



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
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STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

August 20, 2024
Honolulu, Hawai'i

Approval of the Stream Diversion Works Permit (SDWP.6005.6) Application,
Installation of a Portable Submersible Pump; and
Find that a Petition to Amend the Interim Instream Flow Standard is Not Required; and
Approval of Surface Water Use Permit (SWUP.5998.6) Application for New Use,
With Special Conditions, Yas Yamazaki,
3,850 gpd for Diversified Agriculture, Irrigation and Domestic Use;
Wailuku River, 'Īao Surface Water Management Area, Maui, TMK: (2) 3-3-018:006

APPLICANT

Yas Yamazaki
P.O. Box 1427
Wailuku, HI 96793

LANDOWNER

Same

SUMMARY OF REQUEST

That the Commission on Water Resource Management (Commission) approve the following:

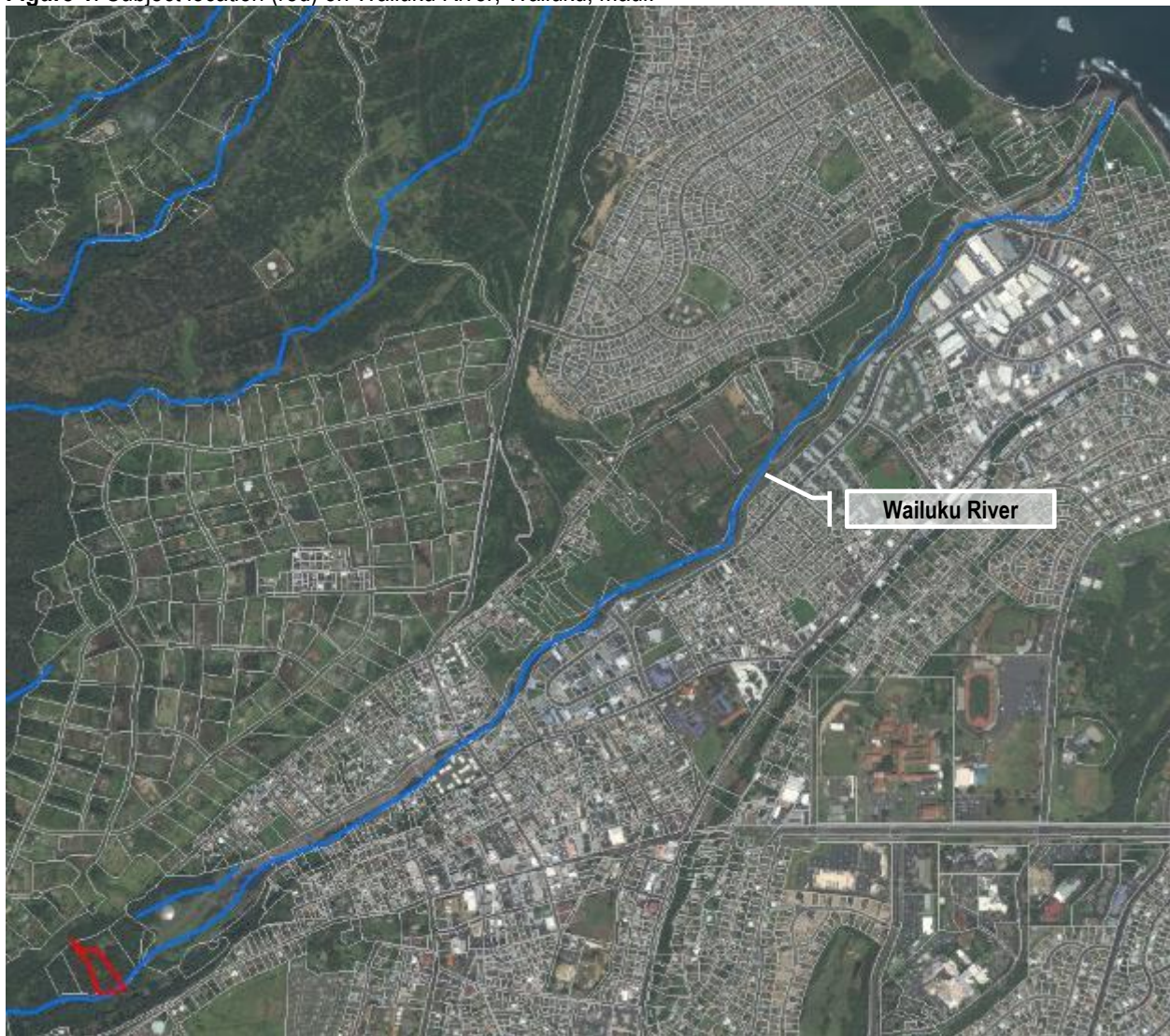
Stream Diversion Works Permit (SDWP.6005.6) application consisting of a 1.25-inch diameter, 8-gallon per minute (gpm) portable submersible pump estimated to pump daily to supplementally fill an existing 15,000 gallon catchment storage tank and 500 gallon tank with triple filtration and ultraviolet (UV) light.

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

Surface Water Use Permit (SWUP.5998.6) Application for new use in the amount of 3,850 gallons per day (gpd) consisting of 3,250 gpd (1.3 acre x 2,500 gpd/acre (gad)) for diversified agriculture and irrigation of ornamentals and 600 gpd (1 unit x 600 gpd) for domestic use.

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

Figure 1: Subject location (red) on Wailuku River, Wailuku, Maui.



BACKGROUND

On March 25, 2023, the Commission on Water Resource Management (Commission) received the complete SDWP.6005.6 Application and SWUP.5998.6 Application. The Stream Diversion Works Permit Application is on the Commission's website at https://files.hawaii.gov/dlnr/cwrw/swreview/SDWP_6005_6.pdf. See **Exhibit 1**. The Surface Water Use Permit Application (**Exhibit 2**) and Public Notice (**Exhibit 3**) are on the Commission's website at <https://files.hawaii.gov/dlnr/cwrw/notice/2024/nt20240311a.pdf>. The public notice was also published in the Maui News on March 15 and March 22, 2024.

STREAM DESCRIPTION

Wailuku River occurs within the ‘Āao surface water hydrologic unit (6024). Both the National Hydrography Dataset and the Division of Aquatic Resources classify Wailuku River as perennial. The total drainage area of Wailuku River is 10.9 square miles with a maximum basin elevation of 5,790 feet, mean annual precipitation of 122 inches, and the longest flow path is 8.74 miles. On the basis of 22 years of complete records (climate years 1984-2005) at USGS stream-gaging station 16604500 on Wailuku River near an altitude of 780 feet and above all diversions, the minimum daily mean flow (Q₁₀₀) was 7.1 million gallons per day (mgd) (the minimum flow occurred on 29 days, an average of about 1.3 days per year); the Q₉₅ flow was 11 mgd; the Q₉₀ flow was 12 mgd; the Q₇₀ flow was 17 mgd; and the Q₅₀ flow was 25 mgd.

However, a more recent analysis of streamflow statistics reveal a downward trend in streamflows on the basis of 20 years of complete records (water years 2004-2023) at USGS stream-gaging station 16604500 on Wailuku River, the minimum daily mean flow (Q₁₀₀) was 4.49 million gallons per day (mgd); the Q₉₅ flow was 10 mgd; the Q₉₀ flow was 11 mgd; the Q₇₀ flow was 15 mgd; and the Q₅₀ flow was 22 mgd.

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

PROJECT DESCRIPTION

On the left bank looking downstream, the proposed diversion will consist of a 1.25-inch diameter, eight (8) gpm portable submersible pump estimated to pump daily to supplementally fill an existing 15,000 gallon catchment storage tank and 500 gallon tank with triple filtration and UV light. No permanent pump or piping is anticipated. The proposed use is for 3,850 gpd consisting of 3,250 gpd (1.3 acres x 2,500 gad) for diversified agriculture, irrigation of ornamental plants, and 600 gpd (1 unit x 600 gpd) for domestic use. Irrigation practices include trickle, spray, sprinklers, and drip. See **Table 1** for a summary of the water use request.

Table 1. Summary of Water Use Request.

TMK Parcel	Water Use Category	Units or Net Acreage	GPD/Unit or GPD/Acre	Requested Quantity (GPD)
(2) 3-3-018:006	Agriculture: Crops & Processing	1.0 acre	2500	2,500
(2) 3-3-018:006	Agriculture: Ornamental & Nursery Plants	0.3 acre	2500	750
(2) 3-3-018:006	Domestic	1 unit	600	600
Total:				3,850

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

Figure 2: Subject location on Wailuku River, Maui. Photo date 6.28.2022. From the County of Maui website.



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

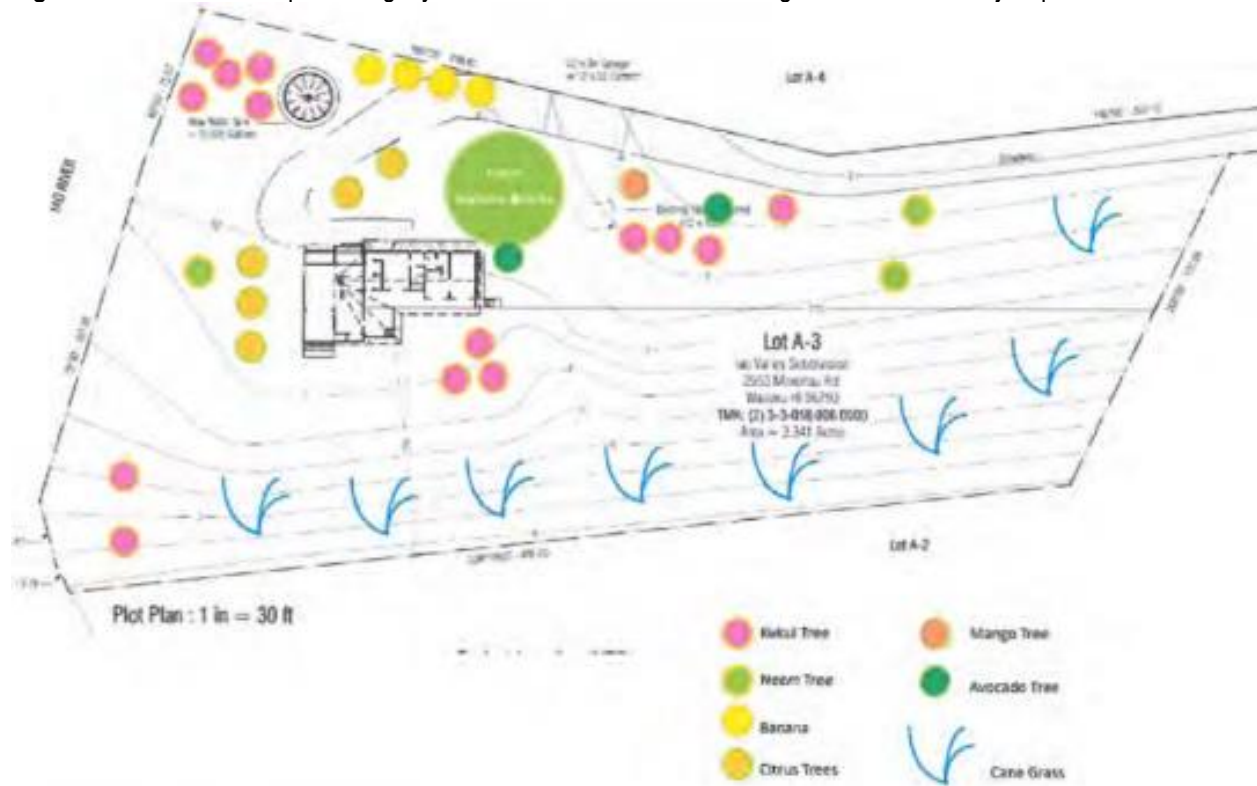


Figure 4: Site photos.



Red ginger, banana, orange and lime trees growing healthy



Giant kukui trees and cold-pressed kukui oil



This avocado tree is much taller than the house.



Ornamental palms planted along the driveway.

Papaya, banana and a mango tree shown in the background



Dragon fruit plants and papaya

Figure 4: Site photos (continued).



Kukui trees and African tulip trees



Planted night-time blooming jasmine plants



Drive way entrance

AGENCY REVIEW COMMENTS

Maui County, Department of Water Supply: The proposed Surface Water Use Permit (SWUP) Application proposes to utilize surface water sourced from the Wailuku River. The MDWS obtains water sourced from the Wailuku River, and the MDWS municipal use is a higher priority than the irrigation portion (3,850 gpd) of use the Applicant proposes. The MDWS peak average production at the Iao Water Treatment Facility is 3.012 million gallons per day (mgd). The plant capacity is 4.5 mgd. During low stream flow conditions, MDWS is unable to utilize our full surface water use permit allocation of 3.2 mgd while complying with Interim Instream Flow Standards. Therefore, any additional new water use permit applications for surface water withdrawals from the Wailuku River may cumulatively impact our public trust priority uses. See **Exhibit 4**.

CWRM Staff Response: The proposed water use is located downstream of the MDWS diversion site and, therefore, should not affect the MDWS use. Moreover, in its Decision and Order (D&O) in contested case hearing [CCH-MA15-01](#), 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. Domestic cultivation is limited to approximately 1.0 acres at the rate of 2,500 gad (COL 170).

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

Maui County, Planning Department: No objections.

Department of Hawaiian Home Lands (DHHL): We understand this SWUPA requests approximately 3,850 gallons per day for irrigation and domestic use. We note that we did not see community consultation listed or a Ka Pa`akai Analysis completed. See **Exhibit 5**.

CWRM Staff Response: Government agencies and the public are given a 30-day opportunity to comment on water use permit applications. Notice is put on the Commission website and in the newspaper. DHHL was sent a letter requesting their review and comment in a timely manner. The community may also participate in the Commission meeting also publicly noticed. The Ka Pa`akai analysis was completed in their application and is addressed below.

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

DLNR, Aquatic Resources: The water volume of diversion seem to be reasonable, but precautionary measures to prevent the pump from accidentally sucking native stream faunas during diversion is requested (e.g. placing filters or grates at the intake). Additionally, please use best practice when installing the pump and to ensure no alteration is caused to the stream flow. See **Exhibit 6**.

CWRM Staff Response: Concur. Added as a special condition by reference.

DLNR, Engineering: No comments.

DLNR, Forestry and Wildlife (DOFAW): The State listed ‘ōpe‘ape‘a or Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) could potentially occur at or in the vicinity of the project and may roost in nearby trees. Any required site clearing should be timed to avoid disturbance to bats during their birthing and pup rearing season (June 1 through September 15). During this period woody plants greater than 15 feet (4.6 meters) tall should not be disturbed, removed, or trimmed. Barbed wire should also be avoided in any construction as bats can become ensnared and killed by such fencing material during flight.

Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season, from September 15 through December 15, when young seabirds make their maiden voyage to sea. If nighttime construction is required during the seabird fledgling season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW’s recommended response protocol by visiting <https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/>. Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai‘i please visit <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

State-listed waterbirds such as ae‘o or Hawaiian stilt (*Himantopus mexicanus knudseni*), ‘alae ke‘oke‘o or Hawaiian coot (*Fulica alai*), and nēnē or Hawaiian Goose (*Branta sandvicensis*) could potentially occur at or in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the Maui Branch DOFAW Office at (808) 984-8100 and establish a buffer zone around the nest. The endemic pueo or Hawaiian Short-Eared Owl (*Asio flammeus sandwichensis*) could potentially nest in the project area. Pueo nest on the ground and active nests have been found year-round. Before any potential vegetative alteration, especially ground-based disturbance, we recommend that line transect surveys are conducted during crepuscular hours through the project area. If a pueo nest is discovered, a minimum buffer distance of 100 meters from the nest should be established until chicks are capable of flight.

The project area is within the range of the State-listed Blackburn’s Sphinx Moth (*Manduca blackburni*) or BSM. Larvae of BSM feed on many nonnative host plants, which includes tree tobacco (*Nicotiana glauca*), that grow in disturbed soil. We recommend contacting the Maui Branch DOFAW Office at (808) 984-8100 for further information about where BSM may be present and whether a vegetation survey should be conducted to determine the presence of plants

preferred by BSM. DOFAW recommends removing plants less than one meter in height or during the dry season to avoid harm to BSM. If you intend to either remove tree tobacco over one meter in height or to disturb the ground around or within several meters of these plants, they must be thoroughly inspected by a qualified entomologist for the presence of BSM eggs and larvae.

The project work on or at Wailuku River could affect endangered native Hawaiian damselflies (*Megalagrion* spp.) that may be present. DOFAW therefore recommends measures to avoid take of endangered Hawaiian Damselflies at the diversion sites during the stream restoration project and further consultation with a qualified entomologist. Please contact DOFAW Maui entomologist Keahi Bustamente at (808) 268-3247.

DOFAW recommends using native plant species for landscaping that are appropriate for the area, i.e., plants for which climate conditions are suitable for them to thrive, plants that historically occurred there, etc. Please do not plant invasive species. DOFAW also recommends referring to www.plantpono.org for guidance on the selection and evaluation of landscaping plants and to determine the potential invasiveness of plants proposed for use in the project.

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

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

The invasive Coconut Rhinoceros Beetle (CRB) or *Oryctes rhinoceros* are found on O‘ahu, Hawai‘i Island, Maui, and Kaua‘i. On July 1, 2022, the Hawai‘i Department of Agriculture (HDOA) approved Plant Quarantine Interim Rule 22-1. This rule restricts the movement of CRB-host material within or to and from the island of O‘ahu, which is defined as the Quarantine Area. Regulated material (host material or host plants) is considered a risk for potential CRB infestation. Host material for the beetle specifically includes (a) entire dead trees, (b) mulch, compost, trimmings, fruit and vegetative scraps, and (c) decaying stumps. CRB host plants include the live palm plants in the following genera: *Washingtonia*, *Livistona*, and *Pritchardia* (all commonly known as fan palms), *Cocos* (coconut palms), *Phoenix* (date palms), and *Roystonea* (royal palms). When such material or these specific plants are moved there is a risk of spreading CRB because they may contain CRB in any life stage. For more information regarding CRB, please visit <https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/coconut-rhinoceros-beetle/>.

Avoid importing soil or other plant material from off-island. Soil and plant material may contain fungi (e.g., Rapid 'Ōhi'a Death) and other pathogens that could harm our native species and ecosystems. We recommend consulting the Hawai'i Interagency Biosecurity Plan at <http://dlnr.hawaii.gov/hisc/plans/hibp/> in planning, design, and construction of the project. We recommend that Best Management Practices are employed during and after construction to contain any soils and sediment with the purpose of preventing damage to near-shore waters and marine ecosystems.

DOFAW is concerned about impacts to vulnerable birds from nonnative predators such as cats, rodents, and mongooses. We recommend taking action to minimize predator presence; remove cats, place bait stations for rodents and mongoose, and provide covered trash receptacles.

Cats prey on native birds, including State-listed endangered waterbirds, seabirds, and forest birds. Predation is instinctive and means that even well-fed cats will hunt and kill wildlife. Therefore, DOFAW recommends that residents with pet cats keep them indoors or safely contained. In addition, no feeding of feral cats should occur on the premises.

Due to the arid climate and risk of wildfire to listed species, we recommend coordinating with the Hawai'i Wildlife Management Organization at (808) 850-0900 or admin@hawaiiwildfire.org, on how wildfire prevention can be addressed in the project area. When engaging in activities that have a high risk of starting a wildfire (i.e. welding in grass), it is recommended that you:

- Wet down the area before starting your task,
- Continuously wet down the area as needed,
- Have a fire extinguisher on hand, and
- In the event that your vision is impaired, (i.e. welding goggles) have a spotter to watch for fire starts.

We appreciate your efforts to work with our office for the conservation of our native species. These comments are general guidelines and should not be considered comprehensive for this site or project. It is the responsibility of the applicant to do their own due diligence to avoid any negative environmental impacts. Should the scope of the project change significantly, or should it become apparent that threatened or endangered species may be impacted, please contact our staff as soon as possible. If you have any questions, please contact Kate Cullison, Protected Species Habitat Conservation Planning Coordinator via email at katherine.cullison@hawaii.gov. See **Exhibit 7**.

CWRM Staff Response: Concur. Added as a special condition by reference.

DLNR, Historic Preservation: On June 19, 2024, SHPD Project No. 2024PR00479 concurred with Commission's project effect determination of "No historic properties affected".

CWRM Staff Response: Staff believes that SHPD review is satisfied. See **Exhibit 8**.

DLNR, Land Division: No comments received.

DLNR, State Parks: No comments received.

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

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

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No comments received.

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

Public Comments: No comments received.

TRADITIONAL AND CUSTOMARY PRACTICES

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

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

The Applicant stated, “The land is blessed with many giant kukui trees and they produce nuts throughout the year. We have been harvesting the nuts and cold-pressed them to make kukui nut oil. The oil is then bottled and given out to friends and visitors to the land as gift or in exchange for a small donation to cover the cost. While we are not native Hawaiians, we enjoy taking care of our land and all that it offers to us. We believe living in harmony with the environment is one way to practice the Hawaiian traditional spirit of Aina.”

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

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

The Applicant stated, “None of the resources, including traditional and customary Native Hawaiian rights will be affected or impaired by our proposed action.”

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

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

The Applicant stated, “We do not see a need for any feasible action could be taken by the Commission on Water Resource Management in regard to our application to reasonably protect Native Hawaiian rights.”

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

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

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

- (1) use of state land or county lands, or the use of state or county funds;
- (2) use within any land classified as a conservation district;
- (3) use within a shoreline area;
- (4) use within any historic site as designated in the National Register or Hawaii Register;
- (5) use within the Waikiki area of O‘ahu;
- (6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
- (7) any reclassification of any land classified as a conservation district;
- (8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a

- shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
- (9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

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

STAFF REVIEW (Stream Diversion Works Permit Application)

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

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

CWRM Staff Response: The proposed use of 3,850 gpd will have a de minimis impact on streamflow. It is less than 5-percent (5%) percent of the gaged flow readings, within the stream's natural variability and considered an insubstantial amount. Staff estimates that both the quantity and quality of stream water or stream ecology is not adversely affected.

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

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

- a. Above all diversions near an altitude of 780 feet, the flow will remain as designated on December 10, 1988, estimated by U.S. Geological Survey (USGS) as Q₉₀ of 12 mgd, Q₇₀ of 17 mgd, and Q₅₀ of 25 mgd.
- b. 10 mgd measured at USGS station 16605500 on Wailuku River at 'Īao Valley Road.
- c. The special provisions for Maui Department of Water Supply and the kuleana users of the 'Īao-Waikapū Ditch are rescinded, and they will receive water through the priority system established for all permittees.
- d. Provisions will be made to maintain mauka to makai flow as much as possible at the Wailuku Water Company diversion to 'Īao-Waikapū and 'Īao-Māniania ditches.

- e. When the mean daily flow of Wailuku River measured at USGS station 16604500 drops below 15 mgd for three consecutive days, then the IIFS is seventy percent (70%) of the streamflow measured at USGS 16604500.
- f. When the USGS station 16605500 on Wailuku River at 'Īao Valley Road indicates that at least 10 md is flowing in Wailuku River, streamflow is adequate to provide for 5 mgd at Waiehu Beach Road. Only when there is water in excess of 10 mgd, measured at USGS station 16605500 on Wailuku River at 'Īao Valley Road, may the water in excess of 10 mgd be diverted at the Spreckels Ditch intake operated by Mahi Pono.

The requested amount of 3,850 gpd is less than 5-percent (5%) of the gaged flow readings, is within the stream's natural variability, and is considered a de minimis amount. The water quantity and quality appear unchanged. Commission staff finds that a petition to amend the instream flow standard is not required under HRS 174C-71 and HAR 13-169-36.

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

CWRM Staff Response: The proposed diversion is not anticipated to have any impact to diversions located upstream. There is one (1) permit holder located nearby and downstream of the applicant and three (3) surface water use permit holders located about 2.5 miles downstream of the applicant who receive their water from spring sources connected to the river. The subject request of 3,850 gpd is considered a de minimis amount compared to water availability and the IIFS, and is not anticipated to affect downstream permit holders.

STAFF REVIEW (Surface Water Use Permit Application)

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

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

CWRM Staff Response: The D&O created a priority system of uses (COL no. 174). Priority 1 uses are legally recognized appurtenant rights, traditional and customary Native Hawaiian rights, domestic uses of the general public, the Department of Hawaiian Home Lands reservations, and the Maui Department of Water Supply uses. Priority 2 are other existing uses. Priority 3 is diversified agriculture, including commercial lo'i kalo. Priority 4 are new uses not based on appurtenant rights.

Per the D&O (Order no. 23), the IIFS for the Wailuku River is as follows:

- a. Above all diversions near an altitude of 780 feet, the flow will remain as designated on December 10, 1988, estimated by U.S. Geological Survey (USGS) as Q₉₀ of 12 mgd, Q₇₀ of 17 mgd, and Q₅₀ of 25 mgd.

- b. 10 mgd measured at USGS station 16605500 on Wailuku River at ‘Īao Valley Road.
- c. The special provisions for Maui Department of Water Supply and the kuleana users of the ‘Īao-Waikapū Ditch are rescinded, and they will receive water through the priority system established for all permittees.
- d. Provisions will be made to maintain mauka to makai flow as much as possible at the Wailuku Water Company diversion to ‘Īao-Waikapū and ‘Īao-Mānania ditches.
- e. When the mean daily flow of Wailuku River measured at USGS station 16604500 drops below 15 mgd for three consecutive days, then the IIFS is seventy percent (70%) of the streamflow measured at USGS 16604500.
- f. When the USGS station 16605500 on Wailuku River at ‘Īao Valley Road indicates that at least 10 md is flowing in Wailuku River, streamflow is adequate to provide for 5 mgd at Waiehu Beach Road. Only when there is water in excess of 10 mgd, measured at USGS station 16605500 on Wailuku River at ‘Īao Valley Road, may the water in excess of 10 mgd be diverted at the Spreckels Ditch intake operated by Mahi Pono.

The request of 3,850 gpd is less than 5-percent (5%) of the gaged flow readings, is within the stream’s natural variability, and is considered a de minimis amount. The water quantity and quality appear unchanged. Commission staff finds that a petition to amend the instream flow standard is not required under HRS 174C-71 and HAR 13-169-36.

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

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

SWUP No.	Permittee	Total Amount (gpd)	Notes
Source: Wailuku River or Spring (Above IIFS)			
2304	DLNR State Parks	4,200	River with ho'i Located above IIFS
ALLOCATION	Wailuku River Q ₇₀ : 17 mgd Wailuku River IIFS: 10 mgd Q ₇₀ – IIFS: 7 mgd or 7,000,000 gpd	7,000,000	USGS gage 16604500 above ‘Īao-Waikapū and ‘Īao-Mānania Ditches
Source: ‘Īao-Mānania Ditch			
2189 / 2190	WCEIC	680,186	184 individuals
2196	WCEIC	78,155	5 lots in common area
2215 / 2216	Brito	6,150	
Total Permitted Use for ‘Īao-Mānania Ditch		764,491	
Source: ‘Īao-Waikapū Ditch			
2178 / 2179	County – Maui DWS	3,200,000	
2339	Yamaoka	1,950	
2188	L. Vida Jr.	6,250	
2292 / 2293	Vida	2,400	
2303	Pinto	2,750	

SWUP No.	Permittee	Total Amount (gpd)	Notes
2183	Kihei Garden	33,261	
3671	Sloan	2,167	
3665	Ota	5,668	
4442	Hee	1,668	
4444	Takitani	2,833	
4445	SPV Trust	1,668	
2207 / 2208	Makani Olu Partners	138,201	
2204	McLean	150,350	
2191	Dando	250	
Total Permitted Use for 'Īao-Waikapū Ditch		3,549,416	
Wailuku River or Spring			
2243 / 2244	Ho'ouluāhui	455,000	River with ho'i
2370	Ornellas	213,750	River
5928	Juergensmeyer	3,850	River
5848	Bashaw	4,450	River
6006	Flint	4,975	River
2371	Lozano	29,678	Spring
2206	Mahi Pono	High flows only	River
2275	Sevilla	50,700	Spring
3623	Almeida	2,728	Spring
Permitted Use Total for Wailuku River or Spring		765,131	
TOTAL PERMITTED USE		5,079,038	
ALLOCATION minus TOTAL PERMITTED USE		1,920,962	
5998	Yamazaki (pending)	3,850	River
REMAINING ALLOCATION AVAILABLE		1,917,112	

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

CWRM Staff Response: Section 174C-3, HRS defines reasonable-beneficial use as “the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest”.

I. Purpose of Use

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

II. Quantity Justification

CWRM Staff Response: The applicant is requesting 3,850 gpd consisting of 3,250 gpd

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

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

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

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

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

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

170. The Commission also concludes that:

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

III. Efficiency of Use

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

IV. Analysis of Practical Alternatives

The applicant stated the following:

- a) Municipal. Non-potable water not available from county.
- b) Wastewater. Wastewater re-use is not legal and there is no district system from central Maui treatment plant.
- c) Ditch system. Non existent.

- d) Desalinization. Non existent.
- e) Groundwater. Cost prohibitive and permit unobtainable.
- f) Conservation. Rain catchment system to collect and conserve river water.
- g) Other. 1 x 15,000 gallon and 1 x 500 gallon water tanks with triple filtration and UV light.

CWRM Staff Response: The proposed water use is reasonable and beneficial. It meets the purpose, quantity justification, efficiency, and there are no practical alternatives. It will supplement natural rainfall as an alternative to meet the applicant's domestic and irrigation needs. Storage tanks and irrigation methods described above make stream water the most practical alternative.

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

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

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

CWRM Staff Response: Portions of Land Commission Awards (LCA) 3225, 7907, and 387 is found within Parcel 6 for which the applicant requested recognition of appurtenant rights. However, appurtenant rights for Parcel 6 were extinguished in the deed from Wailuku Agribusiness Co., Inc., in 1990. See **Exhibit 9**.

