



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
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

September 19, 2023  
Honolulu, Hawai'i

Approval of Surface Water Use Permit Application (SWUP.5934.6) for  
New Uses with Special Conditions, Michele Hoopii for 256,555 gpd; and  
Find that Amendment to SWUP.2157.6 Issued to the Wailuku Water Company is Not Required;  
Waihe'e River, Waihe'e Surface Water Management Area, Maui,  
TMKs: (2) 3-2-018:027, 031, 032, 033

APPLICANT

Michele Hoopii  
58 Hoola Hou Street  
Wailuku, HI 96793

LANDOWNER

Same

SUMMARY OF REQUEST

Approve the following:

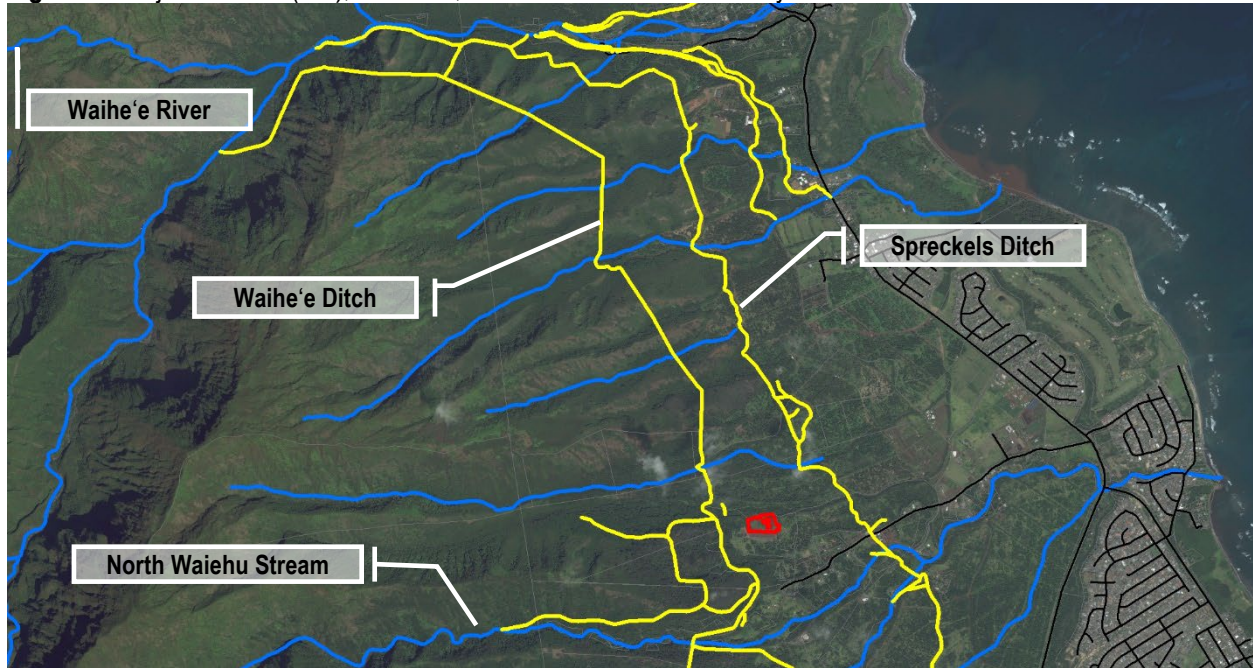
Surface Water Use Permit Application (SWUP.5934.6) for new uses to Michele Hoopii in the amount of 256,555 gallons per day (gpd) consisting of 256,350 gpd (1.709 acres x 150,000 gallons per acre/day (gad)) for kalo and 205 gpd (0.082 acres x 2,500 gad) for diversified agriculture.

TMK parcels (3) 3-2-018:027, 31, 32, and 33 make up the entirety of Land Commission Award (LCA) 3429, LCA 3438, and LCA 3457 and describe pō'alima in the LCA and deed. Recognize appurtenant rights in the amount of 534,450 gpd (3.563 acres x 150,000 gad). This use is considered under the priority for the exercise of traditional and cultural practices.

Find that SWUP.2157.6 issued to the Wailuku Water Company (WWC) for system losses in the amount of 2.73 mgd does not require to be amended. The requested amount of 256,760 gpd is considered de minimis as it is less than 5% the total volume delivered of over 17 mgd to authorized users across the Waihe'e, Waiehu, 'Īao and Waikapū surface water management areas.

LOCATION: Waihe'e River, Waihe'e, Maui. See **Figure 1**.

**Figure 1:** Subject location (red), Waihe'e, Maui. Ditches are shown in yellow.



## BACKGROUND

The North Waiehu Stream was the main water source to the property since before the Mahele of 1848.

Hoopii is the sixth generational descendant of the Mahele awardee who received a Hawaiian Kingdom Government LCA 3429, LCA 3438, and LCA 3457. Water continuously flowed, uninterrupted, until the sugar plantation modified the watercourses throughout Waiehu.

In 2014, waterflow to the property ceased completely and stopped taro growing. Prior to that, the North Waiehu Stream Ditch was vandalized and not repaired by Wailuku Water Co., LLC.

On June 28, 2021, the Commission rendered its decision in Case Number CCH-MA 15-01. It is online at <https://files.hawaii.gov/dlnr/cwrn/cch/cchma1501/CCHMA1501-20210630-D&O.pdf> (D&O). While Hoopii was not part of the CCH, the D&O, Order No. 39, p. 306, stated that SWUP.2157.6 issued to the WWC, “WWC is required to provide water from the Waihe’e Ditch for previous kuleana users of the North Waiehu Ditch.” Under Implementation, Line 203, p. 359 the Commission stated, “WWC is required to provide water from the Waihe’e Ditch for previous kuleana users of the North Waiehu Ditch.” Other water use permittees who previously received water from the North Waiehu Ditch include Lester Nakama (Ciacci) (SWUP.2326.6), Lester Nakama (SWUP.2328.6), and Lee and Nakama (SWUP.2330.6).

On May 25, 2022, Act 27 A Bill for an Act Relating to the Disposition of Water Rights was signed by the Governor. It is online and may be viewed at [https://www.capitol.hawaii.gov/slh/Years/SLH2022/SLH2022\\_Act27.pdf](https://www.capitol.hawaii.gov/slh/Years/SLH2022/SLH2022_Act27.pdf). The following sections were amended:

Section 174C-5, HRS, General Powers and Duties. “(15) Shall determine appurtenant water rights, including but not limited to the quantification of the amount of water and the specification of the water course or the means of access and delivery entitled to by that right, which determination shall be valid for purposes of this chapter.”

Section 174C-63, HRS, Appurtenant rights. Appurtenant rights are preserved. Nothing in the part shall be construed to deny the exercise of an appurtenant right, including access by the holder thereof to conduct activities necessary to assure the use, delivery, and quality of water including temperature and turbidity, that shall not be unreasonably withheld. A permit for water use based on an existing appurtenant right shall be issued upon application. [~~Such~~] The permit shall be subject to sections 174C-26 and 174C-27 and 174C-58 to 174C-62.”

Section 174C-101, HRS Native Hawaiian water rights. “(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, including access by the holder thereof to conduct activities necessary to assure the use, delivery, and quality of water including temperature and turbidity, that shall not be unreasonably withheld, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.”

On September 20, 2022, by a 5-0 vote, the Commission on Water Resource Management (Commission) approved Stream Diversion Works Permit (SDWP.5804.6) Application by Wailuku Water Co., LLC to abandon Registration of Stream Diversion Works and Declaration of Water Use No. 475.6, North Waiehu Ditch Intake on the North Waiehu Stream.

On September 22, 2022, the Commission received the complete SWUP.5934.6 application for new use for TMKs: (2) 3-2-018:027, 031-033. The total request is 256,760 gpd consisting of 256,555 gpd (1.709 acre x 150,000 gad) for kalo and 205 gpd (0.082 acres x 2,500 gad) for diversified agriculture. Hoopii requested the recognition of appurtenant rights for LCA 3429, LCA 3438, and LCA 3457.

The Surface Water Use Permit Application (**Exhibit 1**) and Public Notice (**Exhibit 2**) are online 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

Waihe'e River occurs within the Waihe'e surface water hydrologic unit (6022). Both the National Hydrography Dataset and the Division of Aquatic Resources classify the Waihe'e River as perennial. The total drainage area of Waihe'e River is 7.1 square miles with a maximum basin elevation of 5,696 feet, the average rainfall is 32 inches per year, and the longest flow path is 6.3 miles. On the basis of 24 years of complete records (climate years 1984-2007) at USGS stream-gaging station 16614000 on Waihe'e River near an elevation of 605 feet and above all diversions, the minimum daily mean flow (Q<sub>100</sub>) was 14 million gallons per day (mgd) (the

minimum flow occurred on 6 days over 22 years, an average of 0.3 days per year); the Q<sub>90</sub> flow was 24 mgd; the Q<sub>70</sub> flow was 28 mgd; and the Q<sub>50</sub> flow was 34 mgd.

The two largest diversions on Waihe‘e River are (1) Waihe‘e Ditch near an elevation of about 620 feet; and, (2) Spreckels Ditch near an elevation of about 420 feet. The stream continues another 2.2 miles to the ocean. There are numerous kuleana users diverting off of the stream and all users are summarized in **Table 2** below.

**PROJECT DESCRIPTION**

The applicant requests 256,555 gpd consisting of 256,350 gpd (1.709 acres x 150,000 gad) for kalo and 205 gpd (0.082 acres x 2,500 gad) for diversified agriculture. 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 of Use (gpd)
(2) 3-2-018:027	Kalo	1.63	150,000	244,500
(2) 3-2-018:027	Diversified Agriculture	0.082	2,500	205
(2) 3-2-018:031	Kalo	0.035	150,000	5,250
(2) 3-2-018:032	Kalo	0.007	150,000	1,050
(2) 3-2-018:033	Kalo	0.037	150,000	5,550
<b>TOTAL REQUESTED:</b>				<b>256,555 GPD</b>

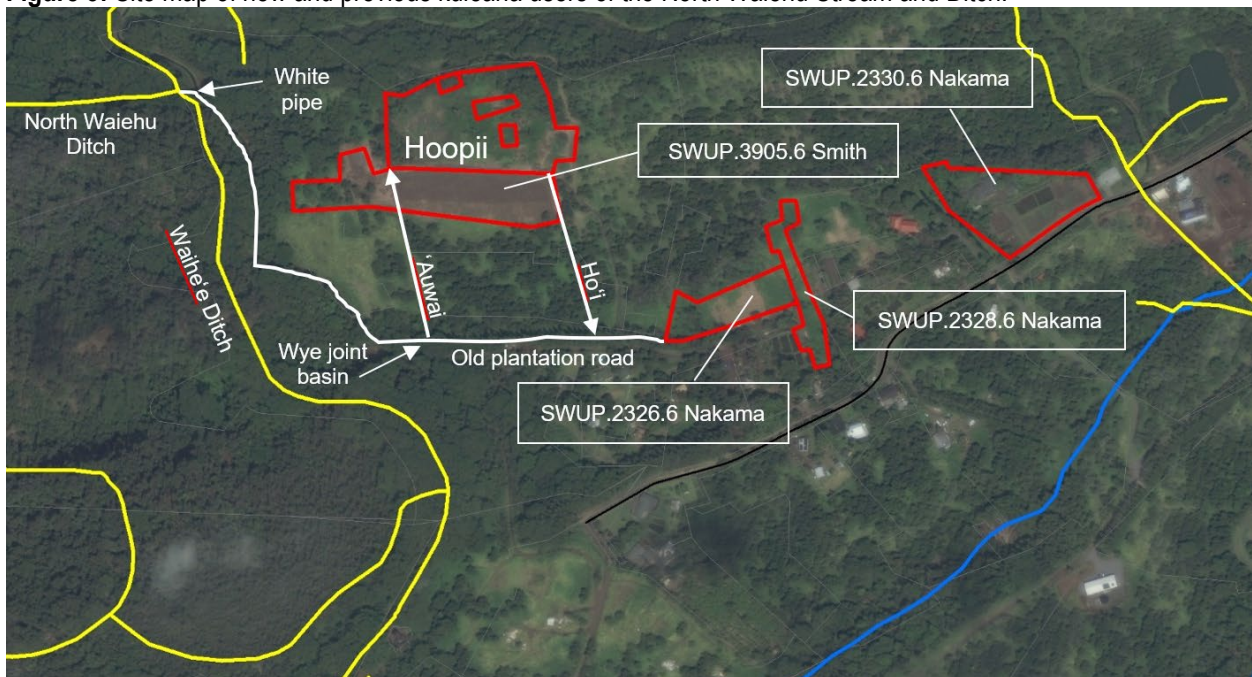
From the application, “The North Waiehu Stream was the main water source to property since before the Mahele of 1848. Water flowed continuously and uninterrupted until the sugar plantation modified the watercourses throughout Waiehu. At that time, water flowed from the North Waiehu Stream and ditch and into a 6-inch “white pipe” that went over the Waihe‘e Ditch. The “white pipe” continued south and parallel to the Waihe‘e Ditch and an old plantation road. This is a shared source with Nakama, an existing permit holder. At the Wye joint basin, a 4-inch “white pipe” turns north into an ‘auwai and then to the Hoopii property. Before flow stopped in 2014, there was a throw out pipe that routed from Hoopii to Nakama’s property and from there the water flowed back into a ditch along side Malaihi Road that eventually connects to the Spreckels ditch. That connection will be restored when the flow returns. The WWC should place the “white pipe” that currently is located over the Waihee Ditch and put the pipe into the Waihee Ditch per the D&O”.

See **Figure 2** and **Figure 3** for site photos.

**Figure 2:** TMK (2) 3-2-018:027, 31-33, Waiehu, Maui. From the County pictometry website, dated June 28, 2022. Source: County of Maui pictometry website, dated June 28, 2022.



**Figure 3:** Site map of new and previous kuleana users of the North Waiehu Stream and Ditch.





Cement flume carrying North Waiehu Stream water to "white pipe" over Waihe'e Ditch. Shared source with Nakama.



Cement basin connecting to "white pipe". Shared source with Nakama.



Start of 6-inch "white pipe" over Waihe'e Ditch. Shared source with Nakama.



"White pipe" continues south parallel to Waihe'e Ditch and along old plantation road. Shared source with Nakama.



Wye joint basin – 4-inch "white pipe" turns north to Hoopii property.



"White pipe" exiting into Hoopii property.



'Auwai to lo'i on Hoopii property.



Before 2104 loss of water from the North Waiehu Stream and ditch.



Before 2104 loss of water from the North Waiehu Stream and ditch.



After 2014 and loss of water from the North Waiehu Stream and ditch.



After 2014 and loss of water from the North Waiehu Stream and ditch.

TMK 3-2-018:027, 31-33 makes up the entirety of Land Commission Award 3429, LCA 3438, and LCA 3457 and describe pō'alima in the LCA and deed. There is no reservation language in the deed. See **Exhibit 3**.

AGENCY REVIEW COMMENTS

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

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

Maui County, Planning Department: No objections.

Department of Hawaiian Home Lands (DHHL): **Comment #1.** There is a discrepancy between the Surface Water Use Permit Application Notice Letter (SWUPANL) and the SWUPA itself. The SWUPANL wrote the proposed water use is for 256,350 gallons per day for diversified agriculture of 22 acres. However, the SWUPA requests 510,000 gallons per day in Item No. 9, while calculating 256,350 gallons per day for Item No. 18 Table No. 1. Please check this discrepancy.

**Comment #2:** For wetland kalo, various studies show water demands can range from 100,000 to 300,000 gpd/acre, with temperature as one of the key factors to prevent rot. USGS shows that net consumptive use is 50,000 gpd/acre, with the additional water flow that is returned to the stream is needed to manage temperature and account for ditch losses. However, the SWUPA notes that there will be no diverted water returned to the stream or ditch. The Department requests the application be supplemented to provide more detail on this matter.

**Comment #3.** The applicant notes that their water use and rights predate the passage of the Hawaiian Homes Commission Act. We believe that it is also necessary to note here that the use the applicant is proposing is for a public trust use of water and that Hawai'i case law there is no priority among public trust uses of water, and there should be sufficient water in this area for all public trust uses.

**Request #1.** The CWRM has a statutory obligation described in Section 101 of the Water Code (HRS § 174C) as follows: "Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in Section 221 of the Hawaiian Homes Commission Act." The CWRM can act to reserve water for DHHL on its own action, when petitioned for action by DHHL, or when required in response to a request for another party to lease or license state waters under HRS 171-58. In designated water management areas, CWRM has adopted reservations of water through a rule making process under HRS 174C-49(d). For non-designated areas they have reserved water during regular meetings under HRS 174C-101. We believe the CWRM is obligated, and we hereby request that in conjunction with this application and others in the area they reserve for DHHL by rule sufficient water for proposed homesteads at Pulehunui. DHHL is prepared to cooperate in this effort., DHHL recognizes and supports the other public trust uses in this area, such as this application. The Department humbly requests the CWRM accommodates DHHL 's unmet needs as well. See **Exhibit 4.**

*CWRM Staff Response:* **Comment 1.** Table 1 (of the application and public notice) showed a total of 256,350 gpd. However, the correct request is 256,555 gpd and is found in Table 2 of the application and consists of 256,350 gpd (1.709 acres x 150,000 gad) for kalo and 205 gpd (0.082 acres x 2,500 gad) for diversified agriculture.



**Comment 2.** Before flow stopped in 2014, there was a throw out pipe that routed from Hoopii to Nakama's property and from there the water flowed back into a ditch alongside Malaihi Road that eventually connects to the Spreckels Ditch. That connection will be restored when the flow returns.

Per the D&O, Conclusions of Law:

68. The Commission concludes that 150,000 gad as the current general irrigation requirement for lo'i kalo is a reasonable use, or the quantity that is necessary for economic and efficient utilization. 150,000 gad is the average irrigation requirement over the 14-15 month period from planting to harvest.

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 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.).

**Comment 3.** Per the D&O, Conclusions of Law:

6. Given the diverse and not necessarily complementary range of water uses, even among public trust uses alone, (the Court) consider(s) it neither feasible nor prudent to designate absolute priorities between broad categories of uses under the water resources trust. There are no absolute priorities between uses under the water resources trust...(and) the Commission inevitably must weigh competing public and private water uses on a case-by-case basis, according to any appropriate standards provided by law. (*Waiahole I*, 94 Hawai'i at 142, 9 P.3d at 454.)

**Request 1.** On December 16, 2020, DHHL petitioned the Commission to reserve 1,327,500 gpd from East Maui streams for use on its Pūlehunui South tract. On November 15, 2022, the Commission approved a reservation of 2.05 cubic feet per second (1.3275 mgd) for DHHL from the East Maui Irrigation System from the Huelo region streams. Should DHHL require additional water for its Pūlehunui North tract, we recommend that DHHL work with Commission staff to develop a suitable water reservation from either the Nā Wai 'Ehā or East Maui region in the future.

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

DLNR, Aquatic Resources: No comments.

DLNR, Engineering: No comments.

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

DLNR, Historic Preservation: No concurrence letter received.

*CWRM Staff Response:* Approval of the application is subject to SHPD Project No. 2023PR00890 concurrence. If SHPD requires conditions, delegation authority to Deputy Director will be added as a special condition.

DLNR, Land Division: No comments received.

DLNR, State Parks: No comments received.

Dept. of Health (DOH), Clean Water Branch: The DOH standard comments are online 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 objections.

US Fish and Wildlife Service (FWS): No objections.

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, "I am the sixth generational descendant of the Mahele awardee who received a Hawaiian Kingdom Government land patent for our Kuleana land, also known as TMK: 3-2-018-027 in which water continuously flowed, uninterrupted, until the sugar plantation modified the watercourses throughout Waiehu. Generational family history and knowledge of Waiehu were shared to me and my siblings of sacred sites gathering areas, fishing methods and traveling routes used by royalty. My family has lived cultivated, and are buried in Waiehu. One of the old watercourses from North Waiehu Stream flowed through Maniania Ditch and fed numerous Kuleana lands registered and awarded to Hawaiian families who cultivated taro, native plants, trees, flowers, and animals for subsistence. Taro continued to be grown on our kuleana land, also known as TMK: 3-2-018-027, until 2014 when North Waiehu Stream Ditch was damaged and not repaired by Wailuku Water Company. We are currently struggling to maintain the sparse taro growing without flowing water."

*CWRM Staff Response:* Cultural, historical, and natural resources in which traditional and customary native Hawaiian rights rely on are known to exist throughout the Wailuku area. There are 37 out of 40 surface water use permittees who's source of water is the Waihe'e River have Priority 1 uses consisting of domestic, appurtenant and traditional and customary practice rights. See **Table 2**. No comments were received by DLNR 'Aha Moku. No comments were received from the public. There were no historic sites identified on the applicant's parcel.

- 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, "The restoration of water to our Kuleana land, also known as TMK: 3-2-018-027, will re-establish the cultivation of taro once abundant on the land. It will also re-establish the cultivation of banana trees, mango trees, jack fruit trees, lilikoi vines, avocado trees, ulu trees, gingers flowers, and many other native plants, trees, vines, and flowers. In addition, it will provide for eventual drinking water and running water for farm and living facilities."

