art. XI, 7 (preserving appurtenant rights and existing riparian rights).

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 second intake

point which resides adjacent to the subject property was damaged around 1995 and Wailuku Ag decided not to repair it. A tunnel portion of the kalani 'auwai caved in around 1960, where Wailuku Ag (C. Brewer) decided not to repair it.

49. Project components

Due to elevation change from the river bed and the property irrigation needs of the property, only a portable submersible pump will 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.

The pump to be used would be a Multiquip 1 HP portabile submersible pump, model ST-2037, with a 1 1/4" discharge hose reduced to standard ¾' 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. Actual estimated average diversion would be equal to apporoximately 300 gallons per day.

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

50. Consistency with county zoning and development plans

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 county's zoning and planed development. Since Maui County does not service the area in which my property is located with county water supply, the authorized and permitted dwellings require adequate water resources which is clearly consistent with the zoning approval for housing in this agricultural land area.

In re: Waiahole Ditch Combined Contesed Case, 94 Hawai'i 97, 162, 9 P.3d409, 474 (2000) ("Waiahole I"), as well as HRS 174C-2(c), these official notices provide for the protection of traditional and customary Hawaiian rights, agriculture and the maintenance of proper ecological balance and scenic beauty as part of the county plan. As the supporting documents show, this parcel of land was part of a land grant of King Kamehameha III intended for agricultural use. The use of this land for agricultural purposes, including the growing of kalo that we plan to do when water rights are approved, will reflect the original intentions of the Hawaiian rulers in making this land grant.

51. Alternative sources of water

The main alternative source of water for the property is a catchment system for rainwater, which has already been installed. An extensive gutter system channels rainwater into the catchment tank which provides sufficient water during a rainy season. Alas the rainy season is not year round, though the water level of 'Iao Stream remains constant throughout the year, even during dry periods such as Maui is experiencing this summer.

Other sources of water are not available or not practical. Municipal water sources do not run anywhere near the property. Wastewater reuse, ditch system, desalinization, and ground water sources are all unavailable. The only practical sources of water for the property are from the catchment system we have installed, and occasional pumping from 'Iao Stream, which this application proposes.

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:

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	Applicant's Contact:	2. SOURCE LANDOWNER'S NAME	Source Landowner's Contact:
Mark Juergensmeyer	[redacted]	Mark Juergensmeyer	
Applicant's Mailing Address, or Principal Place of Business:		**Source Landowner's Mailing Address, or Principal Place of Business:**	
30 Hau'oli St Unit 106, Wailuku HI 96793		same	
Applicant's Phone: / **Applicant's Fax:**	**Applicant's E-mail:**	**Source Landowner's Phone:** / **Source Landowner's Fax:**	**Source Landowner's E-mail:**
[redacted]	[redacted]m	same	same

SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT:** Island: Maui Hydrologic Unit: Iao River Hydrologic Unit Code: 6024

4. **INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT, IF APPLICABLE:** 10

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

6a. **TMK OF PROPOSED STREAM DIVERSION LOCATION:** 3 - 3 - 0 1 8 : 0 0 8 (Zone - Sec - Plat : Parcel)

6b. **TMK OF PROPOSED DITCH DIVERSION LOCATION:** (- - :) (Zone - Sec - Plat : Parcel)

7a. **PROPOSED STREAM DIVERSION:** How will water be diverted from the stream to your property? Check all that apply.
☒ Pipe ☒ Pump ☐ Ditch/auwai ☐ Other Describe:

7b. **WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?**
☐ Yes. How much water will be returned? _____ gallons per day TMK of Returned Water Location: _____
☒ No

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

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

9. **TOTAL QUANTITY OF WATER REQUESTED:** 3550 gallons per day. See Table 1, Item14.