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

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

- a. Qualifying as a Native Hawaiian refers to "those persons who are 'descendants of native Hawaiians who inhabited the islands prior to 1778' and who assert otherwise valid³⁹ customary and traditional rights"; and
- b. (O)nce a (person) qualifies as a native Hawaiian, he or she must then establish that his or her claimed right is constitutionally protected as a customary or traditional native Hawaiian practice."
- c. In other words, the right has two parts: a) that it is a customary or traditional native Hawaiian practice; and b) that the practice is constitutionally protected.

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

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

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

1263.)

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

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

CWRM Staff Response: The requested amount of 3,850 gpd is considered a de minimis amount and will not interfere with the IIFS and existing permit holders. The applicant claims an appurtenant right; however, the appurtenant rights were extinguished through a reservation of water rights in the deed from Wailuku Agribusiness Co., Inc., in 1990. See **Exhibit 9**. The applicant did not claim traditional and customary rights.

- (4) Is consistent with the public interest.

CWRM Staff Response: The public interest is defined under HRS §174C-2(c) "The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest."

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

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

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

The proposed uses are located in the State agricultural district, and County zoning is also agriculture. The proposed uses are consistent with the state and county land use designations.

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

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

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

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

RECOMMENDATION

That the Commission:

1. Approve Stream Diversion Works Permit (SDWP.6005.6) Application consisting of a 1.25-inch diameter, 8-gallon per minute (gpm) portable submersible pump estimated to pump daily to supplementally fill an existing 15,000 gallon catchment storage tank and 500 gallon tank with triple filtration and UV light, subject to the standard stream diversions works permit conditions in **Exhibit 10**.
2. Find that a petition to amend the Interim Instream Flow Standard (interim IFS) is not required under HRS 174C-71 and HAR 13-169-36 because the recommended amount of 3,850 gpd is less than 5-percent (5%) of the gaged flow readings, is within the stream's natural variability, and is considered a de minimis amount.
3. Approve Surface Water Use Permit (SWUP.5998.6) Application for new uses in the amount of 3,850 gallons per day (gpd) consisting of 3,250 gpd (1.3 acre x 2,500 gpd/acre) for diversified agriculture and irrigation of ornamentals and 600 gpd (1 unit x 600 gpd) for domestic use, subject to the standard water use permit conditions in **Exhibit 11** and the following special conditions.
 - a. This permit is invalid if the use as described in **Table 1** changes. This includes, but is not limited to: types of use, location of use, land use classification changes, or anything that varies from the application.
 - b. The domestic use of 2,500 gpd (1.0 acre x 2,500 gad) for diversified agriculture and 600 gpd (1 unit x 600 gpd) for domestic use is recognized as a Priority 1 use. The amount of 750 gpd (0.3 acres x 2,500 gad) for irrigation of ornamental plants is recognized as a Priority 3 use.
 - c. The appurtenant rights for Parcel 6 were extinguished in the deed from Wailuku Agribusiness Co., Inc., in 1990. See **Exhibit 9**.

- d. In conformance with the Division of Aquatic Resources recommendations, incorporated by reference as **Exhibit 6**, precautionary measures to prevent the pump from accidentally sucking native stream faunas during diversion is requested (e.g. placing filters or grates at the intake). Additionally, please use best practice when installing the pump and to ensure no alteration is caused to the stream flow.
- e. In conformance with the Division of Forestry and Wildlife's recommendations, incorporated by reference as **Exhibit 7**, Hawaiian hoary bats, waterbirds, owls, tree snails, native plant may reside in the area. Land based predators and invasive species may also be brought in during construction. DOFAW recommends best management practices by employed to support native species and minimize the introduction of pests to the area.

Ola i ka wai,



DEAN D. UYENO
Acting Deputy Director

Exhibits:

1. Stream Diversion Works Permit Application.
2. Surface Water Use Permit Application.
3. Public Notice, dated March 15 and March 22, 2024.
4. Maui DWS letter dated April 8, 2024.
5. DHHL letter dated April 9, 2024.
6. DLNR, Division of Aquatic Resources letter dated April 9, 2024.
7. DLNR, Division of Forestry and Wildlife letter dated May 3, 2024.
8. DLNR, Historic Preservation letter dated June 19, 2024.
9. Wailuku Agribusiness Co., Inc. Deed dated July 20, 1990
10. Standard Stream Diversion Works Permit Conditions.
11. Standard Surface Water Use Permit Conditions.

APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG
Chairperson



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

For Official Use Only:

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

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

PERMIT TYPE		
1. Permit Status:	<input checked="" type="checkbox"/> New	<input type="checkbox"/> After-The-Fact
2. Type of Construction:	<input checked="" type="checkbox"/> Installation	<input type="checkbox"/> Modification <input type="checkbox"/> Removal / Abandonment
APPLICANT INFORMATION		
3. APPLICANT'S NAME / COMPANY Yas Yamazaki	Applicant's Contact Person	Applicant's Phone (310) 544 4522
Applicant's Mailing Address PO Box 1427	Applicant's E-mail Address yasenfound@gmail.com	
<input type="checkbox"/> Check here if project will impact multiple landowners. If project impacts multiple landowners, skip Item 4 below, then complete and attach Form LND-APP to identify and verify landowner's approval of proposed stream diversion work.		
4. LANDOWNER'S NAME / COMPANY Yas and Mina Yamazaki	Landowner's Contact Person Yas or Mina Yamazaki	Landowner's Phone (310) 544 4522 or (808) 927 0021
Landowner's Mailing Address PO Box 1427	Landowner's E-mail Address yasenfound@gmail.com	
5. CONSULTANT'S NAME / COMPANY N/A	Consultant's Contact Person	Consultant's Phone
Consultant's Mailing Address	Consultant's E-mail Address	
6. CONTRACTOR'S NAME / COMPANY N/A	Contractor's Contact Person	Contractor's Phone
Contractor's Mailing Address	Contractor's E-mail Address	
STREAM INFORMATION		
7. Island: (Check only one)	<input type="checkbox"/> Kauai	<input type="checkbox"/> Oahu <input type="checkbox"/> Molokai <input type="checkbox"/> Lanai <input checked="" type="checkbox"/> Maui <input type="checkbox"/> Hawaii
8. Tax Map Key(s) List all affected tax map key parcels. 3-3-0018-006		
9. Stream / Gulch Name(s) List all affected streams and/or gulches. Wailuku River or Iao River		
FOR OFFICIAL USE ONLY:		
LAT: _____	SWHU ID: _____	FILE ID: _____
LON: _____	GWHU ID: _____	DOC ID: _____
	REACH ID: _____	

GENERAL PROJECT INFORMATION				
10. Diversion No.: (if already assigned)		11. Diversion Name:		
12. Project Site Location(s): Provide site coordinates of downstream-most point of project in degrees, minutes, seconds (NAD83).				
Latitude: 20 ° 53 ' 5 "		Longitude: 156 ° 30 ' 50 "		Elevation: 460 ft. above mean sea level
13. Diversion Structure Type: (Check all that apply)				
<input type="checkbox"/> Unlined channel	<input type="checkbox"/> Hand-built rock	<input type="checkbox"/> Concrete masonry	<input type="checkbox"/> Dam/weir	<input type="checkbox"/> Pipe
<input type="checkbox"/> Metal	<input type="checkbox"/> Plastic	<input type="checkbox"/> Wood	<input checked="" type="checkbox"/> Pump	<input type="checkbox"/> Direct use
<input type="checkbox"/> Other - Describe:				
STREAM DIVERSION WORKS SPECIFICATIONS (For Abandonments, skip to Legal Requirements section, item #32.)				
14. Structure Dimensions: (feet)		Width: N/A using a submersible		
Provide generalized dimensions for the entire project / structure area. If the project includes a pipe (e.g., culvert, drain, etc.), provide the pipe diameter.		Height: pump		
		Length: pump		
15. Diversion Location:		<input checked="" type="checkbox"/> Left bank (downstream view) <input type="checkbox"/> Right bank (downstream view) <input type="checkbox"/> Across entire stream channel		
Provide the general location of the diversion intake structure in relation to the streambank.				
16. Intake Dimensions: (feet)	Width:	Height:	Length:	Diameter: 1.25" p/u
17. Average diversion amount: (cubic feet per second)				
18. Diversion is part of a system of diversions: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
19. Diverted flow can be controlled: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
Control Dimensions: (feet) Width: Height: Length: Diameter: 1.25" p/u				
20. Water will be pumped from the stream: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
If yes, identify pump capacity: (gallons per minute) 8 GPM		Daily average pumping time: (hours) 6 hours		
21. Water will be impounded in the stream channel: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
22. Water diversion capacity will be measured daily: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
23. Water will be returned to the stream: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
If yes, average amount of return flow: (cubic feet per second)				
24. Water will be stored off-stream: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
Describe storage facility: 1-14,900 plastic lined metal tank		Storage capacity: (gallons) 14,900 gallons		
25. State Land Use Classification: (Check all that apply) <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Conservation <input type="checkbox"/> Rural <input type="checkbox"/> Urban				
WATER USE INFORMATION				
Check all water use categories below that are intended for the proposed diversion, then describe the proposed use in more detail.				
<input checked="" type="checkbox"/> 26. Agriculture				
<input checked="" type="checkbox"/> 27. Domestic				
<input type="checkbox"/> 28. Industrial				
<input checked="" type="checkbox"/> 29. Irrigation				
<input type="checkbox"/> 30. Military				
<input type="checkbox"/> 31. Municipal				
LEGAL REQUIREMENTS				
If required, the permits or approvals below must be obtained before the Commission on Water Resource Management can legally issue a permit. Visit the Commission's Applications & Forms webpage (http://dlnr.hawaii.gov/cwrm/info/forms/) for links to agency websites/contact information.				
32. Conservation District Use Permit (CDUP): To find out if your stream diversion works is located in a Conservation District (CD), you may visit to the Land Use Commission (LUC) website at http://luc.hawaii.gov/maps/ to view Land Use District Boundary maps. If the stream diversion works will be located in a CD, contact the Department of Land and Natural Resources' Office of Conservation and Coastal Lands (OCCL) at (808) 587-0377 to determine if a CDUP is required.				
<input type="checkbox"/> Stream diversion works is in a Conservation District.				
<input type="checkbox"/> Required. CDUP #: _____ Date CDUP approved: _____				
<input type="checkbox"/> Not Required. Attach documentation from Office of Conservation and Coastal Lands (OCCL), Department of Land and Natural Resources.				
<input type="checkbox"/> I have not checked with the OCCL about whether or not a CDUP is required.				
<input checked="" type="checkbox"/> Stream diversion works is <u>not</u> in a Conservation District.				

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

Required. SMAP #: _____ Date SMAP approved: _____

Not Required. Attach documentation from applicable County agency.

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

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

**Please note: You are strongly advised to contact the SHPD to obtain a pre-review of your project. In the event that you do not get an HP pre-review and if during the course of either review or the permit itself it is determined that you need SHPD's concurrence, your application or permit may be held in abeyance or denied until issues with HP are resolved. To contact SHPD, please call (808) 692-8015.*

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

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

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

An Environmental Assessment was completed, and

An Environmental Impact Statement was required and has been accepted (attach letter of acceptance).

Publication date in The Environmental Notice: _____

A Finding of No Significant Impact has been determined (attach letter).

Publication date in The Environmental Notice: _____

This project proposes:

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

OTHER REGULATORY REQUIREMENTS

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

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

CULTURAL IMPACTS

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

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

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

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

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

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

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

PROJECT DESCRIPTION
<p><i>Please complete the following sections by providing detailed information on the project components identified below. If there is not enough space available, please make a note in the field (e.g., "See attached") and attach all information with this application as requested.</i></p>
<p>47. Describe the overall project scope and objectives.</p> <p>Our property is a total of approximately 2.34 acres, much of which is very rocky and covered with large boulders. We use rain catchment as our primary water source but need a supplemental source in order to grow a reasonable amount of food crops. Rain catchment meets all our current needs during most of the year except during prolonged dry periods.</p>
<p>48. Describe existing stream channel dimensions and median streamflow conditions at the site of the proposed stream diversion works.</p> <p>As Wailuku River flows along our property line of approximately 250', the average flow width is approximately 25'. Minimum flow width during the past 3 years has been roughly 15'. Depth varies considerably as the riverbed is very rocky.</p>

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

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

Property is zoned AG-2 and has met all county development codes, ie., 1 storage shed and 1 main dwelling 1 septic system and 1 water catchment tank and 1 500-gal water storage tank.

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

There are none and no future plans to connect to county water.

SUBMITTALS

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

52. Location Map: Provide a location map of the proposed project relative to major roadways.

53. Plans / Elevations / Sections: Provide a plan view of the proposed stream diversion works structure in relation to the stream channel and property boundaries. Elevation and section views of the diversion structure in relation to the stream channel should also be provided if available.

SIGNATURES

Signing below indicates that the signatories understand and swear that the information provided is accurate and true to the best of their knowledge. Further, the signatories understand that if the permit requested is granted by the Commission on Water Resource Management (Commission), the permit shall be subject to the following conditions:

- 1) The proposed work is to be completed within two (2) years from the date of permit approval.
- 2) The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion.
- 3) The permittee shall submit a set of as-built plans and photographs to the Commission upon completion of the project.
- 4) The permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months.
- 5) If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.

54. APPLICANT

Print Name: Yas Yamazaki	Signature:	Date: February 21, 2023
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55. CONSULTANT

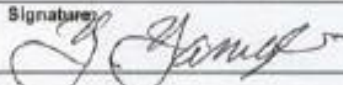
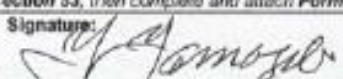
Print Name:	Signature:	Date:
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56. CONTRACTOR

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

Print Name: Yas Yamazaki	Signature:	Date: February 21, 2023
-----------------------------	------------	----------------------------

<p>50. Describe the project's consistency with county zoning and development plans.</p> <p>Property is zoned AG-2 and has met all county development codes, i.e., 1 storage shed and 1 main dwelling 1 septic system and 1 water catchment tank and 1 500-gal water storage tank.</p>		
<p>51. Identify potential alternatives (sources of water) to the project and describe the relative costs and benefits of each alternative.</p> <p>There are none and no future plans to connect to county water.</p>		
<p>SUBMITTALS</p>		
<p><i>Please submit the following plans, maps, or drawings in legible form, preferably on 8.5" by 11" sheets.</i></p>		
<p>52. Location Map: Provide a location map of the proposed project relative to major roadways.</p>		
<p>53. Plans / Elevations / Sections: Provide a plan view of the proposed stream diversion works structure in relation to the stream channel and property boundaries. Elevation and section views of the diversion structure in relation to the stream channel should also be provided if available.</p>		
<p>SIGNATURES</p>		
<p>Signing below indicates that the signatories understand and swear that the information provided is accurate and true to the best of their knowledge. Further, the signatories understand that if the permit requested is granted by the Commission on Water Resource Management (Commission), the permit shall be subject to the following conditions:</p>		
<ol style="list-style-type: none"> 1) The proposed work is to be completed within two (2) years from the date of permit approval. 2) The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion. 3) The permittee shall submit a set of as-built plans and photographs to the Commission upon completion of the project. 4) The permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months. 5) If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard. 		
<p>54. APPLICANT</p>		
<p>Print Name: Yas Yamazaki</p>	<p>Signature: </p>	<p>Date: February 21, 2023</p>
<p>55. CONSULTANT</p>		
<p>Print Name:</p>	<p>Signature:</p>	<p>Date:</p>
<p>56. CONTRACTOR</p>		
<p>Print Name:</p>	<p>Signature:</p>	<p>Date:</p>
<p>57. LANDOWNER (If multiple landowners, skip Section 53, then complete and attach Form SCAP-LND with appropriate landowner signatures.)</p>		
<p>Print Name: Yas Yamazaki</p>	<p>Signature: </p>	<p>Date: February 21, 2023</p>



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

APPLICATION FOR SURFACE WATER USE PERMIT FOR
PROPOSED NEW USE IN A DESIGNATED SURFACE WATER
MANAGEMENT AREA

FORM SWUPA-N Application for New Use
 Application to Modify SWUPA-N

For Official Use Only

For detailed instructions on filling out this application form completely, refer to the attached instructions sheet. Incomplete applications will not be accepted for processing.