*CWRM Staff Response:* There are no anticipated impacts to traditional and customary practices from the proposed use.

- 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, "Enforce the Na Wai Eha Final Decision Findings of Fact Conclusion of Law and Decision & Order - Case Number CCH-MA 15-01: The ruling

stipulates the return of water to “kuleanas previously provided water from the North Waiehu Ditch, continue to serve the Waiehu Kuleana users from the Waihe'e Ditch, and modify the inactivated North Waiehu diversion located just above the Waihee Ditch to facilitate passage of native stream species”. In doing so, this will restore water back to the kuleana for kalo restoration. Existing infrastructure already exists. Allow for a new water intake pipe into Waihe'e Ditch at point of "White Pipe" currently located above Waihe'e Ditch. See Exhibit.”

*CWRM Staff Response:* While staff don't anticipate any impacts on traditional and customary practices, there may be times of drought that may limit or impact streamflow 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 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 (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, p.

291). Priority 1 uses are legally recognized appurtenant rights, traditional and customary Native Hawaiian rights, domestic uses of the general public, the Department of Hawaiian Home Lands reservations, and the Maui Department of Water Supply uses. Priority 2 are other existing uses. Priority 3 is diversified agriculture, including commercial lo'i kalo. Priority 4 are new uses not based on appurtenant rights.

Per the D&O, Decision and Order:

3. The IIFS for Waihe'e River is modified to be as follows:
  - a. above all diversions at gauging station 16614000 near an altitude of about 605 feet the flow will remain as designated on December 10, 1988, estimated by USGS, based on data from 1984-2005, as Q<sub>90</sub> of 24 mgd, Q<sub>70</sub> of 28 mgd, and Q<sub>50</sub> of 34 mgd;
  - b. just downstream of the Spreckels Ditch diversion, at about an altitude of 270 feet, the IIFS will be 11.44 mgd, representing the flow necessary to support the majority of instream habitat (10 mgd) and instream traditional and customary practices (1.44 mgd) associated with the downstream North Waihe'e 'auwai<sup>45</sup>.
  - c. at the mouth of the River, the flow will be at least an estimated 6.0 mgd when losses into the streambed, return flows from the ho'i, and consumption are factored in.
  - d. when the flow at USGS station 16614000 is below 19 mgd for three consecutive days, the IIFS will be 11.15 mgd, the minimum amount agreed to by all parties in the 2014 mediated settlement.

*(<sup>45</sup> This amount represents the traditional and customary uses that are fed directly from the stream and not through WWC's system).*

Per the D&O, Decision and Order:

39. SWUP.2157.6 Wailuku Water Company.
  - d. WWC is required to find a way to provide water from the Waihe'e Ditch for previous kuleana users of the North Waiehu Ditch (see FOF 17).

A summary of surface water use permits from the Waihe'e Surface Water Management Area are shown in **Table 2**.

**Table 2:** Surface Water Use Permits, Waihe'e Surface Water Management Area.

SWUP No.	Permittee	Total Amount (gpd)	Notes
<b>ALLOCATION</b>	Waihe'e River Q <sub>70</sub> : 28 mgd Waihe'e River IIFS: 11.44 mgd Q <sub>70</sub> – IIFS: 16.56 mgd or 16,560,000 gpd	<b>16,560,000</b>	USGS gage 16614000 above Waihe'e and Spreckels Ditches
<b>Source: Waihe'e Ditch</b>			
2298 / 2299	John Varel	895,500	
2355	Fred Coffey	642	
2342	Paul Higashino	301,250	
2290 / 3905	Murray and Carol Smith	6,900	
2326 / 2327	Lester Nakama (Ciacci)	165,000	
2328 / 2329	Lester Nakama	105,000	
2330 / 2331	Peter Lee & Lester Nakama	159,900	
<b>Permitted Use Total for Waihe'e Ditch</b>		<b>1,634,192</b>	
<b>Source: Spreckels Ditch</b>			
2249	Kenneth Kahalekai	289,750	
2312	Kau'i Kahalekai	416,400	
2320 / 2321	Anakalea (Aloha Poi)	75,000	
2262 / 2263	John Varel (Paleka)	52,275	
2334 / 2335	Burt Sakata & Peter Fritz	193,095	
2225 / 2226	Michael Doherty	302,125	
2280 / 2281	Thomas and Denise Texeira	23,838	
2264 / 2265	Piko A'o	734,075	
2316 / 2317	Gordon Apo (Aloha Poi)	109,500	
2221 / 2222	Cordell Chang	76,125	
2313 / 2314	Charlene and Jacob Kana	173,000	
2294	Bryan Sarasin, Sr.	148,750	
2361	Kathleen DeHart	4,125	
2231 / 2232	Diannah Goo	72,600	
2706	Hawaiian Islands Land Trust	1,350,000	
2250 / 2251	Alfred and Ina Kailiehu	37,913	
2318 / 2319	Nolan Ideoka & Lester Nakama	115,500	
2144	Living Waters Foundation	22,938	
2153	Robert Hanusa	625	
2182	Cecilia Chang (Jung)	684	
2593	John Varel (Koolau Cattle Co.)	345,585	
<b>Permitted Use Total for Spreckels Ditch</b>		<b>4,543,903</b>	
<b>Source: Waihe'e River</b>			
2233 / 2234	Diannah Goo	108,600	
2227	Richard Emoto and Roy Ellis	61,000	
2228 / 2229	Faustino and Lovato-Rodrigues	100,500	
2269 / 2270	Michael Rodrigues	193,000	
2283	Lorin Pang	2,500	
2322 / 2323	Barrett (Aloha Poi)	468,760	

SWUP No.	Permittee	Total Amount (gpd)	Notes
2252 / 2253	Crystal Koki	135,706	
2324 / 2325	La'a and Rodrigues	246,000	
2364	William Freitas	75,660	
2365	Diannah Lai Goo	157,500	
3470	John Varel (Emmanuel Church)	150,000	
2362	Joseph Alueta	300,000	
<b>Permitted Use Total for Waihe'e River</b>		<b>1,999,226</b>	
<b>TOTAL PERMITTED USE</b>		<b>8,177,321</b>	
<b>ALLOCATION minus TOTAL PERMITTED USE</b>		<b>8,382,679</b>	
5934	<i>Hoopii (pending)</i>	256,555	<i>Waihe'e Ditch</i>
5947	<i>Mundy</i>	153,125	<i>Waihe'e Ditch</i>
<b>REMAINING ALLOCATION AVAILABLE</b>		<b>7,972,999</b>	

- (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 kalo and diversified agriculture. 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 256,555 gpd consisting of 256,350 gpd (1.709 acres x 150,000 gad) for kalo and 205 gpd (0.082 acres x 2,500 gad) for diversified agriculture. This amount is consistent with 150,000 gpd standard and 2,500 per the D&O, Conclusions of Law:

68. The Commission concludes that 150,000 gad as the current general irrigation requirement for lo‘i kalo is a reasonable use, or the quantity that is necessary for economic and efficient utilization. 150,000 gad is the average irrigation requirement over the 14-15 month period from planting to harvest.

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 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.).

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 irrigation practices include flood (kalo) with a ho'i that returns water to down gradient permittees, and trickle/drip for diversified agriculture.

### IV. Analysis of Practical Alternatives

The applicant stated the following:

- a) Municipal: No municipal water source available to property.
- b) Wastewater: No wastewater reuse since no municipal water or other water source.
- c) Ditch system: Previous user of North Waiehu Stream via North Waiehu Stream Ditch. Infrastructure is in place but waterflow severed from North Waiehu Stream Ditch. Waihe'e Ditch can provide water to TMK: 3-2-018-027.
- d) Desalinization: Due to location, desalinization would not be feasible or financially attainable.
- e) Groundwater: Due to extensive research and financial needs, ground water would not be feasible.
- f) Conservation: No water conservation measures available.
- g) Other: Not applicable.

*CWRM Staff Response:* Non-potable water is the recommended source for kalo and diversified agriculture. The use is reasonable and beneficial. It meets the purpose, quantity justification, efficiency, and there are no practical alternatives.

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

*CWRM Staff Response:* There are 37 out of 40 surface water use permittees that have Priority 1 uses consisting of domestic, appurtenant and traditional and customary practice rights. See **Table 2**. A total of seven (7) surface water use permittees receive water from the Waihe'e Ditch. Existing use permittee's SWUP.2326.6 Nakama, SWUP.2328.6



Nakama, and SWUP.2330.6 Nakama are previous users of the North Waiehu Ditch and per the D&O should get their water from Waihe‘e Ditch. Hoopii’s use should not interfere with these users since water is conveyed to an existing 4-inch takeoff of the main pipe to Nakama. She also has a ho‘i and it is estimated that 90% of the requested amount will flow through the ho‘i and back to Nakama.

New use permit SWUP.3905.6 Smith, while not a previous user of the North Waiehu Ditch, was approved for 5,850 gpd for diversified agriculture and 1,050 gpd for domestic use in the D&O.

Appurtenant Rights. The applicant claims an appurtenant right.

Per the D&O, Conclusions of Law:

68. The Commission concludes that 150,000 gad as the current general irrigation requirement for lo‘i kalo is a reasonable use, or the quantity that is necessary for economic and efficient utilization. 150,000 gad is the average irrigation requirement over the 14-15 month period from planting to harvest.

74. The Commission concludes that 150,000 gallons per acre per day (gad) for lo‘i approximates the quantity of the appurtenant water rights to which that land is entitled.

TMK	Royal Patent (RP) Land Commission Award (LCA)	Description	Percent (%)	Recommended Amount
3-2-018:027	LCA 3429 LCA 3438 LCA 3457	Pō‘alima	100	491,850 gpd (3.279 acres x 150,000 gad)
3-2-018:031	RP 6099 LCA 3429	Pō‘alima	100	10,650 gpd (0.071 acres x 150,000 gad)
3-2-018:032	RP 6163 LCA 3457	Pō‘alima	100	20,850 gpd (0.139 acres x 150,000 gad)
3-2-018:033	RP 6163 LCA 3457	Pō‘alima	100	11,100 gpd (0.074 acres x 150,000 gad)
<b>Total</b>				<b>534,450 gpd</b> <b>(3.563 acres x 150,000 gad)</b>

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:<sup>38</sup>

- 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<sup>39</sup> 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.)

Per the D&O, Decision and Order:

35. In awarding water for traditional and customary practices, and especially providing water for lo'i kalo, the users of traditional 'auwai will be responsible to ensure that the 'auwai are sufficient to handle the flow for the initial users and all down 'auwai users as well.

36. The Commission also encourages the 'auwai users to engage in collective stewardship of the 'auwai systems to use the allocated water responsibly, both in times of abundance and more importantly during times of scarcity.

*CWRM Staff Response:* The applicant stated, "I am the sixth generational descendant of the Mahele awardee who received a Hawaiian Kingdom Government land patent for our Kuleana land, also known as TMK: 3-2-018-027 in which water continuously flowed, uninterrupted, until the sugar plantation modified the watercourses throughout Waiehu. Generational family history and knowledge of Waiehu were shared to me and my siblings of sacred sites gathering areas, fishing methods and traveling routes used by royalty. My family has lived cultivated, and are buried in Waiehu.

"One of the old watercourses from North Waiehu Stream flowed through Maniania Ditch and fed numerous Kuleana lands registered and awarded to Hawaiian families who cultivated taro, native plants, trees, flowers, and animals for subsistence. Taro continued to be grown on our kuleana land, also known as TMK: 3-2-018-027, until 2014 when North Waiehu Stream Ditch was damaged and not repaired by Wailuku Water Company. We are currently struggling to maintain the sparse taro growing without flowing water."

The applicant has claimed both an appurtenant right and a traditional and customary practice right. Based on evidence presented, both appurtenant right and traditional and customary right are affirmed.

- (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 as requested by this application. There were no public comments or objections to this application. Because the use falls under agricultural uses, this applicant meets the criteria to satisfy public interest.

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

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

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

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

*CWRM Staff Response:* The Maui Department of Water Supply updated the Maui Island Water Use and Development Plan in 2022. The use of non-potable water for agricultural use is consistent with County land use plans and policies.

- (7) Will not interfere with the rights of the department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.

*CWRM Staff Response:* The Department of Hawaiian Home Lands (DHHL) has no water reservations in the Waihe'e Surface Water Management Area. All water use permits are subject to the rights of DHHL. Therefore, this application will not interfere with DHHL.

## PUBLIC UTILITIES COMMISSION CONSULTATION

At the August 15, 2023 meeting the Commission deferred action on this SWUPA due to concerns raised by WWC's testimony and directed Commission staff to consult with the Public Utilities Commission (PUC). WWC's testimony provided an excerpt of the PUC order from January 9, 2009 that showed that WWC was "(ii) [...] prohibited from adding any new customers; [...]."

On September 12, 2023, Commission staff met with the chief counsel and a staff member of the PUC to discuss broad questions about PUC jurisdiction only as there is a pending request by WWC to unsuspend docket number 2008-0025 (Application for a Certificate of Public Convenience and Necessity (CPCN) to provide non-potable water distribution service in the Waihe'e, Wai'ehu, Pu'uohala, Wailuku, and Waikapū areas). The PUC's chief counsel informed staff that WWC had filed an amended application on May 18, 2022 and that any additional changes in the amount of customers or users could be added in another filing of WWC to the PUC. Furthermore, the chief counsel did not see any jurisdictional issue that would prevent the Commission from issuing water use permits as the PUC looks to the Commission's orders and decisions first regarding water allocations and approval of usage before the PUC can make determinations on a CPCN. This statement conforms with the PUC's order filed on January 9, 2009. See p. 8-12, **Exhibit 6**.

Additionally, WWC had filed a letter with the PUC on May 19, 2022 that was sent to its customers to "notify [them] about WWC's updated PUC filing, including proposed new rates, and the expected next steps in the restarted PUC proceeding." This letter included a proposed rate schedule where WWC explicitly distinguishes between customers and users. Users are SWUP holders who "for all or part of its allocation to hold appurtenant rights, and/or to use the non-potable water in the exercise of native Hawaiian Traditional and Customary rights, at the SWUP authorized location." See **Exhibit 7**. This SWUPA includes allocations for traditional and customary Native Hawaiian practices. Thus, under WWC's own categorization this SWUPA holder would be a user and not a customer and could not violate the January 9, 2009 PUC order.

## RECOMMENDATION

That the Commission:

1. Approve Surface Water Use Permit Application (SWUP.5934.6) to Michele Hoopii for new uses in the amount of 256,555 gpd consisting of 256,350 gpd (1.709 acres x 150,000 gad) for kalo and 205 gpd (0.082 acres x 2,500 gad) for diversified agriculture, subject to the standard water use permit conditions in **Exhibit 5** and the following special conditions:
  - a. This permit is invalid if the uses as described in Table 1 change. 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. Permit is subject to SHPD Project No. 2023PR00890 concurrence. If SHPD requires conditions, authority shall be delegated to the Deputy Director to attach those as conditions of the surface water use permit.
  - c. The domestic use of 205 gpd (0.82 acres x 2,500 gad) for diversified agriculture and 256,350 gpd (1.709 acre x 150,000 gad) for kalo is recognized as a Priority 1 use. The requested amount of 256,555 gpd is reasonable and beneficial and can be accommodated by the allocated amount for offstream uses by permitted users across the Waihe'e, Waiehu, 'Īao and Waikapū surface water management areas.
2. TMK 3-2-018:027, 31-33 makes up the entirety of Land Commission Award (LCA) 3429, LCA 3438, and LCA 3457 and describe pō'alima in the LCA and deed. Recognize appurtenant rights in the amount of 534,450 gpd (3.563 acres x 150,000 gad) for parcels 27, 31, 32, and 33. This use is considered under the priority for the exercise of traditional and customary practices.
  3. Find that SWUP.2157.6 issued to the Wailuku Water Company for system losses in the amount of 2.73 mgd is not required to be amended.

Ola i ka wai,



DEAN D. UYENO  
Acting Deputy Director

Exhibits:

1. Surface Water Use Permit Application.
2. Public Notice, dated April 26 and May 3, 2023.
3. Land Commission Award 3429, LCA 3438, and LCA 3457.
4. Department of Hawaiian Home Lands letter dated May 17, 2023.
5. Standard Surface Water Use Permit Conditions.
6. PUC Order January 9, 2009 in Docket 2008-0025.
7. Letter from Douglas A. Codiga to PUC May 19, 2022.

APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG  
Chairperson



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

For Official Use Only:

**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 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.

<b>APPLICANT INFORMATION:</b> 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.					
<b>1. APPLICANT'S NAME</b>		Applicant's Contact:		<b>2. SOURCE LANDOWNER'S NAME</b>	
Michele Hoopli		Michele Hoopli		(Portion of Waihe'e Ditch) Wailuku Water Company LLC	
Applicant's Mailing Address, or Principal Place of Business:		Source Landowner's Contact:		Source Landowner's Mailing Address, or Principal Place of Business:	
58 Hoola Hou Street, Wailuku HI 96793		Avery Chumley		255 East Waiko Road, Wailuku HI 96793	
Applicant's Phone:	Applicant's Fax:	Applicant's E-mail:	Source Landowner's Phone:	Source Landowner's Fax:	Source Landowner's E-mail:
		N/A			
<b>SOURCE INFORMATION</b>					
<b>3. SURFACE WATER HYDROLOGIC UNIT:</b> Island: Maui Hydrologic Unit: <u>Waihe'e Stream</u> Hydrologic Unit Code: <u>Waihe'e Stream</u>					
<b>4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT, IF APPLICABLE:</b>					
<b>5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit: Allow for a Water Pipe Intake into Waihe'e Ditch via an existing water course					
<b>6a. TMK OF PROPOSED STREAM DIVERSION LOCATION:</b> _____ - _____ - _____ : _____					
<b>6b. TMK OF PROPOSED DITCH DIVERSION LOCATION:</b> _____ - _____ - _____ : _____					
<b>7a. PROPOSED STREAM DIVERSION:</b> How will water be diverted from the stream to your property? Check all that apply. <input checked="" type="checkbox"/> Pipe <input type="checkbox"/> Pump <input checked="" type="checkbox"/> Ditch/Auau <input type="checkbox"/> Other Describe: _____					
<b>7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?</b> <input type="checkbox"/> Yes. How much water will be returned? _____ gallons per day TMK of Returned Water Location: _____ <input checked="" type="checkbox"/> No					
<b>8. PROPOSED FLOW MEASUREMENT INFORMATION:</b> Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts? Pending <input type="checkbox"/> Yes. List the manufacturer and describe the device: _____ <input type="checkbox"/> No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below.					
<b>PROPOSED USE INFORMATION</b> §§174C-51(4), (5), (6), HRS					
<b>9. TOTAL QUANTITY OF WATER REQUESTED:</b> 510,000 gallons per day. See Table 1, Item 14.					
<b>10. PROPOSED USE:</b> Check all that apply. <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Domestic <input type="checkbox"/> Industrial See Table 1, Item 1. <input checked="" type="checkbox"/> Irrigation <input type="checkbox"/> Military <input type="checkbox"/> Municipal					
<b>11. LOCATION OF PROPOSED WATER USE:</b> 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 EXHIBIT 4E					
<b>PROPOSED USER INFORMATION</b>					
<b>12. APPURTENANT RIGHT:</b> Do you claim an appurtenant right for your proposed water use? and Kuleana <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, has the appurtenant right been established by the courts or the Commission? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Land Commission/Royal Patent					
<b>13. PROPOSED END USER INFORMATION:</b> Will you be an end user on an existing water system? <input checked="" type="checkbox"/> Yes. List the name of the system operator: Waihe'e Ditch System via Wailuku Water Company <input type="checkbox"/> No					
<b>14. REGISTRATION AND DECLARATION OF WATER USE:</b> Do you have a Registration and Declaration of Water Use from the Commission? <input checked="" type="checkbox"/> Yes. List the file reference name(s): Case Number CCH-MA 15-01 - See 21c <input type="checkbox"/> No					
<b>16. STREAM DIVERSION WORKS PERMIT (SDWP):</b> Do you have a SDWP from the Commission? <input type="checkbox"/> Yes. List the permit number(s): _____ <input checked="" type="checkbox"/> No					
NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) if necessary, additional information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited to, any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.					
<b>18. APPLICANT</b>			<b>17. SOURCE LANDOWNER / Water System Owner (Waihe'e Ditch)</b>		
Signature: <u>Michele Hoopli</u>			Signature: _____		
Print: Michele Hoopli			Print: Avery Chumley		
Date: _____			Date: _____		

