

**KA PA‘AKAI ANALYSIS
for the
EXISTING KAPALUA WELLS 1 & 2
HONOLUA
in the Ahupua‘a of Honokahua and the Moku of Kā‘anapali,
Honolua Aquifer System,
Lahaina Aquifer Sector**

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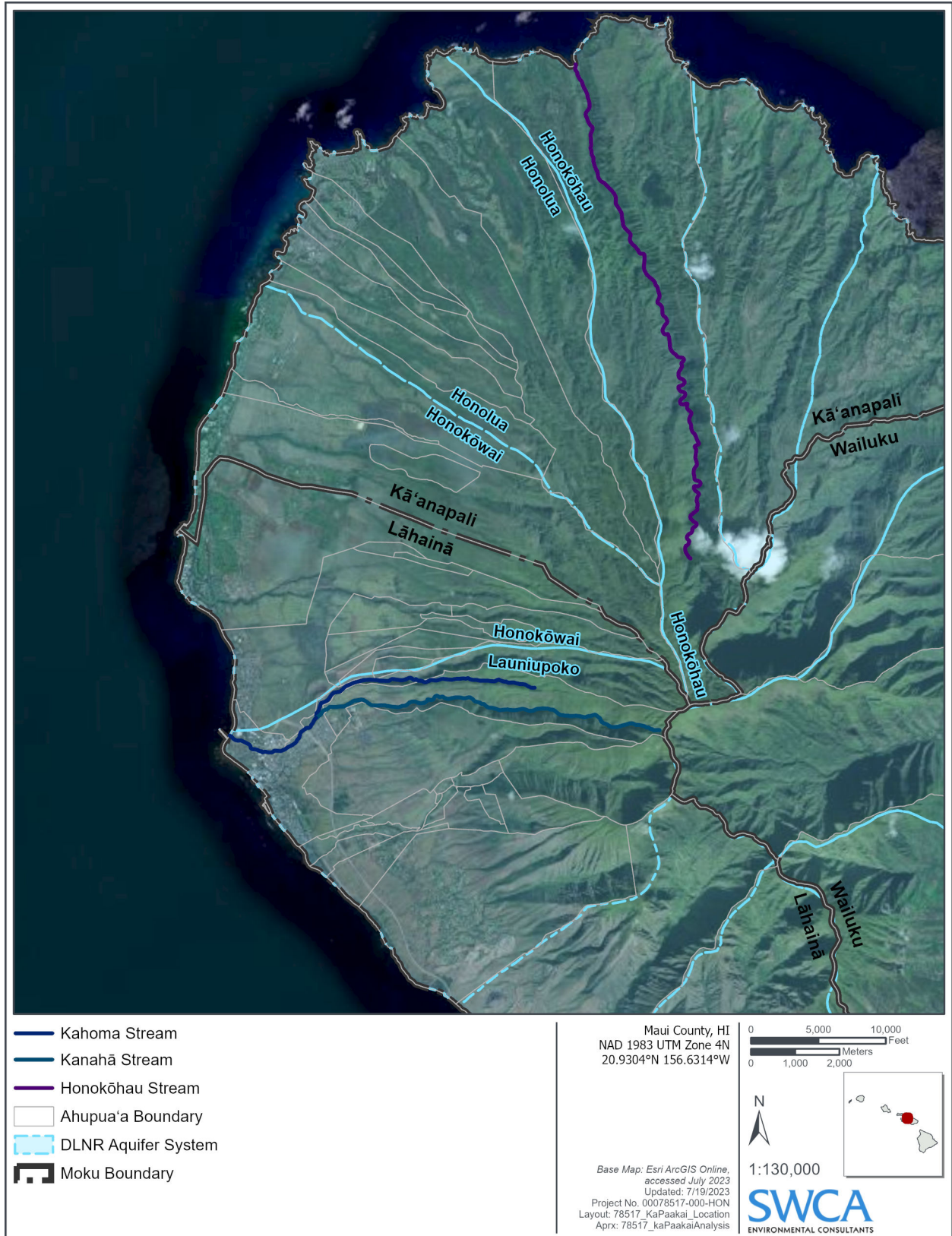
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INTRODUCTION

Maui Land and Pineapple Company Inc. (MLP) conducted and prepared this Ka Pa‘akai Analysis to support its Ground Water Use Permit Application (GWUPA) for the existing Kapalua Wells 1 and 2 located within the ahupua‘a of Honokahua, in the moku (district) of Ka‘anapali. Kapalua Wells 1 and 2 rest within the Honolua Aquifer System and are part of the larger Lahaina Aquifer Sector. (Figure 1)

The following Ka Pa‘akai Analysis has been prepared to support the permit application for MLP’s existing two Kapalua Wells. The analysis focuses on identifying the cultural, historic and natural resources within the Honolua Aquifer System that are valued by Native Hawaiians, the extent to which traditional and customary rights and practices were and are conducted in the area, how those rights and practices have been and may be impacted by the existing water use of Kapalua Wells 1 and 2, and what feasible actions will and may be taken by MLP to reasonably protect these constitutional rights of Native Hawaiians.

The ahupua‘a of Honokahua has a rich history of traditional and cultural use, and current residents, kuleana and appurtenant rights holders continue to value and practice those protected rights. While the current cultural practitioners conduct their traditional practices on a smaller scale than that of their ancestors, they have hopes of expansion. Community members have expressed an interest in increasing traditional subsistence agriculture to provide greater food security and are seeking direct communication with the water system’s management. Some community members have collectively offered to teach and help implement consistent data collection and documentation of the water quality and of the natural resources present within the watershed, including in the nearshore waters. MLP is committed to greater outreach to and collaboration with the community and rights holders impacted throughout the Honolua Aquifer System as we continue to ground ourselves in our kuleana of stewardship throughout this ahupua‘a that we are grateful to be a part of.