The following must be attached before this application is accepted as complete:

- Portion of 7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion location and the quad map name.
- Property tax map showing the stream or diversion location and location of water use referred to established property boundaries.
- Photograph(s) of the surface water source, diversion and end use, if applicable.

APPLICANT INFORMATION: NOTE: In accordance with HRS §§174C-01(1)(B), 174C-01(1)(C), 174C-01(1)(D), or any other statute with a beneficial interest or right in the land which is the water source of the permitted water, applicant for a water permit, the landowner shall be notified as a land applicant for the water permit.					
1. APPLICANT'S NAME		Applicant's Contact:		1. SOURCE LANDOWNER'S NAME	
Yas Yamazaki		310-544-4522		Yas Yamazaki	
Applicant's Rating Address, or Physical Place of Business:		Applicant's Email:		Source Landowner's Contact:	
PO Box 1427 Wailuku, HI 96793		yasefound@gmail.com		310-544-4522	
Applicant's Phone:	Applicant's Fax:	Applicant's Email:	Source Landowner's Phone:	Source Landowner's Fax:	Source Landowner's Email:
310-544-4522	N/A	yasefound@gmail.com	310-544-4522	N/A	yasefound@gmail.com
SOURCE INFORMATION					
3. SURFACE WATER HYDROLOGIC UNIT: Island: <u>Maui</u> Hydrologic Unit: <u>Iao River</u> Hydrologic Unit Code: <u>5024</u>					
4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT, IF APPLICABLE: <u>10</u>					
5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit: See attachment A					
6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: <u>3 - 3 - 0 1 8 - 0 0 6</u>					
6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: _____					
7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all that apply.					
<input checked="" type="checkbox"/> Pipe <input checked="" type="checkbox"/> Pump <input type="checkbox"/> Ditch/Canal <input type="checkbox"/> Other Describe: See attachment A					
7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?					
<input type="checkbox"/> Yes. How much water will be returned? _____ gallons per day. TMK of Returned Water Location: _____					
<input checked="" type="checkbox"/> No. See attachment A					
8. PROPOSED FLOW MEASUREMENT INFORMATION:					
Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts?					
<input type="checkbox"/> Yes. List the manufacturer and describe the device: _____					
<input checked="" type="checkbox"/> No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below. See attachment A					
PROPOSED USE INFORMATION (§§174C-01(4), (5), (6), HRS)					
9. TOTAL QUANTITY OF WATER REQUESTED: <u>3850</u> gallons per day. See Table 1, Item 14.					
10. PROPOSED USE: Check all that apply. <input checked="" type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Industrial					
See Table 1, Item 1. <input checked="" type="checkbox"/> Irrigation <input type="checkbox"/> Military <input type="checkbox"/> Municipal					
11. LOCATION OF PROPOSED WATER USE: Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps. See Table 1, Item 2. See attachment A					
PROPOSED USER INFORMATION					
12. APPURTENANT RIGHT: Do you claim an appurtenant right for your proposed water use? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
See attachment B If yes, has the appurtenant right been established by the courts or the Commission? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system?					
<input type="checkbox"/> Yes. List the name of the system operator: _____ <input checked="" type="checkbox"/> No					
14. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use from the Commission?					
<input type="checkbox"/> Yes. List the file reference number: _____ <input checked="" type="checkbox"/> No					
15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from the Commission?					
<input type="checkbox"/> Yes. List the permit number(s): _____ <input checked="" type="checkbox"/> No					
<small>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, the permit will be subject, but not limited to, any existing legal cases, changes in sustainable yield and instream flow standards, Hawaiian Home Lands laws, 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.</small>					
16. APPLICANT			17. SOURCE LANDOWNER		
 Signature YAS YAMAZAKI 8/19/23 Print Date			 Signature YAS YAMAZAKI 8/19/23 Print Date		

Page 1 of 10
FORM SWUPA-N 05/17/2022

EXHIBIT 2

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

PROPOSED NEW USE OR MODIFIED USE INFORMATION

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

LAND USE CONSISTENCY		EFFICIENCY OF USE									
A	B	C	D	E	F	G	H	I	J	K	
PURPOSE/ WATER USE CATEGORY	NEW FOR PROPOSED LOCATION OF USE TO BE FOLLOWING: • Primary use by proposed location of use • Secondary use by proposed location of use • Photographic of the area of proposed use	STATE LAND USE DISTRICT	CLUB FEED Check the appropriate box and enter in the data space over, if applicable	COUNTY ADMIN CODE	SEAP RSD Check the appropriate box and enter in the data space over, if applicable	HINTS OR NOTES ON ACREAGE	EFFICIENCY OF GROUNDWATER (gallons per day)	REQUESTED QUANTITY OF USE (GPD)	BIAS METHODS? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE. If applicable, which needs to be flow this method calculated for explain this in Table 2.	
Uses that require potable (drinking) water											
	3 - 3 - 0 1 8 : 0 0 6	AG	<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No		<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		
	3 - 3 - 0 1 8 : 0 0 6	AG	<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No		<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		
	3 - 3 - 0 1 8 : 0 0 6	AG	<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No		<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No		
Uses that do not require potable water											
	3 - 3 - 0 1 8 : 0 0 6	AG	<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No		<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No			600	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Land use estimate see attachment A
	3 - 3 - 0 1 8 : 0 0 6	AG	<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No		<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No			2500	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Land use estimate see attachment A
	3 - 3 - 0 1 8 : 0 0 6	AG	<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No		<input type="checkbox"/> Yes, data approved <input type="checkbox"/> Yes, not required <input type="checkbox"/> No			2500	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Land use estimate see attachment A
TOTAL POTABLE USE (L) GPD											
TOTAL NON POTABLE USE (M) GPD											
TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) (N) = 3850 GPD											
G. LIMITATIONS: Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. (\$174C-81(5) HRS)											
None											

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 2: IRRIGATION INFORMATION

List all crops that will be grown as separate line items and include landscape and golf course irrigation. Attach additional copies of Table 2 if necessary.

PROPOSED NEW USE OR MODIFIED USE INFORMATION (continued)																			
16. 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		
TANK OF PROPOSED LOCATION OF USE (List all tanks with outlying areas and plots 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.)		
3	3	0	1	8	:	0	0	6											
3	3	0	1	8	:	0	0	6											
3	3	0	1	8	:	0	0	6											
3	3	0	1	8	:	0	0	6											

Comment:
1. There is no existing county water service to the parcel. 2. Fruit trees includes: banana, papaya, avocado, lilikoi, blackberry, lemon, lime, mandarin orange, grape fruit, navel orange, coffee. 3. Vegetables includes: tomato, eggplant, cucumber, pumpkin, rice, soba, herbs, green leaves for saad. 4. Existing trees includes: kukui, monkeypod, African tulip, coral tree, palm tree, opima. 5. Estimated irrigated acreages have taken into account driveways, easement and dwelling footprints. See attachment A

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE	
OTHER PERTINENT INFORMATION	
20. TABLE 3: ALTERNATIVES ANALYSIS	
A. Analysis of Potable Alternatives (Attach additional sheets if necessary.)	B. Analysis of Non-Potable Alternatives (Attach additional sheets if necessary.)
Municipal sources	Water or non-potable use is unavailable from county
Wastewater reuse	Wastewater re-use is not legal and there is no district system from central Maui treatment plant
Ditch system	Non Existent
Desalination	Non Existent
Ground water	Cost prohibitive and permit unobtainable
Conservation measures	Rain catchment system to collect and conserve river water
Other (specify)	One 15000 gallon and one 500 gallon water tanks with triple filtration and UV light

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

OTHER PERTINENT INFORMATION
<p>21. PUBLIC INTEREST: Hawaii Revised Statutes §174C-2(c) states that: <i>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>Explain how the proposed new use(s) in your application are consistent with items [a] and [b] above.</p> <p>Please See attachment A</p>
<p>21a. Please provide the identity and scope of cultural, historical, and natural resources in which traditional and customary Native Hawaiian rights are exercised in this area.</p> <p>The land is blessed with many giant kukui trees and they produce nuts throughout the year. We have been harvesting the nuts and cold-pressed them to make kukui nut oil. The oil is then bottled and given out to friends and visitors to the land as gift or in exchange for a small donation to cover the cost. While we are not native Hawaiians, we enjoy taking care of our land and all that it offers to us. We believe living in harmony with the environment is one way to practice the Hawaiian traditional spirit of Aina.</p>
<p>21b. Identify the extent to which these resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action</p> <p>None of the resources, including traditional and customary Native Hawaiian rights will be affected or impaired by our proposed action.</p>
<p>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?</p> <p>We do not see a need for any feasible action could be taken by the Commission on Water Resource Management in regard to our application to reasonably protect Native Hawaiian rights.</p>

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

OTHER PERTINENT INFORMATION			
<p>22. INTERFERENCE WITH THE RIGHTS OF THE DEPARTMENT OF HAWAIIAN HOME LANDS Explain how the proposed new use(s) of water will not interfere with the rights of the Department of Hawaiian Home Lands, as provided in section 221 of the Hawaiian Homes Commission Act.</p>	<p>As far as we know, there is no Hawaiian Homes Lands in the district of Wailuku.</p>		
<p>23. INTERFERENCE WITH ANY EXISTING LEGAL USES Explain how the proposed new use(s) of water will not interfere with any other existing legal use(s) of water.</p>	<p>Iao River runs through our property, so we have riparian rights (see Appurtenant Rights Historical Data folder) which are constitutionally protected, see Haw. Const. Art. XI, 7 (preserving appurtenant rights and existing riparian rights).</p>		
<p>24. PUBLIC WATER SYSTEM INFORMATION Check the appropriate box or boxes.</p> <p> <input type="checkbox"/> PUC-Regulated Private System / <input type="checkbox"/> Non-PUC-Regulated Private System / <input checked="" 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>25. CHAPTER 343 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 <input type="checkbox"/> Use within a state conservation district <input type="checkbox"/> Use within a shoreline setback area <input type="checkbox"/> Use within a national or Hawaii registered historic site <input type="checkbox"/> Use within the Waikiki Special District <input type="checkbox"/> The construction, expansion or modification of helicopter facility </td> <td> <input type="checkbox"/> A wastewater treatment unit <input type="checkbox"/> Waste-to-energy facility <input type="checkbox"/> Landfill <input type="checkbox"/> Oil refinery <input type="checkbox"/> Power-generating facility <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"/> Use within a state conservation district <input type="checkbox"/> Use within a shoreline setback area <input type="checkbox"/> Use within a national or Hawaii registered historic site <input type="checkbox"/> Use within the Waikiki Special District <input type="checkbox"/> The construction, expansion or modification of helicopter facility	<input type="checkbox"/> A wastewater treatment unit <input type="checkbox"/> Waste-to-energy facility <input type="checkbox"/> Landfill <input type="checkbox"/> Oil refinery <input type="checkbox"/> Power-generating facility <input checked="" type="checkbox"/> None of the above 11 items	
<input type="checkbox"/> Use of state or county lands, or use of state or county funds <input type="checkbox"/> Use within a state conservation district <input type="checkbox"/> Use within a shoreline setback area <input type="checkbox"/> Use within a national or Hawaii registered historic site <input type="checkbox"/> Use within the Waikiki Special District <input type="checkbox"/> The construction, expansion or modification of helicopter facility	<input type="checkbox"/> A wastewater treatment unit <input type="checkbox"/> Waste-to-energy facility <input type="checkbox"/> Landfill <input type="checkbox"/> Oil refinery <input type="checkbox"/> Power-generating facility <input checked="" type="checkbox"/> None of the above 11 items		

ATTACHMENT A

APPLICANTS: Yas Yamazaki

Form SWUPA-N Source Information:

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

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

Item 7a. Proposed Stream Diversion; How will water be diverted from the stream to your property?

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

There are currently one 15,000 gallon catchment tank for the dwelling, and one 500 gallon catchment tank for the shed on the property for a total of 15,500 gallons. Rainfall totals vary widely with seasonal and drought conditions requiring additional hydro input from Iao Stream in order to properly irrigate current and future plantings during periods of inadequate rainfall.

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

NOTE: *Historically*, the kama auwai (south side of Iao Stream) and the kalani auwai (north side of Iao Stream) were the main sources of water for kalo and other agricultural uses in the area. The kama auwai became the Mission Ditch and then the Kama Ditch, whose stream access point was moved further makai from the original access point. This 2nd

intake point which resides on subject property was damaged around 1995 and Wailuku Ag decided not to repair it. We understand that a tunnel portion of the kalani auwai caved in around 1960, where Wailuku Ag (C. Brewer) decided not to repair it.