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													
A	B	C	D	E	F	G	H	I	J	K			
EFFICIENCY OF USE													
PURPOSE / WATER USE CATEGORY	TKM 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, based on the zoning code approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, based on the zoning code approved, if applicable.	UNITS OR NET ACREAGE	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.		
<b>Uses that require potable (drinking) water</b>													
Zone	-	-	-	-	-	-	-	-	-	-	-	-	
Zone	-	-	-	-	-	-	-	-	-	-	-	-	
Zone	-	-	-	-	-	-	-	-	-	-	-	-	
Zone	-	-	-	-	-	-	-	-	-	-	-	-	
Zone	-	-	-	-	-	-	-	-	-	-	-	-	
Zone	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Uses that do not require potable water</b>													
Zone	3	2	0	1	8	0	2	7	AGRCP	-	-	-	
Zone	3	2	0	1	8	0	3	1	AGRCP	-	-	-	
Zone	3	2	0	1	8	0	3	2	AGRCP	-	-	-	
Zone	3	2	0	1	8	0	3	3	AGRCP	-	-	-	
<b>TOTAL POTABLE USE (L)</b>													
									1.63	244,500	244,500	Net acres x 150,000 = gallons per day	
									.035	5,250	5,250	Net acres x 150,000 = gallons per day	
									.007	1,050	1,050	Net acres x 150,000 = gallons per day	
									.037	5,550	5,550	Net acres x 150,000 = gallons per day	
									<b>TOTAL NON POTABLE USE (M)</b>		256,350	256,350	GPD
									<b>TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) (N) =</b>		256,350	256,350	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													
No limitations													

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		B		C		D		E		F		G		H		
TMK OF PROPOSED LOCATION OF USE (Attach TMK map outlining area and photos for each proposed use.)		CROP		TOTAL ACREAGE		NET IRRIGATED ACREAGE		BEGIN GROWTH PERIOD (Month)		END GROWTH PERIOD (Month)		IRRIGATION SYSTEM (Refer to instructions.)		IRRIGATION PRACTICE (Refer to instructions.)		
Zone	3	2	0	1	8	:	0	2	7							
Zone	3	2	0	1	8	:	0	3	1	Taro (wetland)	3.279	1.63	Year round	Year round	Flood (Kalo)	Irrigate to field capacity
Zone	3	2	0	1	8	:	0	3	1	Taro (Wetland)	.071	.035	Year round	Year round	Flood (Kalo)	Irrigate to field capacity
Zone	3	2	0	1	8	:	0	3	2	Taro (Wetland)	.014	.007	Year round	Year round	Flood (Kalo)	Irrigate to field capacity
Zone	3	2	0	1	8	:	0	3	3	Taro (Wetland)	.074	.037	Year round	Year round	Flood (Kalo)	Irrigate to field capacity
Zone	3	2	0	1	8	:	0	2	7	Diversified Ag	3.279	.082	Year round	Year round	Trickle/Drip	Deficit irrigation
Zone	-	-	-	-	-	:	-	-	-							
Zone	-	-	-	-	-	:	-	-	-							
Zone	-	-	-	-	-	:	-	-	-							
Zone	-	-	-	-	-	:	-	-	-							
Zone	-	-	-	-	-	:	-	-	-							
Zone	-	-	-	-	-	:	-	-	-							
Zone	-	-	-	-	-	:	-	-	-							
Zone	-	-	-	-	-	:	-	-	-							
Zone	-	-	-	-	-	:	-	-	-							
Comments:																



APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

OTHER PERTINENT INFORMATION	
20. TABLE 3: ALTERNATIVES ANALYSIS	
	B. Analysis of Non-Potable Alternatives (Attach additional sheets if necessary.)
Municipal sources	No municipal water source available to property
Wastewater reuse	No wastewater reuse since no municipal water or other water source
Ditch system	Previous user of North Waiehu Stream via North Waiehu Stream Ditch. Infrastructure is in place but waterflow severed from North Waiehu Stream Ditch. Waihe'e Ditch can provide water to TMK: 3-2-018-027
Desalination	Due to location, desalination would not be feasible or financially attainable
Ground water	Do to extensive research and financial needs, ground water would not be feasible
Conservation measures	No water conservation measures available
Other (specify)	Not applicable

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

<b>OTHER PERTINENT INFORMATION</b>
<p><b>21. PUBLIC INTEREST:</b> <i>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.</i></p>
<p><b>Explain how the proposed new use(s) in your application are consistent with items [a] and [b] above.</b></p> <p><b>A.</b></p> <p>I am a lineal descendant of the original Mahele awardee who once lived and cultivated taro on our Kuleana land also known as TMK 3-2-018-027. Historically taro grew abundantly in Walehu and was the main subsistence for many families. Taro was not just a food source but also used for medicinal purposes and given the right preparation, a food for long travels. In addition, when given sufficient water, taro is able to produce offsprings to further provide taro for continuous cultivation. This is how our ancestors survived on an island in the middle of the ocean. Taro as an alternate food source is a public interest.</p> <p><b>B.</b></p> <p>Restoration of water would provide for the protection of traditional and customary Hawaiian rights by allowing for the return of taro cultivation for food and medicine. It could also be an additional source of food for the public should shipping be affected to the Islands.</p>
<p><b>21a. Please provide the identify and scope of cultural, historical, and natural resources in which traditional and customary Native Hawaiian rights are exercised in this area.</b></p> <p>I am the sixth generational descendant of the Mahele awardee who received a Hawaiian Kingdom Government land patent for our Kuleana land, also known as TMK: 3-2-018-027 in which water continuously flowed, uninterrupted, until the sugar plantation modified the watercourses throughout Walehu. Generational family history and knowledge of Walehu were shared to me and my siblings of sacred sites gathering areas, fishing methods and traveling routes used by royalty. My family has lived cultivated, and are buried in Walehu.</p> <p>One of the old watercourses from North Walehu Stream flowed through Maniania Ditch and fed numerous Kuleana lands registered and awarded to Hawaiian families who cultivated taro, native plants, trees, flowers, and animals for subsistence. Taro continued to be grown on our kuleana land, also known as TMK: 3-2-018-027, until 2014 when North Walehu Stream Ditch was damaged and not repaired by Walluku Water Company. We are currently struggling to maintain the sparse taro growing without flowing water.</p>
<p><b>21b. Identify the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action</b></p> <p>The restoration of water to our Kuleana land, also known as TMK: 3-2-018-027, will re-establish the cultivation of taro once abundant on the land. It will also re-establish the cultivation of banana trees, mango trees, jack fruit trees, lilikoi vines, avocado trees, ulu trees, gingers flowers, and many other native plants, trees, vines, and flowers. In addition it will provide for eventual drinking water and running water for farm and living facilities.</p>
<p><b>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?</b></p> <p>Enforce the Na Wai Eha's Final Decision Findings of Fact Conclusion of Law and Decision &amp; Order – Case Number CCH-MA 15-01:</p> <p>The ruling stipulates the return of water to "kuleanas previously provided water from the North Walehu Ditch, continue to serve the Walehu Kuleana users from the Waihe'e Ditch, and modify the Inactivated North Walehu diversion located just above the Waihe'e Ditch to facilitate passage of native stream species" In doing so, this will restore water back to the kuleana for kaio restoration.</p> <p>Existing Infrastructure already exists. Allow for a new water intake pipe into Waihe'e Ditch at point of "White Pipe" currently located above Waihe'e Ditch (See Exhibit 4E)</p>

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

<p><b>OTHER PERTINENT INFORMATION</b></p> <p><b>22. INTERFERENCE WITH THE RIGHTS OF THE DEPARTMENT OF HAWAIIAN HOME LANDS</b>          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.</p> <p>My application will not interfere with the rights of the Department of Hawaiian Home Lands.</p> <p>The water flowed through our Kuleana land, also known as TMK: 3-2-018-027, from North Walehu Stream since before the Great Mahele of 1848. The kuleana land has been passed to me, uninterrupted, from my great, great, great, great, great, great, great grandparent during the time of Kamehameha I which was long before the inception of the Hawaiian Homes Commission Act of 1920. The water does not flow to Walehu Kou Phase I, II, III, or IV</p>													
<p><b>23. INTERFERENCE WITH ANY EXISTING LEGAL USES</b>          Explain how the proposed new use(s) of water will not interfere with any other existing legal use(s) of water.</p> <p>Restoring water will be in compliance with Hawaii Revised Statutes 7-1 and Hawaii Revised Statutes 1-1:</p> <p>§7-1 Building materials, water, etc.; landlords' titles subject to tenants' use. Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use. [CC 1859, §1477; RL 1925, §576; RL 1935, §1694; RL 1945, §12901; RL 1955, §14-1; HRS §7-1]</p> <p>§1-1 Common law of the State; exceptions. The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State. [L 1892, c 57, §5; am L 1903, c 32, §2; RL 1925, §1; RL 1935, §1; RL 1945, §1; RL 1955, §1-1; HRS §1-1]</p>													
<p><b>24. PUBLIC WATER SYSTEM INFORMATION</b>          Check the appropriate box or boxes.</p> <p><input checked="" type="checkbox"/> PUC-Regulated Private System / <input type="checkbox"/> Non-PUC-Regulated Private System / <input type="checkbox"/> Not a Public Water System  <input type="checkbox"/> Intended dedication to Honolulu Board of Water Supply or to County of Maui, Department of Water Supply.</p>													
<p><b>26. CHAPTER 343</b>          This project proposes:</p> <table border="0"> <tr> <td><input type="checkbox"/> Use of state or county lands, or use of state or county funds</td> <td><input type="checkbox"/> A wastewater treatment unit</td> </tr> <tr> <td><input type="checkbox"/> Use within a state conservation district</td> <td><input type="checkbox"/> Waste-to-energy facility</td> </tr> <tr> <td><input type="checkbox"/> Use within a shoreline setback area</td> <td><input type="checkbox"/> Landfill</td> </tr> <tr> <td><input type="checkbox"/> Use within a national or Hawaii registered historic site</td> <td><input type="checkbox"/> Oil refinery</td> </tr> <tr> <td><input type="checkbox"/> Use within the Waikiki Special District</td> <td><input type="checkbox"/> Power-generating facility</td> </tr> <tr> <td><input type="checkbox"/> The construction, expansion or modification of helicopter facility</td> <td><input checked="" type="checkbox"/> None of the above 11 items</td> </tr> </table> <p><input type="checkbox"/> If none of the above 11 items are applicable, no 343 compliance is necessary  <input type="checkbox"/> An Environmental Assessment was completed, and  <input type="checkbox"/> An Environmental Impact Statement was required and has been accepted (attach letter of acceptance).          Publication date in The Environmental Notice:  <input type="checkbox"/> A Finding of No Significant Impact has been determined (attach letter).          Publication date in The Environmental Notice:</p>		<input type="checkbox"/> Use of state or county lands, or use of state or county funds	<input type="checkbox"/> A wastewater treatment unit	<input type="checkbox"/> Use within a state conservation district	<input type="checkbox"/> Waste-to-energy facility	<input type="checkbox"/> Use within a shoreline setback area	<input type="checkbox"/> Landfill	<input type="checkbox"/> Use within a national or Hawaii registered historic site	<input type="checkbox"/> Oil refinery	<input type="checkbox"/> Use within the Waikiki Special District	<input type="checkbox"/> Power-generating facility	<input type="checkbox"/> The construction, expansion or modification of helicopter facility	<input checked="" type="checkbox"/> None of the above 11 items
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<input type="checkbox"/> Use within the Waikiki Special District	<input type="checkbox"/> Power-generating facility												
<input type="checkbox"/> The construction, expansion or modification of helicopter facility	<input checked="" type="checkbox"/> None of the above 11 items												

### Attachments

- Exhibit 1: USGS topographic map showing 'White Pipe' above Waihe'e Ditch and TMK: 3-2-018-027 (Kapalaua)
- Exhibit 2: Maui County Real Property map showing location of TMK: 3-2-018-027 (Kapalaua)
- Exhibit 3: Private family map (**CONFIDENTIAL-NOT FOR PUBLIC RELEASE**)
- Exhibit 4: Water course from North Waiehu Stream to TMK: 3-2-018-027 (Kapalaua) with pictures: 4A through 4R. **Proposed New Water Intake at 'White Pipe': 4E**
- Exhibit 5: Kuleana verification letter from Office of Hawaiian Affairs (**CONFIDENTIAL-NOT FOR PUBLIC RELEASE**)
- Exhibit 6: Native/Foreign testimonies and land documents: 6A through 6AA

#### SUPPLEMENTAL INFORMATION for SWUPA:

##### K. Applicant's Justification for Quantity of Requested Use:

###### Proposed New Use or Modified Use Information

The proposed new use calculation is based on testimony filed by Aloha Poi Factory, Lester Nakama, for application SWUP No: 23266 (below in red). The measurement of water was done by a bucket test from TMK: 3-2-018-027 which was owned by Magdalen Ho'opi'i at the time of the test but has since been conveyed to me, Michele Ho'opi'i. Lester Nakama states that 300,000 gallons is the needed amount of water to sufficiently grow healthy taro. Lack of insufficient water causes stunted corms, rotting due to fluctuation of water temperature and excess weeds, among other issues.

$$\begin{aligned} \text{Total acres} \div 2 &= \text{grow area} \\ \text{Grow area} \times 150,000 &= \text{gallons per day} \end{aligned}$$

I am not currently able to calculate the measurement of water to TMK 3-2-018-027 (Kapalaua). The waterflow from the North Waiehu Stream Ditch ran an open course to a basin, entered into a white pipe above Waihe'e Ditch then ran a pipeline course to a wye joint with the final exit into TMK 3-2-018-027 (Kapalaua). North Waiehu Stream Ditch was vandalized and was not repaired by Wailuku Water Company, who oversaw the maintenance and repairs of North Waiehu Stream Ditch. In addition, several storms caused further collapse of North Waiehu Stream Ditch. The waterflow to TMK 3-2-018-027 (Kapalaua) ceased completely in 2014 causing the elimination of taro growing on the property.

North Waiehu Stream has been the main water source to TMK 3-2-018-027 (Kapalaua) since before the time of the Mahele of 1848. The sugar plantation, Wailuku Agribusiness, and Wailuku

Water Company have altered the water courses over time thus severing the original water source to TMK 3-2-018-027 (Kapalaua).

Hawaii State law 7-1 provides for the protection of native Hawaiian traditional and customary rights. As such, Waihe'e Ditch would provide the alternative source of water to TMK 3-2-018-027 (Kapalaua).

**SWUP No: 23266**

**Testimony submitted on SWUP No: 23266**

**Mary Ciacci (landowner)**

**Lester Nakama (lessee)**

**TMK 3-2-018:021, 044**

**SWUPA-E**

**5. Stream Diversion:**

We are kuleana users in Waiehu that receive kuleana water from two sources (see Exhibits 2 and 3). TMK No. 3-2-018:021 receives water from a kuleana auwai that receives water from North Waiehu Stream. Water is diverted from North Waiehu Stream (TMK No. 3-2-014:001) (see attached USGS topo map) into the North Waiehu Ditch and a 6 inch pipe in North Waiehu Ditch brings water across Waihe'e Ditch and under a plantation road. At some point under the plantation road, the pipe is reduced to 4 inches. The pipe splits and some water comes east toward our land and some goes toward the Ho'opi'i is land. The outflow from the Ho'opi's pipe eventually meets up with the portion of the water that comes toward our land and flows in an open ditch into the loi kalo on our land.

The other source is a kuleana auwai that runs along Malaihi Road, and this auwai provides water to TMK No. 3-2-018:044. The auwai receives water from Waihe'e Ditch, after Waihe'e Ditch receives water from Waihe'e River and North Waiehu Stream. Water is diverted from Waihe'e River at the Waihe'e diversions (see attached USGS topo map) into the Waihe'e Ditch. Water is diverted from North Waiehu Stream (TMK No. 3-2-014:001) (see attached USGS topo map) into the North Waiehu Ditch, then into Waihe'e Ditch. Water from the Waihe'e Ditch flows into a pipe and weir, then into an open ditch. The water continues makai in the ditch and pipes down both sides of Malaihi road until it enters our land at TMK 3-2-018:044. Some of our outflow runs in an open ditch through the neighboring parcels and onto the Lee's parcels at TMK No. 3-2-018:040; some of our outflow returns to the auwai running down Malaihi Road.

**Table 2. Justification for Requested Quantity:**

Our existing water use is not gauged, but we measured our use by using the bucket method. See 'Onipa'a Na Hui Kato, Guidelines for Grassroots Lo'i Kalo Rehabilitation 70. We measured the water in the pipe that comes east toward our land after the split, and recorded the amount of time it took to fill a five-gallon bucket five times; the average time was 4.5 seconds. Using the table on page 70 of Guidelines for Grassroots Lo'i Kalo Rehabilitation, we calculated that we use 96,000 gallons per day.

We measured the inflow at the Hopi'i's property, and recorded the amount of time it took to fill a five-gallon bucket five times; the average time was 3.75 seconds. Using the table on page 70 of Guidelines for Grassroots Lo'i Kalo Rehabilitation, we calculated that we use 115,200 gallons per day. We estimate that about half of this amount, 57,600 gallons per day, flows off the Ho'opi'i's land and meets up with the amount measured above before entering our land.

Testimony submitted on SWUP No: 23266

Mary Ciacci (landowner)

Lester Nakama (lessee)

TMK 3-2-018:021, 044

SWUPA-N

Page 2

**Table 1. Justification for Requested Quantity:**

This application is to request sufficient water for our existing lo'i kalo on TMK Nos. 3-2-018:001 and 3-2-018:044. No new land will be put into cultivation.

We estimated the existing amount of water flowing into our lo'i kalo on TMK No. 3-2-018:021 is 153,600 gallons per day for 1.1 acres of kalo, based on the bucket measuring method (see concurrently filed SWUPA-E). This estimated amount is not enough to produce a healthy crop of wetland kalo. Although we try to make due with what we have, the lack of water causes problems like small corms, taro rot, and uncontrollable weeds. We request at least 300,000 gallons per acre per day for our wetland kalo, which, based on Lester Nakama's more than 45 years of experience as a kalo farmer, is necessary for a healthy crop. Accordingly, we need a total of 330,000 gallons per day (1.1 acres multiplied by 300,000 gallons per day). Because our existing use is 153,600 gallons per day, we subtracted that from the 330,000 gallons to get our estimate of 176,400 gallons per day for TMK No. 3-2-018:021.

**PUBLIC NOTICE**

**Application for Surface Water Use Permit  
Waihe'e Stream, Waihe'e 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.5934.6

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

Applicant: Michele Hoopii  
58 Hoola Hou Street  
Wailuku, HI 96793

Date Application Filed as Complete: September 22, 2022  
Surface Water Hydrologic Unit: Waihe'e (8022), Maui  
Water Source: Waihe'e Stream, Maui  
Location of Diversion: Tax Map Key: (2) 3-2-014:001  
Quantity Requested: 256,350 gpd

New / Existing	Description	Location of Use	Qty of Use (gpd)
New	Kalo	(2) 3-2-018:027	244,500
New	Kalo	(2) 3-2-018:031	5,250
New	Kalo	(2) 3-2-018:032	1,050
New	Kalo	(2) 3-2-018:033	5,550

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.