10. **PROPOSED USE:** Check all that apply. See Table 1, Item 1.
☒ Agriculture ☒ Domestic ☐ Industrial
☒ Irrigation ☐ Military ☐ Municipal

11. **LOCATION OF PROPOSED WATER USE:** Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps. See Table 1, Item 2. see attached maps

PROPOSED USER INFORMATION

12. **APPURTENANT RIGHT:** Do you claim an appurtenant right for your proposed water use? ☒ Yes ☐ No
See Attachment A If yes, has the appurtenant right been established by the courts or the Commission? ☐ Yes ☒ No

13. **PROPOSED END USER INFORMATION:** Will you be an end user on an existing water system?
☐ Yes. List the name of the system operator: ☒ No

14. **REGISTRATION AND DECLARATION OF WATER USE:** Do you have a Registration and Declaration of Water Use from the Commission?
☐ Yes. List the file reference name(s): ☒ No

16. **STREAM DIVERSION WORKS PERMIT (SDWP):** Do you have a SDWP from the Commission?
☐ Yes. List the permit number(s): ☒ No

NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) if necessary, additional information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited to, any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) **the applicant is responsible for paying the required public notice fees associated with this application.**

18. APPLICANT	17. SOURCE LANDOWNER
Signature	Signature
Mark Juergensmeyer August 15, 2022	Mark Juergensmeyer August 15, 2022
Print Date	Print Date

EXHIBIT 2

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

PROPOSED NEW USE OR MODIFIED USE INFORMATION

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

LAND USE CONSISTENCY						EFFICIENCY OF USE				
A	B	C	D	E	F	G	H	I	J	K
PURPOSE / WATER USE CATEGORY	TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.	STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	SUB-METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 2.
Uses that require potable (drinking) water										
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
						TOTAL POTABLE USE (L)			GPD	
Uses that do not require potable water										
DOM	3 - 3 - 0 1 8 : 0 0 8 (Zone - Sec - Plat : Parcel)		☐ Yes, date approved: / / ☒ Yes, not acquired ☐ No	Ag	☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No	1 unit	600	600	☐ Yes ☒ No	Land use estimate see Attachment A
AGRCP	3 - 3 - 0 1 8 : 0 0 8 (Zone - Sec - Plat : Parcel)		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No	Ag	☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No	1 acre	2500	2500	☐ Yes ☐ No	Land use estimate see Attachment A
AGRON	3 - 3 - 0 1 8 : 0 0 8 (Zone - Sec - Plat : Parcel)		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No	Ag	☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No	.3 acre	450	450	☐ Yes ☐ No	Land use estimate see Attachment A
	Zone - Sec - Plat : Parcel		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No		☐ Yes, date approved: / / ☐ Yes, not acquired ☐ No				☐ Yes ☐ No	
						TOTAL NON POTABLE USE (M)		3550	GPD	
TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) (N) =								3550	GPD	

O. LIMITATIONS: Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(5) HRS

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.

PROPOSED NEW USE OR MODIFIED USE INFORMATION (continued)

19. **TABLE 2: IRRIGATION INFORMATION** (List all crops that will be grown as separate line items, including landscape and golf course irrigation uses. Copy Table 2 and attach additional sheets to complete your list, as necessary.)

A TMK OF PROPOSED LOCATION OF USE (Attach TMK map outlining area and photos for each proposed use.)	B CROP	C TOTAL ACREAGE	D NET IRRIGATED ACREAGE	E BEGIN GROWTH PERIOD (Month)	F END GROWTH PERIOD (Month)	G IRRIGATION SYSTEM (Refer to instructions.)	H IRRIGATION PRACTICE (Refer to instructions.)
3 - 3 - 018 : 008 (Zone - Sec - Plat : Parcel)	fruit trees	.7	.7	year round	year round	trickle//drip	apply fixed depth irrigation
3 - 3 - 018 : 008	native plants	.3	.3	year round	year round	trickle/spray	apply fixed depth irrigation
3 - 3 - 018 : 008	nursey/orna-mentals	.3	.3	year round	year round	drip/ sprinklers	apply fixed depth irrigation
3 - 3 - 018 : 008	existing trees	.9	.0	n/a	n/a	n/a	n/a
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							

Comments:

1. There is no existing water source to the parcel
2. Fruit trees include banana, papaya, avocado, mango, orange, lychee, lemon, lime, newly planted coffee
3. Native plants include ohia, a'ali'i, ti; kalo planned when water is available
4. Existing trees include kukui, monkeypod, african tulip, and coffee; they require no irrigation
5. Estimated irrigated acreages have taken into account driveways, easements, and dwelling and out-building footprints.