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

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

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

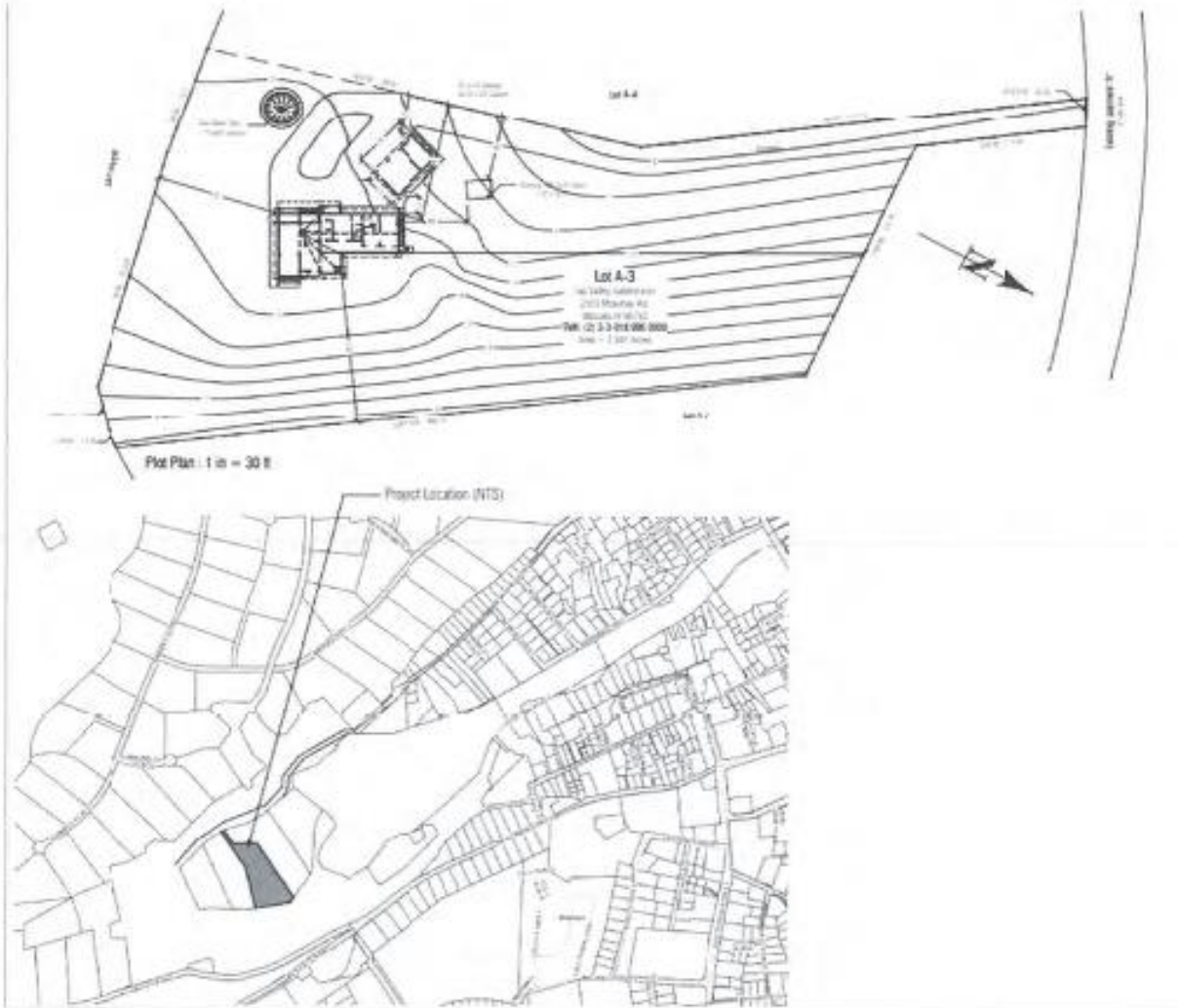
Since water replenishment to the storage tanks would be accomplished only when water levels are determined to be low (approximately 25% of the total in each storage tank), it is very easy to estimate, with a high degree of accuracy, amounts of water replenishment since the total number of gallons the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

The pump to be used would be a Superior Pump, a portable submersible pump, powered by 12 V battery and consuming 12 ampere (approximately 144 watts). This pump can pump up to 480 gallons per hour for the height difference of approximately 20 feet between the river surface and the location of a booster pump that will further pump up the water to the top of the water tank.

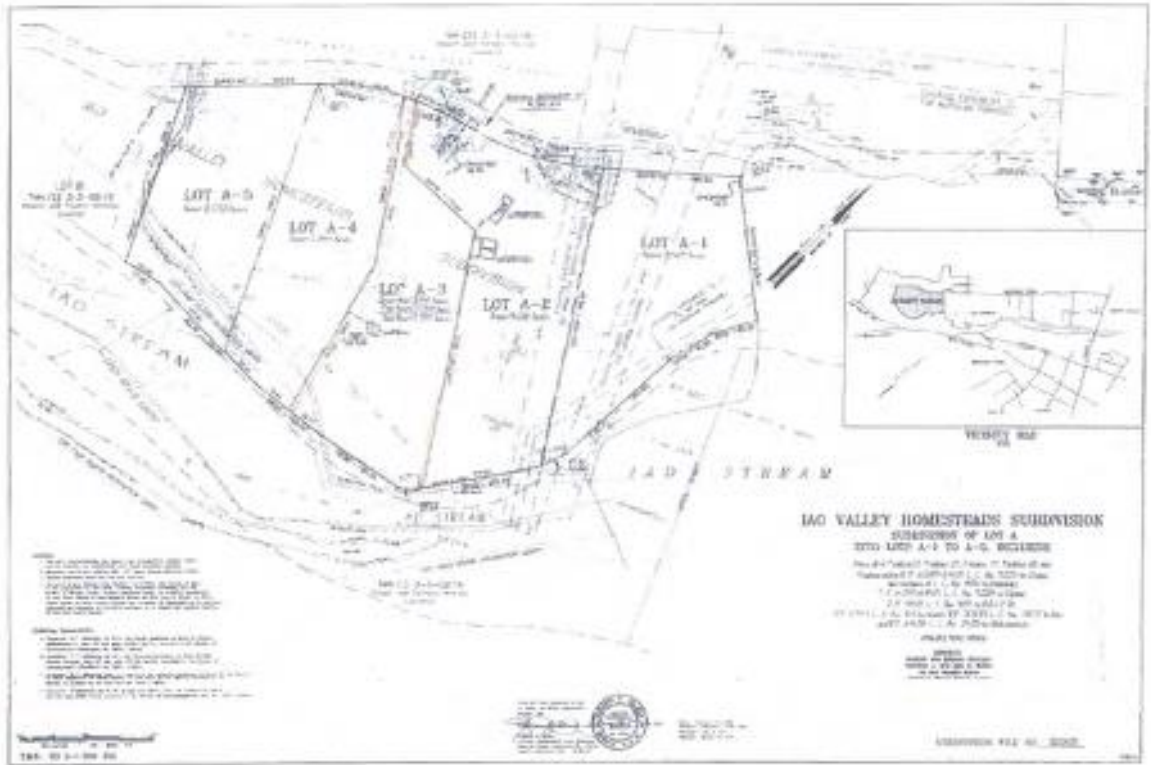
The amount of the stream diversion is measured by observing the increase of water depth in the 14,900-gallon storage tank used. The tank is round and approximately 7 feet high (or 84 inches deep); thus, an increase of 1 inch in water depth represents approximately 177 gallons of water diverted.

Item 11. Location of Proposed Water Use:

Location of proposed use is located at 2553 Mokuhau Road, Wailuku, HI 96793. It is designated as Lot A-3 of the Iao Valley Homestead Subdivision.



Lot A-3 Iao Valley Homestead Subdivision
2553 Mokuhau Road, Wailuku, HI 96793
TMK: (2) 3-3-018-006-0000
Area = 2.341 acres



Item 18. Table 1: Land Use Consistency/Efficiency of Use

Applicants justification for requested quantity of use for item 9

Domestic Use; While it is highly doubtful a 2 bed-room dwelling would consume its 600 gallons daily for domestic use, we are requesting the standard used by the Commission on Water Resource Management estimates for domestic dwellings per day to avoid having to request future revisions of this application. Also, since determining daily rainfall amounts is impossible, it makes logical sense to request the domestic daily estimate. The actual estimated total average diversion would be approximately 300 gallons per day for domestic used, or 109,500 gallons per year.

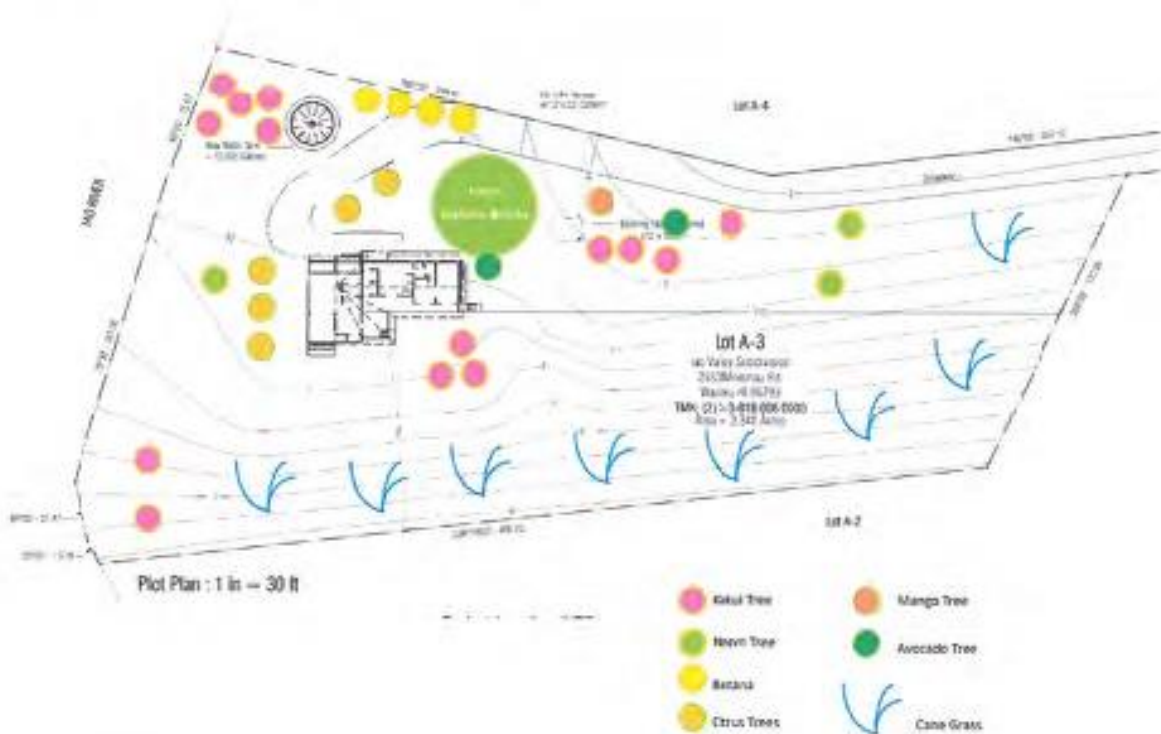
NOTE: Estimated irrigated acreages have taken into account driveways, easements , and dwelling footprints.

AGRCP/ACRON Use;

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

Item 19. Table 2: Comments

This plan was submitted and approved by Ms. Shelly M. KanHai, Land Use Building Plans Technician, County of Maui, Department of Planning on September 20, 2021. We continue to plant according to the plan. Many plants thrive and we have already harvested food fruits. Please see some photos from our garden.



Item 21 Public Interest; Explain how the proposed new use(s) in your application are consistent with items [a] and [b] above.

Our proposed uses are consistent with the Public Interest.

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

In re: Waiahole Ditch Combined Contested Case, 94 Hawai'i 97, 162, 9 P.3d409, 474 (2000) ("Waiahole I"). Further, HRS 174C-2(c) provides that the protection of traditional and

customary Hawaiian rights, agriculture and the maintenance of proper ecological balance and scenic beauty is "in the public interest."

Our proposed uses is a Protected Public Trust Purpose.

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

Our proposed use supports beneficial Instream uses.

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

Our proposed use is Reasonable and Beneficial.

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

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

End of Attachment A

ATTACHMENT B

APPLICANTS: Yas Yamazaki

Form SWUPA-N Source Information:

Item 12. Appurtenant Right:

Submitted with this application are digital copies of the deeds dating back to Wailuku Agriculture Company transfer to Mr. & Mrs. Robert Horcago in 2002. Please refer to the following data files stored in a folder titled "**Deed History**":

<u>Date</u>	<u>Description</u>	<u>Grantor</u> <u>Grantee</u>
Jul. 6, 2002	Quitclaim Deed	Wailuku Agribusiness Co., Inc. Robert & Tamara Horcajo
Feb. 26, 2015	Partial Release of Mortgage	Neil & Elaine Waldow Robert & Tamara Horcajo
May 29, 2015	Warranty Deed	Robert & Tamara Horcajo Stanislav Papez
Feb. 5, 2018	Warranty Deed	Stanislav Papez VedaGuhya Das & Jane Peatross
Apr. 13, 2020	Warranty Deed	VedaGuhya Das & Jane Peatross Yas & Mina Yamazaki

In addition to the above digital copies, we respectfully submit historical data files in order to substantiate the appurtenant rights request to water use for our parcel (2) 3-3-018-007, located at Lot A-3 in the Iao Valley Homestead Subdivision. While many of the documents are in the Hawaiian Language, they are submitted as copies of original records of the era. Please refer to a folder titled "**Kuke Files**" in a folder titled "**Historical Records for Appurtenant Rights**".

Please refer to the Commission on Water Resource Management, hearings Officer's Findings and Recommendations "Provisional Recognition of Appurtenant Rights" dated August 30, 2013 in a folder titled "**Historical Records for Appurtenant Rights**".

Horcajo Lots w/ Associated Kuleana Land Awards and Appurtenant Rights Claims for WUPA

Researched and Compiled by Hōkūalo Pelegrino

Parcel of Land	Kuleana Awards	Historical Use	Appurtenant Rights Claim	Tran. & Const. Rights (T&C)
Horcajo Family Lot TMK (2) 3-3-018-002	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 0331 - Kahii	Kalo land, 1 lo'i Po'ulima, situated near Kalam 'Auwai and Wailuku River.	Yes	Yes
	Portion of LCA 415 - Nalii	Kalo land and hula grove, 1 Po'ulima excluded from claim.	Yes	Yes
	Portion of LCA 2523 - Makahookolo	Kalo land, house lot, 1 Po'ulima excluded from claim, adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 84611 - Kailamou	Kalo land, adjacent to Wailuku River and Kama 'Auwai, includes 1 Po'ulima.	Yes	Yes
	Portion of LCA 7907 - Kuke	2 Lo'i Po'ulima, portion of land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 3291 - Makiena	Kalo land, 26 lo'i kolo, 1 kolo land, and Kama 'Auwai.	Yes	Yes
	Portion of LCA 287 - A.B.C.F.M.	Small kalo ground containing 12-14 small kolo patches, access to water via Kama 'Auwai (n.k.a. Mission Ditch), adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 418:1 - Hahuani	Home lot, kalo land which includes 4 lo'i kolo, adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 418:2 - Hahuani	Kalo land which includes 17 lo'i kolo, used to raise cattle, situated along a road.	Yes	Yes
Lot A-1 TMK (7) 3-3-018-005	Portion of LCA 418:3 - Hahuani	Kalo land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2533.5 - Mahahi	Kalo land. Specified 26 lo'i in total but unsure which 'Apana 1-5 they are located in.	Yes	Yes
	Portion of Deed - Kam IV to Havelok No.1	Adjacent to Wailuku River, no description of use for kalo cultivation.	No	No
	Portion of Deed - Kam IV to Havelok No.1	Adjacent to Wailuku River, no description of use for kalo cultivation.	No	No
	Portion of Grant 3343 - Cirus Spreckels	No information on kalo cultivation, map shows portion of land adjacent to Kama 'Auwai.	No	No
	Portion of Deed - Kam IV to C. Brewer	No information on kalo cultivation, map shows portion of land adjacent to Kalam 'Auwai.	No	No
	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 415 - Nalii	Kalo land and hula grove, 1 Po'ulima excluded from claim.	Yes	Yes
	Portion of LCA 2523 - Makahookolo	Kalo land, house lot, 1 Po'ulima excluded from claim, adjacent to Wailuku River.	Yes	Yes
	Portion of Grant 3343 - Cirus Spreckels	No information on kalo cultivation, map shows portion of land adjacent to Kama 'Auwai.	No	No
Lot A-2 TMK (2) 3-3-018-001	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 7907 - Kuke	2 Lo'i Po'ulima, portion of land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2523 - Makahookolo	Kalo land, house lot, 1 Po'ulima excluded from claim, adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 7907 - Kuke	2 Lo'i Po'ulima, portion of land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2523 - Makahookolo	Kalo land, house lot, 1 Po'ulima excluded from claim, adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 7907 - Kuke	2 Lo'i Po'ulima, portion of land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 287 - A.B.C.F.M.	Small kalo ground containing 12-14 small kolo patches, access to water via Kama 'Auwai (n.k.a. Mission Ditch), adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
Lot A-3 TMK (2) 3-3-018-006	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 7907 - Kuke	2 Lo'i Po'ulima, portion of land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 287 - A.B.C.F.M.	Small kalo ground containing 12-14 small kolo patches, access to water via Kama 'Auwai (n.k.a. Mission Ditch), adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 7907 - Kuke	2 Lo'i Po'ulima, portion of land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 7907 - Kuke	2 Lo'i Po'ulima, portion of land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 2225 - Ojuni	Kalo land, access to water via Kalam 'Auwai, and includes 2 Po'ulima.	Yes	Yes
	Portion of LCA 7907 - Kuke	2 Lo'i Po'ulima, portion of land adjacent to Wailuku River.	Yes	Yes
	Portion of LCA 418:1 - Hahuani	Home lot, kalo land which includes 4 lo'i kolo, adjacent to Wailuku River.	Yes	Yes



Red ginger, banana, orange and lime trees growing healthy



Giant kukui trees and cold-pressed kukui oil



This avocado tree is much taller than the house.