**Figure 1: West Maui Mountains aquifer systems map within the Lahaina Aquifer Sector
 (with permission of SWCA Environmental Consultants)**

ENVIRONMENTAL SETTING

The Honolua aquifer system, or hydrologic unit, resides on the north, leeward slope of Pu‘u Kukui, which is the summit of Mauna Kahālāwai (the West Maui Mountains). The hydrologic unit begins at 4,340 feet in elevation and covers 4.75 square miles to the coastline. This area includes Honolua Stream, which runs approximately 8.3 miles from its headwaters to Honolua Bay, and Pāpua Stream. (DLNR CWRM 2019b: 1)

Established and managed by MLP and its nonprofit partners since 1988, the approximately 8,660-acre Pu‘u Kukui Watershed Preserve encompasses approximately 34 percent of the Honolua hydrologic unit. (Id. at 51) (Figure 2) The Preserve includes rainforests, bogs and shrublands dominated by native species, with at least 36 species of rare plants and eight endangered species under its protection. Nine native tree and freshwater snails, three native forest birds (‘apapane, ‘amakihi and ‘i‘iwi), endangered yellow-faced bees, the endangered and threatened ‘ua‘u (Hawaiian petrel) and nene, and the endangered ‘ōpe‘ape‘a (Hawaiian hoary bat) may find shelter in the expansive conservation area. The native vegetation and forest also protect the mountain’s soils from eroding and act like an absorbent sponge that soaks in heavy rains and slowly squeeze the water into streams and groundwater aquifers.

The preserved wilderness that covers the summit of Mauna Kahālāwai is the source of much of the rainfall and fog drip that recharges the Honolua aquifer. The northeasterly tradewinds push the warmer air from the moist ocean and coastal regions up the windward flank of the mountains to their cooler peak environments, where the air cools and moisture condenses into either fog that gets captured by the trees and shrubs (creating fog drip to the soil below) or rain, which falls more actively. Approximately 40 percent of Honolua has an elevation above 2,000 feet: the start of the fog drip zone. (Id. at 12) The Honolua hydrologic unit gets less rain than Honokōhau because it is on a leeward edge of Mauna Kahālāwai. Its mean annual rainfall is 109 inches (Id.). All of this is important to the recharge of aquifers and to maintaining streamflow.

Streamflow varies with water availability based on weather and other natural conditions, terrain that shapes the stream bed’s angle and floor, and influxes from groundwater and diversions. Descriptions of various portions of a stream include the terms “gaining” or “losing”, which refer in part to natural interactions between ground and surface water. This includes areas where the ground- and surface-waters interact, either adding to the stream with springs or taking from the stream through seepage. “A common misconception is that flow restoration from diversions is immediately followed by continuous flow downstream from the point of release all

the way to the coast (analogous to turning on a faucet); however this is not always the case.” (DLNR CWRM 2019d: 11)

For example, Honolulu Stream mostly loses water below its diversions because its flow does not include access to the same groundwater storage systems as nearby Honokōhau Stream. Precipitation provides Honolulu’s main recharge, and that additional water will first seep into the ground, creating a “losing” section of the stream. “In some cases, flow will become continuous only after enough water has infiltrated the streambed and raised the water table, allowing base flow to be maintained by equilibrium with sub-surface flow.” (Id.) Both Honokōhau and Honolulu streams have gaining and losing sections. Honolulu Stream mostly loses water as it flows from the location of the abandoned diversions to the ocean (Id.), and “the stream naturally runs dry during periods of extremely low rainfall.” (Id., at 18) Much of Honolua Stream’s channel flows less than 80% of the time. (DLNR CWRM 2019b: 1) Honokōhau Stream, on the other hand, mostly gains water below its diversions because the stream accesses high-elevation dike-impounded groundwater that releases via springs that were “improved” by the construction of tunnels. (Id. at 11)

Climate and rainfall changes have been documented in West Maui, showing a significant decline of rainfall during the dry season and increased flooding from more extreme storm events, which do not recharge aquifers and can damage infrastructure and stream valleys, during the wet seasons. Modeling remains uncertain and requires more data collection and study.

Non-native forests, grasslands and shrublands make up almost half of the Honolulu hydrologic unit and dominate the lower half. (DLNR CWRM 2019b: 16) The upper reaches of the watershed hold most of its existing native plants, such as ‘ōhia forests, shrubland and some “native dry cliff vegetation.” (Id. at 16)

BRIEF WELLS AND WATER DATA BACKGROUND

When the Hawai‘i Water Code became law in 1987, it required that all stream diversions and wells be registered with CWRM by May 31, 1989. (HRS 174C) In compliance, MLP registered its diversions on Honokōhau and Honolulu streams and its Kapalua Wells. (Figure 3) The latter requires the GWUPA to which this Ka Pa‘akai Analysis is attached. Diversion 768 (Kaluanui Intake – Inactive since 2005) in the Honokōhau hydrologic unit and Diversion 769 (Honolua Intake – Inactive since 2005) in the Honolulu hydrologic unit are no longer operational. Diversion 770 (Aotaki Weir) in the Honokōhau hydrologic unit requires a SWUPA.

MLP’s two wells (Kapalua Wells 1 and 2) draw from the Honolulu groundwater aquifer system. In 2017, the 12-month moving average for all pumping from the Honolulu aquifer was

2.561 mgd, and the 10-year average was 2.448 mgd, below the sustainable annual yield of 8.0 mgd. (DLNR CWRM 2019b: 32) Of that average, Kapalua Wells 1 and 2 had a small portion: Kapalua Well 1 averaged 0.257 mgd, and Kapalua Well 2 averaged 0.258 mgd in 2018. Water from these wells service domestic and resort needs within the Kapalua area. (Id. at 81)

In 2007, the United States Geological Survey (USGS) and the Office of Hawaiian Affairs (OHA) produced a Scientific Investigations Report that provided data, described the distribution and availability of base flows, and analyzed the freshwater needs of lo‘i kalo (flooded kalo or taro fields). (DLNR CWRM 2019c: 80) The report included descriptions of lower Honokōhau Stream, which had groundwater gains between the USGS long-term continuous gaging station 1662000 at the 870-foot elevation, at Diversion 770 (825-foot elevation) and downstream to the ocean. (Id. At 29) In 2006, MLP filed petitions to amend the instream flow standard for both Honolulu and Honokōhau streams. In 2014, the USGS published another Scientific Investigations Report (2014-5087) that included the streamflow availability of Honolulu Stream under natural low-flow conditions. The above data informed the CWRM process in developing the IIFS and are referenced in the below analysis.