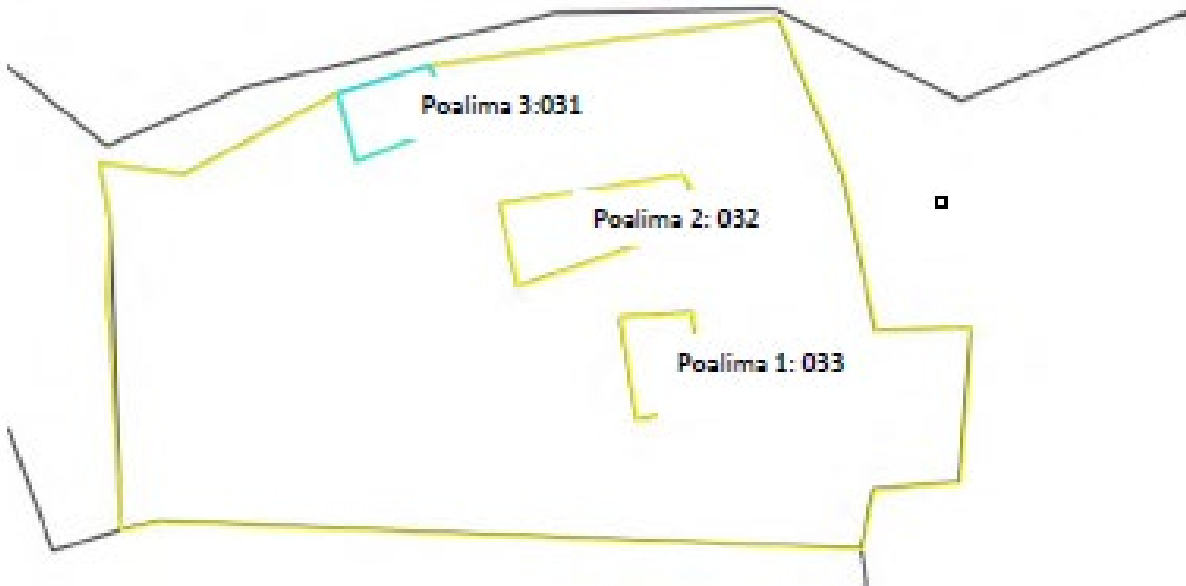
COMMISSION ON WATER RESOURCE MANAGEMENT



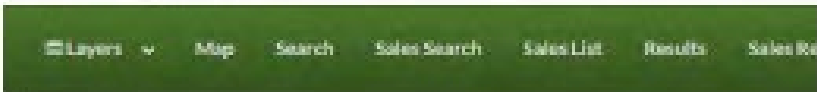
M. KALEO MANUEL, Deputy Director  
for DAWN S. CHANG, Chairperson

Dated: April 19, 2023

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



TMK: [3-2-018-033](#)



### Parcel Information

Parcel Number	320180330000
Location Address	UPPER WAIHEHU WAILUKUHI 96793
Neighborhood Code	3231-5
Legal Information	POALIMA 1 RP 6163, LGAW 34570.074 AC DES
Land Area	0.074 Acres
Parcel Note	



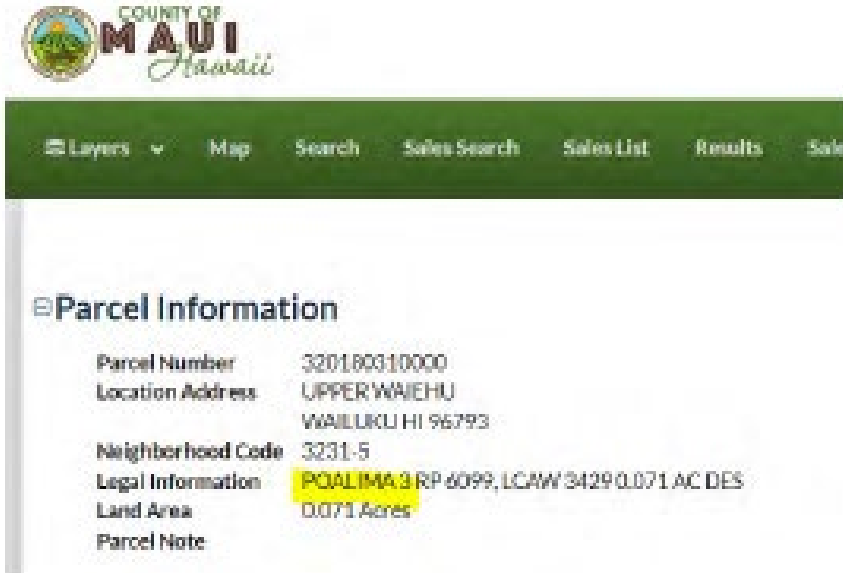
TMK: [3-2-018-032](#)



The screenshot shows the County of Maui GIS interface. At the top left is the County of Maui logo. A green navigation bar contains the following menu items: Layers, Map, Search, Sales Search, Sales List, Results, and Sales. Below the navigation bar, the 'Parcel Information' section is expanded, displaying the following details:

Parcel Number	320180320000
Location Address	UPPER WAIHEHU WAILUKU HI 96793
Neighborhood Code	3231-5
Legal Information	POALIMA 2 RP 6163, LCAW 3457 0.139 AC DES
Land Area	0.14 Acres
Parcel Note	

TMK: [3-2-018-031](#)



The screenshot shows the County of Maui GIS interface. At the top left is the County of Maui logo. A green navigation bar contains the following menu items: Layers, Map, Search, Sales Search, Sales List, Results, and Sales. Below the navigation bar, the 'Parcel Information' section is expanded, displaying the following details:

Parcel Number	320180310000
Location Address	UPPER WAIHEHU WAILUKU HI 96793
Neighborhood Code	3231-5
Legal Information	POALIMA 3 RP 6099, LCAW 3429 0.071 AC DES
Land Area	0.071 Acres
Parcel Note	

No. 3438 Kumahana July 17 Page 305

Ehu sworn He has seen 1 taro section in Kapalaoa ili of Polipoli Land from Kenalo in 1842, a bequest land fro Kumahana's grandparents at the time of Kam. I, no one has objected. Paolima's have been separated.

Mauka	xPaolima
Waihee	Kamaka
Makai	Paolima
Malasea	Kalamafie

No. 3213 Ehu July 16

Kapulu sworn He has seen 2 sections at Halelau ili of Polipoli. Land from Nawai before 1829.

Section 1 - Taro moo and pasture

Mauka	Paolima
Waihee	Kepaa
Makai	Paolima
Malasea	Kapulu

Section 2 - Taro moo and pasture

Mauka	Paolima
Waihee, makai, Malasea	Kepaa

Paolimas are in these two sections, no one has objected.

No. 3432 Kula July 17

Kaiulani sworn He has seen 5 sections in the ilis of Waiehu. Sections 1,2,3, 4, from Laioha before 1829. Sections 5 from Pepe in 1838. No objection. \* 1 Paolima in first section, also in section 2. Page 306

Section 1 - Taro moo, pasture and house at Omas

Mauka	Popoki
Waihee	Paolima
Makai	Z. Nakoookoo's land
Malasea	Land enclosure

Section 2 - Taro moo, at Omas 2

Mauka	Boundaries of this section are in section 1, they are similar.
-------	--

Section 3 - Taro moo at Puupalule

Mauka	Kaiulani
Waihee and makai	Stream
Malasea	Pali

Section 4 - 1 Pond at Pahapahwale

Mauka and all around	Z. Nakoookoo's land
----------------------	---------------------

Section 5 - 1 patch at Kuhimana

Mauka and Waihee	Kalili
Makai	Makanui
Malasea	Pashao

No. 3219 Apapau July 17

Koahula sworn He has seen 1 section in Kapalaoa ili of Polipoli which included the pasture, mountain apples and pandanus. Koahula's land from Kenao before 1825, at the time of Kam. II, jno objection, 4 poalimas in there.

Mauka	Ahikuli ahupuaa
Waihee K	Kaalapahi
Makai	Koahula's land
Malasea	Ahikuli ahupuaa

C. 3427. Kahula.

Kula for the Old land consist of 3 pieces, in Waikua, Maui.  
No. 1 is a piece of half an Akele.

No. 2 . . . . .

The Old and these lands from Olokele in the days of Lanihale  
and his title was never disputed. There is one piece in  
each piece.

No. 1 is bounded Waikua, by Kapihaka's land Waikua, by the  
Creek. On other two sides, by the Kapihaka's land.

No. 2 is bounded Waikua, by Kapihaka's land Waikua, by  
Kapihaka's land Waikua, by Kapihaka's land Waikua, by my  
land.

C. 3430. Kanihala.

Kula for the Old land consists of 3 pieces

No. 1 is a section of his in the Ahupua'a of Kapihaka.

No. 2 . . . . .

No. 3 . . . . .

The Old and these lands from the time before 1839, and  
before from Kapihaka before 1839, and 1843 from Kanihala in 1843. His  
title has never been disputed to either of these pieces. There is one piece  
in piece No. 1

No. 1 is bounded Waikua, by Kapihaka's land Waikua, by  
Kapihaka's land Waikua, by Kanihala's land Waikua, by  
the Creek of Waikua.

No. 2 is bounded Waikua, by Kapihaka's land Waikua, by  
Kanihala's land. On other two sides, by Kapihaka's land.

No. 3 is bounded Waikua, by Kanihala's land Waikua, by  
Kapihaka's land Waikua, by the Creek. Waikua, by Kapihaka's  
land.

C. 3438. Kanihala.

Kula for the Old land consists of one piece of half land, in the

iki of Kipalawa, Pūpūhā, Maui.

The title was taken from Lualaba in 1852, and he was taken in the days of Kamehameha I. The title has never been disputed.

It is bounded Waikua, by the Pūhina's land, Waikua, by Kamehameha's land, Waikua, by the Pūhina's land, Waikua, by the Pūhina's land.

C. 3213. Eka.

~~Waikua~~ Waikua. The title land consists of 2 pieces in the icki of Kipalawa, Pūpūhā, Maui.

N<sup>o</sup> 1 is a piece of half & half land.

The title was taken from Lualaba before 1852, and the title has never been disputed. There is one Pūhina's land in each piece.

N<sup>o</sup> 1 is bounded Waikua, by the Pūhina's land, Waikua, by Kamehameha's land, Waikua, by the Pūhina's land, Waikua, by my land.

N<sup>o</sup> 2 is bounded Waikua, by the Pūhina's land. On other three sides, by Kamehameha's land.

C. 3214. Eka.

Waikua. The title land consists of 2 pieces in Waikua, Maui. It is one half of half & half in the Waikua of Waikua, and the icki of Lualaba.

N<sup>o</sup> 1 is a piece of half in Lualaba.

N<sup>o</sup> 2 is a piece of half in Pūpūhā.

N<sup>o</sup> 3 is a Fish Pond in Pūpūhā. The name of the Pond is Kāhāhāhā.

N<sup>o</sup> 4 is one icki in Pūhina's land.

The title was taken from Lualaba before 1852 and N<sup>o</sup> 1 from Waikua in 1852. The title is not disputed. There is one Pūhina's land in each of the first two pieces.

N<sup>o</sup> 1 is bounded Waikua, by Pūpūhā's land, Waikua, by the Pūhina's land, Waikua, by Kamehameha's land, Waikua, by the Government land.

Waihe'e 343 Kuumahana

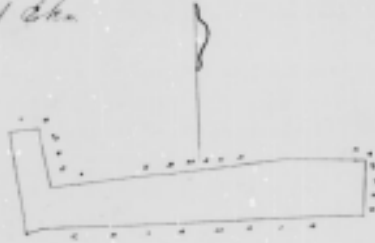
Waihe'e Maui

3-43

He Kapatana. E hoomaka ka ana ma ke kahi Kuumahana o Waihe'e a pili ana ma ke kahi Kooma ma Kama o Kamaha i Kama 1332. Hiki 325 Kaulahao ma ke P. alima. Aka 652 76. Hiki 48 ma ke Kalamais. Aka 82 1/2. Hiki 225. Ma ke Kalamais. Aka 2. Hiki 65. Ma ke Kalamais. Aka 7 1/2. Kama 61. Ma ke Kamaha. Kama 86 1/2. Kama 152. Ma ke Kamaha. Kama 78. Kama 535. Ma ke Kamaha o Kalamais. Aka 13 1/2. Kama 154. Ma ke Kamaha o Kalamais. Kama 75 1/2. Kama 68. Ma ke Kamaha o Kalamais. a hiki ma kahi: hooma ka'i, a waihe'e via anapuni 1 Eka

Waihe'e Aug 12 1852

John L. Lewis  
Maui ana ana



M.S. 1

John L. Lewis  
W. L. Lewis  
J. M. Robertson  
J. Robertson  
J. H. Smith

Honolulu 27 Oct 1852

Waihe'e 345 Kapahi or Anapali

Waihe'e Maui

He Kuumahana. E hoomaka ka ana ma ke kahi Kuumahana o Waihe'e a pili ana ma ke kahi Kama o Kapatana. Aka 80. Hiki 352. Kaulahao ma ke Kuumahana o Kuumahana. Kama 20 1/2. Kama 382. Ma ke P. alima. Kama 62. Kama 284. Ma ke Kapahi. Aka 20. Kama 44. Ma ke Kapahi. a hiki ma kahi: hooma ka'i, a waihe'e via anapuni 1 1/2 Eka

Waihe'e Aug 13 1852

John L. Lewis  
Maui ana ana



John L. Lewis  
W. L. Lewis  
J. M. Robertson  
J. Robertson  
J. H. Smith

Honolulu 27 Oct 1852

78  
 3432 Kalimula  
 Aloha maikai na  
 Luma Hoona kuleana, e ha kai  
 mai ka Olet i au i kai aku i  
 ke kuleana loi kula, Lauhala  
 via i ka Puna si loi i kula, Lau-  
 hala. E kau hoopii ia mekou  
 Me ka Mahalo  
 Waichu 25 Oct. 1867 Kalimula

---

3433 Kaunohani  
 Aloha maikai na  
 Olet i paipai mai ana i na  
 makaainana e kai aku i na  
 Luma Hoona kuleana Puna si  
 kula, malaila mekou hale aku  
 nei. Iwan au ka waiho kane meke  
 i Kaunohani via o Kanani me  
 mai keia mau hi D  
 Palipoli 25 Oct. 1867 Kaunohani

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3434 Kaunohani  
 Aloha maikai na  
 Luma Hoona kuleana, E ha ke  
 nei au i ka paipai mai o Olet  
 i na makaainana Puna ia  
 mekou. Kaunohani i Ahikuli i  
 Kaunohani ke iwa loi 25 i Puhakulua  
 2 loi i Puhakulua 2 loi via keia  
 kuleana e hoike aku nei i na  
 Luma Hoona kuleana Puna  
 Me ka Mahalo  
 Ahikuli Kaunohani  
 25 Oct. 1867

	<p style="text-align: right;">228</p> <p>Mauiha Kaulaha, Ma Waitea Kapala, Maikai        Mahealani, Ma Malaea K. Kaulaha</p>
<p>1228</p>	<p>Kaulaha        Maikai 17        Mahealani Kaulaha</p> <p>Koa ika ma i apama mahealani i Kapala ma        Polipoli. Ma Kaulaha mahealani i Mahealani. Ma mahealani        mahealani mahealani mahealani i Mahealani. Ma mahealani        Mahealani Kaulaha, Ma Waitea Kapala, Maikai        Mahealani, Ma Malaea, Kaulaha</p>
<p>1229</p>	<p>Kaulaha        Maikai 17        Mahealani Kaulaha</p> <p>Koa ika ma i apama mahealani i Kapala ma        Polipoli. Ma Kaulaha mahealani i Mahealani. Ma mahealani        Mahealani mahealani mahealani i Mahealani. Ma mahealani        Mahealani Kaulaha, Ma Waitea Kapala, Maikai        Mahealani, Ma Malaea, Kaulaha</p> <p>Mahealani Kaulaha, Ma Waitea Kapala, Maikai        Mahealani, Ma Malaea, Kaulaha</p>
<p>1230</p>	<p>Kaulaha        Maikai 17        Mahealani Kaulaha</p> <p>Koa ika ma i apama mahealani i Kapala ma        Polipoli. Ma Kaulaha mahealani i Mahealani. Ma mahealani        Mahealani mahealani mahealani i Mahealani. Ma mahealani        Mahealani Kaulaha, Ma Waitea Kapala, Maikai        Mahealani, Ma Malaea, Kaulaha</p> <p>Mahealani Kaulaha, Ma Waitea Kapala, Maikai        Mahealani, Ma Malaea, Kaulaha</p> <p>Mahealani Kaulaha, Ma Waitea Kapala, Maikai        Mahealani, Ma Malaea, Kaulaha</p> <p>Mahealani Kaulaha, Ma Waitea Kapala, Maikai        Mahealani, Ma Malaea, Kaulaha</p>

7103

MAI

HELU-3/25

# PALAPALA SILA HUI.

A KE ALII, MAMULI O KA OLELO A KA POE HOONA KULEANA.

NO KA HUI, Ua hooholo no Lono Hoona i no kama kuleana aia i ka olelo, he kuleana oia no

*Chamohana*  
no ke **Ano Alodie** ika o kela i olelo maika. *Shilona Oiahi 3931.*

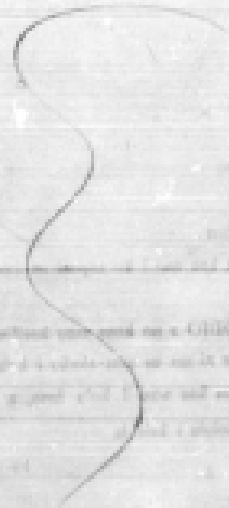
Nalala, no kela Palapala Sila Hui, he hooholo aia no ke Kamehameha IV, he ALE no ke Alua  
i kama kuleana i kama oia maika o ke Hawaii Poe Alua, i no kama a pau, i kela he kama oia,  
a no kama ma kama oia, no kama oia oia no ke **Ano Alodie** i *Chamohana*

*Waihe'e* i kela wahi a pau he no *Chamohana*  
no ke kama oia o *Waihe'e* penei no kama,

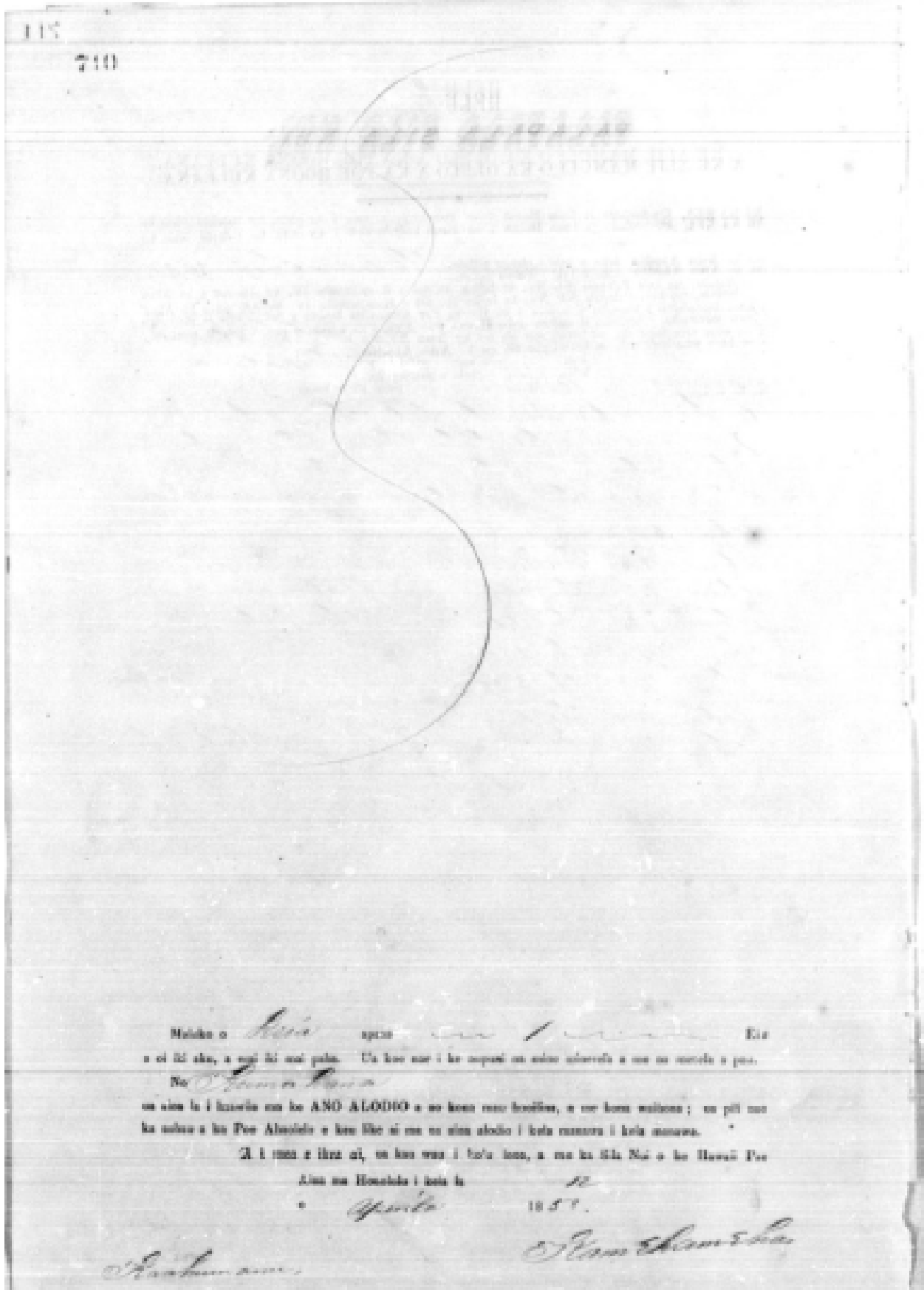
*Chamohana* ma ke kela *Shilona*, a kama i  
penei ma ke kela *Shilona*, *Shilona* a ke  
*Shilona* a ke kela ma kama oia,

<i>Shilona</i>	<i>132°</i>	<i>Sh. 2.36</i>	<i>hau</i>	<i>Palapala</i>	<i>Alua</i>
<i>Shilona</i>	<i>138°</i>	<i>Sh. 61</i>		<i>Palapala</i>	
<i>Shilona</i>	<i>144°</i>	<i>Sh. 7.15</i>			
<i>Shilona</i>	<i>150°</i>	<i>Sh. 63</i>		<i>Palapala</i>	
<i>Shilona</i>	<i>156°</i>	<i>Sh. 60</i>		<i>Palapala</i>	
<i>Shilona</i>	<i>162°</i>	<i>Sh. 131</i>			
<i>Shilona</i>	<i>168°</i>	<i>Sh. 5.38</i>			<i>Ano Alodie</i>
<i>Shilona</i>	<i>174°</i>	<i>Sh. 1.34</i>			
<i>Shilona</i>	<i>180°</i>	<i>Sh. 63</i>			<i>i kela i Chamohana</i>

*Shilona.*







Mahele o Hawaii  
o oi ki aha, a mai ki mai paha. Ua hoo mai i ka mahele o ka mahele a pau.  
No Hawaii  
ua aha la i ka mahele o ka AND ALONG a no hoo mai ka mahele, a no hoo mai ka mahele; ua pii mai  
ka mahele a ka Pae Ahaui a ka mahele a ka mahele a ka mahele i ka mahele i ka mahele.