Ornamental palms planted along the driveway.

Papaya, banana and a mango tree shown in the background



Dragon fruit plants and papaya



Kukui trees and African tulip trees



Planted night-time blooming jasmine plants



Drive way entrance

PUBLIC NOTICE

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

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

SWUP.5998.6

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

Applicant: Yas Yamazaki
P.O. Box 1427
Wailuku, HI 96793

Landowner: Same

Date Application Filed as Complete: March 25, 2023

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

Water Source: Wailuku River, Maui
Applicant is simultaneously applying for a Stream Diversion Works Permit (SDWP.6005.6)

Location of Diversion: Tax Map Key: (2) 3-3-018:006

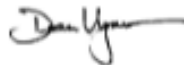
Proposed Use: Agriculture, Irrigation, Domestic

Quantity Requested: 3,850 gallons per day

New/Existing	Description	Location of Water Use	Qty of Use (GPD)
New	Fruit trees, Vegetables, Ornamentals	TMK (2) 3-3-018:006	3,250
New	Domestic (1 unit)	TMK (2) 3-3-018:006	600

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 **April 9, 2024**. 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



DEAN D. UYENO, Acting Deputy Director for
DAWN N. S. CHANG, Chairperson

Dated March 11, 2024

Publish in: Maui News issues of March 15, 2024 and March 22, 2024.

RICHARD T. BISSEN, JR.
Mayor

JOSIAH NISHITA
Managing Director

JOHN STUFFLEBEAN, P.E.
Director

JAMES A. LANDGRAF
Deputy Director



DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
<http://www.mauicounty.gov/water>

April 8, 2024

Dean D. Uyeno
Acting Deputy Director
State of Hawai'i
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai'i 96809

Dear Mr. Uyeno:

Re: Surface Water Use Permit (SWUP.5998.6) Application for New Use
Wailuku River (Stream), Iao Surface Water Management Area, Maui
TMK: (2) 3-3-018:006

Thank you for allowing the County of Maui Department of Water Supply (MDWS) the opportunity to comment on this Surface Water Use Permit Application.

MDWS Priority Use

The proposed Surface Water Use Permit (SWUP) Application proposes to utilize surface water sourced from the Wailuku River. The MDWS obtains water sourced from the Wailuku River, and the MDWS municipal use is a higher priority than the irrigation portion (3,850 gpd) of use the Applicant proposes. The MDWS peak average production at the Iao Water Treatment Facility is 3.012 million gallons per day (mgd). The plant capacity is 4.5 mgd. During low stream flow conditions, MDWS is unable to utilize our full surface water use permit allocation of 3.2 mgd while complying with Interim Instream Flow Standards. Therefore, any additional new water use permit applications for surface water withdrawals from the Wailuku River may cumulatively impact our public trust priority uses.

We hope you find this information useful. Should you have any questions, please contact staff planner Alex Buttaro at (808) 463-3103 or alex.buttaro@mauicounty.gov.

Sincerely,

John Stufflebean, P.E. Digitally signed by John Stufflebean,
P.E.
Date: 2024.04.08 16:16:47 -1000
John Stufflebean, P.E.
Director
BAB

Cc: MDWS Engineering

File location: S:\PLANNING\Permit_Review\Projects Review\planning review\SWUP\233018006 Surface Water Use Permit (SWUP.5998.6)\233018006 Surface Water Use Permit (SWUP.5998.6) Application for New Use MDWS Letter

"By Water All Things Find Life"

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ka Koa Olohe o ka Ahahe Olohe o
Hawaii*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hohe Koa Olohe o ka Ahahe Olohe
o Hawaii*



KALI WATSON
CHAIRMAN, HHC
Ka Lono Ke Akala

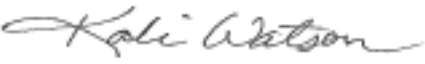
KATIE L. DUCATT
DEPUTY TO THE CHAIRMAN
Ka Hohe Lono Ke Akala

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS
Ka 'Oihana 'Aina Ho'opulapula Hawai'i
P. O. BOX 1879
HONOLULU, HAWAII 96805

April 9, 2024

MEMORANDUM

TO: Dawn Chang, Chairperson
Commission on Water Resource Management

FROM: Kali Watson, Chairman
Hawaiian Homes Commission 

SUBJECT: Stream Diversion Works Permit Application (SDWP 6005.6)
Surface Water Use Permit Application (SWUPA 5998.6) for New Use
Yas Yamazaki, Wailuku River, Maui

Mahalo for sending the above referenced SDWP and SWUPA to the Department of Hawaiian Home Lands (DHHL) for our review and comment. We appreciate the opportunity to review this application and offer the following background and comments.

Relevant Background and Context

The following points serve as a context for our comments on this SDWP and 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

Dawn Chang, Chairperson
April 9, 2024
Page 2

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 (Pūlehumui).

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.”¹ There are two notable developments since the SWPP was adopted. On November 8, 2019, the Pūlehumui Regional Infrastructure Master Plan Environmental Impact Statement was accepted. See [2019-11-08-MA-FEIS-Acceptance-DHHL-Pulehumui-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 list², 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 a particular use draws on to understand the impact on public trust uses of water. A water user

Dawn Chang, Chairperson
April 9, 2024
Page 3

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 'Īao Āquifer 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 SWUPA 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

We understand this SWUPA requests approximately 3,850 gallons per day for irrigation and domestic use. We note that we did not see community consultation listed or a Ka Pa'akai Analysis completed.

Conclusion

Mahalo for the opportunity to comment. If you have any questions or require additional information please contact Cherie Kaanana, Water Program Specialist by email at: cherie-noelle.k.kaanana@hawaii.gov.

JOSH GREEN, MD.
GOVERNOR | KE KĀHANA
SYLVIA LIKIE
LIEUTENANT GOVERNOR | KA HOPE KĀHANA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

Date: 04/09/2024
DAR #AR6599

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
RYAN K.P. KANAKA'OLE
FIRST DEPUTY
DEAN D. UYIBO
ACTING DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION BUREAU
OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KŌHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Brian J. Neilson
DAR Administrator

FROM: Haruko Mauro-Koike, Aquatic Biologist
Haruko Mauro-Koike

SUBJECT: Stream Diversion Works Permit (SDWP.6005.6)
Application, Installation of a Portable Submersible Pump; and Surface Water
Use

Request Submitted by: Yas Yamazaki
Latitude 20° 53' 5", Longitude 156° 30' 50"

Location of Project: _____

Brief Description of Project:

The proposed diversion will consist of a 1.25-inch diameter, 8-gallon per minute (gpm) portable submersible pump estimated to pump daily to supplementally fill an existing 14,900 gallon catchment storage tank.

Comments:

No Comments Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved: *Brian J. Neilson* Date: Apr 10, 2024
Brian J. Neilson
DAR Administrator

DAR# AR6599

Comments

The water volume of diversion seem to be reasonable, but precautionary measures to prevent the pump from accidentally sucking native stream faunas during diversion is requested (e.g. placing filters or grates at the intake). Additionally, please use best practice when installing the pump and to ensure no alteration is caused to the stream flow.

JOSH GREEN, M.D.
GOVERNOR | KE KAUĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KAUĀINA



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

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

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKAOLE
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

May 3, 2024

Log no. 4475
SWUP: 5998.6

MEMORANDUM

TO: DEAN D. UYENO, Acting Deputy Director
Commission on Water Resource Management

FROM: Lindsey Nietmann, Acting Wildlife Program Manager
Division of Forestry and Wildlife

SUBJECT: Request for Comments, Stream Diversion Works Permit (SDWP.6005.6) Application, Installation of a Portable Submersible Pump; and Surface Water Use Permit (SWUP.5998.6) Application for New Use, Yas Yamazaki; Wailuku River, 'Īao Surface Water Management Area, Island of Maui, Hawai'i.

The Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) has received your request for comments on the Stream Diversion Works Permit (SDWP.6005.6) Application for installation of a portable submersible pump; and Surface Water Use Permit (SWUP.5998.6) Application for new use submitted by Yas Yamazaki. The proposed project occurs in Wailuku River, within the 'Īao Surface Water Management Area, Maui, TMK: (2) 3-3-018:006. The property is zoned AG-2 and is approximately 2.34 acres. The proposed diversion will consist of a 1.25-inch diameter, 8-gallon per minute (gpm) portable submersible pump estimated to pump daily to supplementally fill an existing 14,900-gallon catchment storage tank. The proposed new water use is for 3,850 gallons per day (gpd) consisting of 3,250 gpd (1.3 acre x 2,500 gpd/acre) for diversified agriculture and irrigation of ornamentals and 600 gpd (1 unit x 600 gpd) for domestic use.

DOFAW provides the following comments regarding the potential for the proposed work to affect listed species in the vicinity of the project area.

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

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

Artificial lighting can adversely impact seabirds that may pass through the area at night by causing them to become disoriented. This disorientation can result in their collision with manmade structures or the grounding of birds. For nighttime work that might be required, DOFAW recommends that all lights used be fully shielded to minimize the attraction of seabirds. Nighttime work that requires outdoor lighting should be avoided during the seabird fledging season, from September 15 through December 15, when young seabirds make their maiden voyage to sea.

If nighttime construction is required during the seabird fledging season (September 15 to December 15), we recommend that a qualified biologist be present at the project site to monitor and assess the risk of seabirds being attracted or grounded due to the lighting. If seabirds are seen circling around the area, lights should then be turned off. If a downed seabird is detected, please follow DOFAW's recommended response protocol by visiting <https://dlnr.hawaii.gov/wildlife/seabird-fallout-season/>

Permanent lighting also poses a risk of seabird attraction, and as such should be minimized or eliminated to protect seabird flyways and preserve the night sky. For illustrations and guidance related to seabird-friendly light styles that also protect seabirds and the dark starry skies of Hawai'i please visit <https://dlnr.hawaii.gov/wildlife/files/2016/03/DOC439.pdf>.

State-listed waterbirds such as ae'o or Hawaiian stilt (*Himantopus mexicanus knudseni*), 'alae ke'oke'o or Hawaiian coot (*Fulica alai*), and nēnē or Hawaiian Goose (*Branta sandvicensis*) could potentially occur at or in the vicinity of the proposed project site. It is against State law to harm or harass these species. If any of these species are present during construction, all activities within 100 feet (30 meters) should cease and the bird or birds should not be approached. Work may continue after the bird or birds leave the area of their own accord. If a nest is discovered at any point, please contact the Maui Branch DOFAW Office at (808) 984-8100 and establish a buffer zone around the nest.

The endemic pueo or Hawaiian Short-Eared Owl (*Asio flammeus sandwichensis*) could potentially nest in the project area. Pueo nest on the ground and active nests have been found year-round. Before any potential vegetative alteration, especially ground-based disturbance, we recommend that line transect surveys are conducted during crepuscular hours through the project area. If a pueo nest is discovered, a minimum buffer distance of 100 meters from the nest should be established until chicks are capable of flight.

The project work on or at Wailuku River could affect endangered native Hawaiian damselflies (*Megalagrion* spp.) that may be present. DOFAW therefore recommends measures to avoid take of endangered Hawaiian Damselflies at the diversion sites during the stream restoration project and further consultation with a qualified entomologist. Please contact DOFAW Maui entomologist Keahi Bustamente at (808) 268-3247.

The project area is within the range of the State-listed Blackburn's Sphinx Moth (*Manduca blackburni*) or BSM. Larvae of BSM feed on many nonnative host plants, which includes tree tobacco (*Nicotiana glauca*), that grow in disturbed soil. We recommend contacting the Maui Branch DOFAW Office at (808) 984-8100 for further information about where BSM may be present and whether a vegetation survey should be conducted to determine the presence of plants preferred by BSM. DOFAW recommends removing plants less than one meter in height or during the dry season to avoid harm to BSM. If you intend to either remove tree tobacco over one meter in height or to disturb the ground around or within several meters of these plants, they must be thoroughly inspected by a qualified entomologist for the presence of BSM eggs and larvae.

DOFAW recommends using native plant species for landscaping that are appropriate for the area, i.e., plants for which climate conditions are suitable for them to thrive, plants that historically occurred there, etc. Please do not plant invasive species. DOFAW also recommends referring to www.plantpono.org for guidance on the selection and evaluation of landscaping plants and to determine the potential invasiveness of plants proposed for use in the project.

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

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

The invasive Coconut Rhinoceros Beetle (CRB) or *Oryctes rhinoceros* are found on O'ahu, Hawai'i Island, Maui, and Kaua'i. On July 1, 2022, the Hawai'i Department of Agriculture (HDOA) approved Plant Quarantine Interim Rule 22-1. This rule restricts the movement of CRB-host material within or to and from the island of O'ahu, which is defined as the Quarantine Area. Regulated material (host material or host plants) is considered a risk for potential CRB infestation. Host material for the beetle specifically includes (a) entire dead trees, (b) mulch, compost, trimmings, fruit and vegetative scraps, and (c) decaying stumps. CRB host plants include the live palm plants in the following genera: *Washingtonia*, *Livistona*, and *Pritchardia* (all commonly known as fan palms), *Cocos* (coconut palms), *Phoenix* (date palms), and *Roystonea* (royal palms). When such material or these specific plants are moved there is a risk of spreading CRB because they may contain CRB in any life stage. For more information regarding CRB, please visit <https://dlnr.hawaii.gov/hisc/info/invasive-species-profiles/coconut-rhinoceros-beetle/>.