Maui Land & Pineapple Co. Pu'u Kukui Watershed Preserve

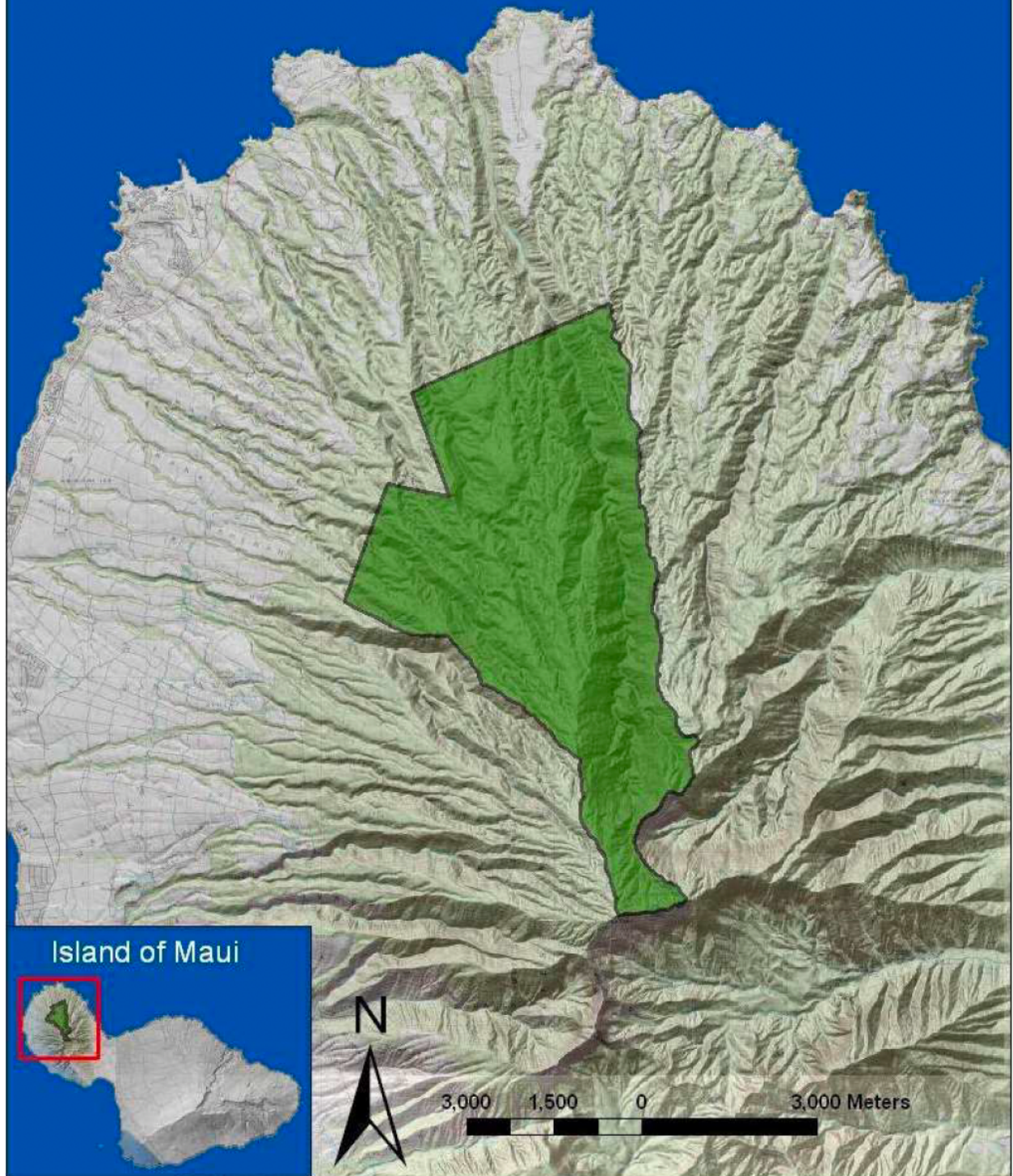


Figure 2: Pu'u Kukui Watershed Reserve

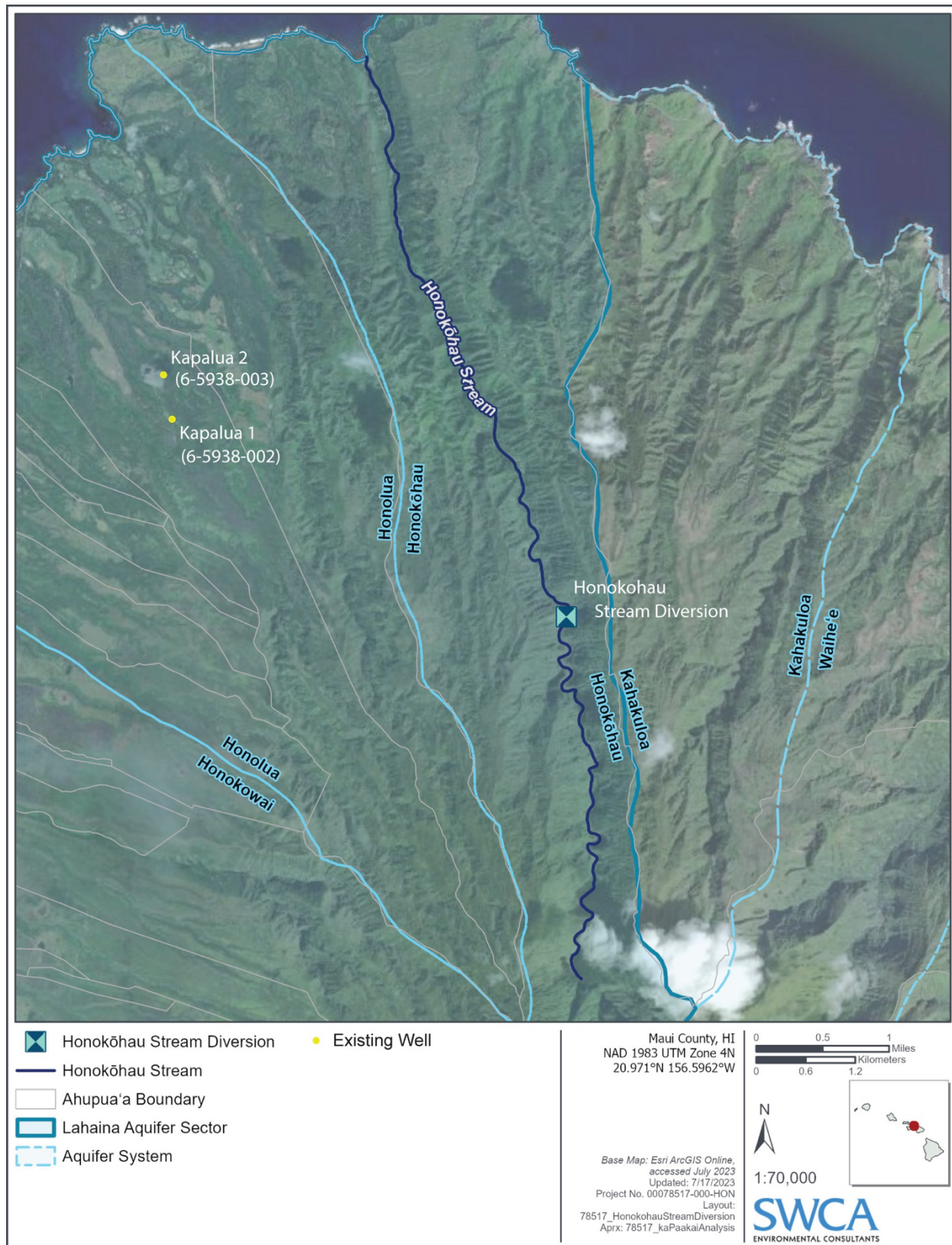


Figure 3: Map of Locations of Existing Kapalua Wells 1 & 2 (with permission of SWCA Environmental Consultants)

KA PA‘AKAI ANALYSIS

Upon publication of the designation of Lahaina Aquifer Sector as a Surface and Ground Water Management Area, existing water users had one year to file their Water Use Permit Applications (WUPA). Upon review of these applications, each of which must include a Ka Pa‘akai Analysis, CWRM may issue permits for existing reasonable and beneficial uses that are within the public interest and consistent with governmental land use plans. (HRS §§ 174C-49 (a), 174C-5050 (c))

The Hawai‘i Supreme Court established the process of the Ka Pa‘akai Analysis in its 2000 decision Ka Pa‘akai O Ka ‘Aina v. Land Use Commission, 94 Hawai‘i 31, 7 P.3d 1068. The prescribed process of analysis helps decisionmakers and resource stewards effectuate the constitutional protections found in Article XII, Section 7, which reads:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

The Hawai‘i Supreme Court had also previously clarified that Article XII, Section 7 was not to be narrowly construed because the intentions of the drafters at the 1978 Constitutional Convention were to protect “the broadest possible spectrum of native rights”. (Pele Def. Fund v. Paty, 73 Haw. 578, 619-20, 837 P.2d 1247, 1271 (1992) (quoting Stand. Comm. Rep. No. 57, in 1 Proceedings of the Constitutional Convention of Hawai‘i of 1978, at 640 (1980)).

Keeping the above in mind when considering proposed actions, the relevant government agency then has the affirmative duty to acquire, review and assess the following information:

- (1) the identity and scope of “valued cultural, historical, or natural resources” in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
- (2) the extent to which those resources – including traditional and customary native Hawaiian rights – will be affected or impaired by the proposed action; and