A i mahele a hoo mai, ua hoo mai i ka mahele, a mahele ka mahele a ka Hawaii Pae

Aha mahele i ka mahele

Mahele

1857

Mahele

Mahele

KUMAHANA - WAIHEHU - MAUI

L. C. A. 3438  
 R. P. 3975  
 Bk. 8, Page 343

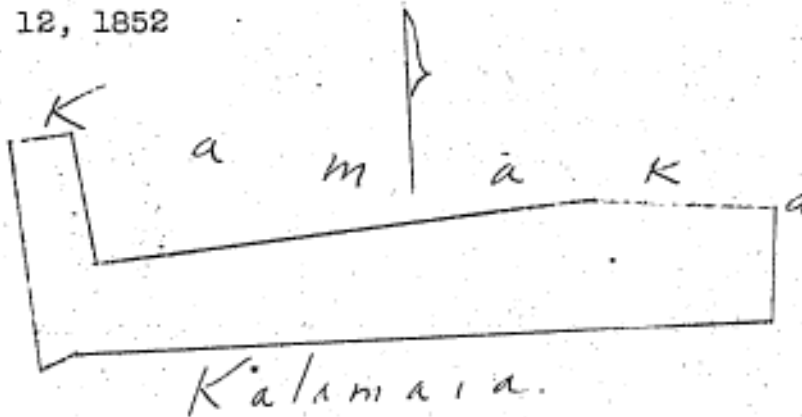
Ili Kapalaua. Beginning at the West corner joining the South-west corner of Kamaka 1

S. $13\frac{1}{2}^{\circ}$ E.	234 chains along Poalima
N. $68\frac{1}{2}^{\circ}$ E.	.41 chains " Kalamaia
N. $82\frac{1}{4}^{\circ}$ E.	7.25 chains along Kalamaia
N. $2^{\circ}$ E.	63 chains " Poalima
N. $7\frac{3}{4}^{\circ}$ W.	61 chains " Kamaka
S. $86\frac{1}{2}^{\circ}$ W.	182 chains along Kamaka
S. $78^{\circ}$ W.	535 chains " " & Poalima
N. $15\frac{1}{2}^{\circ}$ W.	134 chains " " "
S. $75\frac{1}{4}^{\circ}$ W.	63 chains " " "

to the beginning.

Area 1 Acre

Aug. 12, 1852



KUMAHANA - WAIHEHU - MAUI

L. C. A. 3438  
 R. P. 3975  
 Blk. 8, Page 343

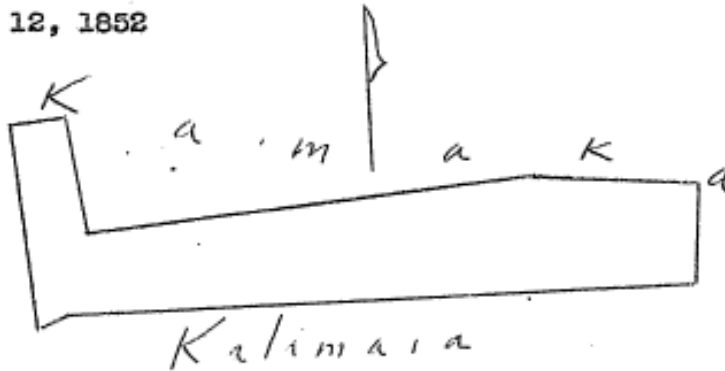
Ili Kapalaua. Beginning at the West corner joining the South-west corner of Kamaka 1

S. $13\frac{1}{2}^{\circ}$ E.	234 chains along Poalima	157.44
N. $68\frac{1}{2}^{\circ}$ E.	41 chains " Kalamaia	27.06
N. $82\frac{1}{2}^{\circ}$ E.	7.25 chains along Kalamaia	478.10
N. $2^{\circ}$ E.	63 chains " Poalima	41.58
N. $75\frac{1}{2}^{\circ}$ W.	61 chains " Kamaka	40.26
S. $86\frac{1}{2}^{\circ}$ W.	182 chains along Kamaka	120.12
S. $78^{\circ}$ W.	535 chains " " & Poalima	353.10
N. $15\frac{1}{2}^{\circ}$ W.	134 chains " " "	88.44
S. $75\frac{1}{2}^{\circ}$ W	63 chains " " "	41.58

to the beginning.

Area 1 Acre

Aug. 12, 1852



No. 2475 Kahalehuki (cont.)

Section 4 - 13 patches at Pohakunui

Mauka	Poalima
	Kaiuipoepoe's land
Waihee	Kaai
Makai	Poalima
Maalaea	Kamana Baiss's land

No. 2474 Kuhu

July 18, 1849

Kapohuli sworn He has seen 2 sections in these ilis of Ahikuli. Land from Kaai-malani at the time of Kam. II. Their house site is old. 2 Fridays in the first section, no one has objected.

Section 1 - Whole ili of Kauuli and a pasture

Mauka	Kaneiakala
Waihee	Stream
Makai	Kamaholoa
Maalaea	Pali

Page 320

Section 2 - House site and pasture in the ili of Kaohe

Mauka, Waihee, makai	Kaneiakala
Maalaea	Ahikuli pali

No. 3456 Keliinui

July 18, 1849

Nuuhwa sworn He has seen 3 sections in the ilis of Waiehu. Sections 1 and 2 from Keliinui's parents at the time of Kam. II. Section 3 from Pepe before 1834. 1 Friday in Kaohe, no one has objected.

Section 1 - Taro pauku at Kaohe

Mauka	Kaholomoana
Waihee	Polea's land
Makai	Kaleo
Maalaea	Stream

Section 2 - 25 taro patches at Ohia 1

Mauka	Z. Nakookoo's land
Waihee	Stream
Makai	Kaleo
Maalaea	Keau

Section 3 - 3 taro patches at Ohia 2

Mauka	Kaniolo
Waihee and makai	Pepeiao
Maalaea	Stream/ Pepeiao

No. 3457 Kamaka

July 18, 1849

Ehu sworn He has seen 1 section in the ili of Kapalaea in Polipoli consisting of a taro moo and pasture. Land from Kenalo in 1846, an old land for Kamaka's grandmother since Kam I, to the time of Kam, III, she is deceased, no one has objected.

Auwae has stopped pressing for that one patch, it has been returned to Kamaka.

Mauka	Auwae's poalima
Waihee	Pea
Makai	Ehu's land
Maalaea	Auwae's land

No. 3275 P Waiwaiole (cont.)

<u>Section 2</u> - 2 Taro patches at Pooluaa		
Mauka		Mahi's land
Waihee		Kamanele
Makai		Malaihi
Maalaea		Mahi's land
<u>Section 3</u> - 9 Taro patches at Ohianui		
Mauka		Mahi's land
Waihee		Apapau
Makai		Kamanele
Maalaea		Poalima
<u>Section 4</u> - 10 Taro patches at Halawa		
Mauka and Waihee		Kane's land
Makai		Kualii
Maalaea		Apapau
<u>Section 5</u> - 13 Taro patches at Kaluaolena 2		
Mauka		Malaihi
Waihee		Pali
Makai		Hoa
Maalaea		Stream
<u>Section 6</u> - Wauke pasture at Papalalooa		

No. 3275 Q Paniolo July 23, 1849

Naleipuleho sworn He had written (claim) in Dec. 1847. Kaleo sworn He has seen 2 sections in these ilis of Waiehu. These 2 sections are from Kapaku in 1842. No one had objected to Paniolo until his death this year 1849. Kalua is Paniolo's true heir, Upa his wife was bequested 1/3 of Paniolo's estate.

<u>Section 1</u> - 2 patches at Kumukahi		
Mauka		Pa
Waihee		Stream
Makai and Maalaea		Kapaku's land
<u>Section 2</u> - Patch pauku at Kumuiliuili		
Mauka		Kanehailua
Waihee		Poleas land
Makai and Maalaea		Kilanakea

No. 3275 Kamaka July 23, 1849 Page 342

Kaleo sworn it was he who wrote (claim) on Dec. 29, 1847. Nuuhiwa sworn He has seen 4 sections in these ilis of Waiehu. Sections 1 and 2 from Polea in 1838. Section 3 from Kilanakea in 1844, his land from his father. Section 4 from Kuasana at the time of Kam. II, noobjections.

<u>Section 1</u> - Taro pauku at Poiwa		
Mauka		Pepehi/Polea's land
Waihee		Polea's land
Makai		Kilanakea
Maalaea		Nuhi/Polea's land
<u>Section 2</u> - Taro pauku at Poiwa		
Mauka		Nuhi's land
Waihee		Ahikuli ahupuaa
Makai		Nuhi's land
Maalaea		Nuhi's land/Polea's land
<u>Section 3</u> - Taro pauku at Poiwa		
Mauka		Nuhi's land
Waihee, Makai, Maalaea		Kulanakea

No. 3275 R Kamaka (cont.)

Section 4 - 2 Taro patches at Kukimana

Mauka and Waihee	Pauanihi
Makai	Wanaoa's land
Maalaea	Stream

No. 3275 S Kawahaale July 23, 1849

Claimant sworn He has known - Kaleipuleho had written in Dec. 1847. Kanse sworn He has seen 1 taro section and pasture in the ili of Kanila in Ahikuli. Land from Kaaimalani at the time of Kam. II. 4 Poalimas there.

Mauka	Kamahaloa's land
Waihee	Stream
Makai	Nuhi's land
Maalaea	Ahikuli pali

No. Poina July 23, 1849 Page 343

He has no claim.

No. 3275 T Kahookano From pg. 196 July 23, 1849

Nushiwa sworn He has heard Kalechano wrote (claim) in Dec. 1847 and he has seen 2 sections in these ilis at Waiehu.

Section 1 from Eleele at the time of Kam. II. Section 2 from Kahookano's parents at the same time as section 1.

Kahookano died in 1847, his wife Kalili and their 4 children are heirs. Kalili has remarried to Keo Kainoa. 3 Poalimas in section 1, no one has objected.

Section 1 - Taro land, pasture and Pahapahawale stream

Mauka	Z. Nakookoo's land
Waihee	Stream
Makai	Z. Nakookoo's land
Maalaea	Ohiaiki ili

Section 2 - 3 Taro patches at Kumuiliuli

Mauka	Kilansakea
Waihee	Pali
Makai	Polea's land
Maalaea	Stream

No. 3275 Kaiaulani July 23, 1849

Kula sworn He has seen Kaleipuleho write the claim in Dec. 1847, and he has seen 2 sections in these ilis of Waiehu. Lands from Kula before 1839. 1 Poalima in section 1, no one has objected.

Section 1 - Taro pauku, pasture and house at Omaso 2

Mauka	Kaawa's land
Waihee	Kapoula
Makai	Keoole
Maalaea	Z. Nakookoo's land

Section 2 - 3 Taro patches at Punopalilo

Mauka	Naialaolao
Waihee and maka i	Stream
Maalaea	Z. Nakookoo's land

N<sup>o</sup> 1 is a half land & hula in the site of Kamaioaka.  
 N<sup>o</sup> 2 is a half land & hula in the site of Kamaioaka.  
 The title was derived from Kamaioaka in the days of Kamaioaka II and his title has never been disputed. There is 2  
 portions in N<sup>o</sup> 1  
 N<sup>o</sup> 1 is bounded Waika, by Kamaioaka's land Waika, by  
 the south of Waika. Waika, by Kamaioaka's land Waika, by the  
 East.  
 N<sup>o</sup> 2 is bounded Waika, by Kamaioaka's land Waika &  
 Waika side by the same. Waika, by the East of Waika.

C. 266. Kamaioaka

Kamaioaka is the title land consist of 3 pieces in Waika, Maui  
 N<sup>o</sup> 1 is a half land in Waika  
 N<sup>o</sup> 2 is a half land in Waika  
 N<sup>o</sup> 3 is a half land in Waika  
 The title was derived from his parents in the days of  
 Kamaioaka II and his title was never disputed. There is no  
 portion in N<sup>o</sup> 1  
 N<sup>o</sup> 1 is bounded Waika, by Kamaioaka's land Waika, by  
 the south of Waika. Waika, by Kamaioaka's land Waika, by the  
 East.  
 N<sup>o</sup> 2 is bounded Waika, by Kamaioaka's land Waika, by the  
 East. Waika, by Kamaioaka's land Waika, by the  
 East.  
 N<sup>o</sup> 3 is bounded Waika, by Kamaioaka's land Waika, by the  
 East. Waika, by Kamaioaka's land Waika, by the  
 East.

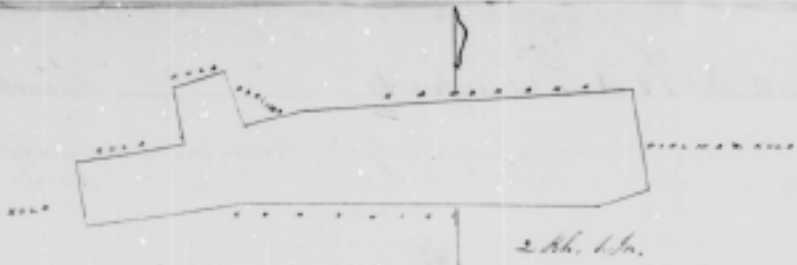
C. 267. Kamaioaka

Kamaioaka is the title land is one piece of half land, in the site of Kamaioaka  
 Kamaioaka II  
 The title was derived from Kamaioaka in 1811, and he from his  
 mother, who possessed it from the days of Kamaioaka I. The title  
 has never been disputed except that the Kamaioaka took away  
 one in 1811 but (he was ordered to restore it)





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2 Ak. 1/2.

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Ulu Pua Pua # 6  
 H. L. Lee  
 C. M. Robertson  
 J. Kaulahoa  
 P. H. Smith

Honolulu 22 Oct. 1852

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Hele 3457 Kamaka Kaiahu Maui


Ili Kapalama. E hoomaka ka ana ana ke kiki Kamehameha. Ikaia e fili ana ana ke kiki Kamehameha  
 76 ana. Kame.

Ahaia	62 1/2'	Kikina	140.	Kaulahoa	Amoa;
Ahaia	56 1/2'	Kikina	277	"	Kame.
Kame	21 1/2'	Kikina	87	"	Pulama.
Ahaia	60 1/2'	Kikina	254	"	Pulama & Kame.
Kame	26 1/2'	Kikina	162	"	Kula. & Pulama.
Ahaia	74 1/2'	Kikina	77	"	Pulama.
Kame	7'	Kikina	162	"	Kula.
Kame	34 1/2'	Kamehameha	86	"	Kamehameha.
Ahaia	7 1/2'	Kamehameha	61	"	"
Kame	36 1/2'	Kamehameha	152	"	"
Ahaia	15'	Kamehameha	141	"	Pulama.
Kame	33 1/2'	Kamehameha	76	"	"
Kame	16'	Kikina	106	"	"
Kame	18'	Kamehameha	462	"	Kamehameha.
Ahaia	15 1/2'	Kamehameha	154	"	Pulama.
Kame	75 1/2'	Kamehameha	62	"	Pulama.
Ahaia	18'	Kamehameha	70	"	"

a kiki ana kiki i kamaka. a mahele ia ana ana 15 1/2' i kiki

Kaiahu, Aug 12. 1852.

Robert L. Lee  
 M. H. Smith



2 Ak. 1/2.

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Ulu Pua Pua # 6  
 H. L. Lee  
 C. M. Robertson  
 J. Kaulahoa  
 P. H. Smith

Honolulu 27 October 1852

83

17 loi i Ka'aohe, he ma'u ana o'ka'a, via ka  
 kuleana e hai aku nei ia nōkou. Aloha  
 me ka māhala  
 Waialeale 15 Dec. 1827 Na Kōkōhūni

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3457 Kamaka  
 Aloha nōkou e ma'ama  
 14. Hoona kuleana Ana loi Kula, me kama  
 a ma lima, aia i Polipoli kōi kuleana  
 3/ loi wai, 7 loi maloo, kula, e kōi he'epa  
 kuleana Aloha me ka māhala  
 Polipoli, Napo'ke Na Kamaka  
 15 Dec. 1827

---

3458 Kikaha  
 Aloha nōkou i pau loa e  
 14. ma'ama Hoona kuleana, he ma'u loi kōi  
 he kula 1, via kōi kuleana, aia i Oha-  
 kōhūni 87 loi, kula, via ka ma'u o'ka'a ma'u  
 loi, aole wahi loi i kōi aku, e ka pau  
 iho la ma'ia i kōi kuleana. Aloha  
 me ka māhala Na Kikaha  
 Oha'kōhūni 10 Dec. 1827.

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3459 Keawe  
 He hai aku nei au i kōi  
 14. kuleana i Oha 4 loi me kōi kula me  
 ka Auwai Oha i Waialeale 19 loi kula 1  
 kōi i Kōhōhōhūni he ma'u pūhala i  
 O'kōi pūhala. O'wau e Keawe, ma'u  
 kōi kuleana Aloha ma'ama Hoona  
 Oha i Waialeale  
 11 Januani 1828 Na Keawe.

KAMAKA - WAIHEHU - MAUI

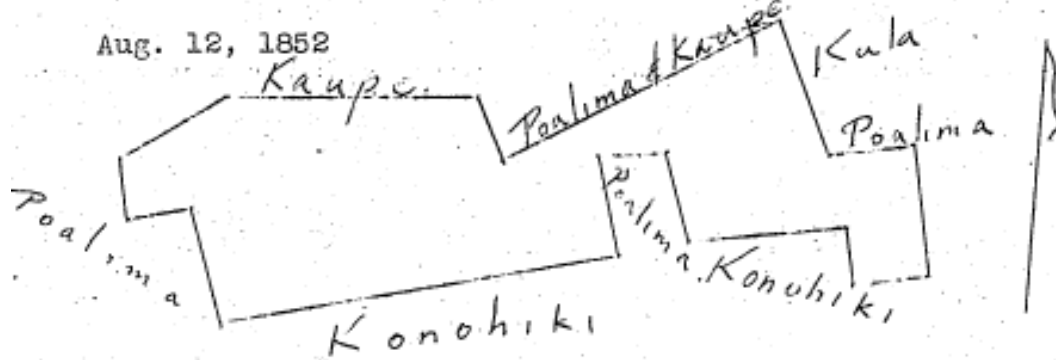
L. C. A. 3457  
 R. P. 6163  
 Bk. 8, Page 349

Ili Kapalaua. Beginning at the West corner of this land joining the Southwest corner of Kaupe

N. 62 $\frac{1}{2}$ ° E.	1.40 chains	along Auwai
N. 86 $\frac{1}{2}$ ° E.	2.79 chains	" Kaupe
S. 21 $\frac{1}{2}$ ° E.	.87 chains	" Poalima
N. 60 $\frac{1}{2}$ ° E.	3.54 chains	" & Kaupe
S. 20 $\frac{1}{2}$ ° E.	1.65 chains	" Kula & Poalima
N. 74 $\frac{1}{2}$ ° E.	.99 chains	" Poalima
S. 7 $\frac{1}{2}$ ° E.	1.63 chains	" Kula
S. 84 $\frac{1}{2}$ ° W.	.86 chains	" Konohiki
N. 7 $\frac{1}{2}$ ° W.	.61 chains	" "
S. 86 $\frac{1}{2}$ ° W.	1.82 chains	" "
N. 15 $\frac{1}{2}$ ° W.	1.01 chains	" Poalima
S. 83 $\frac{1}{2}$ ° W.	.76 chains	" "
S. 16 $\frac{1}{2}$ ° E.	1.06 chains	" "
S. 78 $\frac{1}{2}$ ° W.	4.62 chains	" Konohiki
N. 15 $\frac{1}{2}$ ° W.	1.34 chains	" Poalima
S. 75 $\frac{1}{2}$ ° W.	.63 chains	" "
N. 18 $\frac{1}{2}$ ° W.	.70 chains	" "

to the beginning.