Avoid importing to Maui soil or other plant material from off-island. Soil and plant material may contain fungi (e.g., Rapid 'Ōhi'a Death) and other pathogens that could harm our native species and ecosystems. We recommend consulting the Hawai'i Interagency Biosecurity Plan at <http://dlnr.hawaii.gov/hisc/plans/hibp/> in planning, design, and construction of the project.

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

DOFAW is concerned about impacts to vulnerable birds from nonnative predators such as cats, rodents, and mongooses. We recommend taking action to minimize predator presence; remove cats, place bait stations for rodents and mongoose, and provide covered trash receptacles.

Cats prey on native birds, including State-listed endangered waterbirds, seabirds, and forest birds. Predation is instinctive and means that even well-fed cats will hunt and kill wildlife. Therefore, DOFAW recommends that residents with pet cats keep them indoors or safely contained. In addition, no feeding of feral cats should occur on the premises.

Due to the arid climate and risk of wildfire to listed species, we recommend coordinating with the Hawai'i Wildlife Management Organization at (808) 850-0900 or admin@hawaiiwildfire.org, on how wildfire prevention can be addressed in the project area. When engaging in activities that have a high risk of starting a wildfire (i.e. welding in grass), it is recommended that you:

- Wet down the area before starting your task,
- Continuously wet down the area as needed,
- Have a fire extinguisher on hand, and
- In the event that your vision is impaired, (i.e. welding goggles) have a spotter to watch for fire starts.

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

Sincerely,

Lindsey Nietmann
Lindsey Nietmann
Acting Wildlife Program Manager

JOSH GREEN, M.D.
GOVERNOR | KE KA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KA'ĀINA



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

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

June 19, 2024

Dean D. Uyeno, P.E., Deputy Director
State of Hawaii
Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621,
Honolulu, HI 96809
c/o Dean Uyeno
Email: dean.d.uyeno@hawaii.gov

DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K. P. KANAKAOLE
FIRST DEPUTY

DEAN D. UYENO
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

IN REPLY REFER TO:
Project No. 2024PR00479
Doc. No. 2406SN11
Archaeology

Dear Dean Uyeno:

**SUBJECT: Hawaii Revised Statutes (HRS) Chapter 6E-8 and 6E-42 Historic Preservation Review –
Stream Diversion Works Permit Application (SDWP.6005.6)
Surface Water Use Permit (SWUP.5998.6)
Yamazaki Domestic Water Supply Installation of a Portable Submersible Pump
Request for Concurrence with Project Effect Determination
Wailuku Ahupua'a, Pū'ali Komohana District, Island of Maui
TMK: (2) 3-3-018:006 por. (Iao Stream Channel)**

This letter provides the State Historic Preservation Division's (SHPD's) review of the subject Commission on Water Resource Management (CWRM) Stream Diversion Works Permit Application (SDWP) (SDWP.6005.6) and a Surface Water Use Permit (SWUP.5998.6) for the installation of a submersible pump to pump daily supplemental fill to an existing catchment storage tank. SHPD received the submission on April 17, 2024, which included a SCAP Form, photographs of the project area, and a letter March 11, 2024 from CWRM requesting SHPD's concurrence with a project effect determination of no historic properties affected.

The project proponent (Yas Yamazaki) proposes to pump water from Iao Stream which runs through the South end of the 2.3-acre parcel. The proposed diversion will consist of a 1.25-inch diameter, 8-gallon per minute (gpm) portable submersible pump estimated to pump daily to supplementally fill an existing 14,900-gallon catchment storage tank. The proposed water use is for 3,850 gallons per day (gpd) consisting of 3,250 gpd (1.3-acre x 2,500 gpd/acre) for diversified agriculture and irrigation of ornamentals and 600 gpd (1 unit x 600 gpd) for domestic use.

A search of SHPD records indicates several archaeological investigations have occurred in the vicinity of the current project area (Connolly 1974, Fredericksen and Fredericksen 2002). Additionally, several significant historic properties have been identified within the Iao Stream Channel including Site 50-50-04-05197 (Waibe'e Ditch), Site 50-50-04-02978 (Wallace System Complex), and Site 50-50-04-02979 (North Terrace System Complex). The installation of the proposed pump will not impact the integrity and significance of these historic properties.

Based on the information provided, SHPD concurs with the CWRM's project effect determination of "No historic properties affected" for the current project. Pursuant to HAR §13-275-7(e) and HAR §13-284-7(e), when the SHPD agrees that the action will not affect any significant historic properties, this is the SHPD's written concurrence and

Dean D. Uyeno
June 19, 2024
pg. 2

historic preservation review ends. The HRS 6E historic preservation review process has ended. The permit issuance and project initiation process may proceed.

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

Please contact Sean Naleimaile, Historic Preservation Archaeologist IV, at sean.p.naleimaile@hawaii.gov, for any matters regarding archaeological resources or this letter.

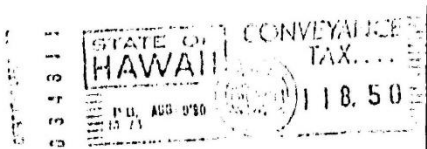
Aloha,



Jessica Puff
Architecture Branch Chief
Acting State Historic Preservation Division Administrator

cc: Yas Yamazaki, yasenfound@gmail.com

step up



90-122753

STATE OF HAWAII
DEPARTMENT OF CONVEYANCES

AUG 20 9 PM 1 46

S. F. ... REGISTRAR

LAND COURT	REGULAR SYSTEM
AFTER RECORDATION, RETURN BY MAIL <input checked="" type="checkbox"/> PICK UP ()	
C. Brewer Properties 927 Fort Street Honolulu, HI 96813 ATTN: Luana Eguiras	
TITLE OF DOCUMENT:	

(DO NOT WRITE IN THIS SPACE)
FAM 92397

DEED

PARTIES TO DOCUMENT:

Grantor: WAILUKU AGRIBUSINESS CO., INC.

Grantee: C. BREWER PROPERTIES, INC.

PROPERTY DESCRIPTION:	LIBER/PAGE/DOCUMENT NO:
See Exhibit "A"	DOCUMENT NO: N/A TRANSFER CERTIFICATE OF TITLE NO(S): N/A

Step up

belonging or appertaining or held and enjoyed therewith unto Grantee, absolutely and in fee simple, and as to said personal property (if any), absolutely and forever.

And the Grantor for itself and its successors and assigns, does hereby covenant with the Grantee, that it has good right to convey said premises, that the interest of the Grantor is free and clear from all encumbrances made by, through or under the Grantor, except as herein mentioned and current real property taxes, if any, which are to be prorated as of the date of recording of this instrument, and it will WARRANT and DEFEND the same unto Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor, except as aforesaid.

EXCEPTING AND RESERVING however, unto the Grantor, its successors and assigns, all water and water rights within or appurtenant to the granted premises, provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

RESERVING AND EXCEPTING unto Grantor, its successors and assigns, forever, as appurtenant to the lands which are located adjacent to or in the vicinity of the granted premises and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns in agricultural operations, the unrestricted right to engage in any type of farming operation including but not limited to open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion,

plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration and other nuisances to be discharged or emitted over and upon the granted premises. Grantor, its successors and assigns shall not be responsible or liable to the Grantee, its successors and assigns, for the consequences from the creation and discharge of such noxious emissions and the Grantee, its successors and assigns, shall indemnify and hold Grantor harmless from any liability or expense resulting from such claims arising from such nuisance whether made by the Grantee, its successors and assigns, or guests or other persons using the granted premises.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof.

Grantee does hereby covenant with Grantor, as a covenant running with the land, that if Grantee changes or files an application to change the agricultural use of the premises, Grantee assumes the responsibility for any roll-back or additional real property taxes which may accrue from the date of initial dedication because of any changes by Grantee.

IN WITNESS WHEREOF, the Grantor and the Grantee
have executed these presents this 20th day of
July, 19 90.

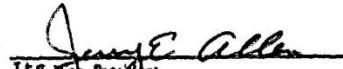
WAILUKU AGRIBUSINESS CO., INC.

By 
ITS VICE PRESIDENT

By 
ITS ASSISTANT SECRETARY

Grantor

C. BREWER PROPERTIES, INC.

By 
ITS VICE PRESIDENT

By 
ITS ASSISTANT SECRETARY

Grantee

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 20th day of July, 1990, before me appeared J. S. Andrasick and Deane Wentworth to me personally known, who, being by me duly sworn, did say that they are the Vice President and Assistant Secretary, respectively, of WAILUKU AGRIBUSINESS CO., INC., -----

a Hawaii corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said J. S. Andrasick and Deane Wentworth acknowledged said instrument to be the free act and deed of said corporation.

Stephanie A. Marques L.S.
Notary Public, State of Hawaii.

My commission expires: 2/10/92

corp. ack.

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 20th day of July, 1990, before
me appeared Jerry E. Allen and Doane Wentworth
to me personally known, who, being by me duly sworn, did say that
they are the Vice President and Assistant Secretary,
respectively, of C. BREWER PROPERTIES, INC., -----

a Hawaii corporation, and that the seal affixed
to the foregoing instrument is the corporate seal of said
corporation and that said instrument was signed and sealed in
behalf of said corporation by authority of its Board of Directors,
and the said Jerry E. Allen and Doane Wentworth
acknowledged said instrument to be the free act and deed of said
corporation.

Stephanie A. Marques L.S.
Notary Public, State of Hawaii.

My commission expires: 2/10/92

step up

EXHIBIT "A"

That certain parcel of land (being portions of Royal Patent 1958, Land Commission Award 387 to American Board of Commissioners for Foreign Missions; Royal Patent 5500, Land Commission Award 8461, Apana 1 to Kaihumau; Royal Patent 6409, Land Commission Award 2523 to Makahookolo; and Land Commission Award 418, Apana 2 to Halualani) situated on the northwesterly side of Iao Valley Road and West Main Street, and the southwesterly side of Iliina Street at Wailuku, Island and County of Maui, State of Hawaii, being LOT 3 of the "IAO VALLEY LARGE-LOT SUBDIVISION", and thus bounded and described as per survey of Reed M. Ariyoshi, Registered Professional Land Surveyor, Certificate No. 6597, to-wit:

Beginning at a point at the southeasterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,144.69 feet North and 4,248.99 feet West and running by azimuths measured clockwise from True South:

1. 82° 20' 252.99 feet along Lots 1, 2, 3 and 4 of Iao Valley Subdivision to a point;
2. 80° 40' 89.64 feet along Lots 4 and 5 of Iao Valley Subdivision to a point;
3. 59° 00' 129.08 feet along Lots 5 and 6 of Iao Valley Subdivision to a point;
4. 47° 28' 235.12 feet along Lots 7, 8 and 9 of Iao Valley Subdivision to a point;
5. 36° 18' 83.97 feet along Lot 10 of Iao Valley Subdivision to a point;
6. 11° 49' 33.46 feet along same to a point;
7. 44° 25' 174.19 feet along same to a point;
8. 334° 26' 18.79 feet along same to a point;
9. 61° 50' 0.89 feet along the northwesterly side of West Main Street to a point;
10. 56° 54' 159.21 feet along same to a point;
11. 52° 28' 101.70 feet along same to a point;
12. 52° 03' 200.87 feet along the northwesterly side of West Main Street and Iao Valley Road to a point;

step up

13. 52° 21' 18.37 feet along the northwesterly side of Iao Valley Road to a point;
14. 65° 32' 179.88 feet along same to a point;
15. Thence along same on a curve to the left having a radius of 1,452.40 feet, the chord azimuth and distance being: 63° 02' 30" 126.28 feet to a point;
16. 60° 33' 335.97 feet along same to a point;
17. Thence along same on a curve to the right having a radius of 798.51 feet, the chord azimuth and distance being: 67° 04' 30" 181.48 feet to a point;
18. 73° 36' 125.62 feet along same to a point;
19. Thence along same on a curve to the right having a radius of 389.26 feet, the chord azimuth and distance being: 85° 24' 159.20 feet to a point;
20. 98° 10' 01.7" 61.90 feet along same to a point;
21. 172° 34' 101.49 feet along the remainder of Royal Patent 1958, Land Commission Award 387 to American Board of Commissioners for Foreign Missions to a point;
22. 83° 46' 76.17 feet along same to a point;
23. 68° 59' 99.62 feet along same to a point;
24. 00° 12' 25.15 feet along same to a point;
25. 73° 32' 01.1" 167.15 feet along the northwesterly side of Iao Valley Road to a point;
26. 71° 31' 45" 95.00 feet along same to a point;
27. 205° 25' 276.92 feet along Lot 2 of Iao Valley Large-Lot Subdivision to a point;
28. 284° 18' 29.51 feet along same to a point;

step up

29.	263°	32'		131.21 feet along same to a point;
30.	225°	28'		226.06 feet along same to a point;
31.	246°	57'		59.22 feet along same to a point;
32.	280°	47'		50.73 feet along same to a point;
33.	302°	27'		133.39 feet along same to a point;
34.	279°	36'		65.03 feet along same to a point;
35.	259°	53'		123.03 feet along same to a point;
36.	231°	42'		139.27 feet along same to a point;
37.	225°	44'		167.41 feet along same to a point;
38.	208°	45'		79.24 feet along same to a point;
39.	265°	17'		72.60 feet along same to a point;
40.	210°	04'		140.42 feet along same to a point;
41.	290°	28'	35"	108.40 feet along Parcel A-1 of Iao Stream Land Transfer - Wailuku Sugar Company to County of Maui to a point;
42.	305°	37'	35"	40.00 feet along Parcel A of Iao Stream Land Transfer - Wailuku Sugar Company to County of Maui to a point;
43.	219°	23'	39"	39.00 feet along same to a point;
44.	240°	05'	20"	124.10 feet along Parcel A-2 of Iao Stream Land Transfer - Wailuku Sugar Company to County of Maui to a point;
45.	32°	11'	20"	12.95 feet along Royal Patent 5351, Land Commission Award 3291 to Makaena to a point;
46.	326°	00'		145.11 feet along same to a point;
47.	237°	48'	40"	132.89 feet along same to a point;
48.	232°	47'		173.70 feet along same to a point;
49.	226°	05'		164.90 feet along same to a point;

step up

50. 219° 35' 100.40 feet along same to a point;
51. 147° 27' 78.20 feet along same to a point;
52. 83° 22' 74.40 feet along same to a point;
53. 154° 15' 25.00 feet along same to a point;
54. 75° 30' 84.65 feet along Royal Patent 6529, Land Commission Award 2533, Apana 5 to Malaihi to a point;
55. 230° 12' 01" 272.32 feet along Parcel A of Iao Stream Land Transfer - Wailuku Sugar Company to County of Maui to a point;
56. 227° 08' 35" 350.12 feet along same to a point;
57. 200° 37' 35" 209.09 feet along same to a point;
58. Thence along same on a curve to the right having a radius of 315.00 feet, the chord azimuth and distance being: 209° 57' 10" 102.10 feet to a point;
59. 18° 51' 14.06 feet along Royal Patent 3339, Land Commission Award 10645, Apana 1 to Paele to a point;
60. 316° 30' 8.66 feet along same to a point;
61. 35° 45' 25.68 feet along Royal Patent 6279, Land Commission Award 515, Apana 4 to Pepee to a point;
62. 314° 45' 60.70 feet along same to a point;
63. 20° 00' 240.00 feet along Royal Patent 5530, Land Commission Award 407, Apana 7 to Z. Kaauwai to a point;
64. 159° 58' 16.01 feet along Royal Patent 5530, Land Commission Award 407, Apana 7 to Z. Kaauwai, and the remainder of Royal Patent 1958, Land Commission Award 387 to American Board of Commissioners for Foreign Missions to a point;

step up

65. 334° 04' 49.44 feet along the remainder of Royal Patent 1958, Land Commission Award 387 to American Board of Commissioners for Foreign Missions to a point;
66. 35° 00' 127.45 feet along the remainder of Royal Patent 1958, Land Commission Award 387 to American Board of Commissioners for Foreign Missions and along Royal Patent 6628, Land Commission Award 5336 to Polokuaa to a point;
67. 336° 08' 42.73 feet along Royal Patent 6628, Land Commission Award 5336 to Polokuaa to a point;
68. 262° 10' 351.22 feet along Royal Patent 6628, Land Commission Award 5336 to Polokuaa, and the remainder of Royal Patent 1958, Land Commission Award 387 to American Board of Commissioners for Foreign Missions to a point;
69. 342° 16' 27.34 feet along the southwesterly side of Iilina Street to the point of beginning and containing an Area of 14.815 acres.