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

OTHER PERTINENT INFORMATION

20. TABLE 3: ALTERNATIVES ANALYSIS

	A. Analysis of *Potable* Alternatives (Attach additional sheets if necessary.)	B. Analysis of *Non-Potable* Alternatives (Attach additional sheets if necessary.)
Municipal sources Municipal sources	Not available nearby; cost-prohibitive	Non-potable water not available from county
Wastewater reuse Wastewater reuse	Not available from country treatment center, other sources not legal	Not available
Ditch system Ditch system	Not available	Not available
Desalinization Desalinization	Not available	Not available
Ground water Ground water	Cost prohiabitive and permit unobtainable	Cost prohibitive and permit unobtainable
Conservation measures Catchment system	15000 gal catchment tank when rain is available; currently drought' filitration UV light	15000 gal catchment tank from rain
Other (specify)		

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

OTHER PERTINENT INFORMATION

21. PUBLIC INTEREST: Hawaii Revised Statutes §174C-2(c) states that: *The state water code shall be liberally interpreted to* [a] *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,* [b] *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.*

Explain how the proposed new use(s) in your application are consistent with items [a] and [b] above.

See attached supplement A

21a. Please provide the identity and scope of cultural, historical, and natural resources in which traditional and customary Native Hawaiian rights are exercised in this area.

See attached supplement A

21b. Identify the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action

See attached supplement A

21c. 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?

See attached supplement A

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

OTHER PERTINENT INFORMATION

22. INTERFERENCE WITH THE RIGHTS OF THE DEPARTMENT OF HAWAIIAN HOME LANDS

Explain how the proposed new use(s) of water 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

23. INTERFERENCE WITH ANY EXISTING LEGAL USES

Explain how the proposed new use(s) of water will not interfere with any other existing legal use(s) of water.

See attached supplement A

24. PUBLIC WATER SYSTEM INFORMATION

Check the appropriate box or boxes.

☐ PUC-Regulated Private System / ☐ Non-PUC-Regulated Private System / ☒ Not a Public Water System
☐ Intended dedication to Honolulu Board of Water Supply or to County of Maui, Department of Water Supply.

25. CHAPTER 343

This project proposes:

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

☐ If none of the above 11 items are applicable, no 343 compliance is necessary
☐ 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:

ATTACHMENT A - *SUPPLEMENT TO SWUPA-N*

APPLICANT: Mark Juergensmeyer and Sucheng Chan, 2565 Mokuhau Rd, Wailuku

Source Information:

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

Since this request is for the minimual daily use requirements estimated for domestic use (600 gpd for one dwelling) and state required agricultural plantings and necessary irrigation needs (2500 gpd per div ag acre), the conveyance of this minimal amount from 'Iao Stream for irrigation and domestic water supplies should have no discernible effect to downsteam points of diversion or the IFS. Further, our water storage tank is a rain catchment facility. 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 water from the stream will be taken only when storage tank depletion is 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, only a portable submersible pump will 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.

The property currently has one 15,000 gallon catchment tank. 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 agricutural inspections required adequate agricultural planting in order to gain approval. Inpections were conducted with our plan passed by the State Land Use Planning Department on Maui. Rain catchment totals cannot meet the necessary requirments to adequately irrigate the agricultural requirements of the State of Hawai'i. Final building inspection for the main dwelling was completed November 5, 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 second intake point which resides adjacent to the subject property was damaged around 1995 and Wailuku Ag decided not to repair it. 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 agricutural 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 tank would be accomplished only when the water level is determined to be low (approximately 25% of the total), it is very easy to estimate, with a high degree of accuracy, amounts of water replenishment since the total number of gallons the tank 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 portabile submersible pump, model ST-2037, with a 1 1/4" discharge hose reduced to standard ¾' 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. Actual estimated average diversion would be equal to apporoximately 300 gallons per day.