- (3) the feasible action, if any, to be taken by the [agency] to reasonably protect native Hawaiian rights if they are found to exist (Ka Pa‘akai at 46-47, 7 P.3d at 1083-84, internal footnotes omitted).

Next, MLP follows the above process of the Ka Pa‘akai Analysis. We offer descriptions of historic and current Native Hawaiian practices that include natural and cultural resources within the Honolua hydrologic unit for which we are submitting our GWUPA. We provide quotes and summaries from recent testimonies of how those resources and the Native Hawaiian community have been affected by the now-inactive Honolua Stream diversions and other water uses in the area that tap into the ahupua‘a’s groundwater, such as our two existing wells. MLP also commits to feasible actions to address the comments of current traditional cultural practitioners and to the current and future care of the natural and cultural resources within the Honokahua ahupua‘a. Each of the following three subsections address the above elements of the Ka Pa‘akai Analysis process, in order.

FIRST ELEMENT: IDENTITY AND SCOPE OF CULTURAL, HISTORIC AND NATURAL RESOURCES, AND THE EXTENT OF NATIVE HAWAIIAN RIGHTS BEING EXERCISED

Natural resources are cultural resources:

After exploring and settling Hawai‘i, the northernmost point of the Polynesian Triangle, Native Hawaiians evolved within this archipelago, becoming a distinct people indigenous to the isolated ecosystems of Hawai‘i. Their ecosystem-based and adaptive resource management strategies continue to resonate, their genealogical connections to the natural elements of the islands make them careful stewards, and the length and depth of their ancestral knowledge continues to expand through cultural practice and consistent resilience within their natural and social environments. In part because of this, all natural resources are cultural resources to Native Hawaiians, particularly if those resources are endemic or native to the place or if they originated from those many, original inter-archipelagic voyages (i.e., canoe plants). MLP respects the Native Hawaiian worldview and will keep it in focus throughout the Ka Pa‘akai Analysis and during resource management decision-making.