Together with easements for roadways as set forth in that certain Deed dated October 24, 1980, recorded as aforesaid in Liber 15378, Page 531, and in that certain Deed dated July 21, 1981, recorded as aforesaid in Liber 15861, Page 257; RESERVING, HOWEVER, unto WAILUKU AGRIBUSINESS CO., INC., the right to use said easements with others entitled thereto and the right from time to time to grant to others the right to use said easements.

RESERVING, HOWEVER, unto WAILUKU AGRIBUSINESS CO., INC., all existing rights to withdraw water from Iao Stream as set forth in that certain Deed dated October 24, 1980, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 15378, Page 531, and in that certain Deed dated July 21, 1981, recorded as aforesaid in Liber 15861, Page 257.

step up

RESERVING, HOWEVER, unto WAILUKU AGRIBUSINESS CO., INC., non-exclusive easements affecting said Lot 3 hereinbefore described over, under and across Easements "A-1" (50 feet wide) and "A-2" (50 feet wide) for siphon purposes, Easement "F" (15 feet wide) for Kama Ditch right-of-way and Easement "G" for access purposes, as shown on that certain unapproved subdivision map, dated April 21, 1986, revised November 9, 1987, by Warren S. Unemori Engineering, Inc., to be used in common with others entitled thereto, and RESERVING FURTHER unto WAILUKU AGRIBUSINESS CO., INC. the right from time to time to grant to others the right to use said easements; said Easements "A-2", "F" and "G" being more particularly described as follows:

1. A Siphon Easement "A-2" (50-Foot Wide) in favor of Wailuku Agribusiness Company, Inc. and being more particularly described as follows:

Beginning at a point at the southeast corner of this easement, the azimuth and distance from the beginning of Course Number 13 of the above described lot being $65^{\circ} 32' 161.65$ feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 1,277.42 feet North and 5,577.23 feet West and running by azimuths measured clockwise from True South:

1. $65^{\circ} 32'$ 18.23 feet along the northwesterly side of Iao Valley Road;
2. Thence along same on a curve to the left having a radius of 1,452.40 feet, the chord azimuth and distance being: $64^{\circ} 53' 39''$ 32.40 feet;
3. $146^{\circ} 00'$ 335.91 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision;
4. $265^{\circ} 17'$ 53.04 feet along Lot 2 of Iao Valley Large-Lot Subdivision;
5. $210^{\circ} 04'$ 4.15 feet along same;
6. $326^{\circ} 00'$ 319.81 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision to the point of beginning and containing an Area of 16,295 square feet, more or less.

2. A Ditch Right-of-Way Easement "F" for Kama Ditch (15-Foot Wide) in favor of Wailuku Agribusiness Company, Inc. and being more particularly described as follows:

Beginning at a point at the southwesterly corner of this easement, the azimuth and distance from the beginning of Course Number 26 of the above described lot being $205^{\circ} 25' 151.07$ feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 1,027.77 feet North and 6,874.04 feet West and running by azimuths measured clockwise from True South:

step up

1. 205° 25' 15.04 feet along Lot 2 of Iao Valley Large-Lot Subdivision;
2. 291° 15' 124.61 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision;
3. 252° 08' 100.45 feet over and across same;
4. 246° 30' 49.08 feet over and across same;
5. 261° 03' 121.84 feet over and across same;
6. 273° 00' 56.26 feet over and across same;
7. 264° 53' 88.50 feet over and across same;
8. 257° 40' 93.43 feet over and across same;
9. 247° 09' 229.66 feet over and across same;
10. 244° 50' 247.59 feet over and across same;
11. 240° 51' 184.66 feet over and across same;
12. 241° 10' 183.12 feet over and across same;
13. 237° 12' 178.81 feet over and across same;
14. 237° 48' 40" 132.89 feet along Royal Patent 5351, Land Commission Award 3291 to Makaena;
15. 232° 47' 173.70 feet along same;
16. 226° 05' 164.90 feet along same;
17. 219° 35' 100.40 feet along same;
18. 237° 37' 364.32 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision;
19. 262° 10' 351.90 feet along Royal Patent 6628, Land Commission Award 5336 to Polokuaa, and the remainder of Royal Patent 1958, Land Commission Award 387 to American Board of Commissioners for Foreign Missions;
20. 342° 16' 15.23 feet along the southwesterly side of Iliua Street;

step up

21. 82° 10' 351.26 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision;
22. 57° 37' 358.67 feet over and across same;
23. 39° 35' 98.87 feet over and across same;
24. 46° 05' 166.63 feet over and across same;
25. 52° 47' 175.24 feet over and across same;
26. 57° 48' 40" 133.47 feet over and across same;
27. 57° 12' 179.25 feet over and across same;
28. 61° 10' 183.60 feet over and across same;
29. 60° 51' 185.14 feet over and across same;
30. 64° 50' 248.41 feet over and across same;
31. 67° 09' 231.34 feet over and across same;
32. 77° 40' 95.77 feet over and across same;
33. 84° 53' 90.50 feet over and across same;
34. 93° 00' 55.75 feet over and across same;
35. 81° 03' 118.36 feet over and across same;
36. 66° 30' 47.91 feet over and across same;
37. 72° 08' 106.51 feet over and across same;
38. 111° 15' 131.03 feet over and across same to the point of beginning and containing an Area of 44,283 square feet, more or less.

3. An Access Easement "G" in favor of Wailuku Agribusiness Company, Inc. and being more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, being also the northwesterly corner of the above described lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 2,635.50 feet North and 4,518.52 feet West and running by azimuths measured clockwise from True South:

1. 18° 51' 14.06 feet along Royal Patent 3339, Land Commission Award 20645, Apana 1 to Paele;
2. 316° 30' 8.66 feet along same;
3. 35° 45' 25.68 feet along Royal Patent 6279, Land Commission Award 515, Apana 4 to Pepea;

step up

4. 314° 45' 60.70 feet along same;
5. 20° 00' 16.52 feet along Royal Patent 5530, Land Commission Award 407, Apana 7 to 2. Kaauwai;
6. 134° 45' 76.65 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision;
7. Thence along Parcel A of Iao Stream Land Transfer - Wailuku Sugar Company to County of Maui on a curve to the right having a radius of 315.00 feet, the chord azimuth and distance being:
214° 20' 48" 54.17 feet to the point of beginning and containing an Area of 1,494 square feet, more or less.

Being portions of the land conveyed by:

1. Deed from H. CORNWELL, also known as Henry Cornwell, and ADELIA CORNWELL, husband and wife, to WAILUKU SUGAR COMPANY, dated February 1, 1870, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 30, Page 1.
2. Deed from S. P. HALAMA (h) and wife, KELOHANUI, also known as Kealohanui (w), to WAILUKU SUGAR COMPANY, dated October 28, 1875, recorded as aforesaid in Liber 44, Page 120.
3. Deed from W. H. BAILEY, also known as William H. Bailey, and wife, ANNA H. BAILEY, to WAILUKU SUGAR COMPANY, dated May 4, 1877, recorded as aforesaid in Liber 50, Page 214.
4. Deed from W. H. BAILEY, also known as William H. Bailey, et al., to WAILUKU SUGAR COMPANY, dated June 13, 1888, recorded as aforesaid in Liber 113, Page 129.
5. Deed from WAIKAPU AGRICULTURAL COMPANY, LIMITED, to WAILUKU SUGAR COMPANY, dated September 1, 1921, recorded as aforesaid in Liber 605, Page 418.
6. Exchange Deed and Agreement from HAWAIIAN COMMERCIAL AND SUGAR COMPANY to WAILUKU SUGAR COMPANY, dated June 23, 1924, recorded as aforesaid in Liber 740, Page 134, as amended by Agreement dated March 24, 1937, recorded as aforesaid in Liber 1371, Page 227, and by Grant dated September 14, 1954, recorded as aforesaid in Liber 2868, Page 284.
7. Exchange Deed from COUNTY OF MAUI, to WAILUKU SUGAR COMPANY, dated January 31, 1978, recorded as aforesaid in Liber 12895, Page 216.

step up

SUBJECT, HOWEVER, to the following:

1. An Electrical Easement "C-2" (50-Foot Wide) in favor of Maui Electric Company, Ltd. and being more particularly described as follows:

Beginning at a point at the southeasterly corner of this easement, the azimuth and distance from the beginning of Course Number 13 of the above described lot being $65^{\circ} 32'$ 151.58 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 1,281.60 feet North and 5,568.05 feet West and running by azimuths measured clockwise from True South:

1. $65^{\circ} 32'$ 28.30 feet along the northwesterly side of Iao Valley Road;
2. Thence along same on a curve to the left having a radius of 1,452.40 feet, the chord azimuth and distance being: $65^{\circ} 06' 19''$ 21.70 feet;
3. $155^{\circ} 02' 10''$ 322.87 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision;
4. $210^{\circ} 04'$ 61.02 feet along Lot 2 of Iao Valley Large-Lot Subdivision;
5. $335^{\circ} 02' 10''$ 358.11 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision to the point of beginning and containing an Area of 17,023 square feet, more or less.

2. A Waterline Easement "D-2" (15-Foot Wide) in favor of the County of Maui, Department of Water Supply and being more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, the azimuth and distance from the beginning of Course Number 39 of the above described lot being $265^{\circ} 17'$ 37.32 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 1,536.07 feet North and 5,793.30 feet West and running by azimuths measured clockwise from True South:

1. $265^{\circ} 17'$ 17.20 feet along Lot 2 of Iao Valley Large-Lot Subdivision;
2. $326^{\circ} 00'$ 323.56 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision;
3. Thence along the northwesterly side of Iao Valley Road on a curve to the left having a radius of 1,452.40 feet, the chord azimuth and distance being: $65^{\circ} 10' 21''$ 15.20 feet;

step up

4. 146° 00' 329.55 feet over and across a portion of Lot 3 of Iao Valley Large-Lot Subdivision to the point of beginning and containing an Area of 4,898 square feet, more or less.

3. Reservation in favor of the State of Hawaii of all mineral and metallic mines.

4. Rights of Native Tenants as contained in Royal Patent No. 1925; Royal Patent No. 1928 and Royal Patent Grant No. 3343.

5. The lien of any commutation due and owing the State of Hawaii, if any, pursuant to Sec. 172-2, H. R. S.; no Royal Patent having been issued on L. C. Aw. 418 to Halualani.

6. The following matters affecting the land herein described, as shown on Tax Map Key: (2) 3-4-36-1 and Tax Map Key: (2) 3-5-1-50, to-wit:

(a) Iao Stream running along and abutting portions of the northerly boundary of said land.

(b) No visible means of access to and from the nearest government road or highway to that portion of Tax Map Key: 3-4-36-1.

7. The following matters affecting the land herein described, as shown on that certain unapproved subdivision map, dated April 21, 1986, revised November 9, 1987, by Warren S. Unemori Engineering, Inc., to-wit:

Iao Stream boundary running along the northerly boundary of said land.

8. Perpetual right-of-way (10 feet wide) in favor of C. Brewer and Company, Limited, for a pipe line over and across the makai or east end of Apana 2 to L. C. Aw. 418, as conveyed by Deed dated September 3, 1904, recorded as aforesaid in Liber 264, Page 979, to which reference is hereby made.

NOTE: Through mesne conveyances, the interest of said C. Brewer and Company, Limited in and to the foregoing easement is now held by Wailuku Agribusiness Co., Inc., a Hawaii corporation.

9. Exceptions, reservations, covenants, conditions and agreements as contained in that certain Exchange Deed and Agreement dated June 23, 1924, recorded as aforesaid in Liber 740, Page 134, as amended by Agreement dated March 24, 1937, recorded as aforesaid in Liber 1371, Page 227, and by Grant dated September 14, 1954, recorded as aforesaid in Liber 2868, Page 284, to which reference is hereby made.

step up

10. Covenants, conditions and agreements as contained in that certain Agreement dated September 6, 1940, recorded as aforesaid in Liber 1603, Page 14, as amended by Agreement dated October 4, 1954, effective November 1, 1954, recorded as aforesaid in Liber 2882, Page 113, to which reference is hereby made. (Besides other land)

11. Grant in favor of MAUI ELECTRIC COMPANY, LIMITED and HAWAIIAN TELEPHONE COMPANY, now known as GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, dated January 5, 1987, recorded as aforesaid in Liber 20331, Page 23.

12. Grant in favor of MAUI ELECTRIC COMPANY, LIMITED and HAWAIIAN TELEPHONE COMPANY, now known as GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, dated February 17, 1987, recorded as aforesaid in Liber 20506, Page 558.

13. Terms and provisions of that certain Farm Dwelling Agreement made by and between Wailuku Agribusiness Co., Inc., "Applicant", and the County of Maui, through its Department of Public Works, "Department", dated December 5, 1988, recorded as aforesaid in Liber 22650, Page 96, to which reference is hereby made.

14. Easement for waterline purposes within Easement D-2, in favor of BOARD OF WATER SUPPLY OF THE COUNTY OF MAUI, dated ---, recorded as aforesaid in Liber 23819, Page 471.

End of Exhibit "A"

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

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

STANDARD SURFACE WATER USE PERMIT CONDITIONS
FOR NEW AND EXISTING USES
(Approved November 15, 2022)

Pursuant to Hawaii's State Constitution, Article XI, Section 7, Hawaii Revised Statutes (HRS), Chapter 174C; Hawaii Administrative Rules (HAR), Chapters 13-167 through 13-171; and Hawaii decisional law and custom, the permittee is hereby authorized to use surface water from the 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/cwrmm/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.