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

Item 12. **Attached** to this application are copies of the deeds dating back to Wailuku Agriculture Company transfer to Horcajo, and in 2019, Horcajo to Juergensmeyer/Chan.

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

Domestic Use; While it is highly doubtful the 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 apporoximately 300 gallons per day for domestic used, 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 absorbtion of water in the soil. Again, it is highly unlikely that 2500 gallons per acre, per day would be necessary but it is prudent to request the Water Resource Management standard.

Other Pertinent Information

21. 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.

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 Contesed Case, 94 Hawai'i 97, 162, 9 P.3d409, 474 (2000) ("Waiahole I"), as well as 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." As the supporting documents show, this parcel of land was part of a land grant of King Kamehameha III intended for agricultural use. The use of this land for agricultural purposes, including the growing of kalo that we plan to do when water rights are approved, will reflect the original intentions of the Hawaiian rulers in making this land grant.

Moreover, all the dwellings and outbuildings on the property have been constructed in traditional Polynesian design. The main house is entirely bamboo, with no walls or windows (only screens and shutters), and the roof is fireproof thatch, all according to Maui County building codes (see attached picture). Forty percent of the land has been left in its undeveloped native state, including all of the area along Iao river. Hence the respect for the 'aina is preserved by minimal development on the site and by diversified agricultural crops. This also provides alternative food sources and helps maintain a proper ecological balance, scenic beauty, and lower carbon footprint, while continuning to maintain and enhance a green enviroment for this portion of Iao Valley, Maui county, and Hawai'i as a whole, which is "consistent with the public interest."

Our proposed uses is a Protected Public Trust Purpose.

Most of the water to be used 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 agriultural 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 the propery.

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.

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

21 a-b-c. Protection of Native Hawai'ian Rights and Culture.

Although the property does not contain any sites or artifacts that are revered in Native Hawai'ian culture, the property is part of a land grant given to Native Hawai'ians by King Kamehameha III for agricultural use. For this reason, and for my general respect for the traditional Hawai'ian trusteeship of the 'aina throughout the Hawai'ian islands, care has been given to respect the land and provide a native Hawai'ian character to it.

Since I was the founding dean of the School of Hawai'ian, Asian and Pacific Studies at the University of Hawai'i at Manoa, I have some understanding of the importance of the 'aina for Native Hawaiian culture. For this reason I have tried to preserve as much of the land in an undeveloped state as possible, and to respect native plants throughout the property. At the outset of my stewardship of this property I held a blessing ceremony led by a native Hawai'ian kahuna. Another Hawai'ian blessing ceremony with a native Hawai'ian kahuna was held at the commencement of the construction of the dwelling and outbuildings on the property.

The main dwelling and outbuildings have been designed in traditional Polynesian style. The main building is entirely bamboo. There are no walls or glass windows; only screens and bamboo shutters. It was designed by a local architect who has studied Bali and Polynesian style architecture in the creation of 100% bamboo structures. At its completion it was featured in the *Maui Times* as an example of the use of native construction materials to create sustainable ecological architecture.

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

The primary use of the water in 'Iao Stream is by the county water district which maintains a pumping station and storage tank downstream of the property. As the amount of runoff downstream of the county water system indicates, there is abundant water throughout the year and the small amount from my property will not affect the water level of the stream. As the historical documents for the site indicates, the property has riparian rights (see Historical Records - Appurtenant Rights folder) which are constitutionally protected, see Haw. Const. Art. XI, 7 (preserving appurtenant rights and existing riparian rights).

23. Explain below how your proposed new use(s) will not interfere with the rights of the Department of Hawai'ian Home Lands as provided in Section 221 of the Hawai'ian Homes Commission Act.