Area 1 52/100 Acres



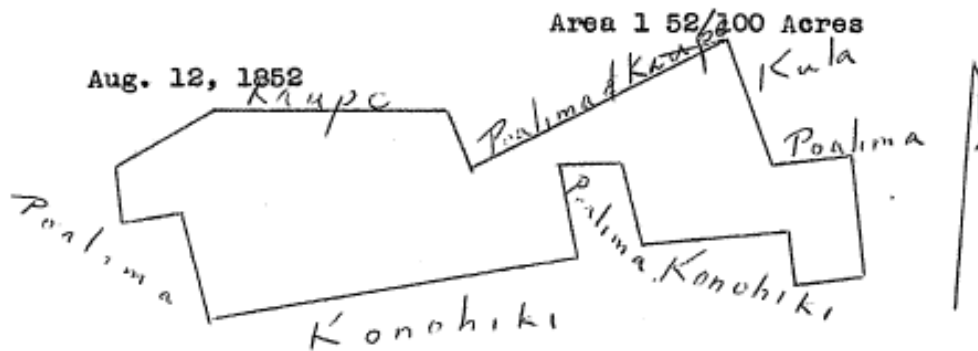
KAMAKA - WAIERU - MAUI

L. C. A. 3457  
 R. P. 6163  
 Bk. 8, Page 349

Ili Kapalaua. Beginning at the West corner of this land joining  
 the Southwest corner of Kaupe

N. 62 $\frac{1}{2}$ ° E.	1.40 chains	along Auwai	92.40
N. 86 $\frac{1}{2}$ ° E.	2.79 chains	" Kaupe	184.14
S. 21 $\frac{1}{2}$ ° E.	87 chains	" Poalima	57.44
N. 60 $\frac{1}{2}$ ° E.	3.54 chains	" & Kaupe	233.64
S. 20 $\frac{1}{2}$ ° E.	1.65 chains	" Kula & Poalima	108.90
N. 74 $\frac{1}{2}$ ° E.	99 chains	" Poalima	65.34
S. 7° E.	1.63 chains	" Kula	107.58
S. 84 $\frac{1}{2}$ ° W.	86 chains	" Konohiki	56.76
N. 7 $\frac{1}{2}$ ° W.	61 chains	" "	40.34
S. 86 $\frac{1}{2}$ ° W.	1.82 chains	" "	126.12
N. 13° W.	1.01 chains	" Poalima	66.66
S. 83 $\frac{1}{2}$ ° W.	76 chains	" "	50.16
S. 16° E.	1.06 chains	" "	69.96
S. 78° W.	4.62 chains	" Konohiki	204.92
N. 15 $\frac{1}{2}$ ° W.	1.34 chains	" Poalima	88.44
S. 75 $\frac{1}{2}$ ° W.	63 chains	" "	41.58
N. 18° W.	70 chains	" "	46.20

to the beginning.





4103

HELU *hals*

**PALAPALA SILA NUI**

**A ke Alii, mamuli o ka olelo a ka Poe Hoona Kuleana,**

---

**NO KA MEA,** *Amaha* Va hooalo ma Ioua Hoona i no kouna kuleana sila i ka olelo, ke kuleana olelo ko  
 ..... Kuleana Hele..... *4107*  
 ma ke Aunz Aiolele Hele a kahi i olelole mahele.

Nahala, ma hele Palapala Sila Nui, ke hehele oia ma o Kaunohiwohe IV, ke Alii ma a ke Aho i kouna Iohouaka i hooalo  
 al mahele a ke Hoona Poe Aho, i no kuleana a poe, i olelo ko kouna Hele, a no kouna mahele hoona ali, no kuleana oia, ma ke Aunz  
 Aiolele ko..... *Amaha*

i hele ..... *Amaha* ..... *Amaha* ..... *Amaha*  
 ma ke hoona poe i ..... *Amaha* ..... poe ma hoona i

*E hoomaha (ma ka Hele) Kouna Hoona i olelole*

<i>Man 62 1/2</i>	<i>Kit</i>	<i>1.40</i>	<i>Kaul</i>	<i>Ma</i>	<i>Ma</i>	<i>Amaha</i>
<i>86 1/2</i>		<i>2.77</i>				<i>Amaha</i>
<i>Man 20 1/2</i>		<i>-.47</i>				<i>Amaha</i>
<i>Man 60 1/2</i>		<i>3.54</i>				<i>Amaha</i>
<i>Man 20 1/2</i>		<i>1.65</i>				<i>Amaha</i>
<i>Man 74 1/2</i>		<i>-.77</i>				
<i>Man 7</i>		<i>1.68</i>				<i>Amaha</i>
<i>84 1/2</i>	<i>Man</i>	<i>-.86</i>				<i>Amaha</i>
<i>Man 7 1/2</i>		<i>-.64</i>				
<i>Man 26 1/2</i>		<i>1.82</i>				
<i>Man 13</i>		<i>1.00</i>				<i>Amaha</i>
<i>Man 83 1/2</i>		<i>-.70</i>				
<i>16</i>	<i>RR</i>	<i>1.06</i>				
<i>78</i>	<i>Man</i>	<i>4.62</i>				<i>Amaha</i>
<i>Man 15 1/2</i>		<i>1.54</i>				<i>Amaha</i>
<i>Man 78 1/2</i>		<i>-.63</i>				
<i>Man 18</i>		<i>-.70</i>				

*Ma 1.00 He*



No. 10469 Napoo July 19, 1849

Hale sworn He has seen 1 section at Kapoinonui in Napoho consisting of 17 patches. Land from Hale, in 1845, Hale's interest from J. Kanse' at the same time. J. Kanse's land from Kakauluohi in 1845. 2 Poalima and 1 prison there, no objections.

Mauka	Pu
Waihee	Government seclosure
Makai	Kaiui
Maalaea	Stream

No. 3373 Pu July 19, 1849

Pepe sworn He has seen 1 taro section, pasture and house in Kapoinonui ahupuaa of Napoho.

Land from Manuela at the time of Kam. II, 1 poalima there, no objections.

Mauka	Paasoo
Waihee	Government fence
Makai	Kulilikana
Maalaea	Waichu stream

No. 3434 Kaapowale July 19, 1849 Page 330

Kapohuli sworn He has seen 1 taro section at pasture at Kapoinoiki of Napoho. Land from Kaneheu in 1838. 3 Poalimas there, no objections.

Makai	Kashu
Mauka and Waihee	Kekaula
Maalaea	Poalima

No. 3258 Laka July 19, 1849

Khu sworn He has seen 1 taro section, pasture and house in Wailaahia ili of Polipoli, since the time of Kam. I. 2 Poalima patches and 2 poalima pastures there.

Mauka	Pali
Waihee	Auwae
Makai	Kapulu/Kaalapahi
Maalaea	Apapau

No. 3429 KAUPU July 19, 1849

Khu sworn He has seen 1 taro section, pasture and house in the ili Palaoa at Polipoli. Land from Nawaihona before 1839. 2 Poalimas there, no objections.

Mauka	Polipoli pale
Waihee	Kamana Baisa
Makai	Waiwaiole
Maalaea	Kamaka

~~3397~~ 332-7 Nalalaolao July 19, 1849

Kula sworn He has seen 3 sections in these ilis of Waiehu. Land from Kula in 1844, Kula's land from Laicha in 1835.

No objections as long as he had lived - 1848 Kapule, his son is his (Nalalaolao heir. 1 poalima in the first section.





HELU <sup>6099</sup>

**PALAPALA SILA NUI**

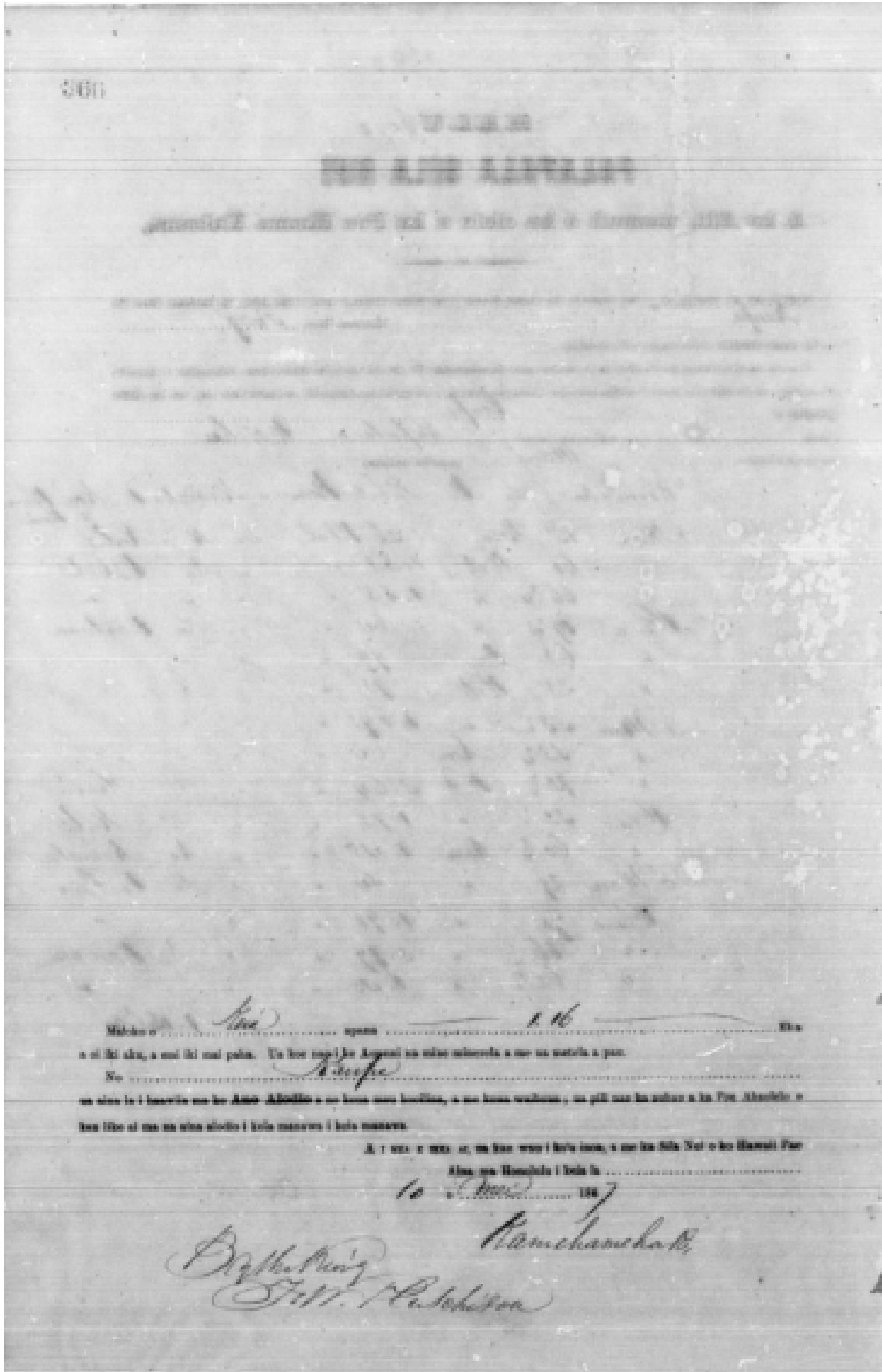
A ke Alii, mamuli o ka olelo a ka Poe Hoona Kuleana,

---

NO KA MEA, Ua hoolaha na Laha Hoona i na hoona kuleana olelo i ka olelo, ke kuleana olelo ke  
*Kaui*..... Kuleana Olelo *1.509*.....  
 na ke **Amo Akolelo** olelo a na i olelo olelo.

Naiaia, na olelo Palapala Sila Nui, ke hoolaha olelo a Kamehameha IV, ke AIP a ke Alii i kama hoolaha i hoona  
 alamaia - ke Hoona Poe Aha, i na hoona a na, i olelo ke hoona a na, a na hoona olelo olelo, na hoona olelo olelo, na ke **Amo**  
**Akolelo** i..... *Kaui*.....  
 i olelo..... *Kapalana*..... *Waihe'e*.....  
 na ke hoona olelo i..... *Maui*..... (na ke hoona olelo):

<i>Hoona</i>	<i>10'</i>	<i>Ke</i>	<i>1.26</i>	<i>Ke</i>	<i>Ke</i>
<i>"</i>	<i>60</i>	<i>Ke</i>	<i>1.51</i>	<i>"</i>	<i>Ke</i>
<i>"</i>	<i>66 1/2</i>	<i>"</i>	<i>1.85</i>	<i>"</i>	<i>"</i>
<i>Ke</i>	<i>19 1/2</i>	<i>"</i>	<i>1.64</i>	<i>"</i>	<i>Ke</i>
<i>"</i>	<i>65</i>	<i>Ke</i>	<i>1.99</i>	<i>"</i>	<i>"</i>
<i>"</i>	<i>25</i>	<i>Ke</i>	<i>1.71</i>	<i>"</i>	<i>"</i>
<i>Maui</i>	<i>58 1/2</i>	<i>"</i>	<i>1.09</i>	<i>"</i>	<i>"</i>
<i>"</i>	<i>55 1/2</i>	<i>Ke</i>	<i>1.64</i>	<i>"</i>	<i>"</i>
<i>"</i>	<i>70 1/2</i>	<i>Ke</i>	<i>1.64</i>	<i>"</i>	<i>Maui</i>
<i>Ke</i>	<i>22 1/2</i>	<i>"</i>	<i>1.75</i>	<i>"</i>	<i>Ke</i>
<i>"</i>	<i>60 1/2</i>	<i>Ke</i>	<i>1.45</i>	<i>"</i>	<i>Ke</i>
<i>Maui</i>	<i>29</i>	<i>"</i>	<i>1.50</i>	<i>"</i>	<i>Ke</i>
<i>Ke</i>	<i>70</i>	<i>"</i>	<i>1.98</i>	<i>"</i>	<i>"</i>
<i>"</i>	<i>86 1/2</i>	<i>"</i>	<i>2.79</i>	<i>"</i>	<i>Ke</i>
<i>"</i>	<i>62 1/2</i>	<i>"</i>	<i>1.80</i>	<i>"</i>	<i>"</i>
					<i>1.16</i>





KAUPE - WAIBHU - MAUI

L. C. A. 3429  
 R. P. 6099  
 Bk. 8, Page 348

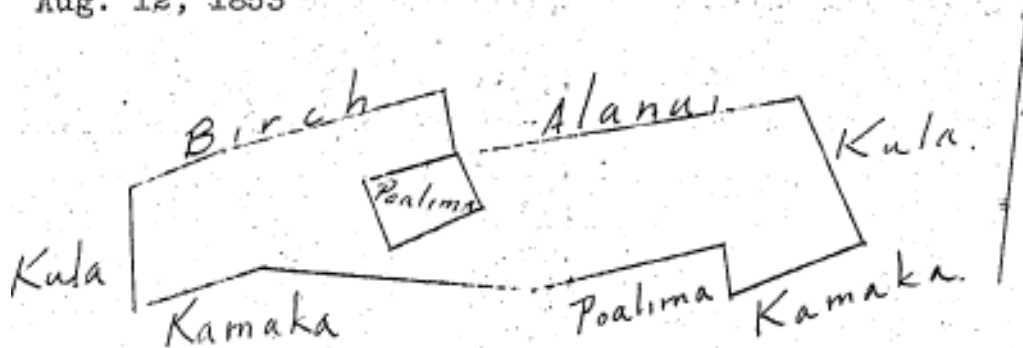
Ili Kapalaua. Beginning at the West corner of Kamaka 1, at the Southwest corner of this land

N. 10° W.	126 chains	along Kula
N. 61° E	153 chains	" Birch
N. 66 $\frac{3}{4}$ ° E.	185 chains	" "
S. 19 $\frac{1}{4}$ ° E.	64 chains	" Poalima
S. 63° W.	99 chains	" "
S. 25° E.	73 chains	" "
N. 58 $\frac{1}{2}$ ° E.	109 chains	" "
N. 33 $\frac{1}{4}$ ° W.	64 chains	" "
N. 72 $\frac{1}{2}$ ° E.	364 chains	" Alanui
S. 32 $\frac{1}{2}$ ° E.	175 chains	" Kula
S. 60° W.	145 chains	" Kamaka
N. 29° W.	54 chains	" Poalima
S. 70° W.	194 chains	" "
S. 86 $\frac{1}{2}$ ° W.	279 chains	" Kamaka
S. 62 $\frac{3}{4}$ ° W.	140 chains	" "

to the beginning.

Area 1 16/100 Acres

Aug. 12, 1853



KAUPE - WAIHEHU - MAUI

L. C. A. 3429  
 R. P. 6099  
 Bk. 8, Page 348

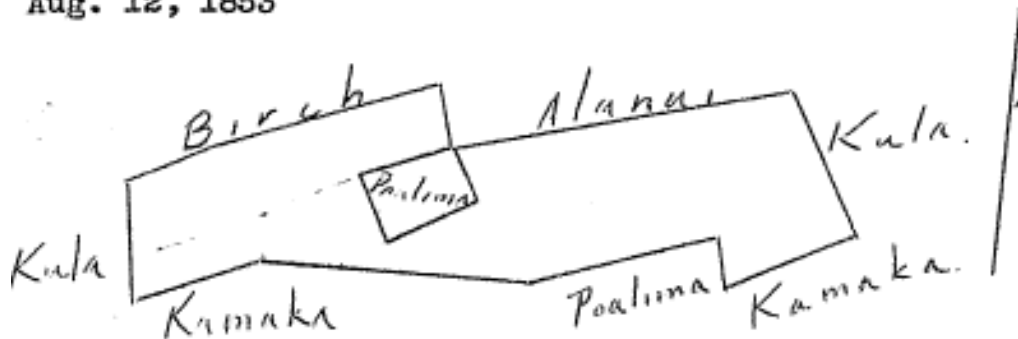
Ili Kapalaua, Beginning at the West corner of Kamaka 1, at the Southwest corner of this land

N. 10° W.	126 chains	along Kula	826
N. 61° E	153 chains	" Birch	100.98
N. 66 $\frac{3}{4}$ ° E.	185 chains	" "	2210
S. 19 $\frac{1}{4}$ ° E.	64 chains	" Poalima	2274
S. 63° W.	99 chains	" "	6534
S. 25° E.	73 chains	" "	4818
N. 58 $\frac{1}{2}$ ° E.	109 chains	" "	7194
N. 33 $\frac{1}{4}$ ° W	64 chains	" "	4274
N. 72 $\frac{1}{4}$ ° E.	364 chains	" Alanui	24024
S. 32 $\frac{3}{8}$ ° E.	175 chains	" Kula	11510
S. 60 $\frac{3}{8}$ ° W.	145 chains	" Kamaka	9570
N. 29° W.	54 chains	" Poalima	3164
S. 70 $\frac{3}{8}$ ° W.	194 chains	" "	12204
S. 86 $\frac{1}{8}$ ° W.	279 chains	" Kamaka	1844
S. 62 $\frac{1}{2}$ ° W.	140 chains	" "	9200

to the beginning.

Area 1 16/100 Acres

Aug. 12, 1853



15

3428 Kekai Aloha iho oukou e ma Lina  
14 Hoona Kuleana. Ke hai aku nei au i  
kou kuleana loi, kula, ma i Pihaku ma  
24 loi e kule, ma au kahi kuleana. Aloha  
ma hoi ma ka mahalo  
Pihaku ma i Na Kekai  
Pepi 25 Dek 1897

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3429 Kauipe Aloha ma Lina Hoona Ku-  
leana. He manua mea hiki au hoi ma  
14 kama kuleana ma. Ke hai aku nei  
au ia oukou, ma i Kauipe wahine  
kane ma ka ma i kane kane. Ahi  
ma ma hoi ma kuleana i Pepi  
29 loi e Kauipe ma hoi wahi kule ma  
mahalo ma hoi wahi kule ma ka  
mahalo Na Kauipe  
Pepi 25 Dek 1897

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3430 Kokuaitubia Aloha ma Lina Hoona  
14 kuleana ma. Ke hai aku, ma wahi  
loi, ma ka hoi i Kokuaitubia i Pepi  
ma hoi e wahi aku nei ma oukou  
i ma Lina Hoona kuleana. Ma ka  
mahalo Na Kokuaitubia  
Pepi 24 Dek 1897

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3431 Kalamane Aloha oukou e ma Lina  
14

288  
 2826 Kapahulu, in the ... of ...  
 Kapahulu, Hawaii  
 This is the ... of ...  
 Kapahulu, Hawaii  
 ...  
 ...  
 ...

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2887  
 2827 Laka ...  
 Laka, Hawaii  
 This is the ... of ...  
 Laka, Hawaii  
 ...  
 ...  
 ...

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2888  
 2828 Laka ...  
 Laka, Hawaii  
 This is the ... of ...  
 Laka, Hawaii  
 ...  
 ...  
 ...

---

2889  
 2829 Laka ...  
 Laka, Hawaii  
 This is the ... of ...  
 Laka, Hawaii  
 ...  
 ...  
 ...

---

2890  
 2830 Laka ...  
 Laka, Hawaii  
 This is the ... of ...  
 Laka, Hawaii  
 ...  
 ...  
 ...



JOSH GREEN, M.D.  
GOVERNOR  
STATE OF HAWAII  
*Ka Ikaika o ka Mōhaka ākea o  
Hawaii*

SYLVIA J. LUKE  
LT GOVERNOR  
STATE OF HAWAII  
*Ka Ikaika o ka Mōhaka ākea o  
Hawaii*



KALI WATSON  
CHAIRMAN, DHHC  
*Ka Ikaika o ka Mōhaka ākea*

KATIE L. DUCATT  
DEPUTY TO THE CHAIRMAN  
*Ka Ikaika o ka Mōhaka ākea*

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS  
*Ka 'Oihana 'Āina Ho'opulapula Hawai'i*  
P O BOX 1879  
HONOLULU, HAWAII 96819

May 17, 2023

MEMORANDUM

TO: Dawn Chang, Chairperson  
Commission on Water Resource Management

FROM: Kali Watson, Chairman *KW*  
Hawaiian Homes Commission

SUBJECT: Surface Water Use Permit Application (SWUPA) No. 5934.6  
Michele Hoopii, Waihe'e Surface Water Management Area, Maui

Mahalo for sending the above referenced SWUPA to the Department of Hawaiian Home Lands (DHHL) for our review and comment. Below we first present relevant background and context for our comments, and then our specific comments, and requests for action.