Ahupua‘a management:

The traditional terms of moku and ahupua‘a, which many land managers continue to reference, originated to delineate land and resource management areas. For example, the Honolulu watershed is within the Honokahua Ahupua‘a and Ka‘anapali Moku. These are not just map names, but terrestrial signposts that often extend from the top of a watershed out to the fishing areas of the sea. The kuleana (right and responsibility) of managing and stewarding the resources within an ahupua‘a required consistent environmental and social awareness and knowledge.

Hawai‘i has several amphidromous species of fish that migrate between fresh and salt water during different points of their life cycles, directly exemplifying the importance of ahupua‘a-based management. Most Hawaiian amphidromous species spawn in fresh water, then the larvae flow downstream into the ocean and develop until they return to the freshwater to grow to full maturity and spawn. These species require the connectivity and comingling of fresh and seawater. They need connectivity upstream to water that is deep and cold enough for them to thrive and spawn, and connectivity downstream to ensure that their larvae are flushed to an area clean enough to provide proper food sources. Many of these amphidromous species crawl as much as swim, so they need natural stream bottoms (rather than modified and smoothed ones), enough stream water flow to attract their upstream migration, but not so much that they cannot

maneuver against the flow. These native fish have similar streamflow needs to that of native mollusks and crustaceans.

The health of these native species relies upon continuous streamflow, and various species inhabiting the stream and just offshore along the coastline need various flow strengths. When Diversion 769 on Honolua Stream was inactivated in 2005, all flow returned to the stream below the Honokōhau Ditch. Even with that restoration, the stream does not flow constantly and therefore does not support native riparian species in its lower reaches. (DLNR CWRM 2019d: 19) Ten percent of the time, during natural flow conditions, Honolua Stream's level is naturally dry at the 800-foot level. (DLNR CWRM 2019b: 37) Stream surveys in 2019 documented that immediately above and below the diversion the stream flows consistently and supports many native species, with pooled water supplying refuge during dry times. Honolua Stream also provides habitat to native damselfly species (*Magdalagrion sp.*), such as the endemic *M. pacificum*. (Id.)

It is understandable why fresh water is considered such a valuable natural and cultural resource that, according to Native Hawaiian customary law, must be shared: no one can own it. The Hawaiian word for “wealth” is waiwai, a duplication of the Hawaiian word for “water”, wai. (Pukui and Elbert 1986: 380)

The mixing of freshwater with kai (nearshore ocean waters) also supports a fragile ecosystem. Honolua stream enters Honolua Bay, and Līpoa Point is named for the brown limu that used to thrive there. (Pukui, Elbert and Mo‘okini (1974): 133) Freshwater flows flush bacteria and other contaminants downstream and are necessary for the lifecycle of limu and other marine life. As mentioned above, several native amphidromous species require wai and kai connectivity for successful life cycles. Many species of nearshore limu (seaweed) do as well. Native Hawaiians often look to limu as beacons of the health of the nearshore and upstream ecosystems and as traditionally gathered and cared for food sources.

Other traditional practices along the Honolua ahupua‘a’s shoreline and in its deep sea include surfing, diving, canoe paddling and voyaging. The voyaging canoe Hōkūle‘a set sail on her historic voyage to Tahiti (the first such inter-archipelagic voyage in more than 600 years) from Honolua Bay in 1976 and continues to return there to honor the place and people. The Honolua-Mokulē‘ia Bay Marine Life Conservation District (MLCD) was established by the Hawai‘i Department of Land and Natural Resources (DLNR) in 1978 to help protect these resources and to continue to ensure public and customary access. While the MLCD does not

allow fishing or gathering, it helps to protect and propagate native fish species, creating a spillover effect to such traditional access areas as Līpoa Point.

Kilo:

The traditional and cultural practice of kilo, or purposeful observations of natural phenomena, continue to be used for farming, fishing, voyaging, assessing natural resources, gathering la‘au lapa‘au (medicinal plants), as well as gathering plants and animals for sustenance. This deep awareness of and alertness to the physical realm of their environment can also take Native Hawaiians to a deeper understanding of ancestral knowledge, practice and spiritual experiences. All of the above builds respectful, reciprocal relationships with land, sea and people that can help practitioners teach, learn and practice other traditional skills.

Native Hawaiians then and now understand and respect the interconnectedness of the environment and the reciprocal nature of caring for what cares for us. Anchored in the belief that Native Hawaiians are related to every natural element of Hawai‘i means that traditional resource management incorporates caring for the resources as family members.

Kalo farming:

For example, kalo, the Hawaiian name for taro, is both a foundational food plant and culturally believed to be the younger brother of Native Hawaiians. To many, these cultural connections are sacred. Reconnecting with cultural and natural resources as one’s ancestors once did provides invaluable learning opportunities and chances to innovate and expand upon experiential knowledge, which adds to an extensive baseline of ecological knowledge. Those traditional knowledge holders can collaborate with the much shorter records of those practicing western scientific studies if trusted relationships can be built.