There are no Hawai'ian Home Lands in the vicinity of the property.

PUBLIC NOTICE

Application for Surface Water Use Permit
Wailuku River, ʻĪao 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.5928.6

Full application link:	https://dlnr.hawaii.gov/cwrm/newsevents/notices/
Applicant:	Mark Juergensmeyer 30 Hauoli Street, Unit 106 Wailuku, HI 96793
Landowner:	Same
Date Application Filed as Complete:	August 18, 2022
Surface Water Hydrologic Unit:	ʻĪao (6024), Maui
Water Source:	Wailuku River, Maui Applicant is simultaneously applying for a Stream Diversion Works Permit (SDWP.5931.6)
Location of Diversion:	Tax Map Key: (2) 3-3-018:008
Proposed Use:	Agriculture, Domestic
Quantity Requested:	3,550 gallons per day

New/Existing	Description	Location of Water Use	Qty of Use (GPD)
New	Domestic (1 unit)	TMK (2) 3-3-018:008	600
New	Agriculture, (fruit trees, native plants, nursery/ornamentals, existing trees)	TMK (2) 3-3-018:008	2,950

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 **May 17, 2023**. 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
DAWN N. S. CHANG, Chairperson

Dated April 19, 2023

Publish in: Maui News issues of April 26,2023 and May 3, 2023

EXHIBIT 3

STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

DIVISION OF FORESTRY AND WILDLIFE
1151 PUNCHBOWL STREET, ROOM 325
HONOLULU, HAWAII 96813

June 6, 2023

MEMORANDUM

TO: M. KALEO MANUEL, Deputy Director
Commission on Water Resource Management

FROM: LAINIE BERRY, Wildlife Program Manager
Division of Forestry and Wildlife

SUBJECT: Stream Diversion Works Permit (SDWP.5931.6) Application, Installation of a Portable Submersible Pump, and Surface Water Use Permit (SWUP.5928.6) Application, New Diversified Agriculture and Domestic Use for 3,550 gpd, on the Wailuku River in the 'Iao Management Area on Maui

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your request for comments on the Stream Diversion Works Permit (SDWP.5931.6) Application and the Surface Water Use Permit (SWUP.5928.6) Application to install a three-inch diameter, 73-gallon per minute (gpm) portable submersible pump estimated to pump daily from the 'Iao Stream and Wailuku River to supplementally fill an existing 15,000 gallon rain catchment storage tank in the 'Iao Surface Water Management Area on the island of Maui. The project consists of a portable pump to be placed adjacent to the property for an hour or less per day to complement water from a catchment storage tank for agricultural drip line watering and domestic use. The maximum amount would be 3,550 gpd to provide for minimual daily use requirements estimated for domestic use (600 gpd for one dwelling) and state required agricultural plantings and necessary irrigation needs (2950 gpd for diversified agriculture on 1.3 acres).

The State listed 'Ōpe'ape'a or Hawaiian Hoary Bat (Lasiurus cinereus semotus) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or

trimmed. Barbed wire should also be avoided for any construction because bats can become ensnared and killed by such fencing material during flight.

The State listed Nēnē or Hawaiian Goose (Branta sandvicensis) could potentially occur in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the Hawai'i Island Branch DOFAW Office at (808) 974-4221.

The project area is within the range of the State listed Blackburn's Sphinx Moth (Manduca blackburni) or BSM. Larvae of BSM feed on many nonnative hostplants, which includes tree tobacco (Nicotiana glauca), that grow in disturbed soil. We recommend contacting the Hawai'i Island Branch DOFAW office at (808) 974-4221 for further information about where BSM may be present and whether a vegetation survey should be conducted to determine the presence of plants preferred by BSM. DOFAW recommends removing plants less than one meter in height or during the dry season to avoid harm to BSM. If you intend to either remove tree tobacco over one meter in height or to disturb the ground around or within several meters of these plants, they must be thoroughly inspected by a qualified entomologist for the presence of BSM eggs and larvae.