Relevant Background and Context

The following points serve as a context for our comments on this SWUPA.

*DHHL water rights*

The State (and particularly the Commission on Water Resource Management [Commission]) has a duty to protect the rights of DHHL to water resources, as enumerated in the Hawaiian Homes Commission Act (HHCA) §§ 101(4), 220, 221; Hawai'i Constitution, Article XI, §§ 1 and 7 and Article XII, § 7; and Hawaii Revised Statutes (HRS) Chapter 174C, the State Water Code.

Notably, DHHL uses of and reservations for water are one of four "public trust uses" / "public trust purposes" of water, as delineated in multiple Hawai'i Supreme Court -cases, including *Wai'ola O Moloka'i* (103 Hawai'i 401) and *Kaua'i Springs* (133 Haw. 141), along with water used for traditional and customary Hawaiian rights, water that maintains proper ecological balance and scenic beauty, and the domestic needs of the general public. Applicants who wish to use water, such as the applicant here, "have the burden to justify the proposed water use in light of the trust purposes." (*Kaua'i Springs* (133 Haw. 141).

*DHHL water needs*

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DHHL lands on Maui comprise approximately 31,000 acres of land, roughly 16% of the total trust holdings across the islands. Most of our lands do not currently have sufficient reservations of water, sufficient allocations of water from public and private water systems, or water secured only after long and difficult efforts. This includes lands that lie within Nā Wai `Ehā (eg., Paukūkalo, Waiehu, Pu`unani) and lands served by the Maui Department of Water Supply that develops water from within Nā Wai `Ehā (Pūlehunui).

DHHL calculates future water needs for all of our tracts by first reviewing the land use designations made by the HHC through the General Plan, in the DHHL Island Plans, and Regional Plans, as well as any detailed development plans that are created as tracts move into homestead and other development, and any other information about land characteristics in each tract that could impact future water demands. Many of these needs are documented in the State Water Projects Plan (SWPP) Update of 2017 estimated future water demands on Hawaiian Home Lands. That publicly available document details its methodology and relied on Island, regional, and project plans for estimates of 20-year water demands.

It was also noted in the SWPP that “Because the SWPP is a guide and a high-level planning document ...and should be updated where necessary.”<sup>1</sup> There are two notable developments since the SWPP was adopted. On November 8, 2019, the Pūlehunui Regional Infrastructure Master Plan Environmental Impact Statement was accepted. See [2019-11-08-MA-FEIS-Acceptance-DHHL-Pulehunui-Regional-Infrastructure-Master-Plan.pdf \(hawaii.gov\)](#). Among other matters, it calls for the development of 269 acres worth of subsistence agriculture lots on the land at Pu`unēnē. Additionally, on November 8, 2020, the Pu`unani Homestead Subdivision Plan Environmental Assessment had a Finding Of No Significant Impact. See [2020-11-08-MA-FEA-Puunani-Homestead-Subdivision.pdf \(hawaii.gov\)](#). Among other matters, it calls for the development of 161 residential homestead lots on a 47.4 acre parcel of land in Waikapu.

DHHL has 29,124 applicants on the Maui Island-wide waiting list<sup>2</sup>, each of whom are entitled to a homestead. It is foreseeable that DHHL's needs for water to fulfill the purposes of the HHCA may exceed both its current reservations as well as any needs calculated on the basis of projected water demands of our current land inventory.

#### *Hydrology and water systems of Nā Wai `Ehā*

The various surface water units within Nā Wai `Ehā overlie parts of the `Īao Aquifer and are hydrologically connected through dynamic surface and ground water hydrological relationships. Moreover, both the privately controlled Wailuku Water Company and the County Department of Water Supply develop and supply water across hydrologic unit boundaries, including the combined draw on surface and ground water sources by the County. This complex conjoining network results means that analysis of any individual Water Use Permit Application cannot be accomplished solely in relationship to the particular diversion or water delivery system

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a particular use draws on to understand the impact on public trust uses of water. A water user obtaining water directly from the stream itself and a water user obtaining water from a particular ditch both holding influence water availability and the water delivery ability of the interlinked system. Thus, despite a particular ditch or diversion in the area of the 'Āo Aquifer System not explicitly used by or for future intended use by DHHL, there is inevitably an interconnected nature within the surface water sources of this area. Therefore, statements in a particular WUPA that the proposed use is not immediately adjacent to DHHL needs is an insufficient response by the applicant to their burdens.

#### Comments and Requests for the applicant and Commission

**Comment #1.** There is a discrepancy between the Surface Water Use Permit Application Notice Letter (SWUPANL) and the SWUPA itself. The SWUPANL wrote the proposed water use is for 256,350 gallons per day for diversified agriculture of 22 acres. However, the SWUPA requests 510,000 gallons per day in Item No. 9, while calculating 256,350 gallons per day for Item No. 18 Table No. 1. Please check this discrepancy.

**Comment #2:** For wetland kalo, various studies show water demands can range from 100,000 to 300,000 gpd/acre, with temperature as one of the key factors to prevent rot. USGS shows that net consumptive use is 50,000 gpd/acre, with the additional water flow that is returned to the stream is needed to manage temperature and account for ditch losses. However, the SWUPA notes that there will be no diverted water returned to the stream or ditch. The Department requests the application be supplemented to provide more detail on this matter.

**Comment #3.** The applicant notes that their water use and rights predate the passage of the Hawaiian Homes Commission Act. We believe that it is also necessary to note here that the use the applicant is proposing is for a public trust use of water and that Hawai'i case law there is no priority among public trust uses of water, and there should be sufficient water in this area for all public trust uses.

**Request #1.** The CWRM has a statutory obligation described in Section 101 of the Water Code (HRS § 174C) as follows: "Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in Section 221 of the Hawaiian Homes Commission Act."

The CWRM can act to reserve water for DHHL on its own action, when petitioned for action by DHHL, or when required in response to a request for another party to lease or license state waters under HRS 171-58. In designated water management areas, CWRM has adopted reservations of water through a rule making process under HRS 174C-49(d). For non-designated areas they have reserved water during regular meetings under HRS 174C-101.

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We believe the CWRM is obligated, and we hereby request that in conjunction with this application and others in the area they reserve for DHHL by rule sufficient water for proposed homesteads at Pūlehunui. DHHL is prepared to cooperate in this effort.

DHHL recognizes and supports the other public trust uses in this area, such as this application. The Department humbly requests the CWRM accommodates DHHL's unmet needs as well.

### Conclusion

Mahalo for the opportunity to comment. If you have any questions or require additional information please contact Andrew Choy, Planning Program Manager at (808) 620-9485 or by email at: [Andrew.h.choy@hawaii.gov](mailto:Andrew.h.choy@hawaii.gov).

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 Waihe'e, Waiehu, 'Īao, and Waikapū Surface Water Management Areas, Maui, and in the amount and from and upon the locations described above; subject however, to the requirements of law including, but not limited to, the following conditions:

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

LOCATION OF USE

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

## WATER USE REPORTING

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

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

## MODIFICATION OR REVOCATION

10. This permit may be modified or revoked and the amount of water initially granted may be reduced if the Commission determines it is necessary to:
  - a) Protect the water sources (quantity or quality);
  - b) Meet other legal obligations including appurtenant rights;
  - c) Insure adequate conservation measures;
  - d) Require efficiency of water uses;
  - e) Reserve water for future uses, provided that all legal existing uses of water as of June, 1987 shall be protected;
  - f) Meet legal obligations to the Department of Hawaiian Home Lands, if applicable; or
  - g) Carry out such other necessary and proper exercise of the State's and the Commission's police powers under law as may be required.

Prior to any reduction or revocation, the Commission shall give notice of its proposed action to the permittee and provide the permittee an opportunity to be heard.

11. The permittee shall request modification of the permit as necessary to comply with all applicable laws, rules, and ordinances that will affect the permittee's water use.
12. Any modification of the permit terms, conditions, or uses may only be made with the express written consent of the Commission. HRS §174C-57.
13. After a hearing, the commission may suspend or revoke a permit for:
  - a) Any materially false statement in the application for the water permit, a modification of a permit term, or any materially false statement in any report or statement of fact required of the user pursuant to this part;
  - b) Any willful violation of any condition of the permit;
  - c) Any violation of any provision of this chapter;
  - d) Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user's nonuse was due to extreme hardship caused by factors beyond the user's control. The Commission and the permittee may enter into a written agreement that, for reasons satisfactory to the Commission, any period of nonuse may not apply towards the four-year revocation period. Any period of nonuse which is caused by a declaration of water shortage pursuant to HRS §174C-62 shall not apply towards the four-year period of forfeiture.

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

#### TRANSFER

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

#### FEES

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

#### DECLARATION OF WATER SHORTAGE

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

#### WATER SHORTAGE PLAN

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

ACCESS

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

OTHER

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



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
WAILUKU WATER DISTRIBUTION COMPANY, )  
LLC, and WAILUKU WATER COMPANY, LLC )  
 )  
For a Certificate of Public )  
Convenience and Necessity to )  
Provide Non-Potable Water )  
Distribution Service in the Waihee, )  
Waiehu, Puuhala, Wailuku, and )  
Waikapu Areas and for Approval of )  
Rules and Regulations Pursuant to )  
Section 269-7.5, Hawaii Revised )  
Statutes; Approval of Rates and )  
Contracts Pursuant to Section )  
269-16, Hawaii Revised Statutes; )  
Approval of Waivers Pursuant to )  
Section 6-61-92, Hawaii )  
Administrative Rules; and Approval )  
Of Affiliate Transactions Pursuant )  
To Sections 269-19 and 269-19.5, )  
Hawaii Revised Statutes. )  
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DOCKET NO. 2008-0025

ORDER SUSPENDING DOCKET  
AND DISMISSING AS MOOT REQUEST FOR LEAVE TO FILE REPLY

FILED  
2009 JAN -9 P 12:14  
PUBLIC UTILITIES  
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
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WAILUKU WATER DISTRIBUTION COMPANY, )  
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To Sections 269-19 and 269-19.5, )  
Hawaii Revised Statutes. )  
\_\_\_\_\_ )

Docket No. 2008-0025

ORDER SUSPENDING DOCKET  
AND DISMISSING AS MOOT REQUEST FOR LEAVE TO FILE REPLY

By this Order, the commission suspends this docket pending a decision by the Commission on Water Resource Management ("CWRM") on interim instream flow standards in Case No. CCH-MA06-01 for `Iao, Waihee, Waiehu, and Waikapu Streams (collectively, "Na Wai `Eha"), which Applicants WAILUKU WATER DISTRIBUTION COMPANY, LLC ("WWDC") and WAILUKU WATER COMPANY, LLC ("WWC") (jointly, "Applicants")<sup>1</sup> have

<sup>1</sup>Applicants and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party pursuant to Hawaii Revised Statutes ("HRS")

identified as the sources of water to be provided to customers; and on water use permits affecting Na Wai `Eha, which was designated by CWRM as a surface water management area ("SWMA"), unless otherwise ordered by the commission. During the period of suspension, the commission places certain conditions and requirements on Applicants, described below. In addition, the commission dismisses as moot the Request for Leave to Reply to Applicants' Response Filed on November 26, 2008, which was filed by HAWAIIAN COMMERCIAL & SUGAR COMPANY, A DIVISION OF ALEXANDER & BALDWIN, INC. ("HC&S") on December 15, 2008 ("Request for Leave").

I.

Background

On February 8, 2008, Applicants filed an application ("Application"), requesting, among other things approval of: (1) a Certificate of Public Convenience and Necessity ("CPCN") to provide non-potable water distribution service in certain areas of Waihee, Waiehu, Puuohala, Wailuku, and Waikapu on the island of Maui, Hawaii; (2) approval of initial rates for the non-potable water distribution service; (3) a transfer of assets from WWC to WWDC and approval of affiliated transactions, including a lease from WWC to WWDC ("Proposed Lease"); and (4) a sale of property, plant and equipment from WWC to

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§ 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62, are jointly referred to herein as the "Parties."

MICHAEL W. ATHERTON DEVELOPMENT, INC., WILLIAM S. FILIOS, TRUSTEE, BOYCE HOLDINGS, INC. (collectively, "Purchasers") under HRS § 269-19 ("Proposed Land Sale").

On February 20, 2008, Applicants filed an "Errata Sheet" with attached replacement pages for the Application; and on March 17, 2008, Applicants filed a "Supplement and Errata," with Supplement Exhibits A to E, for the Application.

On March 6, 2008, the commission issued Order No. 24079, which determined that HAR § 6-61-57(1), and not HAR § 6-61-57(2), shall govern the deadline for intervention in this docket. Thus, the commission ruled that the deadline for intervention in this docket would be ten days after the last public hearing held on the Application.

On May 14, 2008, the commission held a public hearing on the Application at Maui Waena Intermediate School in Kahului, Maui, Hawaii. Accordingly, the deadline for intervention was May 27, 2008.

By May 27, 2008, the following parties timely filed motions to intervene and/or participate in this proceeding:

- (1) COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY ("DWS");
- (2) MMK MAUI L.P. ("MMK"); (3) HUI O NA WAI `EHA and MAUI TOMORROW FOUNDATION, INC. (jointly, "Community Groups");
- (4) OFFICE OF HAWAIIAN AFFAIRS ("OHA"); (5) Purchasers, MTP OPERATING COMPANY, LLC, MAALAEA PROPERTIES, LLC, and WAIKAPU PROPERTIES, LLC (collectively, "Atherton Parties");

(6) HC&S; and (7) WAILUKU COUNTRY ESTATES IRRIGATION COMPANY and WAILUKU COUNTRY ESTATES COMMUNITY ASSOCIATION, INC. (jointly, "WCE").

By Order issued on October 28, 2008, the commission, among other things, granted participation status in this proceeding to: (1) DWS; (2) MMK; (3) the Community Groups; (4) OHA; (5) the Atherton Parties; (6) HC&S; and (7) WCE (collectively, "Participants"). The commission also directed the Parties and Participants to submit statements of position as to whether the Application, as supplemented, is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88. In addition, the commission instructed the Parties and Participants to file a stipulated procedural schedule that, absent a waiver by the Parties and Participants, complies with the time requirements of HRS § 269-16(f)(3), within forty-five days from the date of the Order, for the commission's review and approval.<sup>2</sup>

## II.

### Suspension

By letter dated November 3, 2008, the commission asked the Parties and Participants for their respective positions on whether the commission should or should not suspend this docket

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<sup>2</sup>By letter dated December 18, 2008, the commission approved a request filed by Applicants for an extension of time for the Parties and Participants to file a stipulated procedural schedule in this docket.

pending a decision by the CWRM in Case No. CCH-MA06-01.<sup>3</sup> The Parties and Participants subsequently submitted their position statements on suspension pursuant to that letter.<sup>4</sup> In sum, the Consumer Advocate, OHA, MMK, and HC&S were in favor of suspension; Applicants, DWS, the Atherton Parties, and WCE objected to suspension. While the Community Groups asserted that the Application was incomplete, they deferred to the commission to decide whether or not to suspend this docket.<sup>5</sup> Several Parties and Participants, regardless of whether they supported or objected to suspension, expressed concerns that, should the commission suspend the docket, it should maintain the status quo and place conditions on Applicants during the suspension period so that Applicants are not allowed to continue "business as usual" and avoid commission oversight during the suspension period.

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<sup>3</sup>The commission's November 3, 2008 letter was prompted by the CWRM's decision in September 2008 to restore approximately 12 million gallons of water a day to several East Maui streams that were historically diverted by East Maui Irrigation Company for irrigation use by HC&S.

<sup>4</sup>The Parties and Participants also submitted their position statements on completeness of the Application pursuant to the commission's Order issued on October 28, 2008. On November 17, 2008, HC&S filed a statement addressing HC&S' positions on both the completeness and suspension issues ("HC&S' Statement"). On November 26, 2008, Applicants filed a response to HC&S' Statement ("Applicants' Response"). HC&S' Request for Leave, filed on December 15, 2008, requests leave to respond to Applicants' Response.

<sup>5</sup>See Community Groups' Statement of Position re. Suspension of Docket, filed on November 13, 2008 ("Community Groups' Suspension SOP"), at 2 ("The Community Groups defer to the PUC regarding how best to pursue necessary regulation of WWC's operations without working at cross-purposes with the CWRM.").

Some of the position statements -- in particular, HC&S' Statement -- provided relevant background information as to pending proceedings before the CWRM that affect Na Wai 'Eha. According to these filings, there are two such proceedings before the CWRM. The first proceeding, Case No. CCH MA06-01, arose out of a Petition to Amend the Instream Flow Standards for Na Wai 'Eha, dated June 25, 2004 ("IFS Proceeding").<sup>6</sup> As explained by HC&S:

Instream flow standards ("IFS") determine the quantity of water that must be left in the streams for, among other things, the protection of stream biota and traditional and customary native Hawaiian rights. HRS §§ 174C-3, 174C-71. The establishment of IFS thereby determines the amount of water that may be diverted for offstream uses, such as irrigation. In addition to water quantities, the IFS may establish at what points along the stream water may be diverted for offstream uses.<sup>7</sup>

The IFS Proceeding is in a contested case and is still ongoing.<sup>8</sup> When the commission held its public hearing in this docket in May 2008, the contested case hearing in the IFS Proceeding had closed in March 2008, and the parties to the IFS Proceeding were anticipating a proposed decision from the CWRM Hearings Officer to be issued in the Fall of 2008.<sup>9</sup>

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<sup>6</sup>See Letter filed on November 13, 2008, from Applicants to the commission, at 1 ("Applicants' Suspension SOP"). According to WWC, the parties to the IFS Proceeding are: WWC, DWS, the Community Groups, OHA, and HC&S. See Letter dated and filed on December 31, 2007, from WWC to the Commission, at 1 n.1.

<sup>7</sup>HC&S Statement, at 4-5 (footnote and citation omitted).

<sup>8</sup>See Community Groups' Suspension SOP, at 3.

<sup>9</sup>See *id.*

However, CWRM granted a request by HC&S to re-open the hearing, which postponed the filing of closing briefs until December 2008 and any proposed decision until sometime after that.<sup>10</sup> Applicants estimate that the CWRM may issue a Decision and Order in the IFS Proceeding between May to August 2009.<sup>11</sup> The parties to the IFS Proceeding thereafter have the opportunity to appeal any final decision to the Intermediate Court of Appeals, and then to the Supreme Court.<sup>12</sup>

The second proceeding arose out of the CWRM's designation of Na Wai `Eha as a SWMA in April 2008 ("SWMA Proceeding"). HC&S describes this designation as follows:

As a result of this designation, "no person shall make any withdrawal, diversion, impoundment, or consumptive use of water in any designated water management area without first obtaining a permit from the [Water Commission]." HRS § 174C-48(a).

Water use permits specify the specific identity of the authorized user, the purpose of use, the amount of water authorized for such use, and the location of use. Declaration of Ken C. Kawahara attached; see also Exhibit 4, attached hereto as an example of a water use permit. Although water use permits are transferable (i.e., the identity of the user may change) upon notification to the Water Commission under HRS § 174C-59,

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<sup>10</sup>See id.

<sup>11</sup>See Applicants' Suspension SOP, at 2. See also OHA's Statement of Position re. Suspension of Docket Pending Decision by CWRM in CCH-MA06-01, filed on November 13, 2008 ("OHA's Suspension SOP"), at 2 (estimating issuance of a Decision and Order from CWRM "before mid-2009, at the earliest.").

<sup>12</sup>See Applicants' Suspension SOP, at 2-3. See also Community Groups' Suspension SOP, at 3. To illustrate how long it may take the IFS Proceeding to be fully resolved on appeal, Applicants and the Community Groups mention the Waiahole water case on O`ahu that is still continuing on its third appeal after fifteen years.



the purpose, amount, and location of use may not be modified without a new permit being issued by the Water Commission. HRS § 174C-57(b). Declaration of Ken C. Kawahara, attached.

Once an area is designated as a SWMA, as Na Wai Eha was in April 2008, even those who are currently using water in that area (e.g., HC&S and Applicant in this case) must apply for water use permits, and there is no guarantee that all current uses and amounts will be approved. *Waiahole I*, 94 Haw. at 149, 9 P.3d at 461. Applications requesting permits to continue existing uses of Na Wai Eha water are still being accepted until April 30, 2009. Declaration of Ken C. Kawahara; Public Notice (Exhibit 3).<sup>13</sup>

In addition, OHA explains that existing and future users of water will have to prove in the SWMA Proceeding that their uses are "reasonable-beneficial" and consistent with the public trust in order to obtain water use permits from the CWRM to use water diverted from Na Wai `Eha streams.<sup>14</sup> The SWMA Proceeding is also subject to the contested case process.<sup>15</sup>

Furthermore, regarding the CWRM's jurisdiction, HC&S maintains:

The Water Commission has "exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code." HRS § 174C-7(a); see also, *Ko`olau Agr. Co., Ltd. v. Commission on Water Resource Management*, 83 Hawai`i 484, 489-90, 927 P.2d 1367, 1372-73 (1996) (stating that "The Code established the Commission on Water Resource Management (aka, CWRM) and bestowed upon it 'exclusive jurisdiction and final authority in all matters relating to implementation and

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<sup>13</sup>HC&S' Statement, at 5-6 (footnote omitted).