Historically, the five valleys north of Lahaina along the flanks of Mauna Kahālāwai supported extensive agriculture. E.S. Craighill Handy, Elizabeth Green Handy and Mary Kawena Pukui report in *Native Planters in Old Hawaii: Their Life, Lore, and Environment* (1972) that Honokawai, Kahana, Honokahua and Honolulu “had extensive lo‘i lands in their valley bottoms, where terraces rose tier on tier in symmetrical stone-faced lo‘i.” (Handy and Handy: 494). (Id.) Honolulu stream supported more than 140 lo‘i at one time. (DLNR CWRM 2019d: 20) Below Diversion 769, some kalo farming continues, although the more prominent kalo producer in the area was and continues to be within the Honokōhau ahupua‘a. (Id.) Extensive lo‘i kalo were farmed in the middle reaches of Honolulu Stream before the plantation era, but the area was known more for traditional religious worship. (DLNR CWRM 2019b: 69)

Historic Resources:

As in most parts of Hawai‘i, pre-contact Hawaiian populations centered around West Maui’s streams and coastal resources. Therefore, most archaeological sites and features within the Honolua ahupua‘a are related to farming and habitation, with some fishing features. (Id. at 74) Along Honolua Stream, examples of pre-contact cultural activity, including ‘auwai and terracing, have been found both above and below Diversion 769. Honolua also includes some culturally significant sites such as burials and religious structures. (Id.)

SECOND ELEMENT: DEMONSTRATE EXTENT TO WHICH THOSE RESOURCES HAVE BEEN AND WILL BE AFFECTED OR IMPAIRED BY THE EXISTING WATER USE

The Hawai‘i Water Code (Code), Chapter 174C, Hawaii Revised Statutes (HRS), provides the methods by which CWRM (also, the Commission) may adopt interim instream flow standards (IIFS), and the Hawai‘i Supreme Court described those standards as “the primary mechanism by which the Commission is to discharge its duty to protect and promote the entire range of public trust purposes dependent upon instream flows.” (Waiahole I: 94 Hawai‘i 97, 148, 9 P.3d 409, 460).

The Hawai‘i Constitution, Article XI, Section 1 states, “All public natural resources are held in trust by the State for the benefit of the people. Article XI, Section 7 explains that Hawai‘i “has an obligation to protect, control, and regulate the use of Hawai‘i’s resources for the benefit of its people.” Out of that, the Public Trust Doctrine’s four priority water uses include:

- (1) Water used for traditional and customary practices,
- (2) Water reserved and used by the Department of Hawaiian Home Lands,
- (3) Water for domestic uses, and
- (4) Water in its natural state.

The Code defines “Instream flow standard” as the “quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect fishery, wildlife, recreational, aesthetic, scenic and other beneficial instream uses.” (HRS § 174C-3, Definitions). Instream use is defined as “beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving water in the stream.” (Id.) The definitions continues to include the following quoted examples of instream use, among others, that are of particular interest in a Ka Pa‘akai Analysis:

- Maintenance of fish and wildlife habitats;
- Maintenance of ecosystems such as estuaries, wetlands and stream vegetation;
- Aesthetic values such as waterfalls and scenic waterways;
- Maintenance of water quality;
- The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- The protection of traditional and customary Native Hawaiian rights. (Id.)

Non-instream use also applies to this Ka Pa‘akai Analysis because lo‘i kalo often require stream water to be temporarily diverted through ‘auwai (irrigation ditches) to keep cool, fresh

water moving across the lo‘i, and because the water that is the subject of the relevant SWUPA is being diverted in part to provide an existing, beneficial use for domestic and agricultural purposes. The Code further defines “non-instream use” as stream water that is used outside of the natural stream channel for domestic, agricultural and industrial purposes. (Id.)

Stream data:

The USGS does not have a long-term, continuous record gaging system for Honolua Stream, which is shorter and shallower than the other watershed-defining streams of West Maui. Without the upper-elevation dike structures of the other streams, it does not have natural access to ground water to aid its surface flow; it must rely upon precipitation. Its estimated low-flow duration values at Diversion 769 are a median flow of 2.46 mgd and a low flow of 0.00 mgd. Based on calculations and estimations, it is only expected to flow ma uka to ma kai 80% of the time. (DLNR CWRM 2019d: 25)

Collaboration with community:

Several community members offered that they could be part of an observational and data collecting team. For Honolua Stream, Kanoelani Steward testified that “there’s absolutely no recent data from surveys done from the past year, or even mention that anything was done. You guys only talk about the surveys that were done in 1961, which definitely doesn’t reflect the fish populations today.” (DLNR CWRM 2019a: 13) She also said that she had partnered with Pu‘u Kukui Watershed to go into Honolua Stream, and offered to:

train[] the community and other people, and giving them... empowering them to be able to collect this data and to hand it over to you guys, because you guys definitely don’t have the capacity to monitor all year round. And so, definitely finding not just people from the community, but even the educational programs helps get the teachers involved to teach it to the kids, ‘cause we do go up there to Honolulu to do surveys and everything, and so we also have knowledge of what types of fish are in the stream.

She urged Commission staff “to try to be more creative in accounting for all of our native stream organisms, because it is definitely protect[ed] as one of the instream uses.” (Id.)

Lo‘i kalo impacts:

Several o kalo farmers provided written and oral testimony to CWRM staff in September and October 2019 (DLNR CWRM 2019a) and to the Commissioners in November 2019 (DLNR CWRM 2019e), all before the worldwide COVID-19 pandemic. Even in 2019, testifiers spoke of the desire for food security and independence and for the ability to open more lo‘i, if there

was consistent and reliable water flow at the correct temperature. Almost everyone who testified requested more water from the streams.

Infrastructure maintenance:

A parallel sentiment was the need for end users of the pumped Honolulu aquifer to use the water conservatively and respectfully. Testifiers often called for irrigators to use the water more efficiently: not watering their landscaping during midday sun, planting native plants that require less water, and using agricultural land for agriculture. They also advocated for using R-1 water (recycled graywater), especially for residential or resort landscaping to prevent unwanted chemicals or elements from getting into the groundwater or agriculture.