The project work on or at 'Iao Stream could affect endangered native Hawaiian damselflies (Megalagrion spp.) that may be present. DOFAW therefore recommends a survey be conducted by a qualified entomologist to determine if listed damselflies are present in the project area and to assess any potential impacts to those species.

DOFAW recommends minimizing the movement of plant or soil material between worksites. Soil and plant material may contain detrimental fungal pathogens (e.g., Rapid 'Ōhi'a Death), vertebrate and invertebrate pests (e.g., Coqui Frogs, Little Fire Ants, etc.), or invasive plant parts (e.g., Miconia, Mullein, etc.) that could harm our native species and ecosystems. We recommend consulting the Maui Invasive Species Committee (MISC) at (808) 573-6472 to help plan, design, and construct the project, learn of any high-risk invasive species in the area, and ways to mitigate their spread. All equipment, materials, and personnel should be cleaned of excess soil and debris to minimize the risk of spreading invasive species.

To prevent the spread of Rapid 'Ōhi'a Death (ROD), DOFAW requests that the information and guidance at the following website be reviewed and followed if 'ōhi'a trees are present at the project site that will be removed, trimmed, or potentially injured: https://cms.ctahr.hawaii.edu/rod.

We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to near-shore waters and marine ecosystems.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Myrna N. Girald Pérez, Protected Species Habitat Conservation Planning Coordinator at (808) 265-3276 or myrna.girald-perez@hawaii.gov.

Sincerely,

Lainie Berry

LAINIE BERRY
Wildlife Program Manager

STATE OF HAWAII | KA MOKUʻĀINA ʻO HAWAIʻI
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA ʻOIHANA KUMUWAIWAI ʻĀINA

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

July 26, 2023

IN REPLY REFER TO:
Project No. 2023PR00853
Doc. No. 2307IK08

MEMORANDUM

TO: M. Kaleo Manuel, P.E., Deputy Director
State Commission on Water Resource Management
P.O. Box 621, Honolulu, Hawaiʻi 96809
c/o Dean Uyeno, dean.d.uyeno@hawaii.gov

FROM: ʻIolani Kauhane, Maui Island Historic Preservation Archaeologist III

SUBJECT: Chapter 6E-42 Historic Preservation Review
Stream Diversion Works Permit (SDW .5931.6) Application, Installation of a Portable Submersible Pump, and Surface Water Use Permit (SWUP .5928.6) Application, Mark Juergensmeyer, New Diversified Agriculture and Domestic Use for 3,550 gpd
Wailuku River, ʻĪao Surface Management Area
Wailuku Ahupuaʻa, Pūʻali Komohana District, Island of Hawaiʻi
TMK: (2) 3-3-018:008 por.

RESPONSE:

[ ] This is a [ ] public (county or state) project [X] private project and [ ] **will** [ ] **may** affect historic properties.

[X] SHPD's determination is **no historic properties affected** for the work described under this permit
(*The proposed project does not include ground disturbances and no historic properties have been identified within the parcel. However, the Wallace System Loʻi Complexes (SIHP Site 50-50-04-02978) have been documented just north of the current parcel along Wailuku River.)*

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 historic preservation review process is ended. The permit issuance process may continue.

Please attach to 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.

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

Signed:
Alan Downer

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

cc. Mark Juergensymeyer, juergensmeyer@gmail.com

EXHIBIT 5

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
(Approved November 15, 2022)

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 Waiheʻe, Waiehu, ʻĪao, 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/ʻauwai, 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/ʻauwai, or pipeline.
   b. Outflow amounts, when relevant, such as for loʻi kalo. For outflows, reporting shall also include where the water is going, whether to the source ditch/ʻauwai, other users, or dispersed without re-use.

   For forms or online reporting, see https://dlnr.hawaii.gov/cwrm/info/waterusereport/.

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 ʻauwai are responsible for the proper maintenance of ʻauwai 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.