<sup>14</sup>See OHA's Suspension SOP, at 2.

<sup>15</sup>See Community Groups' Suspension SOP, at 3.

administration of the state water code, except as specifically provided in this chapter.'"). "No state or county government agency may enforce any statute, rule, or order affecting the waters of the State controlled under the provisions of [the State Water Code]... inconsistent with the provisions [therein]." HRS § 174C-4(b).<sup>16</sup>

The commission has thoroughly reviewed the Parties' and Participants' filings on suspension. Against the backdrop provided therein related to the CWRM proceedings, and based on a review of the entire record herein, the commission finds it appropriate to suspend this docket pending a decision by CWRM in the IFS Proceeding and the SWMA Proceeding for the reasons discussed below.

As noted above, Applicants have requested, among other things, a CPCN in their Application. The commission's statute governing CPCNs, HRS § 269-7.5, provides, in relevant part:

(a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules governing the proposed service.

. . . .

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<sup>16</sup>See HC&S' Statement, at 4.

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied.<sup>17</sup>

The commission finds suspension reasonable and necessary in this instance because, until the CWRM allocates water to Applicants and approves of Applicants' usage, the commission will be unable to determine whether Applicants are fit, willing, and able to provide the proposed non-potable water distribution service. As explained by the Consumer Advocate:

The criteria for determining fitness and ability consider the following. First, one considers whether Applicant has sufficient financial resources to sustain operations, particularly during the initial year(s) of operation when the customer base is developing. Second, one must ascertain whether Applicant possesses the requisite technical knowledge to operate the plant facilities and ensure the reliable provision of the proposed regulated service in accordance with the Department of Health and Commission requirements. Third, one must determine whether Applicant has adequate plant facilities to handle the demands of the potential customers. Last, especially in the case of water utilities, one must determine whether the Applicant is authorized to use the water that is needed to provide the proposed service.

The Consumer Advocate notes that the CWRM has jurisdiction over who is authorized to use the available water resources within the State of Hawaii. Furthermore, Applicant is

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<sup>17</sup>HRS §§ 269-7.5(a), 269-7.5(c) (emphasis added)..

presently awaiting a decision by the CWRM on its request for authorization to use the non-potable water that is needed by Applicant to provide the proposed service.

. . . . .  
Based on the above, the resolution of Case No. CCH-MA06-01 is critical to making a determination as to whether Applicant will be allowed to draw the non-potable water that is needed for the provision of the proposed service. Until a favorable ruling is received from the CWRM, Applicant cannot be found fit and able to provide the proposed non-potable water service.<sup>18</sup>

Moreover, until the CWRM issues water permits to Applicants, Applicants cannot reasonably ascertain its service territory, as required by HRS § 269-7.5(a). HC&S expands on this point as follows:

Because the Water Commission, through the water use permit process described above, will determine the specific locations where Na Wai Eha water may be used, Applicant cannot credibly describe, and this Commission cannot reasonably determine, the service territory until water use permits are issued. By describing a large service territory encompassing all areas within the potential reach of their transmission infrastructure, Applicant misleads the public and this Commission into believing that Applicant can, and will be obligated to, serve anyone within the geographic area. In reality, Applicant will be able to legally provide water only to those specific areas yet to be approved by the Water Commission.<sup>19</sup>

Furthermore, without adequate information about Applicants' projected customer base and the amounts of water that Applicants will be allowed to divert from the streams,

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<sup>18</sup>Letter filed on November 13, 2008, from the Consumer Advocate to the commission, at 2.

<sup>19</sup>HC&S' Statement, at 7.

the commission will not have sufficient information to make a determination on Applicants' proposed rates and charges in the Application.

Compelling policy reasons also support suspension of this docket. Under HAR § 6-61-1, the commission is obligated "to secure the just, speedy, and inexpensive determination of every proceeding." To ensure a just and speedy resolution of the docket and an efficient use of the commission's and the Parties' and Participants' resources, it is essential that the commission suspend, rather than proceed, only to later have to reprocess this or a new or amended application after the CWRM issues decisions on Applicants' ability to divert water.

The commission, however, does not intend for a suspension period to continue indefinitely -- i.e., until all appeals are exhausted in the IFS Proceeding and the SWMA Proceeding. The suspension period will last until the CWRM issues a decision in the IFS Proceeding and Applicants obtain the necessary water use permits in the SWMA Proceeding. The commission acknowledges that subsequent appeals of the CWRM decisions may take many years, but at least the commission will have some pronouncement from the CWRM on Applicants' right to divert water for the commission to proceed with its own docket while any appeals of the CWRM decisions are pending. The commission finds this time period reasonable because, as mentioned above, initial decisions are expected from the CWRM in mid-2009. Also, as maintained by HC&S, "decisions by administrative agencies are given force and

effect pending appeal. Each of the Water Commission's three decisions in the Waiahole Ditch case remained in effect and have been implemented and enforced during the pendency of the appeals."<sup>20</sup> Moreover, as discussed further below, if for any reason, decisions from the CWRM are delayed, the commission may, in its discretion, reassess the circumstances and lift the suspension.

Notwithstanding the suspension, the commission will continue to have oversight over Applicants. The following conditions and requirements shall apply during the suspension period:

(a) The status quo shall be maintained during the suspension period. Accordingly, Applicants and their affiliates: (i) shall maintain current rates and the current supply of water to customers; (ii) are prohibited from adding any new customers; and (iii) are prohibited from selling or transferring any of their assets. Thus, Applicants shall not proceed with the Proposed Lease and the Proposed Land Sale, as requested in the Application.

(b) Applicants shall be required to file semi-annual financial statements, which shall include a balance sheet and income statement. The first report shall be due thirty days after the reporting period covering January 1, 2009 to June 30, 2009.

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<sup>20</sup>HC&S' Statement, at 12 n.8.

(c) Applicants shall file a new or amended application immediately after the necessary water use permits have been obtained from the CWRM.

(d) Applicants shall file status reports every three months addressing the status of the IFS Proceeding and the SWMA Proceeding.

(e) The commission, at any time, may impose additional requirements on Applicants, and lift or extend the suspension if, in its discretion, it is reasonable and necessary to do so.

(f) The failure to adhere to the foregoing requirements may result in further regulatory action as authorized by law.

Because the commission decides herein to suspend this docket, Applicants' Request for Leave is dismissed as moot. The commission will also reserve ruling on the completeness of the Application and Applicants' waiver requests in the Application. Likewise, it is not necessary for the commission to set a deadline for the Parties and Participants to file a Stipulated Procedural Order for the docket.<sup>21</sup>

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<sup>21</sup>Some Parties and Participants addressed in their filings the issue of whether HRS § 269-16(f) should only apply to rate increase requests and not to proceedings requesting a CPCN. The commission did not ask the Parties and Participants to brief this issue and it is not properly before the commission now. The commission therefore declines to discuss the issue herein.

III.

Orders

THE COMMISSION ORDERS:

1. This docket is suspended until the CWRM issues a decision in the IFS Proceeding and Applicants obtain the necessary water use permits in the SWMA Proceeding, unless otherwise ordered by the commission.

2. During the suspension period, the following conditions and requirements shall apply:

(a) The status quo shall be maintained. Accordingly, Applicants and their affiliates: (i) shall maintain current rates and the current supply of water to customers; (ii) are prohibited from adding any new customers; and (iii) are prohibited from selling or transferring any of their assets. Thus, Applicants shall not proceed with the Proposed Lease and the Proposed Land Sale, as requested in the Application.

(b) Applicants shall be required to file semi-annual financial statements, which shall include a balance sheet and income statement. The first report shall be due thirty days after the reporting period covering January 1, 2009 to June 30, 2009.

(c) Applicants shall file a new or amended application immediately after the necessary water use permits have been obtained from the CWRM.

(d) Applicants shall file status reports every three months addressing the status of the IFS Proceeding and the SWMA Proceeding.



(e) The commission, at any time, may impose additional requirements on Applicants, and lift or extend the suspension if, in its discretion, it is reasonable and necessary to do so.

(f) The failure to adhere to the foregoing requirements may result in further regulatory action as authorized by law.

3. HC&S' Request for Leave is dismissed as moot.

DONE at Honolulu, Hawaii JAN - 9 2009

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Kaiulani Kidani Shinsato  
Commission Counsel

2008-0025.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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Certificate of Service

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Certificate of Service

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May 19, 2022

The Honorable Chair and Members  
State of Hawaii Public Utilities Commission  
Kekuaanoa Building, 1st Floor  
465 South King Street, Room 103  
Honolulu, HI 96813

Re: Docket No. 2008-0025: In the Matter of the Amended Application of  
Wailuku Water Company, LLC

Honorable Chair and Members of the Commission:

On behalf of Wailuku Water Company, LLC ("WWC"), and pursuant to section 269-7.5(b), Hawaii Revised Statutes, this to notify the Commission that on May 19, 2022 WWC sent the enclosed letter via the U.S. Postal Service to the addresses on the attached list.

Thank you for your attention to this matter.

Very truly yours,

SCHLACK ITO  
A LIMITED LIABILITY LAW COMPANY

/s/ Douglas A. Codiga  
Douglas A. Codiga



May 19, 2022

Aloha!

This letter provides important information concerning water delivery service by the Wailuku Water Company and the regulation of WWC as a public utility by the Hawaii Public Utilities Commission.

Regulation by the PUC reflects the ongoing evolution of the water system. Following formation of the Wailuku Sugar Company in 1862, the irrigation system has transitioned from primarily serving sugar cane to serving a variety of uses, including irrigation water for diversified agriculture, as a non-potable source for the County of Maui Department of Water Supply, and for native Hawaiian traditional and customary practices. WWC began owning and operating the irrigation system in 2005, and has taken great pride since then in operating a network that was built more than one hundred years ago – and that will continue to serve the convenience and needs of the public into the future.

The regulatory process before the PUC, largely inactive since 2009, is now resuming. As you may recall, on February 8, 2008, WWC filed an application with the PUC seeking certification as a public utility. As a public utility, WWC will own, operate, and maintain the non-potable water distribution system to deliver non-potable water to its customers and users. In exchange, like other public utilities WWC will be entitled to fees from utility customers to defray the cost of operation, provide capital for useful improvements to the system, and allow WWC the opportunity to earn a fair return on its investment. In January 2009, the PUC suspended the original application pending the completion of landmark proceedings before the Commission on Water Resource Management involving instream flow standards and use permits, which impact the WWC water delivery system and those who use it. Although these CWRM actions were expected to conclude within a relatively short time period, only recently have conditions been met to resume the PUC proceeding.

Accordingly, the purpose of this letter is to notify you about WWC's updated PUC filing, including proposed new rates, and the expected next steps in the restarted PUC proceeding. Due to the passage of time, WWC has amended its original application with updated data and information and the amended application was filed with the PUC on May 18, 2022. Like the original application, the amended application requests PUC approval to continue long-term contracts for certain existing customers. It also seeks to establish proposed new rates for other customers (see enclosed summary of proposed rates). We urge you to contribute to the PUC's process and to participate in the public hearing expected to be scheduled by the PUC in the future. For your convenience, a copy of WWC's amended application filed on May 18, 2022 is available on the PUC's Document Management Services website (under Docket No. 2008-0025) at <https://dms.puc.hawaii.gov/dms/index.jsp> or on WWC's website at [www.wailukuwater.com](http://www.wailukuwater.com).

We look forward to serving you in the future.

MAHALO NUI LOA

Avery B. Chumbley, President  
WAILUKU WATER COMPANY, LLC

Enclosure

**WAILUKU WATER COMPANY, LLC  
 PROPOSED RATE SCHEDULE**

**DISCLAIMER:** The following summarizes the rates proposed by the Wailuku Water Company, LLC (“WWC”) pursuant to its Amended Application filed in Docket No. 2008-0025 before the State of Hawaii Public Utilities Commission. This summary identifies broadly applicable categories. To further determine potentially applicable proposed rates, the Amended Application should be consulted. A copy is available at [www.wailukuwater.com](http://www.wailukuwater.com).

<i>Category</i>	<i>Proposed Rate</i>
<b>As proposed, a Customer:</b> <ul style="list-style-type: none"> <li>• Holds a Surface Water Use Permit (“SWUP”) issued by the Commission on Water Resource Management (“CWRM”); and</li> <li>• Is not a User.</li> </ul>	\$1.8395 per thousand gallons
<b>As proposed, a Contract Customer:</b> <ul style="list-style-type: none"> <li>• Holds a SWUP issued by CWRM</li> <li>• Holds an existing Customer Contract (not terminable on short notice without cause), in effect as of May 1, 2022, for non-potable water delivery from WWC; and</li> <li>• Is not a User.</li> </ul>	Charges based on terms of Customer Contract, as approved by the Hawaii Public Utilities Commission; if contract terminates Customer rate shall apply
<b>As proposed, a User:</b> <ul style="list-style-type: none"> <li>• Holds a SWUP issued by CWRM; and</li> <li>• Has been found by CWRM for all or part of its allocation to hold appurtenant rights, and/or to use the non-potable water in the exercise of native Hawaiian Traditional and Customary rights, at the SWUP-authorized location.</li> </ul>	\$0.000 per thousand gallons

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 Wailuku Water Company Amended Application  
 Mailing List for Notice Letter

<u>Full Name</u>	<u>Address</u>
	P.O. Box 785 Wailuku, HI 96793
	P.O. Box 1433 Wailuku, HI 96793
	230 Koeli Street Wailuku, HI 96793
	1419 Nuna Place Waikapu, HI 96793
	175 W. Waiko Road Wailuku, HI 96793
	2160A Puuohala Road Wailuku, HI 96793
	2525 Kahekili Hwy. Wailuku, HI 93793-9233
	2192 Mokuhau Road Wailuku, HI 96793
	1740 Kamamalu Place Wailuku, HI 96793
	2315 Kahekili Hwy. Wailuku, HI 96793
	P.O. Box 6240 Kahului, HI 96733
	1159 Piihana Road Wailuku, HI 96793
	PO Box 6134 Kahului, HI 96733
	P.O. Box 3172 Wailuku, HI 96793
	85 E. Kanamele Loop Wailuku, HI 96793
	P.O. Box 1394 Lockeford, CA 95237
	41 Waihee Valley Road Wailuku, HI 96793
	611 Halemalu Place Wailuku, HI 96793
	2032 B Ulei Lane Wailuku, HI 96793
	88 S Papa Avenue, Apt. 404 Kahului, HI 96732-3307
	P.O. Box 330808 Kahului, HI 96733



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	495 Hukilike Street, Bay 4 Kahului, HI 96732
	P.O. Box 488 Kahului, HI 96732
	185 West Waiko Road Wailuku, HI 96793
	2160 Puuohala Road Wailuku, HI 96793
	895 Malaihi Road Wailuku, HI 96793
	895 Malaihi Road Wailuku, HI 96793
	918 Kanakea Loop Lahaina, HI 96761
	592 S. Papa Avenue Kahului, HI 96732
	P.O. Box 239 Wailuku, HI 96793
	P.O. Box 34167 San Diego, CA 92163
	2005 Main Street Wailuku, HI 96793
	150 Pakana Street Wailuku, HI 96793
	150 Pakana Street Wailuku, HI 96793
	P.O. Box 97 Kihei, HI 96753
	823 Malaihi Road Wailuku, HI 96793
	P.O. Box 910 Wailuku, HI 96793
	202 Waihee Valley Road Wailuku, HI 96793
	240 Waihee Valley Road Wailuku, HI 96793
	3660 Kahekili Hwy. Wailuku, HI 96793
	1415 Honua Place Wailuku, HI 96793
	250 Alamaha Street, Suite N18 Kahului, HI 96732
	P.O. Box 442 Wailuku, HI 96793

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	2585 Kahekili Highway Wailuku, HI 96793
	787 Alua Street Wailuku, HI 96793
	1962-B Wells Street Wailuku, HI 96793
	555 California Steet, Suite 3450 San Francisco, CA 94104
	P.O. Box 7 Santa Barbara, CA 93102
	671 Kaimana Street Kahului, HI 96732
	45-520 Alokahi Street Kaneohe, HI 96744
	306 Hiolani Pukalani, HI 96768
	P.O. Box 946 Wailuku, HI 96793
	128 River Road Wailuku, HI 96793
	374 Nihoa Street Kahului, HI 96732
	350 West Waiko Road Wailuku, HI 96793
	2160 B Puuohala Road Wailuku, HI 96793-0463
	P.O. Box 762 Wailuku, HI 96793
	1455 Miloiki Street Honolulu, HI 96825-3229
	P.O. Box 235 Wailuku, HI 96793
	800 Lower Main Street Wailuku, HI 96793
	1630 Piiholo Road Makawao, HI 96768
	P.O. Box 1170 Wailuku, HI 96793
	90 Pulehu Place Kahului, HI 96732
	P.O. Box 342 Wailuku, HI 96793
	130 Pilikana Place Wailuku, HI 96793

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	94 Laukahi Street Kihei, HI 96753
	2192 Mokuhan Road Wailuku, HI 96793
	P.O. Box 696 Wailuku, HI 96793
	107 Waihee Valley Rd. Wailuku, HI 96793
	2445C Vineyard St. Wailuku, HI 96793
	37 Hui Hui Place Wailuku, HI 96793
	219-K West Waiko Road Wailuku, HI 96793
	P.O. Box 3017 Wailuku, HI 96793
	P.O. Box 310 Kihei, HI 96753
	245A West Waiko Road Wailuku, HI 96793
	915 Malaihi Road Wailuku, HI 96793
	P.O. Box 2846 Wailuku, HI 96793-7846
	205 Waihee Valley Road Wailuku, HI 96793
	11 Waihee Valley Road Wailuku, HI 96793
	P.O. Box 331194 Kahului, HI 96733
	1997 Alcova Ridge Drive Las Vegas, NV 89135
	P.O. Box 2787 Wailuku, HI 96793
	P.O. Box 696 Wailuku, HI 96793
	P.O. Box 1005 Wailuku, HI 96793
	1420 Honua Place Waikapu, HI 96793
	P.O. Box 1451 Wailuku, HI 96793
	P.O. Box 492 Wailuku, HI 96793

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	P.O. Box 1211 Wailuku, HI 96793
	484 Kalua Road Wailuku, HI 96793
	1271 Malaihi Road Wailuku, HI 96793
	P.O. Box 351 Wailuku, HI 96793
	1060 East Kuiaha Road Haiku, HI 96708
	P.O. Box 1574 Wailuku, HI 96793
	575 A Iao Valley Rd. Wailuku, HI 96793
	384 Waihee Valley Road Wailuku, HI 96793
	2644 Kahekili Highway Wailuku, HI 96793
	2120 C Kahekili Hwy. Wailuku, HI 96793
	1422 Nuna Pl. Wailuku, HI 96793
	1415 Kilohi St. Wailuku, HI 96793
	227 Kawaipuna Street Wailuku, HI 96793
	1550 Nukuna Place Wailuku, HI 96793
	P.O. Box 292 Wailuku, HI 96793
	P.O. Box 2082 Wailuku, HI 96793
	P.O. Box 1609 Waianae, HI 96792
	P.O. Box 1746 Wailuku, HI 96793
	1299 Malaihi Road Wailuku, HI 96793
	P.O. Box 1058 Puunene, HI 96784
	340 Iao Valley Road Wailuku, HI 96793
	166 River Road Wailuku, HI 96793

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	213 West Waiko Road Waikapu, HI 96793
	2839 Kalialani Circle Pukalani, HI 96768
	2518 W. Main Street Wailuku, HI 96793
	1421 Nuna Place Wailuku, HI 96793
	107 Waihee Valley Rd. Wailuku, HI 96793
	P.O. Box 218 Wailuku, HI 96793
	702 Kaae Road Wailuku, HI 96793
	P.O. Box 592 Wailuku, HI 96793
	P.O. Box 11255 Lahaina, HI 96761
	727 Wainee Street, Suite 104 Lahaina, HI 96761
	P.O. Box 2577 Wailuku, HI 96793
	191 Waihee Valley Road Wailuku, HI 96793
	135 Pilikana Place Wailuku, HI 96793
	125 Pilikana Street Wailuku, HI 96793
	1295 Old Waikapu Road Wailuku, HI 96793
	363 West Waiko Road Wailuku, HI 96793
	P.O. Box 330763 Kahului, HI 96733
	P.O. Box 965 Wailuku, HI 96793
	P.O. Box 1451 Wailuku, HI 96793
	104 N Market St. Wailuku, HI 96793
	P.O. Box 1104 Puunene, HI 96784
	1670 Honoapiilani Highway Wailuku, HI 96793

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	150 Pakana St. Wailuku, HI 96793
	911 NE 11th Avenue Portland, OR 97232-4181
	P.O. Box 351 Kula, HI 96790
	P.O. Box 2390 Wailuku, HI 96793
	P.O. Box 1870 Manteca, CA 95336
	104 N Market St. Wailuku, HI 96793

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COMMISSION

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