Water wasting complaint:

On April 23, 2019, residents of Honokōhau, Ka Malo o Kahālāwai and the West Maui Preservation Association filed a water wasting complaint with CWRM against MPL and the Ka'anapali Land Management Company for wasting water from the Honokōhau Ditch. The complainants included lo'i kalo farmers of land along the Honokōhau Stream and others who exercise "traditional and customary practices of fishing, surfing, canoe paddling, and diving in nearshore waters where the wasted water meets the ocean." (DLNR CWRM 2019d: 32)

Public testimony at a Nov. 20, 2019, CWRM meeting mainly focused on the complaint issues. Among additional requests were that MLP use their underused well water from a different aquifer instead of diverting Honokōhau Stream (DLNR CWRM 2019e: 29), and that a water advisory committee be formed, made up of kuleana owners and other stakeholders. They suggested that this advisory committee could update CWRM on conditions of streams and traditional and cultural users. (Id. at 31) Many testifiers noted a lack of communication from MLP as well as a lack of involvement with the community. They spoke of historic and current dissatisfaction, as of 2019, with the seeming lack of interest by MLP in their community and its needs and concerns.

On the other hand, Gretchen Asano, a former resident of Honokōhau whose house was destroyed by the flood after Hurricane Olivia, alleged to the Commissioners, "We appreciate the Hui Watershed and their restoration projects; we have a good relationship with them." (Id. at 34)

CWRM Staff noted that it should be possible to resolve the formal complaint should be able to be resolved through repair and maintenance tasks. **Pertaining to the Honolulu hydrologic** unit, staff recommended clearing the remnants of non-functional Diversion 768 and 769 and abandoning these diversions. (Id. at 39) The Commission unanimously approved that

MLP shall dismantle and remove the nonfunctioning diversions along Honolua Stream. (DLNR CWRM 2019d: 27-28; DLNR CWRM 2019e: 39-40)

THIRD ELEMENT: FEASIBLE ACTIONS TO BE TAKEN TO REASONABLY PROTECT NATIVE HAWAIIAN RIGHTS

MLP appreciates the concerns voiced by community members, current residents, kuleana and appurtenant rights holders, as well as the volume of suggestions made, and the care shown for Honolua Valley. We seek to show that we have not only listened, but we also have heard the voices and words of the Native Hawaiian community that has a generational kuleana to this ahupua‘a and its cultural and natural resources. While continued use of the existing Kapalua Wells 1 and 2 are not seen by consulted parties as having much impact on freshwater accessibility as a stream diversion, common values of conservation, efficiency, respectful use and overall watershed management remain. We report below on advancements that have been made since the testimony and comments were offered back in 2019, and we provide commitments to continue to improve our stewardship of the resources and our relationships with the community. All of the following are feasible actions MLP has, can and will take to reasonably protect Native Hawaiian Rights.

Ahupua‘a management:

MLP honors the Native Hawaiian traditions and knowledge of ahupua‘a-based resource management and continues to strive to steward in that manner. We remain focused on preserving the aquifer and surface waters of the Pu‘u Kukui Watershed because the quantity and quality of the ground and surface waters depend heavily on the health and recharge of the watershed. We also have been extending that watershed protection ma kai, adding to our conservation lands in the ma kai section of the ahupua‘a. We now manage 1,000 acres of conservation land ma kai of the preserve and have put an additional 3,000 acres in a conservation easement in the coastal and riparian areas ma kai of the upland watershed preserve.

The Living Pono Project, a nonprofit partner of MLP’s, holds this conservation easement, which has linked the management areas ma uka and ma kai, intentionally following the ahupua‘a model. This will enable “holistic decision making and better protection of natural resources, with increased community outreach opportunities to accessible lands.” (DLNR DOFAW 2023: 10) We look forward to learning from the traditional and cultural practitioners of this ahupua‘a about what they have learned through their generations of kilo in the area, and we will share what we have learned and are learning about this vast amount of interconnected resources. MLP seeks to restore and perpetuate both the environment and the related traditional and cultural practices within a healthy environment.

Fortunately, on April 14, 2023, the Board of Land and Natural Resources unanimously authorized additional 2:1 matching funding to manage the watershed, which is part of the Natural Area Partnership Program, for Hawai‘i Fiscal Years 2024-2030. These critical funds from DLNR, combined with philanthropic contributions to MLP’s nonprofit partners, The Living Pono Project and The Nature Conservancy Hawai‘i, will help to ensure the perpetuation of native ecosystems, endangered and endemic species and ongoing access to clean fresh water.

In our approved Management Plan for the Pu‘u Kukui Watershed Preserve for Fiscal Years 2024-2030, we describe how we will strive to use culturally appropriate methods to help improve and protect one of Hawai‘i’s largest privately owned natural preserves and the rest of the ahupua‘a. The Management Plan confirms MLP’s commitments to continue to:

1. Respond to the threat of invasive ungulates by maintaining existing deer fencing and deploying more fencing to eventually eliminate ungulate activity in the preserve;
2. Reduce and remove non-native weed species that have displaced native vegetation over large areas;
3. Restrict access to the preserve area “to minimize human impacts and protect public safety” (DLNR DOFAW 2023: 11);
4. Plan koa, ‘a‘ali‘i, ‘ōhia and other native forest vegetation to capture additional rainfall and fog drip and increase the ongoing percolation into the aquifer.
5. “Track biological and physical resources in the watershed and evaluate changes in those resources over time,” and “provide logistical support to approved research projects that will improve management understanding of the watershed’s resources” (Id. at 29)
6. Prevent rare species extinction in the watershed;
7. Partner with the community on projects focusing on preserving and enhancing native plants and animals, particularly in the ma kai conservation areas “to preserve and enhance native plant and animal communities, protect nearshore waters from land-based pollutants, [and] increase community stewardship of coastal lands and ahupua‘a connectivity.” (Id. at 11);
8. Assist in the long-term management of the native ecosystems of West Maui through continued active participation in the Mauna Kahālāwai Watershed Partnership; and
9. Provide adequate workers and equipment to meet the plan’s goals.

None of the above goals is possible in isolation within the ahupua‘a or without management partners, including the community. Please note that MLP also a founding member of the Mauna Kahālāwai Watershed Partnership (previously known as the West Maui Mountains Watershed Partnership) and an involved member of the West Maui Ridge2Reef, both of which focus on collaborative, ahupua‘a-based entities.

The Honolua hydrologic unit is part of the West Maui Ridge2Reef initiative, which honors the ahupua‘a resource management model of Native Hawaiians, in part by bringing together managing agencies, stakeholder organizations and community volunteers to examine and provide solutions for such issues as upcountry, land-based pollution sources affecting nearshore reef ecosystems. This includes sourcing legacy sediment and agricultural runoff, mitigating that damage and limiting its future occurrence.

Collaboration with community:

MLP intends that a more consistent and reliable relationship will continue to grow into a formalized working group with mutual respect and trust. We will assure that there is a regular exchange of information and ideas. A new natural resources manager has recently been hired by MLP and is coordinating with HWS to build a steady relationship and solid lines of communication, which will help to support lo‘i kalo farmers, appurtenant rights holders, traditional and cultural practitioners, and residents of the ahupua‘a.

Learning from written and oral testimony that many of the ahupua‘a’s traditional practitioners, educators and children want to be proactively involved has been inspiring for the new management at MLP. This will build on the network of community collaboration being built by the management of the Pu‘u Kukui Watershed Preserve, including the example offered during public testimony by Kanoelani Steward, who already as worked with the preserve on community engagement projects and habitat surveys. Her suggestion to connect with multi-generational community and education groups provides hope for on-the-ground training of present and future resource stewards.

MLP looks forward to many productive conversations that will share ideas about how to make the water system more efficient and how to best work together to obtain and share reliable and consistent data about our shared environment, ma uka to ma kai. Together with cultural practitioners we will seek to employ a blend of traditional kilo methods, western scientific data sets and historic information to make informed resource management decisions. This inclusive methodology will enable more transparency and information about data collected about water quality and quantity throughout the system. It will also provide for better outreach and education about the connection between preservation and conservation with the continued enjoyment of fresh water.

Ocean, coastal and lo‘i kalo support:

Being more involved in ma kai resources survey and management, and working with the ahupua‘a’s community and education groups, and the traditional and cultural users of the area

helps us to more quickly note and respond to any higher water temperatures and levels of water discharge from ma uka. We seek to strengthen and expand these partnerships also engender better and more timely communications about issues and solutions, particularly if there are weather-related flooding issues that may also discharge additional sediment that could negatively impact the limu and reefs.

By improving communication and trust with the lo‘i kalo farmers, appurtenant rights holders, residents and other traditional and cultural practitioners of the stream valley and coast, MLP and its contractors intend to create reliability and efficiency in the system. Two-way communication should enable faster response times during weather events and possible infrastructure complications. Much of the 2019 testimony related a desire for the ability to open more lo‘i kalo and feed more people with their native foods. The COVID-19 pandemic that followed further expanded the interests of many local and Native Hawaiians to return to localized agriculture for food and health security, as well as continued cultural revitalization. MLP supports these goals and seeks to collaborate on additional feasible actions through regular meetings and discussions with rights and stakeholders.

Shared responsibility of end-users:

MLP concurs with community members that we all need to seek ways to be more responsible in our water use. Currently, because the aquifer and precipitation sources for water in these ahupua‘a mostly originate within the Pu‘u Kukui Watershed Preserve, and because we agree that everyone who has the privilege to use and enjoy that water should share in the responsibility of caring for it, we envision that all end-users who consume diverted and pumped water from the Honokōhau and Honolua hydrologic units will share equally in the perpetual care for this resource. MLP also agrees with comments from the community and CWRM members (DLNR CWRM 2019e: 25, 27) that the operation and management of the ditch and diverted water system should occur at a high level, and that the cost of this ongoing care be borne by the end-users, to ensure perpetual funding and care of the 110-year-old infrastructure.

Also, while County R-1 water (recycled graywater) is not available in our area, MLP commits to exploring ways to recycle and improve efficiency by the end users of the diverted stream water. We will work with landscapers to assure that they are not irrigating during the peak evaporation times of high sun and explore ways to collaborate on landscaping with more native and drought-resistant plants that require less water and help rebuild West Maui’s once robust and diverse native ecosystem. Presently, non-potable water needs for the Kapalua area are only met by water diverted from Holokōhau and Honolua streams, and we look forward to brainstorming with Native Hawaiians and other community members to innovate additional,

feasible and beneficial uses of our shared resources and coordinated methods of outreach and education for the diversion's and wells' end users.

Historic Resources:

Furthermore, should MLP, its contractors or its management partners learn of or make any inadvertent discoveries of historic properties in the area, the procedures required in Hawaii Administrative Rules § 13-280 will be followed.

SUMMARY

After identifying traditional and customary practices – in historic and present times – exercised within the ahupua‘a of Honokahua and the Honolua aquifer, determining if and how those practices have been or might be affected by the existing use of Kapalua Wells 1 and 2, and finding several feasible actions that we can take to reasonably protect the rights of Native Hawaiians to continue their cultural practices, MLP looks forward to continuing to improve our sustainable stewardship of the area’s natural resources. This has been an educational and inspirational exercise.

MLP respects and honors Hawai‘i’s duty, as affirmed by the Hawai‘i Constitution, to “protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes” for Native Hawaiians, subject only to the government’s “right to accommodate competing interests.” (Haw. Const. Art. XII, § 7, and Flores-Case ‘Ohana 2023). After reviewing past and current statistics and hearing and reading the words of Native Hawaiians who are currently practicing customary and traditional activities in Honolua watershed, many of whom seek an expansion of their activities and of their ability to collaborate with resource managers, we see opportunities to learn more about this area and its community and to build respectful relationships. MLP’s new management commits to engaging humbly and to striving to work together toward a balanced use of the area’s natural resources to support traditional and cultural uses, agriculture, housing for local residents and a healthy economy.

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